

1 **SENATE FLOOR VERSION**

2 April 13, 2022

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 3316

6 By: Miller, Talley, Echols,
7 Fugate, Stark, Waldron,
8 Goodwin and Lepak of the
9 House

10 and

11 Pugh and Rader of the
12 Senate

13 **[expungements - criminal arrest records - automatic**
14 **sealing of records under certain circumstances -**
15 **effective date]**

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

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

19 Section 18. A. Persons authorized to file a motion for
20 expungement, as provided herein, must be within one of the following
21 categories:

- 22 1. The person has been acquitted;
- 23 2. The conviction was reversed with instructions to dismiss by
24 an appellate court of competent jurisdiction, or an appellate court
of competent jurisdiction reversed the conviction and the
prosecuting agency subsequently dismissed the charge;

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

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

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

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

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

24

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

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

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

20 11. The person was convicted of a misdemeanor offense, the
21 person was sentenced to a term of imprisonment, a suspended sentence
22 or a fine in an amount greater than Five Hundred Dollars (\$500.00),
23 the person has not been convicted of a felony, no felony or
24 misdemeanor charges are pending against the person and at least five

1 (5) years have passed since the end of the last misdemeanor
2 sentence;

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

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

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

21 15. The person was convicted of a nonviolent felony offense not
22 listed in Section 571 of Title 57 of the Oklahoma Statutes which was
23 subsequently reclassified as a misdemeanor under Oklahoma law, the
24 person is not currently serving a sentence for a crime in this state

1 or another state, at least thirty (30) days have passed since the
2 completion or commutation of the sentence for the crime that was
3 reclassified as a misdemeanor, any restitution ordered by the court
4 to be paid by the person has been satisfied in full, and any
5 treatment program ordered by the court has been successfully
6 completed by the person, including any person who failed a treatment
7 program which resulted in an accelerated or revoked sentence that
8 has since been successfully completed by the person or the person
9 can show successful completion of a treatment program at a later
10 date. Persons seeking an expungement of records under the
11 provisions of this paragraph may utilize the expungement forms
12 provided in Section ~~2~~ 18a of this ~~act~~ title.

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

18 C. Beginning three (3) years after the effective date of this
19 act and subject to the availability of funds, individuals with clean
20 slate eligible cases shall be eligible to have their criminal
21 records sealed automatically. For purposes of Section 18 et seq. of
22 this title, "clean slate eligible case" shall mean a case where each
23 charge within the case is pursuant to paragraph 1, 2, 3, 5, 6, 7, 8,
24 10, 11, 14 or 15 of subsection A of this section.

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

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

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

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

24

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

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

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

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

17 a. after reviewing the agency record, the agency believes
18 the case does not meet the definition of a clean slate
19 eligible case,

20 b. the individual has not paid court-ordered restitution
21 to the victim, or

22 c. the agency has a reasonable belief, grounded in
23 supporting facts, that an individual with a clean
24 slate eligible case is continuing to engage in

1 criminal activity, whether charged or not charged,
2 within or outside the state;

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

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

18 The Bureau and the Oklahoma Supreme Court may promulgate rules
19 to govern the process for automatic expungement of records for a
20 clean slate eligible case in accordance with this subsection.

21 C. 1. Nothing in this section precludes an individual from
22 filing a petition for expungement of records that are eligible for
23 automatic expungement under subsection C of Section 18 of this title

24

1 if an automatic expungement has not occurred pursuant to subsection
2 B of this section.

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

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

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

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

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

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

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

21 ~~F.~~ I. Employers, educational institutions, state and local
22 government agencies, officials, and employees shall not, in any
23 application or interview or otherwise, require an applicant to
24 disclose any information contained in sealed records. An applicant

1 need not, in answer to any question concerning arrest and criminal
2 records, provide information that has been sealed, including any
3 reference to or information concerning such sealed information and
4 may state that no such action has ever occurred. Such an
5 application may not be denied solely because of the refusal of the
6 applicant to disclose arrest and criminal records information that
7 has been sealed.

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

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

14 ~~I.~~ L. For the purposes of this section, sealed materials which
15 are recorded in the same document as unsealed material may be
16 recorded in a separate document, and sealed, then obliterated in the
17 original document.

18 ~~J.~~ M. For the purposes of this section, district court index
19 reference of sealed material shall be destroyed, removed or
20 obliterated.

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

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

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

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

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

23 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
24 April 13, 2022 - DO PASS AS AMENDED