

STATE OF OKLAHOMA

1st Session of the 56th Legislature (2017)

HOUSE BILL 1479

By: Young

AS INTRODUCED

An Act relating to criminal procedure; amending 22 O.S. 2011, Sections 18 and 19, as last amended by Sections 1 and 2, Chapter 348, O.S.L. 2016 and 19a (22 O.S. Supp. 2016, Sections 18 and 19), which relate to criminal arrest record expungements; authorizing expungements due to mistaken identity; defining term; providing for the reimbursement of fees and costs; amending 74 O.S. 2011, Section 150.12, as amended by Section 2, Chapter 178, O.S.L. 2015 (74 O.S. Supp. 2016, Section 150.12), which relates to reporting fingerprint and criminal history information; providing exception to certain fee; 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;

1 2. The conviction was reversed with instructions to dismiss by
2 an appellate court of competent jurisdiction, or an appellate court
3 of competent jurisdiction reversed the conviction and the
4 prosecuting agency subsequently dismissed the charge;

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

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

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

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

20 7. The person was charged with one or more misdemeanor or
21 felony crimes, all charges have been dismissed, the person has never
22 been convicted of a felony, no misdemeanor or felony charges are
23 pending against the person, and the statute of limitations for
24 refiling the charge or charges has expired or the prosecuting agency

1 confirms that the charge or charges will not be refiled; provided,
2 however, this category shall not apply to charges that have been
3 dismissed following the completion of a deferred judgment or delayed
4 sentence;

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

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

18 10. The person was convicted of a misdemeanor offense, the
19 person was sentenced to a fine of less than Five Hundred One Dollars
20 (\$501.00) without a term of imprisonment or a suspended sentence,
21 the fine has been paid or satisfied by time served in lieu of the
22 fine, the person has not been convicted of a felony, and no felony
23 or misdemeanor charges are pending against the person;

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

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

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

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

1 authorization of the person or the person has been arrested for a
2 crime as a result of mistaken identity.

3 B. For purposes of this ~~act~~, "expungement" section:

4 1. "Expungement" shall mean the sealing of criminal records, as
5 well as any public civil record, involving actions brought by and
6 against the State of Oklahoma arising from the same arrest,
7 transaction or occurrence; and

8 2. "Mistaken identity" means the erroneous arrest of a person
9 for a crime as a result of misidentification by a witness or law
10 enforcement, confusion on the part of a witness or law enforcement
11 as to the identity of the person who committed the crime,
12 misinformation provided to law enforcement as to the identity of the
13 person who committed the crime, or some other mistake on the part of
14 a witness or law enforcement as to the identity of the person who
15 committed the crime.

16 C. For purposes of seeking an expungement under the provisions
17 of paragraph 10, 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, 12, 13
21 and 14 of subsection A of this section shall be sealed to the public
22 but not to law enforcement agencies for law enforcement purposes.
23 Records expunged pursuant to paragraphs 8, 9, 10, 11, 12 and 13 of
24 subsection A of this section shall be admissible in any subsequent

1 criminal prosecution to prove the existence of a prior conviction or
2 prior deferred judgment without the necessity of a court order
3 requesting the unsealing of the records. Records expunged pursuant
4 to paragraph 4, 6, 12 or 13 of subsection A of this section may also
5 include the sealing of Pardon and Parole Board records related to an
6 application for a pardon. Such records shall be sealed to the
7 public but not to the Pardon and Parole Board.

8 SECTION 2. AMENDATORY 22 O.S. 2011, Section 19, as last
9 amended by Section 2, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2016,
10 Section 19), is amended to read as follows:

11 Section 19. A. Any person qualified under Section 18 of this
12 title may petition the district court of the district in which the
13 arrest information pertaining to the person is located for the
14 sealing of all or any part of the record, except basic
15 identification information.

16 B. Upon the filing of a petition or entering of a court order,
17 the court shall set a date for a hearing and shall provide thirty
18 (30) days of notice of the hearing to the prosecuting agency, the
19 arresting agency, the Oklahoma State Bureau of Investigation, and
20 any other person or agency whom the court has reason to believe may
21 have relevant information related to the sealing of such record.

22 C. Upon a finding that the harm to privacy of the person in
23 interest or dangers of unwarranted adverse consequences outweigh the
24 public interest in retaining the records, the court may order such

1 records, or any part thereof except basic identification
2 information, to be sealed. If the court finds that neither sealing
3 of the records nor maintaining of the records unsealed by the agency
4 would serve the ends of justice, the court may enter an appropriate
5 order limiting access to such records.

6 Any order entered under this subsection shall specify those
7 agencies to which such order shall apply. Any order entered
8 pursuant to this subsection may be appealed by the petitioner, the
9 prosecuting agency, the arresting agency, or the Oklahoma State
10 Bureau of Investigation to the Oklahoma Supreme Court in accordance
11 with the rules of the Oklahoma Supreme Court. In all such appeals,
12 the Oklahoma State Bureau of Investigation is a necessary party and
13 must be given notice of the appellate proceedings.

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

20 E. Inspection of the records included in the order may
21 thereafter be permitted by the court only upon petition by the
22 person in interest who is the subject of such records, the Attorney
23 General, or by the prosecuting agency and only to those persons and
24 for such purposes named in such petition.

1 F. Employers, educational institutions, state and local
2 government agencies, officials, and employees shall not, in any
3 application or interview or otherwise, require an applicant to
4 disclose any information contained in sealed records. An applicant
5 need not, in answer to any question concerning arrest and criminal
6 records, provide information that has been sealed, including any
7 reference to or information concerning such sealed information and
8 may state that no such action has ever occurred. Such an
9 application may not be denied solely because of the refusal of the
10 applicant to disclose arrest and criminal records information that
11 has been sealed.

12 G. All arrest and criminal records information existing prior
13 to the effective date of this section, except basic identification
14 information, is also subject to sealing in accordance with
15 subsection C of this section.

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

18 I. For the purposes of this section, sealed materials which are
19 recorded in the same document as unsealed material may be recorded
20 in a separate document, and sealed, then obliterated in the original
21 document.

22 J. For the purposes of this section, district court index
23 reference of sealed material shall be destroyed, removed or
24 obliterated.

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

4 L. Subsequent to records being sealed as provided herein, the
5 prosecuting agency, the arresting agency, the Oklahoma State Bureau
6 of Investigation, or other interested person or agency may petition
7 the court for an order unsealing said records. Upon filing of a
8 petition the court shall set a date for hearing, which hearing may
9 be closed at the discretion of the court, and shall provide thirty
10 (30) days of notice to all interested parties. If, upon hearing,
11 the court determines there has been a change of conditions or that
12 there is a compelling reason to unseal the records, the court may
13 order all or a portion of the records unsealed.

14 M. Nothing herein shall prohibit the introduction of evidence
15 regarding actions sealed pursuant to the provisions of this section
16 at any hearing or trial for purposes of impeaching the credibility
17 of a witness or as evidence of character testimony pursuant to
18 Section 2608 of Title 12 of the Oklahoma Statutes.

19 N. If a person qualifies for an expungement under the
20 provisions of paragraph 3 or 14 of subsection A of Section 18 of
21 this title and said petition for expungement is granted by the
22 court, the court shall order the reimbursement of all filing fees
23 and court costs incurred by the petitioner as a result of filing the
24 expungement request.

1 SECTION 3. AMENDATORY 22 O.S. 2011, Section 19a, is
2 amended to read as follows:

3 Section 19a. Notwithstanding any provision of Section 18 or 19
4 of Title 22 of the Oklahoma Statutes, when a charge is dismissed
5 because the court finds that ~~the defendant~~ a person has been
6 arrested or charged as a result of ~~the defendant's~~ his or her name
7 or other identification having been appropriated or used without ~~the~~
8 ~~defendant's~~ consent or authorization by another person or the person
9 has been arrested for a crime as a result of mistaken identity, the
10 court dismissing the charge may, upon motion of the district
11 attorney ~~or~~, the defendant person or ~~upon the court's own motion the~~
12 court, enter an order for expungement of law enforcement and court
13 records relating to the charge. The order shall contain a statement
14 that the dismissal and expungement are ordered pursuant to this
15 section. An order entered pursuant to this section shall be subject
16 to the provisions of subsections D through M of Section 19 of Title
17 22 of the Oklahoma Statutes.

18 SECTION 4. AMENDATORY 74 O.S. 2011, Section 150.12, as
19 amended by Section 2, Chapter 178, O.S.L. 2015 (74 O.S. Supp. 2016,
20 Section 150.12), is amended to read as follows:

21 Section 150.12 A. 1. It is hereby the duty of any sheriff,
22 chief of police, city marshal, constable and any other law
23 enforcement officer who takes custody of a person who has been
24 arrested and who, in the best judgment of the arresting officer, is

1 believed to have committed any offense, except an offense exempted
2 by the rules promulgated by the Oklahoma State Bureau of
3 Investigation pursuant to the provisions of Section 150.1 et seq. of
4 this title, to take or cause to be taken the fingerprint impressions
5 of such person or persons and to forward such fingerprint
6 impressions together with identification information to the Oklahoma
7 State Bureau of Investigation, at its Oklahoma City office. In the
8 case of any sheriff, chief of police, city marshal, constable, or
9 any other law enforcement officer equipped with a live-scan device
10 designed for the electronic capture and transmission of fingerprint
11 images approved by the Oklahoma State Bureau of Investigation,
12 fingerprint images may instead be taken and transmitted to the
13 Bureau electronically. If the sheriff, chief of police, city
14 marshal, or constable has contracted for the custody of prisoners,
15 such contractor shall be required to take the fingerprint
16 impressions of such person.

17 2. It shall not be the responsibility of, nor shall the
18 sheriff, chief of police, city marshal, constable, other law
19 enforcement officer, or contractor receiving custody of an arrested
20 person as a prisoner require the arresting officer to take the
21 fingerprint impressions of the arrested person; provided, if the
22 arresting officer is employed by the same law enforcement agency as
23 the sheriff, chief of police, city marshal, or constable receiving
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1 custody of such person, the arresting officer may be required to
2 take such impressions.

3 3. The law enforcement officers shall also forward the
4 prosecution filing report and the disposition report forms to the
5 appropriate prosecuting authority within seventy-two (72) hours. If
6 fingerprint impressions have not been taken at the time of an
7 arrest, the court shall order the fingerprints to be taken by the
8 sheriff at the arraignment, first appearance, or at the time of
9 final adjudication of a defendant whose court attendance has been
10 secured by a summons or citation for any offense, except an offense
11 exempted by the rules promulgated by the Bureau. If a person is in
12 the custody of a law enforcement or correctional agency and a
13 warrant issues or an information is filed alleging the person to
14 have committed an offense other than the offense for which the
15 person is in custody, the custodial law enforcement or correctional
16 agency shall take the fingerprints of such person in connection with
17 the new offense, provided the offense is not exempted by the rules
18 of the Bureau. Any fingerprint impressions and identification
19 information required by this subsection shall be sent to the Bureau
20 within seventy-two (72) hours after taking such fingerprints.

21 B. In order to maintain a complete criminal history record, the
22 court shall inquire at the time of sentencing whether or not the
23 person has been fingerprinted for the offense upon which the
24 sentence is based and, if not, shall order the fingerprints be taken

1 immediately of such person and those fingerprints shall be sent by
2 the law enforcement agency taking the fingerprint impressions to the
3 Bureau within seventy-two (72) hours after taking the fingerprint
4 impressions.

5 C. In addition to any other fingerprints which may have been
6 taken of a person in a criminal matter, the Department of
7 Corrections shall take the fingerprints of all prisoners received at
8 the Lexington Reception and Assessment Center or otherwise received
9 into the custody of the Department and shall send copies of such
10 fingerprints together with identification information to the Bureau
11 within seventy-two (72) hours of taking such fingerprints.

12 D. The Bureau shall, upon receipt of fingerprint impressions
13 and identification information for offenses not exempt by rule of
14 the Bureau, send one copy of the fingerprint impressions to the
15 Federal Bureau of Investigation, at its Washington, D.C., office,
16 and the other copy shall be filed in the Oklahoma State Bureau of
17 Investigation's office. The rules promulgated by the Bureau
18 pursuant to the provision of this act exempting certain offenses
19 from mandatory reporting shall be based upon recommended Federal
20 Bureau of Investigation standards for reporting criminal history
21 information and are not intended to include violators of city or
22 town ordinances and great care shall be exercised to exclude the
23 reporting of criminal history information for such offenses, except
24 when recommended by the Federal Bureau of Investigation standards.

1 E. The reporting to the Oklahoma State Bureau of Investigation
2 of criminal history information on each person subject to the
3 mandatory reporting requirements of Section 150.1 et seq. of this
4 title shall be mandatory for all law enforcement agencies, courts,
5 judicial officials, district attorneys and correctional
6 administrators participating in criminal matters, whether reported
7 directly or indirectly, manually or by automated system as may be
8 provided by the rules promulgated by the Bureau.

9 F. Except for offenses exempted by the rules promulgated by the
10 Bureau, the following events shall be reported to the Bureau within
11 seventy-two (72) hours and the Bureau shall have seventy-two (72)
12 hours after receipt of the report to enter such information into a
13 criminal record data base:

- 14 1. An arrest;
- 15 2. The release of a person after arrest without the filing of
16 any charge; and
- 17 3. A decision of a prosecutor not to commence criminal
18 proceedings or to defer or postpone prosecution.

19 G. Except for offenses exempted by the rules promulgated by the
20 Bureau, the following events shall be reported to the Bureau within
21 thirty (30) days and the Bureau shall have thirty (30) days after
22 receipt of the report to enter such information into a criminal
23 record data base:

1 1. A decision by a prosecutor to modify or amend initial
2 charges upon which the arrest was made, including deletions or
3 additions of charges or counts;

4 2. The presentment of an indictment or the filing of a criminal
5 information or other statement of charges;

6 3. The dismissal of an indictment or criminal information or
7 any charge specified in such indictment or criminal information;

8 4. An acquittal, conviction or other court disposition at trial
9 or before, during or following trial, including dispositions
10 resulting from pleas or other agreements;

11 5. The imposition of a sentence;

12 6. The commitment to or release from the custody of the
13 Department of Corrections or incarceration in any jail or other
14 correctional facility;

15 7. The escape from custody of any correctional facility, jail
16 or authority;

17 8. The commitment to or release from probation or parole;

18 9. An order of any appellate court;

19 10. A pardon, reprieve, commutation of sentence or other change
20 in sentence, including a change ordered by the court;

21 11. A revocation of probation or parole or other change in
22 probation or parole status; and
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1 12. Any other event arising out of or occurring during the
2 course of criminal proceedings or terms of the sentence deemed
3 necessary as provided by the rules established by the Bureau.

4 The Bureau shall have authority to withhold any entry on a
5 criminal history record when there is reason to believe the entry is
6 based on error or an unlawful order. The Bureau shall in such case
7 take immediate action to clarify or correct the entry.

8 H. Information reportable under the provisions of this section
9 shall be reportable by the law enforcement officer or person
10 directly responsible for the action, event or decision, unless
11 otherwise provided by rule or agreement. The form and content of
12 information to be reported and methods for reporting information,
13 including fingerprint impressions and other identification
14 information, shall be established by the rules promulgated by the
15 Bureau. The Bureau is hereby directed to establish rules to
16 implement the provisions of Section 150.1 et seq. of this title,
17 provided any rule relating to reporting by courts or judicial
18 officials shall be issued jointly by the Bureau and the Oklahoma
19 Supreme Court.

20 I. Any person or agency subject to the mandatory reporting of
21 criminal history information or fingerprints as required by the
22 provisions of this act shall take appropriate steps to ensure that
23 appropriate agency officials and employees understand such
24 requirements. Each agency shall establish, and in appropriate cases

1 impose, administrative sanctions for failure of an official or
2 employee to report as provided by law. Refusal or persistent
3 failure of a person or agency to comply with the mandatory reporting
4 requirements of this act may result in the discontinued access to
5 Bureau information or assistance until such agency complies with the
6 law.

7 J. All expungement orders which are presented to the Bureau for
8 alterations to criminal history records must be accompanied by a
9 payment of One Hundred Fifty Dollars (\$150.00) payable to the
10 Bureau. The subject of the criminal history, whose record is being
11 amended or updated based upon an expungement order, is responsible
12 for such payment. Payment shall be rendered before any expungement
13 order may be processed by the Bureau. Payment of the fee shall be
14 waived if the subject of the criminal history record has been
15 granted an expungement under the provisions of paragraph 3 or 14 of
16 subsection A of Section 18 of Title 22 of the Oklahoma Statutes.

17 SECTION 5. This act shall become effective November 1, 2017.
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