

1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4  
5  
6  
7  
8  
9  
0  
1  
2  
3  
4

**AS AMENDED**

By: Dunlap and Sherrer of the  
House

# Sykes of the Senate

9  
10

13

14

15

16

17  
18  
19

20

21

22

23

24

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

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

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

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

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

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

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

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

20        11. The person was convicted of a misdemeanor offense, the  
21 person was sentenced to a term of imprisonment or a suspended  
22 sentence, the person has not been convicted of a felony, no felony  
23 or misdemeanor charges are pending against the person, and at least  
24

1 ~~ten (10)~~ five (5) years have passed since the end of the last  
2 misdemeanor sentence;

3 ~~11.~~ 12. The person was convicted of a nonviolent felony  
4 offense, not listed in Section 571 of Title 57 of the Oklahoma  
5 Statutes, the person has received a full pardon for the offense, the  
6 person has not been convicted of any other felony, the person has  
7 not been convicted of a separate misdemeanor in the last fifteen  
8 (15) years, no felony or misdemeanor charges are pending against the  
9 person, and at least ten (10) years have passed since the felony  
10 conviction; ~~or~~

11 ~~12.~~ 13. The person was convicted of not more than two  
12 nonviolent felony offenses, not listed in Section 571 of Title 57 of  
13 the Oklahoma Statutes, the person has received a full pardon for  
14 both of the nonviolent felony offenses, no felony or misdemeanor  
15 charges are pending against the person, and at least twenty (20)  
16 years have passed since the last misdemeanor or felony conviction;  
17 or

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

22 B. For purposes of this act, "expungement" shall mean the  
23 sealing of criminal records as well as any public civil record  
24 arising from the same arrest, transaction or occurrence.

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

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

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

21 Section 19. A. Any person qualified under Section 18 of this  
22 title may petition the district court of the district in which the  
23 arrest information pertaining to the person is located for the  
24

1 sealing of all or any part of the record, except basic  
2 identification information.

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

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

18 Any order entered under this subsection shall specify those  
19 agencies to which such order shall apply. Any order entered  
20 pursuant to this subsection may be appealed by the petitioner, the  
21 ~~district attorney~~ prosecuting agency, the arresting agency, or the  
22 Oklahoma State Bureau of Investigation to the Oklahoma Supreme Court  
23 in accordance with the rules of the Oklahoma Supreme Court. In all  
24 such appeals, the Oklahoma State Bureau of Investigation is a

1 necessary party and must be given notice of the appellate  
2 proceedings.

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

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

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

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

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

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

11 J. For the purposes of this section, district court index  
12 reference of sealed material shall be destroyed, removed or  
13 obliterated.

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

17 L. Subsequent to records being sealed as provided herein, the  
18 ~~district attorney~~ prosecuting agency, the arresting agency, the  
19 Oklahoma State Bureau of Investigation, or other interested person  
20 or agency may petition the court for an order unsealing said  
21 records. Upon filing of a petition the court shall set a date for  
22 hearing, which hearing may be closed at the discretion of the court,  
23 and shall provide thirty (30) days of notice to all interested  
24 parties. If, upon hearing, the court determines there has been a



1 change of conditions or that there is a compelling reason to unseal  
2 the records, the court may order all or a portion of the records  
3 unsealed.

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

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

15 SECTION 3. This act shall become effective November 1, 2016.

16 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
17 April 5, 2016 - DO PASS AS AMENDED  
18  
19  
20  
21  
22  
23  
24