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March 2, 2017

By: Shaw

An Act relating to criminal procedure; amending 22 O.S. 2011, Section 18, as last amended by Section 1, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2016, Section 18), which relates to expungement of criminal records; modifying qualifications for certain categories; 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 1, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2016, 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 of competent jurisdiction reversed the conviction and the prosecuting agency subsequently dismissed the charge;

3. The factual innocence of the person was established by the use of deoxyribonucleic acid (DNA) evidence subsequent to

1 conviction, including a person who has been released from prison at  
2 the time innocence was established;

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

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

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

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

23 8. The person was charged with a misdemeanor, the charge was  
24 dismissed following the successful completion of a deferred judgment

1 or delayed sentence, the person has never been convicted of a  
2 felony, no misdemeanor or felony charges are pending against the  
3 person, and at least one (1) year has passed since the charge was  
4 dismissed;

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

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

18 11. The person was convicted of a misdemeanor offense, the  
19 person was sentenced to a term of imprisonment, a suspended sentence  
20 or a fine in an amount greater than Five Hundred Dollars (\$500.00),  
21 the person has not been convicted of a felony, no felony or  
22 misdemeanor charges are pending against the person, and at least  
23 five (5) years have passed since the end of the last misdemeanor  
24 sentence;

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

9        13. The person was convicted of ~~not more than two nonviolent~~  
10 ~~felony offenses, not listed~~ a violent crime as defined in Section  
11 571 of Title 57 of the Oklahoma Statutes, the person has received a  
12 full pardon for ~~both of the nonviolent felony offenses~~ the offense,  
13 no felony or misdemeanor charges are pending against the person, and  
14 at least ~~twenty (20)~~ ten (10) years have passed since the last  
15 misdemeanor or felony conviction; or

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

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

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

17 SECTION 2. This act shall become effective November 1, 2017.

18 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY  
19 March 2, 2017 - DO PASS  
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