

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1807

By: Floyd

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5
6 AS INTRODUCED

7 An Act relating to expungement of records; amending
8 22 O.S. 2011, Sections 18, as last amended by Section
9 1, Chapter 459, O.S.L. 2019, 19, as last amended by
10 Section 2, Chapter 348, O.S.L. 2016, and 991c, as
11 last amended by Section 4, Chapter 459, O.S.L. 2019
12 (22 O.S. Supp. 2019, Sections 18, 19 and 991c), which
13 relate to eligibility for expungement, sealing of
14 records and deferred sentences; modifying categories
15 of persons eligible to file motion for expungement;
16 modifying procedures for petition to seal records;
17 authorizing court to order expungement of certain
18 complaint or police reports; modifying procedures for
19 expungement of records upon completion of deferred
20 sentence; and providing an effective date.

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

22 SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last
23 amended by Section 1, Chapter 459, O.S.L. 2019 (22 O.S. Supp. 2019,
24 Section 18), is amended to read as follows:

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

- 28 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.~~ 7. 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.~~ 8. The person was charged with a nonviolent felony offense
11 not 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 9. The person was charged with a felony offense not listed in
18 Section 13.1 of Title 21 of the Oklahoma Statutes or Section 582 of
19 Title 57 of the Oklahoma Statutes, the charge was dismissed
20 following the successful completion of a deferred judgment or
21 delayed sentence, the person has never been convicted of a felony,
22 no misdemeanor or felony charges are pending against the person and
23 at least ten (10) years have passed since the charge was dismissed;
24

1 10. The person was convicted of a misdemeanor offense, the
2 person was sentenced to a fine of less than Five Hundred One Dollars
3 (\$501.00) without a term of imprisonment or a suspended sentence,
4 the fine has been paid or satisfied by time served in lieu of the
5 fine, the person has not been convicted of a felony and no felony or
6 misdemeanor charges are pending against the person;

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

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

21 13. The person was convicted of not more than two felony
22 offenses, none of which is a felony offense listed in Section 13.1
23 of Title 21 of the Oklahoma Statutes ~~or any offense that would~~
24 ~~require the person to register pursuant to the provisions of the Sex~~

1 ~~Offenders Registration Act~~ or Section 582 of Title 57 of the
2 Oklahoma Statutes, no felony or misdemeanor charges are pending
3 against the person, and at least ten (10) years have passed since
4 the completion of the sentence for the felony conviction;

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

9 15. The person was convicted of a nonviolent felony offense not
10 listed in Section 571 of Title 57 of the Oklahoma Statutes which was
11 subsequently reclassified as a misdemeanor under Oklahoma law, the
12 person is not currently serving a sentence for a crime in this state
13 or another state, at least thirty (30) days have passed since the
14 completion or commutation of the sentence for the crime that was
15 reclassified as a misdemeanor, any restitution ordered by the court
16 to be paid by the person has been satisfied in full, and any
17 treatment program ordered by the court has been successfully
18 completed by the person, including any person who failed a treatment
19 program which resulted in an accelerated or revoked sentence that
20 has since been successfully completed by the person or the person
21 can show successful completion of a treatment program at a later
22 date. Persons seeking an expungement of records under the
23 provisions of this paragraph may utilize the expungement forms
24 provided in Section 2 of this act.

1 B. For purposes of Section 18 et seq. of this title,
2 "expungement" shall mean the sealing of criminal records, as well as
3 any public civil record, involving actions brought by and against
4 the State of Oklahoma arising from the same arrest, transaction or
5 occurrence.

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

10 D. Records expunged pursuant to paragraphs 4, 7, 8, ~~9~~ 10, 11,
11 12, 13, 14 and 15 of subsection A of this section shall be sealed to
12 the public but not to law enforcement agencies for law enforcement
13 purposes. Records expunged pursuant to paragraphs 7, 8, ~~9~~ 10, 11,
14 12 and 13 of subsection A of this section shall be admissible in any
15 subsequent criminal prosecution to prove the existence of a prior
16 conviction or prior deferred judgment without the necessity of a
17 court order requesting the unsealing of the records. Records
18 expunged pursuant to paragraph 4, ~~6~~ 12 or 13 of subsection A of
19 this section may also include the sealing of Pardon and Parole Board
20 records related to an application for a pardon. Such records shall
21 be sealed to the public but not to the Pardon and Parole Board.

22 SECTION 2. AMENDATORY 22 O.S. 2011, Section 19, as last
23 amended by Section 2, Chapter 348, O.S.L. 2016 (22 O.S. Supp. 2019,
24 Section 19), is amended to read as follows:

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~~ where the
4 prosecution occurred or would have occurred for the sealing of all
5 or any part of the record, except basic identification information.

6 B. Except for a person convicted of an offense of domestic
7 abuse, domestic violence or stalking, a person petitioning for
8 expungement may elect to identify himself or herself in the caption
9 of the case using initials and not his or her full name. If a
10 petitioner elects to use his or her initials in the caption of the
11 case, such petitioner shall conspicuously identify his or her full
12 name and date of birth in the body of each document he or she files
13 with the court clerk.

14 C. Upon the filing of a petition or entering of a court order,
15 the court shall set a date for a hearing and shall provide thirty
16 (30) days of notice of the hearing to the prosecuting agency, the
17 arresting agency, the Oklahoma State Bureau of Investigation, the
18 victim or victims of the crime or, in the case of a deceased victim,
19 members of the family of the victim and any other person or agency
20 whom the court has reason to believe may have relevant information
21 related to the sealing of such record.

22 ~~C.~~ D. Upon a finding that the harm to privacy of the person in
23 interest or dangers of unwarranted adverse consequences outweigh the
24 public interest in retaining the records, the court may order such

1 records, or any part thereof except basic identification
2 information, to be sealed. If the court finds that neither sealing
3 of the records nor maintaining of the records unsealed by the agency
4 would serve the ends of justice, the court may enter an appropriate
5 order limiting access to such records.

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

14 ~~D.~~ E. Upon the entry of an order to seal the records, or any
15 part thereof, the subject official actions shall be deemed never to
16 have occurred, and the person in interest and all criminal justice
17 agencies may properly reply, upon any inquiry in the matter, that no
18 such action ever occurred and that no such record exists with
19 respect to such person.

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

1 ~~F.~~ G. Employers, educational institutions, state and local
2 government agencies, officials, and employees shall not, in any
3 application or interview or otherwise, require an applicant to
4 disclose any information contained in sealed records. An applicant
5 need not, in answer to any question concerning arrest and criminal
6 records, provide information that has been sealed, including any
7 reference to or information concerning such sealed information and
8 may state that no such action has ever occurred. Such an
9 application may not be denied solely because of the refusal of the
10 applicant to disclose arrest and criminal records information that
11 has been sealed.

12 ~~G.~~ H. All arrest and criminal records information existing
13 prior to ~~the effective date of this section~~ May 14, 1987, except
14 basic identification information, is also subject to sealing in
15 accordance with subsection ~~E.~~ D. of this section.

16 ~~H.~~ I. Nothing in this section shall be construed to authorize
17 the physical destruction of any criminal justice records.

18 ~~I.~~ J. For the purposes of this section, sealed materials which
19 are recorded in the same document as unsealed material may be
20 recorded in a separate document, and sealed, then obliterated in the
21 original document.

22 ~~J.~~ K. For the purposes of this section, district court index
23 reference of sealed material shall be destroyed, removed or
24 obliterated.

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

4 ~~H.~~ M. Subsequent to records being sealed as provided herein,
5 the prosecuting agency, the arresting agency, the Oklahoma State
6 Bureau of Investigation, or other interested person or agency may
7 petition the court for an order unsealing ~~said~~ the records. Upon
8 filing of a petition the court shall set a date for hearing, which
9 hearing may be closed at the discretion of the court, and shall
10 provide thirty (30) days of notice to all interested parties. If,
11 upon hearing, the court determines there has been a change of
12 conditions or that there is a compelling reason to unseal the
13 records, the court may order all or a portion of the records
14 unsealed.

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

20 ~~N.~~ O. If a person qualifies for an expungement under the
21 provisions of paragraph 3 of subsection A of Section 18 of this
22 title and ~~said~~ the petition for expungement is granted by the court,
23 the court shall order the reimbursement of all filing fees and court
24

1 costs incurred by the petitioner as a result of filing the
2 expungement request.

3 SECTION 3. AMENDATORY 22 O.S. 2011, Section 991c, as
4 last amended by Section 4, Chapter 459, O.S.L. 2019 (22 O.S. Supp.
5 2019, Section 991c), is amended to read as follows:

6 Section 991c. A. Upon a verdict or plea of guilty or upon a
7 plea of nolo contendere, but before a judgment of guilt, the court
8 may, without entering a judgment of guilt and with the consent of
9 the defendant, defer further proceedings upon the specific
10 conditions prescribed by the court not to exceed a seven-year
11 period, except as authorized under subsection B of this section.
12 The court shall first consider restitution among the various
13 conditions it may prescribe. The court may also consider ordering
14 the defendant to:

- 15 1. Pay court costs;
- 16 2. Pay an assessment in lieu of any fine authorized by law for
17 the offense;
- 18 3. Pay any other assessment or cost authorized by law;
- 19 4. Engage in a term of community service without compensation,
20 according to a schedule consistent with the employment and family
21 responsibilities of the defendant;
- 22 5. County jail confinement for a period not to exceed ninety
23 (90) days or the maximum amount of jail time provided for the
24 offense, if it is less than ninety (90) days;

1 6. Pay an amount as reimbursement for reasonable attorney fees,
2 to be paid into the court fund, if a court-appointed attorney has
3 been provided to defendant;

4 7. Be supervised in the community for a period not to exceed
5 eighteen (18) months, unless a petition alleging violation of any
6 condition of deferred judgment is filed during the period of
7 supervision. As a condition of any supervision, the defendant shall
8 be required to pay a supervision fee of Forty Dollars (\$40.00) per
9 month. The supervision fee shall be waived in whole or part by the
10 supervisory agency when the accused is indigent. No person shall be
11 denied supervision based solely on the inability of the person to
12 pay a fee;

13 8. Pay into the court fund a monthly amount not exceeding Forty
14 Dollars (\$40.00) per month during any period during which the
15 proceedings are deferred when the defendant is not to be supervised
16 in the community. The total amount to be paid into the court fund
17 shall be established by the court and shall not exceed the amount of
18 the maximum fine authorized by law for the offense;

19 9. Make other reparations to the community or victim as
20 required and deemed appropriate by the court;

21 10. Order any conditions which can be imposed for a suspended
22 sentence pursuant to paragraph 1 of subsection A of Section 991a of
23 this title; or

24 11. Any combination of the above provisions.

1 However, unless under the supervision of the district attorney,
2 the offender shall be required to pay Forty Dollars (\$40.00) per
3 month to the district attorney during the first two (2) years of
4 probation to compensate the district attorney for the costs incurred
5 during the prosecution of the offender and for the additional work
6 of verifying the compliance of the offender with the rules and
7 conditions of his or her probation. The district attorney may waive
8 any part of this requirement in the best interests of justice. The
9 court shall not waive, suspend, defer or dismiss the costs of
10 prosecution in its entirety. However, if the court determines that
11 a reduction in the fine, costs and costs of prosecution is
12 warranted, the court shall equally apply the same percentage
13 reduction to the fine, costs and costs of prosecution owed by the
14 offender.

15 B. When the court has ordered restitution as a condition of
16 supervision as provided for in subsection A of this section and that
17 condition has not been satisfied, the court may, at any time prior
18 to the termination or expiration of the supervision period, order an
19 extension of supervision for a period not to exceed three (3) years.

20 C. In addition to any conditions of supervision provided for in
21 subsection A of this section, the court shall, in the case of a
22 person before the court for the offense of operating or being in
23 control of a motor vehicle while the person was under the influence
24 of alcohol, other intoxicating substance, or a combination of

1 alcohol and another intoxicating substance, or who is before the
2 court for the offense of operating a motor vehicle while the ability
3 of the person to operate such vehicle was impaired due to the
4 consumption of alcohol, require the person to participate in an
5 alcohol and drug substance abuse evaluation program offered by a
6 facility or qualified practitioner certified by the Department of
7 Mental Health and Substance Abuse Services for the purpose of
8 evaluating the receptivity to treatment and prognosis of the person.
9 The court shall order the person to reimburse the facility or
10 qualified practitioner for the evaluation. The Department of Mental
11 Health and Substance Abuse Services shall establish a fee schedule,
12 based upon the ability of a person to pay, provided the fee for an
13 evaluation shall not exceed Seventy-five Dollars (\$75.00). The
14 evaluation shall be conducted at a certified facility, the office of
15 a qualified practitioner or at another location as ordered by the
16 court. The facility or qualified practitioner shall, within
17 seventy-two (72) hours from the time the person is assessed, submit
18 a written report to the court for the purpose of assisting the court
19 in its determination of conditions for deferred sentence. No
20 person, agency or facility operating an alcohol and drug substance
21 abuse evaluation program certified by the Department of Mental
22 Health and Substance Abuse Services shall solicit or refer any
23 person evaluated pursuant to this subsection for any treatment
24 program or alcohol and drug substance abuse service in which the

1 person, agency or facility has a vested interest; however, this
2 provision shall not be construed to prohibit the court from ordering
3 participation in or any person from voluntarily utilizing a
4 treatment program or alcohol and drug substance abuse service
5 offered by such person, agency or facility. Any evaluation report
6 submitted to the court pursuant to this subsection shall be handled
7 in a manner which will keep the report confidential from review by
8 the general public. Nothing contained in this subsection shall be
9 construed to prohibit the court from ordering judgment and sentence
10 in the event the defendant fails or refuses to comply with an order
11 of the court to obtain the evaluation required by this subsection.
12 As used in this subsection, "qualified practitioner" means a person
13 with at least a bachelor's degree in substance abuse treatment,
14 mental health or a related health care field and at least two (2)
15 years of experience in providing alcohol abuse treatment, other drug
16 abuse treatment, or both alcohol and other drug abuse treatment who
17 is certified each year by the Department of Mental Health and
18 Substance Abuse Services to provide these assessments. However, any
19 person who does not meet the requirements for a qualified
20 practitioner as defined herein, but who has been previously
21 certified by the Department of Mental Health and Substance Abuse
22 Services to provide alcohol or drug treatment or assessments, shall
23 be considered a qualified practitioner provided all education,
24 experience and certification requirements stated herein are met by

1 September 1, 1995. The court may also require the person to
2 participate in one or both of the following:

3 1. An alcohol and drug substance abuse course, pursuant to
4 Sections 3-452 and 3-453 of Title 43A of the Oklahoma Statutes; and

5 2. A victims impact panel program, as defined in subsection H
6 of Section 991a of this title, if such a program is offered in the
7 county where the judgment is rendered. The defendant shall be
8 required to pay a fee of not less than Fifteen Dollars (\$15.00) nor
9 more than Sixty Dollars (\$60.00) as set by the governing authority
10 of the program and approved by the court to the victims impact panel
11 program to offset the cost of participation by the defendant, if in
12 the opinion of the court the defendant has the ability to pay such
13 fee.

14 D. Upon completion of the conditions of the deferred judgment,
15 and upon a finding by the court that the conditions have been met
16 and all fines, fees, and monetary assessments have been paid as
17 ordered, the defendant shall be discharged without a court judgment
18 of guilt, and the court shall order the verdict or plea of guilty or
19 plea of nolo contendere to be expunged from the record and the
20 charge shall be dismissed with prejudice to any further action. The
21 procedure to expunge the record of the defendant shall be as
22 follows:

23 1. All references to the name of the defendant shall be deleted
24 from the docket sheet;

1 2. The public index of the filing of the charge shall be
2 expunged by deletion, mark-out or obliteration;

3 3. Upon expungement, the court clerk shall keep a separate
4 confidential index of case numbers and names of defendants which
5 have been obliterated pursuant to the provisions of this section;

6 4. No information concerning the confidential file shall be
7 revealed or released, except upon written order of a judge of the
8 district court ~~or~~, upon written request by the named defendant to
9 the court clerk or upon written request of the named defendant's
10 attorney to the court clerk, so long as the attorney has filed an
11 entry of appearance in the expunged case. Confidential information
12 shall only be revealed or released for the purpose of updating the
13 criminal history record of the defendant with the Oklahoma State
14 Bureau of Investigation or to assist in filing a subsequent
15 expungement pursuant to Section 18 of this title; and

16 5. Defendants qualifying under Section 18 of this title may
17 petition the district court to have the filing of the indictment and
18 the dismissal expunged from the public index and docket sheet. This
19 section shall not be mutually exclusive of Section 18 of this title.

20 Records expunged pursuant to this subsection shall be sealed to
21 the public but not to law enforcement agencies for law enforcement
22 purposes. Records expunged pursuant to this subsection shall be
23 admissible in any subsequent criminal prosecution to prove the
24 existence of a prior conviction or prior deferred judgment without

1 the necessity of a court order requesting the unsealing of such
2 records.

3 E. The provisions of subsection D of this section shall be
4 retroactive.

5 F. Whenever a judgment has been deferred by the court according
6 to the provisions of this section, deferred judgment may not be
7 accelerated for any technical violation unless a petition setting
8 forth the grounds for such acceleration is filed by the district
9 attorney with the clerk of the sentencing court and competent
10 evidence justifying the acceleration of the judgment is presented to
11 the court at a hearing to be held for that purpose. The hearing
12 shall be held not more than twenty (20) days after the entry of the
13 plea of not guilty to the petition, unless waived by both the state
14 and the defendant. Any acceleration of a deferred sentence based on
15 a technical violation shall not exceed ninety (90) days for a first
16 acceleration or five (5) years for a second or subsequent
17 acceleration.

18 G. Upon any violation of the deferred judgment, other than a
19 technical violation, the court may enter a judgment of guilt and
20 proceed as provided in Section 991a of this title or may modify any
21 condition imposed. Provided, however, if the deferred judgment is
22 for a felony offense, and the defendant commits another felony
23 offense, the defendant shall not be allowed bail pending appeal.

1 H. The deferred judgment procedure described in this section
2 shall apply only to defendants who have not been previously
3 convicted of a felony offense and have not received more than one
4 deferred judgment for a felony offense within the ten (10) years
5 previous to the commission of the pending offense.

6 Provided, the court may waive this prohibition upon written
7 application of the district attorney. Both the application and the
8 waiver shall be made a part of the record of the case.

9 I. The deferred judgment procedure described in this section
10 shall not apply to defendants found guilty or who plead guilty or
11 nolo contendere to a sex offense required by law to register
12 pursuant to the Sex Offenders Registration Act.

13 J. All defendants who are supervised pursuant to this section
14 shall be subject to the sanction process as established in
15 subsection D of Section 991b of this title.

16 K. Notwithstanding the provisions of subsections F and G of
17 this section, a person who is being considered for an acceleration
18 of a deferred judgment for an offense where the penalty has
19 subsequently been lowered to a misdemeanor shall only be subject to
20 a judgment and sentence that would have been applicable had he or
21 she committed the offense after July 1, 2017.

22 SECTION 4. This act shall become effective November 1, 2020.
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