

An Act

ENROLLED SENATE
BILL NO. 1770

By: Pugh of the Senate

and

Miller of the House

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

SUBJECT: Expungement of criminal records

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

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;

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;

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

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

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

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

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

8. The person was charged with a misdemeanor, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a

felony, no misdemeanor or felony charges are pending against the person and at least one (1) year has passed since the charge was dismissed;

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

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

11. The person was convicted of a misdemeanor offense, the person was sentenced to a term of imprisonment, a suspended sentence or a fine in an amount greater than Five Hundred Dollars (\$500.00), the person has not been convicted of a felony, no felony or misdemeanor charges are pending against the person and at least five (5) years have passed since the end of the last misdemeanor sentence;

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

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

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

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

B. For purposes of Section 18 et seq. of this title, ~~"expungement" shall mean:~~

1. "Expungement" means the sealing of criminal records, as well as any public civil record, involving actions brought by and against the State of Oklahoma arising from the same arrest, transaction or occurrence. A fully sealed expunged record shall not be available to the public or to law enforcement. Such records may be retained in the state criminal history repository but shall only be accessible to designated employees of the Oklahoma State Bureau of Investigation for research and statistical purposes. A partially sealed expunged record shall not be available to the public but shall be available to law enforcement agencies for law enforcement purposes; and

2. "Single-source record" means a criminal history record from this state that consists of an Oklahoma arrest record only. A single-source record shall not contain any arrest from another state, a federal arrest, or an entry into the National Sex Offender

Registry or a National Crime Information Center (NCIC) wanted/warrant entry.

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

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

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

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

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

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

SECTION 2. AMENDATORY 22 O.S. 2021, Section 19, as amended by Section 2, Chapter 143, O.S.L. 2022 (22 O.S. Supp. 2023, Section 19), is amended to read as follows:

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

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

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

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

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

- a. after reviewing the agency record, the agency believes the ~~case~~ arrest record does not meet the definition of a clean slate eligible ~~case~~ arrest record,
- b. the individual has not paid court-ordered restitution to the victim, or
- c. the agency has a reasonable belief, grounded in supporting facts, that an individual with a clean slate eligible ~~case~~ arrest record is continuing to engage in criminal activity, whether charged or not charged, within or outside the state;

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

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

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

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

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

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

E. Upon the filing of a petition or entering of a court order as prescribed in subsection A of this section, the court shall set a date for a hearing and shall provide thirty (30) days of notice of the hearing to the prosecuting agency, the arresting agency, the

Oklahoma State Bureau of Investigation, and any other person or agency whom the court has reason to believe may have relevant information related to the sealing of such record.

F. If a petitioner requests expungement for multiple offenses in one county, each of which would qualify for expungement if processed sequentially, the expungements may be considered under a single petition. The petitioner shall not be required to submit multiple petitions to accomplish the sequential sealing of multiple offenses in a single county.

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

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

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

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

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

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

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

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

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

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

~~O.~~ P. Subsequent to records being sealed as provided herein, the prosecuting agency, the arresting agency, the Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing ~~said~~ such records. Upon filing of a petition, the court shall set a date for hearing, which hearing may be closed at the discretion of the court, and shall provide thirty (30) days of notice to all interested parties. If, upon hearing, the court determines there has been a change of

conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

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

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

S. Any offense that has been expunged shall not be treated as a prior offense in determining whether another offense qualifies for an expungement under Section 18 of this title.

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

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

1. An order setting aside or vacating the judgment of conviction, judgment of not guilty by reason of mental disease or defect or adjudication of delinquency;
2. An order granting the petitioner a new trial or fact-finding hearing;
3. An order granting the petitioner a new commitment hearing or dispositional hearing;

4. An order discharging the petitioner from custody;

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

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

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

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

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

1. Dismiss the motion; and

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

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

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

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

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

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of April, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____