

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3316

By: Miller, **Talley** and **Echols**
of the House

and

Pugh of the Senate

11 COMMITTEE SUBSTITUTE

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

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

SECTION 1. **AMENDATORY** 22 O.S. 2021, Section 18, is
amended to read as follows:

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;

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;

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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 a nonviolent felony offense not
6 listed in Section 571 of Title 57 of the Oklahoma Statutes which was
7 subsequently reclassified as a misdemeanor under Oklahoma law, the
8 person is not currently serving a sentence for a crime in this state
9 or another state, at least thirty (30) days have passed since the
10 completion or commutation of the sentence for the crime that was
11 reclassified as a misdemeanor, any restitution ordered by the court
12 to be paid by the person has been satisfied in full, and any
13 treatment program ordered by the court has been successfully
14 completed by the person, including any person who failed a treatment
15 program which resulted in an accelerated or revoked sentence that
16 has since been successfully completed by the person or the person
17 can show successful completion of a treatment program at a later
18 date. Persons seeking an expungement of records under the
19 provisions of this paragraph may utilize the expungement forms
20 provided in Section ~~2~~ 18a of this ~~act~~ 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. Beginning three (3) years after the effective date of this
4 act and subject to the availability of funds, individuals with clean
5 slate eligible cases shall be eligible to have their criminal
6 records sealed automatically. For purposes of Section 18 et seq. of
7 this title, "clean slate eligible case" shall mean a case where each
8 charge within the case is pursuant to paragraphs 1, 2, 3, 5, 6, 7,
9 8, 10, 11, 14 or 15 of subsection A of this section.

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

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

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

5 Section 19. A. Any person qualified under Section 18 of this
6 title may petition the district court of the district in which the
7 arrest information pertaining to the person is located for the
8 sealing of all or any part of the record, except basic
9 identification information.

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

13 1. On a monthly basis, the Oklahoma State Bureau of
14 Investigation shall identify cases which are clean slate eligible by
15 conducting a search of the criminal history repository records of
16 the Bureau;

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

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

3 a. after reviewing the agency record, the agency believes
4 the case does not meet the definition of a clean slate
5 eligible case,

6 b. the individual has not paid court-ordered restitution
7 to the victim, or

8 c. the agency has a reasonable belief, grounded in
9 supporting facts, that an individual with a clean
10 slate eligible case is continuing to engage in
11 criminal activity, whether charged or not charged,
12 within or outside the state;

13 4. If an agency identified in paragraph 3 of this subsection
14 objects for a reason described in paragraph 3 of this subsection
15 within forty-five (45) days of the day on which the notice described
16 in paragraph 2 of this subsection is transmitted, the record shall
17 not be expunged. Once a year, the Bureau shall submit a report to
18 the Legislature with a list of all cases where a record was not
19 expunged pursuant to this paragraph; and

20 5. After forty-five (45) days pass from the day on which the
21 notice described in paragraph 2 of this subsection is sent, the
22 Bureau shall provide to the courts a list of all cases where
23 responses from all parties were received and no parties objected.
24 The court shall review this list and provide to all agencies that

1 have criminal history records a signed expungement order for all
2 cases approved. Upon receipt of a signed expungement order, each
3 agency shall seal the relevant records.

4 The Bureau and the Administrative Office of the Courts shall
5 promulgate rules to govern the process for automatic expungement of
6 records for a clean slate eligible case in accordance with this
7 subsection.

8 C. 1. Nothing in this section precludes an individual from
9 filing a petition for expungement of records that are eligible for
10 automatic expungement under subsection C of Section 18 of this title
11 if an automatic expungement has not occurred pursuant to subsection
12 B of this section.

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

16 D. An automatic expungement granted under subsection B of this
17 section does not preclude an individual from requesting the
18 unsealing of records in accordance with subsection O of this
19 section.

20 E. Upon the filing of a petition or entering of a court order
21 as prescribed in subsection A of this section, the court shall set a
22 date for a hearing and shall provide thirty (30) days of notice of
23 the hearing to the prosecuting agency, the arresting agency, the
24 Oklahoma State Bureau of Investigation, and any other person or

1 agency whom the court has reason to believe may have relevant
2 information related to the sealing of such record.

3 ~~E.~~ F. Upon a finding that the harm to privacy of the person in
4 interest or dangers of unwarranted adverse consequences outweigh the
5 public interest in retaining the records, the court may order such
6 records, or any part thereof except basic identification
7 information, to be sealed. If the court finds that neither sealing
8 of the records nor maintaining of the records unsealed by the agency
9 would serve the ends of justice, the court may enter an appropriate
10 order limiting access to such records.

11 Any order entered under this subsection shall specify those
12 agencies to which such order shall apply. Any order entered
13 pursuant to this subsection may be appealed by the petitioner, the
14 prosecuting agency, the arresting agency, or the Oklahoma State
15 Bureau of Investigation to the Oklahoma Supreme Court in accordance
16 with the rules of the Oklahoma Supreme Court. In all such appeals,
17 the Oklahoma State Bureau of Investigation is a necessary party and
18 must be given notice of the appellate proceedings.

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

3 ~~E.~~ H. Inspection of the records included in the order may
4 thereafter be permitted by the court only upon petition by the
5 person in interest who is the subject of such records, the Attorney
6 General, or by the prosecuting agency and only to those persons and
7 for such purposes named in such petition.

8 ~~F.~~ I. Employers, educational institutions, state and local
9 government agencies, officials, and employees shall not, in any
10 application or interview or otherwise, require an applicant to
11 disclose any information contained in sealed records. An applicant
12 need not, in answer to any question concerning arrest and criminal
13 records, provide information that has been sealed, including any
14 reference to or information concerning such sealed information and
15 may state that no such action has ever occurred. Such an
16 application may not be denied solely because of the refusal of the
17 applicant to disclose arrest and criminal records information that
18 has been sealed.

19 ~~G.~~ J. All arrest and criminal records information existing
20 prior to the effective date of this section, except basic
21 identification information, is also subject to sealing in accordance
22 with subsection ~~E~~ F of this section.

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

1 ~~F.~~ L. For the purposes of this section, sealed materials which
2 are recorded in the same document as unsealed material may be
3 recorded in a separate document, and sealed, then obliterated in the
4 original document.

5 ~~J.~~ M. For the purposes of this section, district court index
6 reference of sealed material shall be destroyed, removed or
7 obliterated.

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

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

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

3 ~~N.~~ Q. If a person qualifies for an expungement under the
4 provisions of paragraph 3 of subsection A of Section 18 of this
5 title and said petition for expungement is granted by the court, the
6 court shall order the reimbursement of all filing fees and court
7 costs incurred by the petitioner as a result of filing the
8 expungement request.

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

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11 COMMITTEE REPORT BY: COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS,
12 dated 02/17/2022 - DO PASS, As Amended and Coauthored.

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