

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 SENATE BILL 370

By: Bergstrom

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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 127, O.S.L. 2018 (22 O.S. Supp. 2018, Section
10 18), which relates to expungement of criminal
11 records; modifying eligibility to file motion for
12 expungement; providing exception for certain
13 offenses; stating effect of expungement on certain
14 citizenship rights; authorizing motion for
15 expungement with certain consent; and providing an
16 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;
- 25 2. The conviction was reversed with instructions to dismiss by
26 an appellate court of competent jurisdiction, or an appellate court

1 of competent jurisdiction reversed the conviction and the
2 prosecuting agency subsequently dismissed the charge;

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

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

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

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

18 7. The person was charged with one or more misdemeanor or
19 felony crimes, all charges have been dismissed, the person has never
20 been convicted of a felony, no misdemeanor or felony charges are
21 pending against the person and the statute of limitations for
22 refileing the charge or charges has expired or the prosecuting agency
23 confirms that the charge or charges will not be refiled; provided,
24 however, this category shall not apply to charges that have been

1 dismissed following the completion of a deferred judgment or delayed
2 sentence;

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

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

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

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

5 12. The person was convicted of a nonviolent felony offense not
6 listed in Section 571 of Title 57 of the Oklahoma Statutes, the
7 person has not been convicted of any other felony or separate
8 misdemeanor in the last seven (7) years, no felony or misdemeanor
9 charges are pending against the person and at least five (5) years
10 have passed since the completion of the sentence for the felony
11 conviction; provided, however, this paragraph 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 paragraph 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, no felony or misdemeanor charges are
21 pending against the person, and at least twenty (20) years have
22 passed since the last misdemeanor or felony conviction; provided,
23 however, this paragraph shall not apply to persons convicted of an
24 offense enumerated in Section 13.1 of Title 21 of the Oklahoma

1 Statutes. Expungements obtained under this paragraph without a full
2 pardon shall not restore citizenship rights including, but not
3 limited to rights to possess or own firearms and the right to vote;
4 or

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

9 15. The person has requested and received written consent to
10 file a motion for expungement from the Oklahoma State Bureau of
11 Investigation, the arresting agency and the District Attorney.

12 Written consent of such agencies shall be attached to the motion for
13 expungement. If any such agencies do not provide written consent to
14 the motion for expungement, such motion cannot be filed and shall
15 not be granted.

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

21 C. For purposes of seeking an expungement under the provisions
22 of paragraph 10, 11, 12 or 13 of subsection A of this section,
23 offenses arising out of the same transaction or occurrence shall be
24 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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