

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2397

By: Dunlap and Sherrer of the
House

and

Sykes of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; amending 22 O.S. 2011, Sections 18, as last amended by Section 2, Chapter 397, O.S.L. 2015 and 19, as amended by Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp. 2015, Sections 18 and 19), which relate to criminal arrest record expungement qualifications and procedures; adding and modifying expungement categories; deleting and replacing certain designation; making DNA samples, records and identifiable information inadmissible in prosecutions under certain circumstances; amending 22 O.S. 2011, Section 977, which relates to the entering and filing of judgments; modifying identification information required for judgments entered in criminal cases; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last
2 amended by Section 2, Chapter 397, O.S.L. 2015 (22 O.S. Supp. 2015,
3 Section 18), is amended to read as follows:

4 Section 18. A. Persons authorized to file a motion for
5 expungement, as provided herein, must be within one of the following
6 categories:

7 1. The person has been acquitted;

8 2. The conviction was reversed with instructions to dismiss by
9 an appellate court of competent jurisdiction, or an appellate court
10 of competent jurisdiction reversed the conviction and the ~~district~~
11 ~~attorney~~ prosecuting agency subsequently dismissed the charge;

12 3. The factual innocence of the person was established by the
13 use of deoxyribonucleic acid (DNA) evidence subsequent to
14 conviction, including a person who has been released from prison at
15 the time innocence was established;

16 4. The person has received a full pardon on the basis of a
17 written finding by the Governor of actual innocence for the crime
18 for which the claimant was sentenced;

19 5. The person was arrested and no charges of any type,
20 including charges for an offense different than that for which the
21 person was originally arrested, are filed and the statute of
22 limitations has expired or the prosecuting agency has declined to
23 file charges;

1 6. The person was under eighteen (18) years of age at the time
2 the offense was committed and the person has received a full pardon
3 for the offense;

4 7. The person was charged with one or more misdemeanor or
5 felony crimes, all charges have been dismissed, the person has never
6 been convicted of a felony, no misdemeanor or felony charges are
7 pending against the person, and the statute of limitations for
8 refiling the charge or charges has expired or the prosecuting agency
9 confirms that the charge or charges will not be refiled; provided,
10 however, this category shall not apply to charges that have been
11 dismissed following the completion of a deferred judgment or delayed
12 sentence;

13 8. The person was charged with a misdemeanor, the charge was
14 dismissed following the successful completion of a deferred judgment
15 or delayed sentence, the person has never been convicted of a
16 ~~misdemeanor or~~ felony, no misdemeanor or felony charges are pending
17 against the person, and at least one (1) year has passed since the
18 charge was dismissed;

19 9. The person was charged with a nonviolent felony offense, not
20 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
21 charge was dismissed following the successful completion of a
22 deferred judgment or delayed sentence, the person has never been
23 convicted of a ~~misdemeanor or~~ felony, no misdemeanor or felony
24

1 charges are pending against the person, and at least ~~ten (10)~~ five
2 (5) years have passed since the charge was dismissed;

3 10. The person was convicted of a misdemeanor offense, the
4 person was sentenced to a fine of less than Five Hundred One Dollars
5 (\$501.00) without a term of imprisonment or a suspended sentence,
6 the fine has been paid or satisfied by time served in lieu of the
7 fine, the person has not been convicted of a felony, and no felony
8 or misdemeanor charges are pending against the person;

9 11. The person was convicted of a misdemeanor offense, the
10 person was sentenced to a term of imprisonment, a suspended sentence
11 or a fine in an amount greater than Five Hundred Dollars (\$500.00),
12 the person has not been convicted of a felony, no felony or
13 misdemeanor charges are pending against the person, and at least ~~ten~~
14 ~~(10)~~ five (5) years have passed since the end of the last
15 misdemeanor sentence;

16 ~~11.~~ 12. The person was convicted of a nonviolent felony
17 offense, not listed in Section 571 of Title 57 of the Oklahoma
18 Statutes, the person has received a full pardon for the offense, the
19 person has not been convicted of any other felony, the person has
20 not been convicted of a separate misdemeanor in the last fifteen
21 (15) years, no felony or misdemeanor charges are pending against the
22 person, and at least ten (10) years have passed since the felony
23 conviction; ~~or~~

1 ~~12.~~ 13. The person was convicted of not more than two
2 nonviolent felony offenses, not listed in Section 571 of Title 57 of
3 the Oklahoma Statutes, the person has received a full pardon for
4 both of the nonviolent felony offenses, no felony or misdemeanor
5 charges are pending against the person, and at least twenty (20)
6 years have passed since the last misdemeanor or felony conviction;
7 or

8 14. The person has been charged or arrested or is the subject
9 of an arrest warrant for a crime that was committed by another
10 person who has appropriated or used the person's name or other
11 identification without the person's consent or authorization.

12 B. For purposes of this act, "expungement" shall mean the
13 sealing of criminal records, as well as any public civil record,
14 involving actions brought by and against the State of Oklahoma
15 arising from the same arrest, transaction or occurrence.

16 C. For purposes of seeking an expungement under the provisions
17 of paragraph 10 ~~or~~, 11, 12 or 13 of subsection A of this section,
18 offenses arising out of the same transaction or occurrence shall be
19 treated as one conviction and offense.

20 D. Records expunged pursuant to paragraphs 8, 9, 10, 11 ~~and~~,
21 12, 13 and 14 of subsection A of this section shall be sealed to the
22 public but not to law enforcement agencies for law enforcement
23 purposes. Records expunged pursuant to paragraphs 8, 9, 10 ~~and~~, 11,
24 12 and 13 of subsection A of this section shall be admissible in any

1 subsequent criminal prosecution to prove the existence of a prior
2 conviction or prior deferred judgment without the necessity of a
3 court order requesting the unsealing of the records. Records
4 expunged pursuant to paragraph 4, 6 ~~or 11~~, 12 or 13 of subsection A
5 of this section may also include the sealing of Pardon and Parole
6 Board records related to an application for a pardon. Such records
7 shall be sealed to the public but not to the Pardon and Parole
8 Board.

9 SECTION 2. AMENDATORY 22 O.S. 2011, Section 19, as
10 amended by Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp. 2015,
11 Section 19), is amended to read as follows:

12 Section 19. A. Any person qualified under Section 18 of this
13 title may petition the district court of the district in which the
14 arrest information pertaining to the person is located for the
15 sealing of all or any part of the record, except basic
16 identification information.

17 B. Upon the filing of a petition or entering of a court order,
18 the court shall set a date for a hearing and shall provide thirty
19 (30) days of notice of the hearing to the ~~district attorney~~
20 prosecuting agency, the arresting agency, the Oklahoma State Bureau
21 of Investigation, and any other person or agency whom the court has
22 reason to believe may have relevant information related to the
23 sealing of such record.

1 C. Upon a finding that the harm to privacy of the person in
2 interest or dangers of unwarranted adverse consequences outweigh the
3 public interest in retaining the records, the court may order such
4 records, or any part thereof except basic identification
5 information, to be sealed. If the court finds that neither sealing
6 of the records nor maintaining of the records unsealed by the agency
7 would serve the ends of justice, the court may enter an appropriate
8 order limiting access to such records.

9 Any order entered under this subsection shall specify those
10 agencies to which such order shall apply. Any order entered
11 pursuant to this subsection may be appealed by the petitioner, the
12 ~~district attorney~~ prosecuting agency, the arresting agency, or the
13 Oklahoma State Bureau of Investigation to the Oklahoma Supreme Court
14 in accordance with the rules of the Oklahoma Supreme Court. In all
15 such appeals, the Oklahoma State Bureau of Investigation is a
16 necessary party and must be given notice of the appellate
17 proceedings.

18 D. Upon the entry of an order to seal the records, or any part
19 thereof, the subject official actions shall be deemed never to have
20 occurred, and the person in interest and all criminal justice
21 agencies may properly reply, upon any inquiry in the matter, that no
22 such action ever occurred and that no such record exists with
23 respect to such person.
24

1 E. Inspection of the records included in the order may
2 thereafter be permitted by the court only upon petition by the
3 person in interest who is the subject of such records, the Attorney
4 General, or by the ~~district attorney~~ prosecuting agency and only to
5 those persons and for such purposes named in such petition.

6 F. Employers, educational institutions, state and local
7 government agencies, officials, and employees shall not, in any
8 application or interview or otherwise, require an applicant to
9 disclose any information contained in sealed records. An applicant
10 need not, in answer to any question concerning arrest and criminal
11 records, provide information that has been sealed, including any
12 reference to or information concerning such sealed information and
13 may state that no such action has ever occurred. Such an
14 application may not be denied solely because of the refusal of the
15 applicant to disclose arrest and criminal records information that
16 has been sealed.

17 G. All arrest and criminal records information existing prior
18 to the effective date of this section, except basic identification
19 information, is also subject to sealing in accordance with
20 subsection C of this section.

21 H. Nothing in this section shall be construed to authorize the
22 physical destruction of any criminal justice records.

23 I. For the purposes of this section, sealed materials which are
24 recorded in the same document as unsealed material may be recorded

1 in a separate document, and sealed, then obliterated in the original
2 document.

3 J. For the purposes of this section, district court index
4 reference of sealed material shall be destroyed, removed or
5 obliterated.

6 K. Any record ordered to be sealed pursuant to this section, if
7 not unsealed within ten (10) years of the expungement order, may be
8 obliterated or destroyed at the end of the ten-year period.

9 L. Subsequent to records being sealed as provided herein, the
10 ~~district attorney~~ prosecuting agency, the arresting agency, the
11 Oklahoma State Bureau of Investigation, or other interested person
12 or agency may petition the court for an order unsealing said
13 records. Upon filing of a petition the court shall set a date for
14 hearing, which hearing may be closed at the discretion of the court,
15 and shall provide thirty (30) days of notice to all interested
16 parties. If, upon hearing, the court determines there has been a
17 change of conditions or that there is a compelling reason to unseal
18 the records, the court may order all or a portion of the records
19 unsealed.

20 M. Nothing herein shall prohibit the introduction of evidence
21 regarding actions sealed pursuant to the provisions of this section
22 at any hearing or trial for purposes of impeaching the credibility
23 of a witness or as evidence of character testimony pursuant to
24 Section 2608 of Title 12 of the Oklahoma Statutes.

1 N. If a person qualifies for an expungement under the
2 provisions of paragraph 3 of subsection A of Section 18 of this
3 title and said petition for expungement is granted by the court, the
4 court shall order the reimbursement of all filing fees and court
5 costs incurred by the petitioner as a result of filing the
6 expungement request.

7 SECTION 3. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 211.1 of Title 22, unless there
9 is created a duplication in numbering, reads as follows:

10 All deoxyribonucleic acid (DNA) samples, records and
11 identifiable information generated pursuant to the provisions of
12 Section 1 of Enrolled House Bill No. 2275 of the 2nd Session of the
13 55th Oklahoma Legislature that are required to be automatically
14 expunged under the provisions of that section shall be inadmissible
15 in any prosecution of that person for a crime committed after the
16 date the DNA samples, records and identifiable information should
17 have been automatically expunged.

18 SECTION 4. AMENDATORY 22 O.S. 2011, Section 977, is
19 amended to read as follows:

20 Section 977. A. When judgment upon a conviction is rendered,
21 the clerk must enter the same upon the minutes, stating briefly the
22 offense for which the conviction has been had, and must immediately
23 annex together and file the following papers, which constitute a
24 record of the action:

1 1. The indictment and a copy of the minutes of the plea or
2 demurrer;
3 2. A copy of the minutes of the trial;
4 3. The charges given or refused, and the endorsements, if any,
5 thereon; and
6 4. A copy of the judgment, which shall include a notation of
7 the ~~date~~ year of birth of the defendant and the last four digits of
8 the Social Security number of the defendant. The judgment shall
9 also contain the statutory reference to the felony crime the
10 defendant was convicted of and the date of the offense.

11 B. The court shall obtain the ~~date~~ year of birth of the
12 defendant and the last four digits of the Social Security number of
13 the defendant.

14 SECTION 5. This act shall become effective November 1, 2016.

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