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February 26, 2019

By: David of the Senate

and

Kannady of the House

An Act relating to criminal procedure; amending 22 O.S. 2011, Section 18, as last amended by Section 1, Chapter 127, O.S.L. 2018 (22 O.S. Supp. 2018, Section 18), which relates to expungement of records; authorizing motion for expungement under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 22 O.S. 2011, Section 18, as last amended by Section 1, Chapter 127, O.S.L. 2018 (22 O.S. Supp. 2018, 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;

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

5 4. The person has received a full pardon on the basis of a
6 written finding by the Governor of actual innocence for the crime
7 for which the claimant was sentenced;

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

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

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

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

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

14 10. The person was convicted of a misdemeanor offense, the
15 person was sentenced to a fine of less than Five Hundred One Dollars
16 (\$501.00) without a term of imprisonment or a suspended sentence,
17 the fine has been paid or satisfied by time served in lieu of the
18 fine, the person has not been convicted of a felony and no felony or
19 misdemeanor charges are pending against the person;

20 11. The person was convicted of a misdemeanor offense, the
21 person was sentenced to a term of imprisonment, a suspended sentence
22 or a fine in an amount greater than Five Hundred Dollars (\$500.00),
23 the person has not been convicted of a felony, no felony or
24 misdemeanor charges are pending against the person and at least five

1 (5) years have passed since the end of the last misdemeanor
2 sentence;

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

10 13. The person was convicted of not more than two nonviolent
11 felony offenses, not listed in Section 571 of Title 57 of the
12 Oklahoma Statutes, the person has received a full pardon for both of
13 the nonviolent felony offenses, no felony or misdemeanor charges are
14 pending against the person, and at least twenty (20) years have
15 passed since the last misdemeanor or felony conviction; ~~or~~

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

20 15. The person is not otherwise eligible to file a motion
21 pursuant to this subsection, but upon leave of court, may file a
22 motion for expungement; provided, the Oklahoma State Bureau of
23 Investigation, the arresting agency and the district attorney shall
24 each provide a written statement of the facts deemed relevant about

1 the crime. Such statements shall be attached to the motion. The
2 determination of whether to allow the filing of such motion or to
3 grant the expungement remains solely at the discretion of the court.

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

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

SECTION 2. This act shall become effective November 1, 2019.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
February 26, 2019 - DO PASS