

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3316

By: Miller

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5  
6 AS INTRODUCED

7 An Act relating to expungements; amending 22 O.S.  
8 2021, Sections 18 and 19, which relate to the  
9 expungement of criminal arrest records; providing for  
10 the automatic sealing of records under certain  
11 circumstances; defining term; providing process for  
12 the automatic expungement of certain eligible cases;  
13 providing for the filing of expungement petitions and  
14 unsealing of records apart from the automatic  
15 expungement process; and providing an effective date.

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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:

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;
2. The conviction was reversed with instructions to dismiss by  
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;

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 two (2) years after the effective date of this act  
19 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 conviction within the case is pursuant to paragraphs 1, 2, 3, 5, 6,  
24 7, 8, 10, 11, 14 and 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.

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;

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

9        3. The prosecuting agency, arresting agency, and the Bureau  
10 may, no later than thirty-five (35) days from the day on which the  
11 notice described in paragraph 2 of this subsection is transmitted,  
12 object to an automatic expungement for any of the following reasons:

13        a. after reviewing the agency record, the agency believes  
14 the case does not meet the definition of a clean slate  
15 eligible case,

16        b. the individual has not paid court-ordered restitution  
17 to the victim, or

18        c. the agency has a reasonable belief, grounded in  
19 supporting facts, that an individual with a clean  
20 slate eligible case is continuing to engage in  
21 criminal activity within or outside the state;

22        4. If an agency identified in paragraph 3 of this subsection  
23 objects for a reason described in paragraph 3 of this subsection  
24 within thirty-five (35) days of the day on which the notice

1 described in paragraph 3 of this subsection is transmitted, the  
2 record shall not be expunged;

3 5. If thirty-five (35) days pass from the day on which the  
4 notice described in paragraph 3 of this subsection is sent without  
5 an objection for a reason described in paragraph 3 of this  
6 subsection, the Bureau shall seal the record and transmit a notice  
7 to the court clerk and law enforcement agencies to seal the record;  
8 and

9 6. The Bureau shall make rules to govern the process for  
10 automatic expungement of records for a clean slate eligible case in  
11 accordance with this subsection.

12 C. Nothing in this section precludes an individual from filing  
13 a petition for expungement of records that are eligible for  
14 automatic expungement under subsection C of Section 18 of this title  
15 if an automatic expungement has not occurred pursuant to subsection  
16 B of this section.

17 D. An automatic expungement granted under subsection B of this  
18 section does not preclude a person from requesting the unsealing of  
19 records in accordance with subsection O of this 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       ~~H.~~ 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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