

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 SENATE BILL 1238

By: Bergstrom

4
5
6 AS INTRODUCED

7 An Act relating to criminal procedure; amending 22
8 O.S. 2011, Section 18, as last amended by Section 1,
9 Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2017, Section
10 18), which relates to expungement of criminal
11 records; modifying qualifications for certain
12 categories; stating certain exceptions to this
13 category; providing an allowable application
14 procedure; and providing an effective date.

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 1, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2017,
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
of competent jurisdiction reversed the conviction and the
prosecuting agency subsequently dismissed the charge;

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 felony, no misdemeanor or felony charges are pending against the
5 person, and at least one (1) year has passed since the charge was
6 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 felony, no misdemeanor or felony charges are pending
12 against the person, and at least five (5) years have passed since
13 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, a suspended sentence
22 or a fine in an amount greater than Five Hundred Dollars (\$500.00),
23 the person has not been convicted of a felony, no felony or
24 misdemeanor charges are pending against the person, and at least

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

3 12. The person was convicted of a nonviolent felony offense,
4 not listed in Section 571 of Title 57 of the Oklahoma Statutes, the
5 person has received a full pardon for the offense, or the person has
6 not been convicted of any other felony, ~~the person has not been~~
7 ~~convicted of a~~ or separate misdemeanor ~~in the last fifteen (15)~~
8 within seven (7) years of the date following the completion of the
9 execution of the sentence, and no felony or misdemeanor charges are
10 pending against the person, and at least ten (10) years have passed
11 since the felony conviction. This category shall not apply to
12 persons convicted of an offense enumerated in Section 13.1 of Title
13 21 of the Oklahoma Statutes. Expungements obtained under this
14 category without a full pardon shall not restore citizenship rights
15 including, but not limited to, rights to possess or own firearms and
16 the right to vote;

17 13. The person was convicted of not more than two nonviolent
18 felony offenses, not listed in Section 571 of Title 57 of the
19 Oklahoma Statutes, the person has received a full pardon for both of
20 the nonviolent felony offenses or the person has not been convicted
21 of any other felony or misdemeanor within ten (10) years of the date
22 following the completion of the execution of the sentence, and no
23 felony or misdemeanor charges are pending against the person, and at
24 least twenty (20) years have passed since the last misdemeanor or

1 felony conviction. This category shall not apply to persons
2 convicted of an offense enumerated in Section 13.1 of Title 21 of
3 the Oklahoma Statutes. Expungements obtained under this category
4 without a full pardon shall not restore citizenship rights
5 including, but not limited to rights to possess or own firearms and
6 the right to vote; or

7 14. The person has been charged or arrested or is the subject
8 of an arrest warrant for a crime that was committed by another
9 person who has appropriated or used the person's name or other
10 identification without the person's consent or authorization; or

11 15. The person has requested and received written consent to
12 file an application for expungement from the Oklahoma State Bureau
13 of Investigation, the arresting agency and the District Attorney.
14 Written consent of the above agencies shall be attached to the
15 application for expungement. If any of the above agencies do not
16 provide written consent to the application for expungement, it
17 cannot be filed and shall not be granted.

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

22 C. For purposes of seeking an expungement under the provisions
23 of paragraph 10, 11, 12 or 13 of subsection A of this section,
24

1 offenses arising out of the same transaction or occurrence shall be
2 treated as one conviction and offense.

3 D. Records expunged pursuant to paragraphs 8, 9, 10, 11, 12, 13
4 and 14 of subsection A of this section shall be sealed to the public
5 but not to law enforcement agencies for law enforcement purposes.

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

15 SECTION 2. This act shall become effective November 1, 2018.

16
17 56-2-2562 BH 1/18/2018 10:15:48 AM

18
19
20
21
22
23
24