

1 ENGROSSED SENATE
2 BILL NO. 1770

By: Pugh of the Senate

3 and

4 Miller of the House

5
6 An Act relating to criminal records; amending 22 O.S.
7 2021, Sections 18, as last amended by Section 1,
8 Chapter 143, O.S.L. 2022, and 19, as amended by
9 Section 2, Chapter 143, O.S.L. 2022 (22 O.S. Supp.
10 2023, Sections 18 and 19), which relate to
11 expungement and sealing of records; defining terms;
12 clarifying records eligible to be sealed; requiring
13 electronic submission of certain report; authorizing
14 consideration of certain multiple expungements in a
15 single petition; prohibiting treatment of certain
16 offense as a prior offense under certain
17 circumstances; amending 22 O.S. 2021, Section 1373.5,
18 which relates to DNA testing results; requiring
19 submission of certain report to the Oklahoma State
20 Bureau of Investigation; updating statutory language;
21 updating statutory references; and providing an
22 effective date.

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

24 SECTION 1. AMENDATORY 22 O.S. 2021, Section 18, as last
amended by Section 1, Chapter 143, O.S.L. 2022 (22 O.S. Supp. 2023,
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;

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 18a of this title.

17 B. For purposes of Section 18 et seq. of this title,

18 ~~"expungement" shall mean:~~

19 1. "Expungement" means the sealing of criminal records, as well
20 as any public civil record, involving actions brought by and against
21 the State of Oklahoma arising from the same arrest, transaction or
22 occurrence. A fully sealed expunged record shall not be available
23 to the public or to law enforcement. Such records may be retained
24 in the state criminal history repository but shall only be

1 accessible to designated employees of the Oklahoma State Bureau of
2 Investigation for research and statistical purposes. A partially
3 sealed expunged record shall not be available to the public but
4 shall be available to law enforcement agencies for law enforcement
5 purposes; and

6 2. "Single-source record" means a criminal history record from
7 this state that consists of an Oklahoma arrest record only. A
8 single-source record shall not contain any arrest from another
9 state, a federal arrest, or an entry into the National Sex Offender
10 Registry or a National Crime Information Center (NCIC)
11 wanted/warrant entry.

12 C. Beginning three (3) years after ~~the effective date of this~~
13 ~~act~~ November 1, 2022, and subject to the availability of funds,
14 individuals with clean slate eligible ~~cases~~ arrest records shall be
15 eligible to have their ~~criminal~~ arrest records sealed automatically.
16 For purposes of Section 18 et seq. of this title, "clean slate
17 eligible ~~case~~" arrest record" shall mean a ~~case~~ an arrest record
18 where each charge within the ~~case is pursuant to~~ record meets one of
19 the following criteria:

20 1. Records described in paragraph 1, 2, 3, 4, 5, 6, 7, 8, 10,
21 11, 14 or 15 of subsection A of this section;

22 2. Records described in paragraph 7 of subsection A of this
23 section where the prosecuting agency has declined to file charges
24 and the record is an Oklahoma single-source record; or

1 3. Records described in paragraph 8, 10, or 11 of subsection A
2 of this section where the record is an Oklahoma single-source
3 record.

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

8 E. Records expunged pursuant to paragraphs 4, 8, 9, 10, 11, 12,
9 13, 14 and 15 of subsection A of this section shall be partially
10 sealed so that such records are not available to the public but ~~not~~
11 remain available 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, as
22 amended by Section 2, Chapter 143, O.S.L. 2022 (22 O.S. Supp. 2023,
23 Section 19), is amended to read as follows:

24

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

6 B. The process for the automatic expungement of a clean slate
7 eligible ~~ease~~ arrest record as defined in subsection C of Section 18
8 of this title is as follows:

9 1. On a monthly basis, the Oklahoma State Bureau of
10 Investigation shall identify ~~eases~~ arrest records which are clean
11 slate eligible by conducting a search of the criminal history
12 repository records of the Bureau;

13 2. The Bureau shall, on a monthly basis, provide a list of
14 clean slate eligible ~~eases~~ arrest records to the prosecuting agency
15 and the arresting agency;

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

22 a. after reviewing the agency record, the agency believes
23 the ~~ease~~ arrest record does not meet the definition of
24 a clean slate eligible ~~ease~~ arrest record,

1 b. the individual has not paid court-ordered restitution
2 to the victim, or

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

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

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

23 The Bureau and the ~~Oklahoma~~ Supreme Court may promulgate rules
24 to govern the process for automatic expungement of records for a

1 clean slate eligible ~~ease~~ arrest record in accordance with this
2 subsection.

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

8 2. An individual does not have a cause of action for damages as
9 a result of the failure of the Bureau to identify ~~a ease~~ an arrest
10 record as eligible for automatic expungement.

11 D. An automatic expungement granted under subsection B of this
12 section does not preclude an individual from requesting the
13 unsealing of records in accordance with subsection ~~Θ~~ P of this
14 section.

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

22 F. If a petitioner requests expungement for multiple offenses
23 in one county, each of which would qualify for expungement if
24 processed sequentially, the expungements may be considered under a

1 single petition. The petitioner shall not be required to submit
2 multiple petitions to accomplish the sequential sealing of multiple
3 offenses in a single county.

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

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

20 ~~G.~~ H. Upon the entry of an order to seal the records, or any
21 part thereof, or upon an automatic expungement described in
22 subsection B of this section, the subject official actions shall be
23 deemed never to have occurred, and the person in interest and all
24 criminal justice agencies may properly reply, upon any inquiry in

1 the matter, that no such action ever occurred and that no such
2 record exists with respect to such person.

3 ~~H.~~ I. 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.~~ J. 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 ~~J.~~ K. All arrest and criminal records information existing
20 prior to ~~the effective date of this section~~ May 14, 1987, except
21 basic identification information, is also subject to sealing in
22 accordance with subsection ~~F~~ G of this section.

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

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

8 ~~N.~~ O. 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 ~~O.~~ P. 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~~ such records. Upon
15 filing of a petition, the court shall set a date for hearing, which
16 hearing may be closed at the discretion of the court, and shall
17 provide thirty (30) days of notice to all interested parties. If,
18 upon hearing, the court determines there has been a change of
19 conditions or that there is a compelling reason to unseal the
20 records, the court may order all or a portion of the records
21 unsealed.

22 ~~P.~~ Q. Nothing herein shall prohibit the introduction of
23 evidence regarding actions sealed pursuant to the provisions of this
24 section at any hearing or trial for purposes of impeaching the

1 credibility of a witness or as evidence of character testimony
2 pursuant to Section 2608 of Title 12 of the Oklahoma Statutes.

3 ~~Q.~~ R. 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~~ the petition for expungement is granted by the court,
6 the 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 S. Any offense that has been expunged shall not be treated as a
10 prior offense in determining whether another offense qualifies for
11 an expungement under Section 18 of this title.

12 SECTION 3. AMENDATORY 22 O.S. 2021, Section 1373.5, is
13 amended to read as follows:

14 Section 1373.5. A. If the results of the forensic DNA testing
15 conducted under the provisions of ~~this act~~ the Postconviction DNA
16 Act are favorable to the petitioner, the court shall schedule a
17 hearing to determine the appropriate relief to be granted. Based on
18 the results of the testing and any other evidence presented at the
19 hearing, the court shall thereafter enter any order that serves the
20 interests of justice including, but not limited to, any of the
21 following:

22 1. An order setting aside or vacating the judgment of
23 conviction, judgment of not guilty by reason of mental disease or
24 defect or adjudication of delinquency;

1 2. An order granting the petitioner a new trial or fact-finding
2 hearing;

3 3. An order granting the petitioner a new commitment hearing or
4 dispositional hearing;

5 4. An order discharging the petitioner from custody;

6 5. An order specifying the disposition of any evidence that
7 remains after the completion of the testing;

8 6. An order granting the petitioner additional discovery on
9 matters related to the DNA test results on the conviction or
10 sentence under scrutiny including, but not limited to, documents
11 pertaining to the original criminal investigation or the identities
12 of other suspects; or

13 7. An order directing the state to place any unidentified DNA
14 profile or profiles obtained from postconviction DNA testing into
15 Oklahoma or federal databases as allowed within applicable state and
16 federal laws.

17 B. If the court issues an order setting aside or vacating the
18 judgment of conviction and dismisses the case with prejudice, a copy
19 of the order indicating the individual has been exonerated through
20 DNA testing shall be submitted to the Oklahoma State Bureau of
21 Investigation in accordance with the requirements of Section 150.12
22 of Title 74 of the Oklahoma Statutes.

23 C. If the results of the tests are not favorable to the
24 petitioner, the court shall:

1 1. Dismiss the motion; and

2 2. Make such further orders as the court deems appropriate,
3 including an order that:

4 a. requires the DNA test results be provided to the
5 Pardon and Parole Board or Department of Corrections,
6 or

7 b. requests the DNA profile of the petitioner be added to
8 the convicted offender index database of the OSBI
9 Combined DNA Index System (CODIS) Database as provided
10 by law.

11 SECTION 4. This act shall become effective November 1, 2024.

12 Passed the Senate the 5th day of March, 2024.

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14 _____
15 Presiding Officer of the Senate

16 Passed the House of Representatives the ____ day of _____,
17 2024.

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19 _____
20 Presiding Officer of the House
21 of Representatives
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