

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 ENGROSSED SENATE
5 BILL NO. 815

By: David and **Bergstrom** of the
Senate

6 and

7 Kannady of the House

8
9
10 An Act relating to criminal procedure; amending 22
11 O.S. 2011, Section 18, as last amended by Section 1,
12 Chapter 127, O.S.L. 2018 (22 O.S. Supp. 2018, Section
13 18), which relates to expungement of records;
14 modifying eligibility for certain expungement;
15 authorizing motion for expungement under certain
16 circumstances; and providing an effective date.

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

18 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last
19 amended by Section 1, Chapter 127, O.S.L. 2018 (22 O.S. Supp. 2018,
20 Section 18), is amended to read as follows:

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

24 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 the
17 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 or
23 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 five
6 (5) years have passed since the end of the last misdemeanor
7 sentence;

8 12. The person was convicted of a nonviolent felony offense not
9 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
10 person has not been convicted of any other felony or separate
11 misdemeanor in the last seven (7) years, no felony or misdemeanor
12 charges are pending against the person and at least five (5) years
13 have passed since the completion of the sentence for the felony
14 conviction;

15 13. The person was convicted of ~~not more than two nonviolent~~
16 ~~felony offenses, not~~ a felony offense listed in Section 571 of Title
17 57 of the Oklahoma Statutes, not to include any offense listed in
18 Section 13.1 of Title 21 of the Oklahoma Statutes or any offense
19 that would require the person to register pursuant to the provisions
20 of the Sex Offenders Registration Act, the person has received a
21 full pardon for ~~both of the nonviolent felony offenses~~ offense, no
22 felony or misdemeanor charges are pending against the person, and at
23 least ~~twenty (20)~~ ten (10) years have passed since the last
24

1 ~~misdemeanor or~~ completion of the sentence for the felony conviction;

2 ~~or~~

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

7 15. The person is not otherwise eligible to file a motion
8 pursuant to this subsection, but upon leave of court, may file a
9 motion for expungement; provided, the Oklahoma State Bureau of
10 Investigation, the arresting agency and the district attorney shall
11 each provide a written statement of the facts deemed relevant about
12 the crime. Such statements shall be attached to the motion. The
13 determination of whether to allow the filing of such motion or to
14 grant the expungement remains solely at the discretion of the court.

15 B. For purposes of Section 18 et seq. of this title,
16 "expungement" shall mean the sealing of criminal records, as well as
17 any public civil record, involving actions brought by and against
18 the State of Oklahoma arising from the same arrest, transaction or
19 occurrence.

20 C. For purposes of seeking an expungement under the provisions
21 of paragraph 10, 11, 12 or 13 of subsection A of this section,
22 offenses arising out of the same transaction or occurrence shall be
23 treated as one conviction and offense.

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

13 SECTION 2. This act shall become effective November 1, 2019.
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15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/02/2019 - DO
16 PASS, As Coauthored.
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