

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 650

By: Shaw and Pittman of the
Senate

and

Loring of the House

7
8
9
10 COMMITTEE SUBSTITUTE

11 [criminal procedure - expungement of criminal
12 records - modifying qualifications - effective
13 date]

14
15
16 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

17 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last
18 amended by Section 1, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2016,
19 Section 18), is amended to read as follows:

20 Section 18. A. Persons authorized to file a motion for
21 expungement, as provided herein, must be within one of the following
22 categories:

- 23 1. The person has been acquitted;
- 24

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 on the basis of a
10 written finding by the Governor of actual innocence for the crime
11 for which the claimant was sentenced;

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

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

20 7. The person was charged with one or more misdemeanor or
21 felony crimes, all charges have been dismissed, the person has never
22 been convicted of a felony, no misdemeanor or felony charges are
23 pending against the person, and the statute of limitations for
24 refiling the charge or charges has expired or the prosecuting agency

1 confirms that the charge or charges will not be refiled; provided,
2 however, this category shall not apply to charges that have been
3 dismissed following the completion of a deferred judgment or delayed
4 sentence;

5 8. The person was charged with a misdemeanor, the charge was
6 dismissed following the successful completion of a deferred judgment
7 or delayed sentence, the person has never been convicted of a
8 felony, no misdemeanor or felony charges are pending against the
9 person, and at least one (1) year has passed since the charge was
10 dismissed;

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

18 10. The person was convicted of a misdemeanor offense, the
19 person was sentenced to a fine of less than Five Hundred One Dollars
20 (\$501.00) without a term of imprisonment or a suspended sentence,
21 the fine has been paid or satisfied by time served in lieu of the
22 fine, the person has not been convicted of a felony, and no felony
23 or misdemeanor charges are pending against the person;

24

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

8 12. The person was convicted of a nonviolent felony offense,
9 not listed in Section 571 of Title 57 of the Oklahoma Statutes, the
10 person has received a full pardon for the offense, or the person has
11 not been convicted of any other felony, ~~the person has not been~~
12 ~~convicted of a~~ or separate misdemeanor in the last fifteen (15)
13 within seven (7) years of the date following the completion of the
14 execution of the sentence, and no felony or misdemeanor charges are
15 pending against the person, and at least ten (10) years have passed
16 since the felony conviction. This category shall not apply to
17 persons convicted of an offense enumerated in Section 13.1 of Title
18 21 of the Oklahoma Statutes. Expungements obtained under this
19 category without a full pardon shall not restore citizenship rights
20 including, but not limited to, rights to possess or own firearms and
21 the right to vote;

22 13. The person was convicted of not more than two nonviolent
23 felony offenses, not listed in Section 571 of Title 57 of the
24 Oklahoma Statutes, the person has received a full pardon for both of

1 the nonviolent felony offenses, or the person has not been convicted
2 of any other felony or misdemeanor within ten (10) years of the date
3 following the completion of the execution of the sentence, and no
4 felony or misdemeanor charges are pending against the person, and at
5 least twenty (20) years have passed since the last misdemeanor or
6 felony conviction. This category shall not apply to persons
7 convicted of an offense enumerated in Section 13.1 of Title 21 of
8 the Oklahoma Statutes. Expungements obtained under this category
9 without a full pardon shall not restore citizenship rights
10 including, but not limited to, rights to possess or own firearms and
11 the right to vote; ~~or~~

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

16 15. The person has requested and received written consent to
17 file an application for expungement from the Oklahoma State Bureau
18 of Investigation, the arresting agency and the District Attorney of
19 the county in which the conviction occurred. Written consent of the
20 aforementioned agencies shall be attached to the application for
21 expungement. If any of the above agencies do not provide written
22 consent to the application for expungement, the application for
23 expungement cannot be filed and shall not be granted.

24

1 B. For purposes of this act, "expungement" shall mean the
2 sealing of criminal records, as well as any public civil record,
3 involving actions brought by and against the State of Oklahoma
4 arising from the same arrest, transaction or occurrence.

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

9 D. Records expunged pursuant to paragraphs 8, 9, 10, 11, 12, 13
10 ~~and~~, 14 and 15 of subsection A of this section shall be sealed to
11 the public but not to law enforcement agencies for law enforcement
12 purposes. Records expunged pursuant to paragraphs 8, 9, 10, 11, 12
13 ~~and~~, 13 and 15 of subsection A of this section shall be admissible
14 in any subsequent criminal prosecution to prove the existence of a
15 prior conviction or prior deferred judgment without the necessity of
16 a 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. 2011, Section 19, as last
22 amended by Section 2, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2016,
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. Upon the filing of a petition or entering of a court order,
7 the court shall set a date for a hearing and shall provide thirty
8 (30) days of notice of the hearing to the prosecuting agency, the
9 arresting agency, the Oklahoma State Bureau of Investigation, the
10 victim or representative of the victim, and any other person or
11 agency whom the court has reason to believe may have relevant
12 information related to the sealing of such record. The victim or
13 representative of the victim shall be afforded the opportunity to
14 provide testimony at the expungement hearing.

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

23 Any order entered under this subsection shall specify those
24 agencies to which such order shall apply. Any order entered

1 pursuant to this subsection may be appealed by the petitioner, the
2 prosecuting agency, the arresting agency, or the Oklahoma State
3 Bureau of Investigation to the Oklahoma Supreme Court in accordance
4 with the rules of the Oklahoma Supreme Court. In all such appeals,
5 the Oklahoma State Bureau of Investigation is a necessary party and
6 must be given notice of the appellate proceedings.

7 D. Upon the entry of an order to seal the records, or any part
8 thereof, the subject official actions shall be deemed never to have
9 occurred, and the person in interest and all criminal justice
10 agencies may properly reply, upon any inquiry in the matter, that no
11 such action ever occurred and that no such record exists with
12 respect to such person.

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

18 F. Employers, educational institutions, state and local
19 government agencies, officials, and employees shall not, in any
20 application or interview or otherwise, require an applicant to
21 disclose any information contained in sealed records. An applicant
22 need not, in answer to any question concerning arrest and criminal
23 records, provide information that has been sealed, including any
24 reference to or information concerning such sealed information and

1 may state that no such action has ever occurred. Such an
2 application may not be denied solely because of the refusal of the
3 applicant to disclose arrest and criminal records information that
4 has been sealed.

5 G. All arrest and criminal records information existing prior
6 to the effective date of this section, except basic identification
7 information, is also subject to sealing in accordance with
8 subsection C of this section.

9 H. Nothing in this section shall be construed to authorize the
10 physical destruction of any criminal justice records.

11 I. For the purposes of this section, sealed materials which are
12 recorded in the same document as unsealed material may be recorded
13 in a separate document, and sealed, then obliterated in the original
14 document.

15 J. For the purposes of this section, district court index
16 reference of sealed material shall be destroyed, removed or
17 obliterated.

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

21 L. Subsequent to records being sealed as provided herein, the
22 prosecuting agency, the arresting agency, the Oklahoma State Bureau
23 of Investigation, or other interested person or agency may petition
24 the court for an order unsealing said records. Upon filing of a

1 petition the court shall set a date for hearing, which hearing may
2 be closed at the discretion of the court, and shall provide thirty
3 (30) days of notice to all interested parties. If, upon hearing,
4 the court determines there has been a change of conditions or that
5 there is a compelling reason to unseal the records, the court may
6 order all or a portion of the records unsealed.

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

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

18 SECTION 2. This act shall become effective November 1, 2017.
19

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CRIMINAL JUSTICE AND
21 CORRECTIONS, dated 04/13/2017 - DO PASS, As Amended.
22
23
24