

An Act

ENROLLED HOUSE
BILL NO. 1799

By: Miller, Cruz, Lawson and
Munson of the House

and

Rosino of the Senate

An Act relating to children; amending 10A O.S. 2011, Section 2-6-109, which relates to the expungement of juvenile court records; modifying qualifications for juvenile court record expungements; defining term; providing procedures for expunging records; requiring the preparation and filing of written expungement order; requiring the mailing of expungement orders to certain agencies; and providing an effective date.

SUBJECT: Children

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-6-109, is amended to read as follows:

Section 2-6-109. A. A person or the child, or the parent, legal guardian or the attorney for the child, who is the subject of a juvenile court record, ~~that is not confidential as provided by law,~~ may petition the district court in which the juvenile court record is located for an order to expunge ~~all or any part of the record pertaining to the person, except basic identification information; provided:~~ or the child.

B. The petition for expungement may be filed either as an oral or written petition for an order to expunge the record pertaining to the child at the time the case is before the court for a final review of the ordered disposition pursuant to Section 2-2-503 of this title or at any time after an informal adjustment agreement has

been successfully completed pursuant to Section 2-2-104 of this title; provided:

1. The person or child has attained ~~twenty-one (21) years of age or older~~ successfully completed the informal adjustment agreement, the deferred adjudication, or a period of probation or custody with a juvenile bureau or the Office of Juvenile Affairs and the case of the person or child is being, or has been, dismissed by the court or the court is closing the case due to lack of jurisdiction upon the person or child reaching eighteen (18) years of age or nineteen (19) years of age if jurisdiction of the court was previously extended by the court pursuant to Section 2-7-504 of this title;

2. The person or child has not been arrested for any adult criminal offense and no charge, indictment, or information has been filed or is pending against the person or child at the time of the petition for an expungement; and

3. ~~The person has not been subject to any deferred prosecution or deferred sentence, and has not been convicted of any criminal offense; and~~

4. All court costs, restitution, fines and other court-ordered requirements have been completed for ~~all~~ the informal adjustment or the juvenile proceedings.

B. C. After November 1, 2021, any person who has attained eighteen (18) years of age or older and has successfully completed an informal adjustment agreement, a deferred adjudication, or a period of probation or custody with a juvenile bureau or the Office of Juvenile Affairs, and whose case has previously been dismissed, may petition the court for an order of expungement. In order to be eligible for an order of expungement, the person must have satisfied the requirements of paragraphs 1, 2 and 3 of subsection B of this section.

D. For the purposes of this section, the term "expunge" or "expungement" shall mean the sealing of juvenile court records.

E. 1. If an adjudication, deferred adjudication, or informal adjustment of a person or child is being dismissed or has been dismissed, then upon the receipt of an oral or written petition of the person, the child, or other authorized person, the court may, if the state does not object, grant the expungement if the court finds

that the harm to privacy of the person or the child in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records.

2. If the court grants the expungement, it shall issue a written order to any law enforcement agency over which the court has jurisdiction to expunge all files and records pertaining to the arrest or adjudication of the person or child and shall order the clerk of the court to expunge the entire file and record of the case, including docket sheets, index entries, court records, summonses, warrants or records in the office of the clerk or which have been produced by a law enforcement agency in which the name of the person or the child is mentioned. The court may order probation officers and counselors of a juvenile bureau or the Office of Juvenile Affairs to expunge all records, reports and social and clinical studies relating to the person or the child that are in the possession of a juvenile bureau or the Office of Juvenile Affairs, except when the documents are necessary to maintain state or federal funding.

3. Members of the judiciary, district attorneys, the person or the child, counsel for the person or the child, employees of juvenile bureaus and the Office of Juvenile Affairs who are assigned juvenile court intake responsibilities, and the Department of Corrections may access records that have been expunged pursuant to this subsection without a court order for the purpose of determining whether to dismiss an action, seek a voluntary probation, file a petition or information, or for purposes of sentencing or placement in a case where the person or child who is the subject of the sealed record is alleged to have committed a subsequent juvenile delinquent act, a youthful offender act, or any adult criminal offense. Provided, any record sealed pursuant to this section shall be ordered unsealed upon application of the prosecuting agency when said records are requested for use in any subsequent juvenile delinquent, youthful offender or adult prosecution.

F. If the state objected to an oral petition for expungement, the court shall allow the person or the child, or counsel for the person or child, to file a written petition for the expungement of the juvenile court records. Upon the filing of a petition for expungement of a juvenile court record, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall provide a thirty (30) days' notice of the hearing to the district attorney, the Office of Juvenile Affairs, the Oklahoma State Bureau of Investigation, and any other person or

agency whom the court has reason to believe may have relevant information related to the expungement of any record.

~~C. G.~~ Upon a finding that the harm to privacy of the person or child in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court ~~may~~ shall order the records, ~~or any part thereof except basic identification information,~~ to be expunged. ~~If the court finds that neither expungement of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to the records.~~ Any order entered pursuant to the provisions of this subsection shall specify those agencies to which the court order shall apply.

~~D. H.~~ Upon the entry of an order to expunge any juvenile court record, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person or the child in interest and all juvenile and criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to the person or the child.

~~E.~~ ~~Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of the records, the Attorney General, or by the district attorney and only to those persons and for such purposes named in the petition.~~

~~F. I.~~ When an order of expungement is issued by the court pursuant to this section, the court shall require counsel for the person or the child to prepare a written order of expungement which shall be signed by the court and filed in the clerk's office of the district court in which the juvenile court record is located. Copies of the order of expungement shall be provided or mailed to the person or the child, as well as the parent or legal guardian of the child, the prosecuting attorney, the law enforcement agency or agencies that investigated the case, the detention or jail in which the person or the child was incarcerated, the juvenile bureau, the Office of Juvenile Affairs, and the Oklahoma State Bureau of Investigation directing the entity to expunge the juvenile court records in its custody as directed in the order.

J. Employers, educational institutions, landlords, state and local government agencies, officials, and employees shall not, in any application or interview or ~~otherwise~~ in any other way, require

an applicant to disclose any information contained in any expunged juvenile court records. An applicant need not, in answer to any question concerning arrest, juvenile and criminal records, provide information that has been expunged, including any reference to or information concerning expungement and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose information that has been expunged.

~~G.~~ K. Nothing in this section shall be construed to authorize the physical destruction of any juvenile records.

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

~~I.~~ M. For the purposes of this act, district court index reference of sealed material shall be destroyed, removed or obliterated.

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

~~K.~~ O. Subsequent to records being sealed as provided herein, the district attorney, the Office of Juvenile Affairs, the Oklahoma State Bureau of Investigation, or other interested person or agency may petition the court for an order unsealing any records. Upon filing of a petition, the court shall set a date for hearing, which hearing may be closed at the court's discretion, and shall provide thirty (30) days' notice to all interested parties. If, upon hearing, the court determines there has been a change of conditions or that there is a compelling reason to unseal the records, the court may order all or a portion of the records unsealed.

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

~~M.~~ Q. A person who has attained eighteen (18) years of age or older may petition the district or municipal court in which the

juvenile court record is located for an order to expunge ~~all or any part of~~ the record pertaining to matters involving truancy provided the person has met the criteria set forth in paragraphs ~~2 1~~ through ~~4 3~~ of subsection ~~A B~~ of this section. The petition shall be reviewed by the district or municipal judge with primary responsibility over the juvenile court docket.

SECTION 2. This act shall become effective November 1, 2021.

Passed the House of Representatives the 8th day of March, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 13th day of April, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____