

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 55th Legislature (2016)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2397

By: Dunlap

7 COMMITTEE SUBSTITUTE

8 An Act relating to criminal procedure; amending 22
9 O.S. 2011, Sections 18, as last amended by Section 2,
Chapter 397, O.S.L. 2015 and 19, as amended by
10 Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp.
2015, Sections 18 and 19), which relate to criminal
11 arrest record expungement qualifications and
procedures; adding and modifying expungement
12 categories; deleting and replacing certain
designation; and providing an effective date.

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

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

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

- 22 1. The person has been acquitted;
- 23 2. The conviction was reversed with instructions to dismiss by
- 24 an appellate court of competent jurisdiction, or an appellate court

1 of competent jurisdiction reversed the conviction and the ~~district~~
2 ~~attorney~~ prosecuting agency subsequently dismissed the charge;

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

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

10 5. The person was arrested and no charges of any type,
11 including charges for an offense different than that for which the
12 person was originally arrested, are filed and the statute of
13 limitations has expired or the prosecuting agency has declined to
14 file charges;

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

18 7. The person was charged with one or more misdemeanor or
19 felony crimes, all charges have been dismissed, the person has never
20 been convicted of a felony, no misdemeanor or felony charges are
21 pending against the person, and the statute of limitations for
22 refiling the charge or charges has expired or the prosecuting agency
23 confirms that the charge or charges will not be refiled; provided,
24 however, this category shall not apply to charges that have been

1 dismissed following the completion of a deferred judgment or delayed
2 sentence;

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

9 9. The person was charged with a nonviolent felony offense, not
10 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
11 charge was dismissed following the successful completion of a
12 deferred judgment or delayed sentence, the person has never been
13 convicted of a ~~misdemeanor or~~ felony, no misdemeanor or felony
14 charges are pending against the person, and at least ~~ten (10)~~ five
15 (5) years have passed since the charge was dismissed;

16 10. The person was convicted of a misdemeanor offense, the
17 person was sentenced to a fine of less than Five Hundred One Dollars
18 (\$501.00) without a term of imprisonment or a suspended sentence,
19 the fine has been paid or satisfied by time served in lieu of the
20 fine, the person has not been convicted of a felony, and no felony
21 or misdemeanor charges are pending against the person;

22 11. The person was convicted of a misdemeanor offense, the
23 person was sentenced to a term of imprisonment or a suspended
24 sentence, the person has not been convicted of a felony, no felony

1 or misdemeanor charges are pending against the person, and at least
2 ~~ten (10)~~ five (5) years have passed since the end of the last
3 misdemeanor sentence;

4 ~~11.~~ 12. The person was convicted of a nonviolent felony
5 offense, not listed in Section 571 of Title 57 of the Oklahoma
6 Statutes, the person has received a full pardon for the offense, the
7 person has not been convicted of any other felony, the person has
8 not been convicted of a separate misdemeanor in the last fifteen
9 (15) years, no felony or misdemeanor charges are pending against the
10 person, and at least ten (10) years have passed since the felony
11 conviction; ~~or~~

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

19 14. The person has been charged or arrested or is the subject
20 of an arrest warrant for a crime that was committed by another
21 person who has appropriated or used the person's name or other
22 identification without the person's consent or authorization.
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1 B. For purposes of this act, "expungement" shall mean the
2 sealing of criminal records as well as any public civil record
3 arising from the same arrest, transaction or occurrence.

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

8 D. Records expunged pursuant to paragraphs 8, 9, 10, 11 ~~and~~,
9 12, 13 and 14 of subsection A of this section shall be sealed to the
10 public but not to law enforcement agencies for law enforcement
11 purposes. Records expunged pursuant to paragraphs 8, 9, 10 ~~and~~, 11,
12 12 and 13 of subsection A of this section shall be admissible in any
13 subsequent criminal prosecution to prove the existence of a prior
14 conviction or prior deferred judgment without the necessity of a
15 court order requesting the unsealing of the records. Records
16 expunged pursuant to paragraph 4, 6 ~~or 11~~, 12 or 13 of subsection A
17 of this section may also include the sealing of Pardon and Parole
18 Board records related to an application for a pardon. Such records
19 shall be sealed to the public but not to the Pardon and Parole
20 Board.

21 SECTION 2. AMENDATORY 22 O.S. 2011, Section 19, as
22 amended by Section 1, Chapter 178, O.S.L. 2015 (22 O.S. Supp. 2015,
23 Section 19), is amended to read as follows:
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1 Section 19. A. Any person qualified under Section 18 of this
2 title may petition the district court of the district in which the
3 arrest information pertaining to the person is located for the
4 sealing of all or any part of the record, except basic
5 identification information.

6 B. Upon the filing of a petition or entering of a court order,
7 the court shall set a date for a hearing and shall provide thirty
8 (30) days of notice of the hearing to the ~~district attorney~~
9 prosecuting agency, the arresting agency, the Oklahoma State Bureau
10 of Investigation, and any other person or agency whom the court has
11 reason to believe may have relevant information related to the
12 sealing of such record.

13 C. Upon a finding that the harm to privacy of the person in
14 interest or dangers of unwarranted adverse consequences outweigh the
15 public interest in retaining the records, the court may order such
16 records, or any part thereof except basic identification
17 information, to be sealed. If the court finds that neither sealing
18 of the records nor maintaining of the records unsealed by the agency
19 would serve the ends of justice, the court may enter an appropriate
20 order limiting access to such records.

21 Any order entered under this subsection shall specify those
22 agencies to which such order shall apply. Any order entered
23 pursuant to this subsection may be appealed by the petitioner, the
24 ~~district attorney~~ prosecuting agency, the arresting agency, or the

1 Oklahoma State Bureau of Investigation to the Oklahoma Supreme Court
2 in accordance with the rules of the Oklahoma Supreme Court. In all
3 such appeals, the Oklahoma State Bureau of Investigation is a
4 necessary party and must be given notice of the appellate
5 proceedings.

6 D. Upon the entry of an order to seal the records, or any part
7 thereof, the subject official actions shall be deemed never to have
8 occurred, and the person in interest and all criminal justice
9 agencies may properly reply, upon any inquiry in the matter, that no
10 such action ever occurred and that no such record exists with
11 respect to such person.

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

17 F. Employers, educational institutions, state and local
18 government agencies, officials, and employees shall not, in any
19 application or interview or otherwise, require an applicant to
20 disclose any information contained in sealed records. An applicant
21 need not, in answer to any question concerning arrest and criminal
22 records provide information that has been sealed, including any
23 reference to or information concerning such sealed information and
24 may state that no such action has ever occurred. Such an

1 application may not be denied solely because of the refusal of the
2 applicant to disclose arrest and criminal records information that
3 has been sealed.

4 G. All arrest and criminal records information existing prior
5 to the effective date of this section, except basic identification
6 information, is also subject to sealing in accordance with
7 subsection C of this section.

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

10 I. For the purposes of this section, sealed materials which are
11 recorded in the same document as unsealed material may be recorded
12 in a separate document, and sealed, then obliterated in the original
13 document.

14 J. For the purposes of this section, district court index
15 reference of sealed material shall be destroyed, removed or
16 obliterated.

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

20 L. Subsequent to records being sealed as provided herein, the
21 ~~district attorney~~ prosecuting agency, the arresting agency, the
22 Oklahoma State Bureau of Investigation, or other interested person
23 or agency may petition the court for an order unsealing said
24 records. Upon filing of a petition the court shall set a date for

1 hearing, which hearing may be closed at the discretion of the court,
2 and shall provide thirty (30) days of notice to all interested
3 parties. If, upon hearing, the court determines there has been a
4 change of conditions or that there is a compelling reason to unseal
5 the records, the court may order all or a portion of the records
6 unsealed.

7 M. Nothing herein shall prohibit the introduction of evidence
8 regarding actions sealed pursuant to the provisions of this section
9 at any hearing or trial for purposes of impeaching the credibility
10 of a witness or as evidence of character testimony pursuant to
11 Section 2608 of Title 12 of the Oklahoma Statutes.

12 N. If a person qualifies for an expungement under the
13 provisions of paragraph 3 of subsection A of Section 18 of this
14 title and said petition for expungement is granted by the court, the
15 court shall order the reimbursement of all filing fees and court
16 costs incurred by the petitioner as a result of filing the
17 expungement request.

18 SECTION 3. This act shall become effective November 1, 2016.
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20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY AND CIVIL PROCEDURE,
21 dated 02/22/2016 - DO PASS, As Amended.
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