

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1448

By: David

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6 AS INTRODUCED

7 An Act relating to sealing of records; amending 22
8 O.S. 2011, Section 18, as last amended by Section 1,
9 Chapter 459, O.S.L. 2019 (22 O.S. Supp. 2019, Section
10 18), which relates to expungement of records;
11 modifying requirements for certain categories of
12 eligibility for expungement; requiring issuance of
13 order of expungement after pardon; requiring delivery
14 of order to certain entities; requiring filing of
15 certain document with Secretary of State; providing
16 for public access of certain document for specified
17 time period; authorizing use of sealed record for
18 specified purposes; prohibiting requirement for
19 disclosure of certain information; prohibiting denial
20 of application under certain circumstances;
21 authorizing petition for unsealing of certain
22 records; providing for notice and hearing;
23 authorizing order to unseal records under certain
24 circumstances; providing exceptions to applicability;
25 construing provisions; updating statutory reference;
26 providing for codification; and providing an
27 effective date.

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

31 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last
32 amended by Section 1, Chapter 459, O.S.L. 2019 (22 O.S. Supp. 2019,
33 Section 18), is amended to read as follows:
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1 Section 18. A. Persons authorized to file a motion for
2 expungement, as provided herein, must be within one of the following
3 categories:

4 1. The person has been acquitted;

5 2. The conviction was reversed with instructions to dismiss by
6 an appellate court of competent jurisdiction, or an appellate court
7 of competent jurisdiction reversed the conviction and the
8 prosecuting agency subsequently dismissed the charge;

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

13 4. The person has received a full pardon by the Governor for
14 the crime for which the person was sentenced;

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

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

23 7. The person was charged with one or more misdemeanor or
24 felony crimes, all charges have been dismissed, the person has never

1 been convicted of a felony, no misdemeanor or felony charges are
2 pending against the person and the statute of limitations for
3 refiling the charge or charges has expired or the prosecuting agency
4 confirms that the charge or charges will not be refiled; provided,
5 however, this category shall not apply to charges that have been
6 dismissed following the completion of a deferred judgment or delayed
7 sentence;

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

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

21 10. The person was convicted of a misdemeanor offense, the
22 person was sentenced to a fine of less than Five Hundred One Dollars
23 (\$501.00) without a term of imprisonment or a suspended sentence,
24 the fine has been paid or satisfied by time served in lieu of the

1 fine, the person has not been convicted of a felony and no felony or
2 misdemeanor charges are pending against the person;

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

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

17 13. The person was convicted of not more than two felony
18 offenses, none of which is a felony offense listed in Section 13.1
19 of Title 21 of the Oklahoma Statutes or any offense that would
20 require the person to register pursuant to the provisions of the Sex
21 Offenders Registration Act, no felony or misdemeanor charges are
22 pending against the person, and at least ten (10) years have passed
23 since the completion of the sentence for the felony conviction;

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

5 15. The person was ~~convicted of~~ charged with a nonviolent
6 felony offense not listed in Section 571 of Title 57 of the Oklahoma
7 Statutes which was subsequently reclassified as a misdemeanor under
8 Oklahoma law, the person is not currently serving a sentence for a
9 crime in this state or another state, at least thirty (30) days have
10 passed since the completion or commutation of the sentence for the
11 crime that was reclassified as a misdemeanor, any restitution
12 ordered by the court to be paid by the person has been satisfied in
13 full, and any treatment program ordered by the court has been
14 successfully completed by the person, including any person who
15 failed a treatment program which resulted in an accelerated or
16 revoked sentence that has since been successfully completed by the
17 person or the person can show successful completion of a treatment
18 program at a later date. Persons seeking an expungement of records
19 under the provisions of this paragraph may utilize the expungement
20 forms provided in Section ~~2 of this act~~ 18a of this title.

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

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

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

19 SECTION 2. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 332a of Title 57, unless there
21 is created a duplication in numbering, reads as follows:

22 A. For pardons granted on or after the effective date of this
23 act, within thirty (30) days of granting a pardon, the Governor
24 shall issue an order of expungement directing all official records

1 relating to the subject of the pardon including, but not limited to,
2 arrest, information, indictment, trial, plea, sentencing and
3 application for pardon, to be sealed to the public but not to law
4 enforcement for law enforcement purposes only. The Oklahoma Pardon
5 and Parole Board shall deliver a certified copy of the order of
6 expungement to:

7 1. The Oklahoma State Bureau of Investigation;

8 2. The presiding judge or a district judge of the judicial
9 district where the conviction was rendered;

10 3. The prosecuting authority of the conviction; and

11 4. The arresting agency.

12 Such entities shall seal all records within their possession
13 relating to the pardoned offenses within thirty (30) days of receipt
14 of a certified copy of the order for expungement.

15 B. After an order of expungement is issued pursuant to this
16 section, the Pardon and Parole Board shall file with the Oklahoma
17 Secretary of State a document to be made available to the public
18 certifying that the order was issued in compliance with this section
19 and the proper agencies were provided notice of such order. The
20 document shall remain available for public access for three (3)
21 years, after which the document shall be sealed.

22 C. Upon issuance of an order to seal the records or any part
23 thereof, the pardoned offenses shall be deemed never to have
24 occurred, and the person receiving the pardon and all law

1 enforcement agencies may properly state, upon any inquiry in the
2 matter, that no such action ever occurred and that no such record
3 exists with respect to such person. However, the sealed record
4 shall be retained solely for use by law enforcement agencies,
5 prosecuting attorneys and courts for the purpose of sentencing such
6 person for any subsequent criminal offense.

7 D. Employers, educational institutions, state and local
8 government agencies, officials and employees shall not, in any
9 application or interview, require a person to disclose any
10 information contained in sealed records. In response to any inquiry
11 related to a person's arrest or criminal record, the person shall
12 not be required to provide information that has been sealed,
13 including any reference to or information concerning such sealed
14 information, and may state that no such action has ever occurred.
15 An application by such person may not be denied solely because of
16 the refusal of the applicant to disclose arrest and criminal record
17 information that has been sealed.

18 E. Subsequent to records being sealed as provided pursuant to
19 this section, the prosecuting agency, the arresting agency or the
20 Oklahoma State Bureau of Investigation may petition the district
21 court where the conviction was rendered for an order unsealing the
22 records. Upon filing of a petition, the court shall set a date for
23 hearing, which may be closed at the discretion of the court and
24 shall provide notice to all interested parties not less than thirty

1 (30) days prior to the hearing. Upon hearing, if the court
2 determines there has been a change of conditions or that there is a
3 compelling reason to unseal the records, the court may order all or
4 a portion of the records unsealed.

5 F. This section shall not apply to a pardon issued for:

6 1. Any offense in which the victim was under eighteen (18)
7 years of age at the time the offense was committed;

8 2. A sex offense requiring the person to register pursuant to
9 the provisions of the Sex Offenders Registration Act;

10 3. Any offense listed in Section 571 of Title 57 of the
11 Oklahoma Statutes;

12 4. Any offense committed by any executive, legislative, county,
13 municipal, judicial or other public officer, or any employee of this
14 state or any political subdivision thereof, in the course of his or
15 her official capacity; and

16 5. Any offense that resulted in the death of a person.

17 G. Nothing in this section shall be construed to prohibit the
18 introduction of evidence regarding actions sealed pursuant to the
19 provisions of this section at any hearing or trial for purposes of
20 impeaching the credibility of a witness or as evidence of character
21 testimony pursuant to Sections 2608 and 2609 of Title 12 of the
22 Oklahoma Statutes.

1 SECTION 3. This act shall become effective November 1, 2020.

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