

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB2397**

By: Dunlap of the House and Sykes of the Senate

Title: Criminal procedure; adding and modifying expungement categories; providing effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendments; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

**SENATE CONFEREES**

Sykes	_____
Crain	_____
Holt	_____
Dahm	_____
Treat	_____
Matthews	_____
Pittman	_____

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

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.

15  
16        55-2-9987            GRS            05/16/16  
17  
18  
19  
20  
21  
22  
23  
24