

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 HOUSE BILL 1799

By: Miller

4
5
6 AS INTRODUCED

7 An Act relating to children; amending 10A O.S. 2011,
8 Section 2-6-109, which relates to the expungement of
9 juvenile court records; modifying qualifications for
10 juvenile court record expungements; defining term;
11 providing procedures for expunging records; requiring
12 the preparation and filing of written expungement
13 order; requiring the mailing of expungement orders to
14 certain agencies; and providing an effective date.

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

16 SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-6-109, is
17 amended to read as follows:

18 Section 2-6-109. A. A person or the child, or the parent,
19 legal guardian or the attorney for the child, who is the subject of
20 a juvenile court record, ~~that is not confidential as provided by~~
21 ~~law,~~ may petition the district court in which the juvenile court
22 record is located for an order to expunge ~~all or any part of the~~
23 record pertaining to the person, ~~except basic identification~~
24 ~~information; provided:~~ or the child.

B. The petition for expungement may be filed either as an oral
or written petition for an order to expunge the record pertaining to

1 the child at the time the case is before the court for a final
2 review of the ordered disposition pursuant to Section 2-2-503 of
3 this title or at any time after an informal adjustment agreement has
4 been successfully completed pursuant to Section 2-2-104 of this
5 title; provided:

6 1. The person or child has ~~attained twenty-one (21) years of~~
7 ~~age or older~~ successfully completed the informal adjustment
8 agreement, the deferred adjudication, or a period of probation or
9 custody with a juvenile bureau or the Office of Juvenile Affairs and
10 the case of the person or child is being, or has been, dismissed by
11 the court or the court is closing the case due to lack of
12 jurisdiction upon the person or child reaching eighteen (18) years
13 of age or nineteen (19) years of age if jurisdiction of the court
14 was previously extended by the court pursuant to Section 2-7-504 of
15 this title;

16 2. The person or child has not been arrested for any adult
17 criminal offense and no charge, indictment, or information has been
18 filed or is pending against the person or child at the time of the
19 petition for an expungement; and

20 3. ~~The person has not been subject to any deferred prosecution~~
21 ~~or deferred sentence, and has not been convicted of any criminal~~
22 ~~offense; and~~

1 4. All court costs, restitution, fines and other court-ordered
2 requirements have been completed for ~~all~~ the informal adjustment or
3 the juvenile proceedings.

4 C. After November 1, 2021, any person who has attained eighteen
5 (18) years of age or older and has successfully completed an
6 informal adjustment agreement, a deferred adjudication, or a period
7 of probation or custody with a juvenile bureau or the Office of
8 Juvenile Affairs, and whose case has previously been dismissed, may
9 petition the court for an order of expungement. In order to be
10 eligible for an order of expungement, the person must have satisfied
11 the requirements of paragraphs 1, 2 and 3 of subsection B of this
12 section.

13 D. For the purposes of this section, the term "expunge" or
14 "expungement" shall mean the sealing of juvenile court records.

15 E. 1. If an adjudication, deferred adjudication, or informal
16 adjustment of a person or child is being dismissed or has been
17 dismissed, then upon the receipt of an oral or written petition of
18 the person, the child, or other authorized person, the court may, if
19 the state does not object, grant the expungement if the court finds
20 that the harm to privacy of the person or the child in interest or
21 dangers of unwarranted adverse consequences outweigh the public
22 interest in retaining the records.

23 2. If the court grants the expungement, it shall issue a
24 written order to any law enforcement agency over which the court has

1 jurisdiction to expunge all files and records pertaining to the
2 arrest or adjudication of the person or child and shall order the
3 clerk of the court to expunge the entire file and record of the
4 case, including docket sheets, index entries, court records,
5 summonses, warrants or records in the office of the clerk or which
6 have been produced by a law enforcement agency in which the name of
7 the person or the child is mentioned. The court may order probation
8 officers and counselors of a juvenile bureau or the Office of
9 Juvenile Affairs to expunge all records, reports and social and
10 clinical studies relating to the person or the child that are in the
11 possession of a juvenile bureau or the Office of Juvenile Affairs,
12 except when the documents are necessary to maintain state or federal
13 funding.

14 3. Members of the judiciary, district attorneys, the person or
15 the child, counsel for the person or the child, employees of
16 juvenile bureaus and the Office of Juvenile Affairs who are assigned
17 juvenile court intake responsibilities, and the Department of
18 Corrections may access records that have been expunged pursuant to
19 this subsection without a court order for the purpose of determining
20 whether to dismiss an action, seek a voluntary probation, file a
21 petition or information, or for purposes of sentencing or placement
22 in a case where the person or child who is the subject of the sealed
23 record is alleged to have committed a subsequent juvenile delinquent
24 act, a youthful offender act, or any adult criminal offense.

1 Provided, any record sealed pursuant to this section shall be
2 ordered unsealed upon application of the prosecuting agency when
3 said records are requested for use in any subsequent juvenile
4 delinquent, youthful offender or adult prosecution.

5 B. F. If the state objected to an oral petition for
6 expungement, the court shall allow the person or the child, or
7 counsel for the person or child, to file a written petition for the
8 expungement of the juvenile court records. Upon the filing of a
9 petition for expungement of a juvenile court record, the court shall
10 set a date for a hearing, which hearing may be closed at the court's
11 discretion, and shall provide a thirty (30) days' notice of the
12 hearing to the district attorney, the Office of Juvenile Affairs,
13 the Oklahoma State Bureau of Investigation, and any other person or
14 agency whom the court has reason to believe may have relevant
15 information related to the expungement of any record.

16 C. G. Upon a finding that the harm to privacy of the person or
17 child in interest or dangers of unwarranted adverse consequences
18 outweigh the public interest in retaining the records, the court may
19 shall order the records, or any part thereof except basic
20 identification information, to be expunged. If the court finds that
21 neither expungement of the records nor maintaining of the records
22 unsealed by the agency would serve the ends of justice, the court
23 may enter an appropriate order limiting access to the records. Any
24

1 order entered pursuant to the provisions of this subsection shall
2 specify those agencies to which the court order shall apply.

3 ~~D.~~ H. Upon the entry of an order to expunge any juvenile court
4 record, or any part thereof, the subject official actions shall be
5 deemed never to have occurred, and the person or the child in
6 interest and all juvenile and criminal justice agencies may properly
7 reply, upon any inquiry in the matter, that no such action ever
8 occurred and that no such record exists with respect to the person
9 or the child.

10 ~~E.~~ ~~Inspection of the records included in the order may~~
11 ~~thereafter be permitted by the court only upon petition by the~~
12 ~~person in interest who is the subject of the records, the Attorney~~
13 ~~General, or by the district attorney and only to those persons and~~
14 ~~for such purposes named in the petition.~~

15 I. When an order of expungement is issued by the court pursuant
16 to this section, the court shall require counsel for the person or
17 the child to prepare a written order of expungement which shall be
18 signed by the court and filed in the clerk's office of the district
19 court in which the juvenile court record is located. Copies of the
20 order of expungement shall be provided or mailed to the person or
21 the child, as well as the parent or legal guardian of the child, the
22 prosecuting attorney, the law enforcement agency or agencies that
23 investigated the case, the detention or jail in which the person or
24 the child was incarcerated, the juvenile bureau, the Office of

1 Juvenile Affairs, and the Oklahoma State Bureau of Investigation
2 directing the entity to expunge the juvenile court records in its
3 custody as directed in the order.

4 ~~F.~~ J. Employers, educational institutions, landlords, state and
5 local government agencies, officials, and employees shall not, in
6 any application or interview or ~~otherwise~~ in any other way, require
7 an applicant to disclose any information contained in any expunged
8 juvenile court records. An applicant need not, in answer to any
9 question concerning arrest, juvenile and criminal records, provide
10 information that has been expunged, including any reference to or
11 information concerning expungement and may state that no such action
12 has ever occurred. Such an application may not be denied solely
13 because of the applicant's refusal to disclose information that has
14 been expunged.

15 ~~G.~~ K. Nothing in this section shall be construed to authorize
16 the physical destruction of any juvenile records.

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

21 ~~I.~~ M. For the purposes of this act, district court index
22 reference of sealed material shall be destroyed, removed or
23 obliterated.

24

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

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

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

20 ~~M.~~ Q. A person who has attained eighteen (18) years of age or
21 older may petition the district or municipal court in which the
22 juvenile court record is located for an order to expunge ~~all or any~~
23 ~~part of~~ the record pertaining to matters involving truancy provided
24 the person has met the criteria set forth in paragraphs ~~2~~ 1 through

1 4 3 of subsection A B of this section. The petition shall be
2 reviewed by the district or municipal judge with primary
3 responsibility over the juvenile court docket.

4 SECTION 2. This act shall become effective November 1, 2021.

5
6 58-1-6342 GRS 01/16/21
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24