

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

SENATE BILL 1770

By: Pugh

AS INTRODUCED

An Act relating to criminal records; amending 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), which relates to expungement; clarifying records eligible to be sealed; amending 22 O.S. 2021, Section 19, as amended by Section 2, Chapter 143, O.S.L. 2022 (22 O.S. Supp. 2023, Section 19), which relates to sealing of records; 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; and providing an effective date.

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;

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
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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
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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 the sealing of criminal records, as well as
19 any public civil record, involving actions brought by and against
20 the State of Oklahoma arising from the same arrest, transaction or
21 occurrence.

22 C. Beginning three (3) years after the effective date of this
23 act and subject to the availability of funds, individuals with clean
24 slate eligible ~~cases~~ arrest records shall be eligible to have their

1 ~~criminal~~ arrest records sealed automatically. For purposes of
2 Section 18 et seq. of this title, "clean slate eligible ~~case~~ arrest
3 record" shall mean ~~a case~~ an arrest record where each charge within
4 the ~~case is pursuant to~~ arrest meets one of the following criteria:

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

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

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

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

17 E. Records expunged pursuant to paragraphs 4, 8, 9, 10, 11, 12,
18 13, 14 and 15 of subsection A of this section shall be sealed to the
19 public but not to law enforcement agencies for law enforcement
20 purposes. Records expunged pursuant to paragraphs 8, 9, 10, 11, 12
21 and 13 of subsection A of this section shall be admissible in any
22 subsequent criminal prosecution to prove the existence of a prior
23 conviction or prior deferred judgment without the necessity of a
24 court order requesting the unsealing of the records. Records

1 expunged pursuant to paragraph 4, 6, 12 or 13 of subsection A of
2 this section may also include the sealing of Pardon and Parole Board
3 records related to an application for a pardon. Such records shall
4 be sealed to the public but not to the Pardon and Parole Board.

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

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

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

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

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

23 3. The prosecuting agency, arresting agency, and the Bureau
24 may, no later than forty-five (45) days from the day on which the

1 notice described in paragraph 2 of this subsection is transmitted,
2 object to an automatic expungement and such objection shall be
3 transmitted to all parties. An objection may be made for any of the
4 following reasons:

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

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

22 5. After forty-five (45) days pass from the day on which the
23 notice described in paragraph 2 of this subsection is sent, the
24 Bureau shall provide to the courts a list of all cases where

1 responses from all parties were received and no parties objected.
2 The court shall review this list and provide to all agencies that
3 have criminal history records a signed expungement order for all
4 cases approved. Upon receipt of a signed expungement order, each
5 agency shall seal the relevant records.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 ~~O.~~ P. Subsequent to records being sealed as provided herein,
20 the prosecuting agency, the arresting agency, the Oklahoma State
21 Bureau of Investigation, or other interested person or agency may
22 petition the court for an order unsealing said records. Upon filing
23 of a petition the court shall set a date for hearing, which hearing
24 may be closed at the discretion of the court, and shall provide

1 thirty (30) days of notice to all interested parties. If, upon
2 hearing, the court determines there has been a change of conditions
3 or that there is a compelling reason to unseal the records, the
4 court may order all or a portion of the records unsealed.

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

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

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

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

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

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