

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 3316

By: Miller

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7
8 COMMITTEE SUBSTITUTE

9 An Act relating to expungements; amending 22 O.S.
10 2021, Sections 18 and 19, which relate to the
11 expungement of criminal arrest records; providing for
12 the automatic sealing of records under certain
13 circumstances; defining term; providing procedures
14 and guidelines for the automatic expungement of
15 certain eligible cases; requiring the submission of
16 certain report to the Legislature; requiring the
17 promulgation of rules; providing for the filing of
18 expungement petitions and unsealing of records apart
19 from the automatic expungement process; prohibiting
20 any cause of action for failing to identify eligible
21 cases; and providing an effective date.

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

23 SECTION 1. AMENDATORY 22 O.S. 2021, Section 18, is
24 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 by the Governor for
10 the crime for which the person was sentenced;

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

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

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

1 however, this category shall not apply to charges that have been
2 dismissed following the completion of a deferred judgment or delayed
3 sentence;

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

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

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

23 11. The person was convicted of a misdemeanor offense, the
24 person was sentenced to a term of imprisonment, a suspended sentence

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

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

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

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

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

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

22 C. Beginning three (3) years after the effective date of this
23 act and subject to the availability of funds, individuals with clean
24 slate eligible cases shall be eligible to have their criminal

1 records sealed automatically. For purposes of Section 18 et seq. of
2 this title, "clean slate eligible case" shall mean a case where each
3 charge within the case is pursuant to paragraphs 1, 2, 3, 5, 6, 7,
4 8, 10, 11, 14 or 15 of subsection A of this section.

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

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

21 SECTION 2. AMENDATORY 22 O.S. 2021, Section 19, is
22 amended to read as follows:

23 Section 19. A. Any person qualified under Section 18 of this
24 title may petition the district court of the district in which the

1 arrest information pertaining to the person is located for the
2 sealing of all or any part of the record, except basic
3 identification information.

4 B. The process for the automatic expungement of a clean slate
5 eligible case as defined in subsection C of Section 18 of this title
6 is as follows:

7 1. On a monthly basis, the Oklahoma State Bureau of
8 Investigation shall identify cases which are clean slate eligible by
9 conducting a search of the criminal history repository records of
10 the Bureau;

11 2. The Bureau shall, on a monthly basis, provide a list of
12 clean slate eligible cases to the prosecuting agency and the
13 arresting agency;

14 3. The prosecuting agency, arresting agency, and the Bureau
15 may, no later than forty-five (45) days from the day on which the
16 notice described in paragraph 2 of this subsection is transmitted,
17 object to an automatic expungement and such objection shall be
18 transmitted to all parties. An objection may be made for any of the
19 following reasons:

20 a. after reviewing the agency record, the agency believes
21 the case does not meet the definition of a clean slate
22 eligible case,
23 b. the individual has not paid court-ordered restitution
24 to the victim, or

1 c. the agency has a reasonable belief, grounded in
2 supporting facts, that an individual with a clean
3 slate eligible case is continuing to engage in
4 criminal activity, whether charged or not charged,
5 within or outside the state;

6 4. If an agency identified in paragraph 3 of this subsection
7 objects for a reason described in paragraph 3 of this subsection
8 within forty-five (45) days of the day on which the notice described
9 in paragraph 2 of this subsection is transmitted, the record shall
10 not be expunged. Once a year, the Bureau shall submit a report to
11 the Legislature with a list of all cases where a record was not
12 expunged pursuant to this paragraph; and

13 5. After forty-five (45) days pass from the day on which the
14 notice described in paragraph 2 of this subsection is sent, the
15 Bureau shall provide to the courts a list of all cases where
16 responses from all parties were received and no parties objected.
17 The court shall review this list and provide to all agencies that
18 have criminal history records a signed expungement order for all
19 cases approved. Upon receipt of a signed expungement order, each
20 agency shall seal the relevant records.

21 The Bureau and the Administrative Office of the Courts shall
22 promulgate rules to govern the process for automatic expungement of
23 records for a clean slate eligible case in accordance with this
24 subsection.

1 C. 1. Nothing in this section precludes an individual from
2 filing a petition for expungement of records that are eligible for
3 automatic expungement under subsection C of Section 18 of this title
4 if an automatic expungement has not occurred pursuant to subsection
5 B of this section.

6 2. An individual does not have a cause of action for damages as
7 a result of the failure of the Bureau to identify a case as eligible
8 for automatic expungement.

9 D. An automatic expungement granted under subsection B of this
10 section does not preclude an individual from requesting the
11 unsealing of records in accordance with subsection O of this
12 section.

13 E. Upon the filing of a petition or entering of a court order
14 as prescribed in subsection A of this section, the court shall set a
15 date for a hearing and shall provide thirty (30) days of notice of
16 the hearing to the prosecuting agency, the arresting agency, the
17 Oklahoma State Bureau of Investigation, and any other person or
18 agency whom the court has reason to believe may have relevant
19 information related to the sealing of such record.

20 ~~E.~~ F. Upon a finding that the harm to privacy of the person in
21 interest or dangers of unwarranted adverse consequences outweigh the
22 public interest in retaining the records, the court may order such
23 records, or any part thereof except basic identification
24 information, to be sealed. If the court finds that neither sealing

1 of the records nor maintaining of the records unsealed by the agency
2 would serve the ends of justice, the court may enter an appropriate
3 order limiting access to such records.

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

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

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

24

1 ~~F.~~ I. 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.~~ J. All arrest and criminal records information existing
13 prior to the effective date of this section, except basic
14 identification information, is also subject to sealing in accordance
15 with subsection ~~E~~ F of this section.

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

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

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

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

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

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

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

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SECTION 3. This act shall become effective November 1, 2022.

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