

STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

HOUSE BILL 2397

By: Dunlap

AS INTRODUCED

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; and providing an effective date.

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

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

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

1. The person has been acquitted;
2. The conviction was reversed with instructions to dismiss by 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 pay a fine which has been paid or was
18 satisfied by time served in lieu of paying the fine, the person has
19 not been convicted of a felony, and no felony or misdemeanor charges
20 are pending against the person;

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

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.

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
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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.

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