

1 **SENATE FLOOR VERSION**

2 February 27, 2024

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 1770

By: Pugh of the Senate

and

Miller of the House

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

18
19
20 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

21 SECTION 1. AMENDATORY 22 O.S. 2021, Section 18, as last
22 amended by Section 1, Chapter 143, O.S.L. 2022 (22 O.S. Supp. 2023,
23 Section 18), is amended to read as follows:
24

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 | refileing 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;

24

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 18a of this title.

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

23 1. "Expungement" means the sealing of criminal records, as well
24 as any public civil record, involving actions brought by and against

1 the State of Oklahoma arising from the same arrest, transaction or
2 occurrence. A fully sealed expunged record shall not be available
3 to the public or to law enforcement. Such records may be retained
4 in the state criminal history repository but shall only be
5 accessible to designated employees of the Oklahoma State Bureau of
6 Investigation for research and statistical purposes. A partially
7 sealed expunged record shall not be available to the public but
8 shall be available to law enforcement agencies for law enforcement
9 purposes; and

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

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

24

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

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

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

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

13 E. Records expunged pursuant to paragraphs 4, 8, 9, 10, 11, 12,
14 13, 14 and 15 of subsection A of this section shall be partially
15 sealed so that such records are not available to the public but ~~not~~
16 remain available 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
24

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

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

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

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

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

21 3. The prosecuting agency, arresting agency, and the Bureau
22 may, no later than forty-five (45) days from the day on which the
23 notice described in paragraph 2 of this subsection is transmitted,
24 object to an automatic expungement and such objection shall be

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 ~~ease~~ arrest record does not meet the definition of
5 a clean slate eligible ~~ease~~ arrest record,
- 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 ~~ease~~ arrest record is continuing to
11 engage in criminal activity, whether charged or not
12 charged, 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 electronically
18 submit a report to the Legislature with a list of all cases where a
19 record was not 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 ~~Oklahoma~~ Supreme Court may promulgate rules
5 to govern the process for automatic expungement of records for a
6 clean slate eligible ~~ease~~ arrest record 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~~ an arrest
15 record as eligible 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 ~~θ~~ P 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 F. If a petitioner requests expungement for multiple offenses
4 in one county, each of which would qualify for expungement if
5 processed sequentially, the expungements may be considered under a
6 single petition. The petitioner shall not be required to submit
7 multiple petitions to accomplish the sequential sealing of multiple
8 offenses in a single county.

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

20 Section 1373.5. A. If the results of the forensic DNA testing
21 conducted under the provisions of ~~this act~~ the Postconviction DNA
22 Act are favorable to the petitioner, the court shall schedule a
23 hearing to determine the appropriate relief to be granted. Based on
24 the results of the testing and any other evidence presented at the

1 hearing, the court shall thereafter enter any order that serves the
2 interests of justice including, but not limited to, any of the
3 following:

4 1. An order setting aside or vacating the judgment of
5 conviction, judgment of not guilty by reason of mental disease or
6 defect or adjudication of delinquency;

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

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

11 4. An order discharging the petitioner from custody;

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

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

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

23 B. If the court issues an order setting aside or vacating the
24 judgment of conviction and dismisses the case with prejudice, a copy

1 of the order indicating the individual has been exonerated through
2 DNA testing shall be submitted to the Oklahoma State Bureau of
3 Investigation in accordance with the requirements of Section 150.12
4 of Title 74 of the Oklahoma Statutes.

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

- 7 1. Dismiss the motion; and
8 2. Make such further orders as the court deems appropriate,
9 including an order that:

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

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
19 February 27, 2024 - DO PASS AS AMENDED BY CS
20
21
22
23
24