An Act

ENROLLED HOUSE
BILL NO. 3091

By: Williams, Pittman, Hoskin, Denny and Sherrer of the House

and

Johnson (Rob) and Ivester of the Senate

An Act relating to criminal record expungements; amending 10A O.S. 2011, Section 2-5-210, which relates to the Youthful Offender Act; clarifying procedures for expunging criminal records of youthful offenders; providing access to expunged records for certain purposes; providing for the unsealing of records upon application for use in subsequent prosecutions; defining term; amending 22 O.S. 2011, Section 18, which relates to the expungement of records; adding and modifying expungement qualifications; and providing an effective date.

SUBJECT: Expungement of criminal records

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-5-210, is amended to read as follows:

Section 2-5-210. A. Whenever a youthful offender is placed in the custody of or under the supervision of the Office of Juvenile Affairs, the Office shall within thirty (30) days prepare and file with the court a written rehabilitation plan for the youthful offender. The rehabilitation plan shall be tailored to the needs and goals of the youthful offender while ensuring protection of the public while the offender is in the custody or supervision of the

Office of Juvenile Affairs. The rehabilitation plan shall include, but not be limited to:

1. Clearly stated and measurable objectives which the youthful offender is expected to achieve; and

2. Identification of the specific services and programs that will be provided to the youthful offender by the Office of Juvenile Affairs to assist the youthful offender in achieving the measurable objectives to be reached, including, but not limited to, diagnostic testing consistent with the current standards of medical practice.

B. The court shall schedule an annual review hearing in open court for every youthful offender in the custody of the Office of Juvenile Affairs. Such hearing may be scheduled either upon the court's own motion or upon a motion filed by the Office of Juvenile Affairs. Each annual review hearing shall be scheduled and completed within the thirty-day period immediately preceding the date the sentence was imposed upon the youthful offender. Notice shall be given to the youthful offender, the counsel, parent or guardian of the youthful offender, the district attorney, and the Office of Juvenile Affairs at the time the motion for review is made or filed. The court, at its discretion, may schedule other review hearings as the court deems necessary, after notice to the parties. The court shall hold a review hearing for good cause shown, upon any motion filed by the district attorney, the Office of Juvenile Affairs, or the youthful offender for the purpose of making a determination to:

1. Order the youthful offender discharged from the custody of the Office of Juvenile Affairs without a court judgment of guilt, and order the verdict or plea of guilty or plea of nolo contendere expunged from the record as provided in paragraphs 1 through 5 of subsection C of Section 991c of Title 22 of the Oklahoma Statutes and dismiss the charge with prejudice to any further action, if the court finds that the youthful offender has reasonably completed the rehabilitation plan and objectives and that such dismissal will not jeopardize public safety.

If a youthful offender has been discharged without a court judgment of guilt and the charge has been dismissed with prejudice as provided in this paragraph, upon the motion of the youthful offender and the passage of three (3) years after the date of such discharge and dismissal, the court may, in addition, order any law enforcement agency over which the court has jurisdiction to ~~produce~~

expunge all files and records pertaining to the arrest and conviction of the youthful offender, and shall order the clerk of the court to ~~destroy~~ 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 youthful offender is mentioned. The court may order probation officers and counselors of the Office of Juvenile Affairs to ~~destroy~~ expunge all records, reports, and social and clinical studies relating to the youthful offender that are in the possession of the Office of Juvenile Affairs, except when the documents are necessary to maintain state or federal funding.

Members of the judiciary, district attorneys, the youthful offender, counsel for the youthful offender, 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 who is the subject of the sealed record is alleged to have committed a subsequent youthful offender act, a juvenile delinquent 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.

As used in this paragraph, "expunge" shall mean the sealing of criminal records;

2. Revoke an order of probation and place the youthful offender in the custody of the Office of Juvenile Affairs if such offender is less than eighteen (18) years of age;

3. Place the youthful offender on probation under the supervision of the age-appropriate agency;

4. Place the youthful offender if less than eighteen (18) years of age in a sanction program operated or contracted for by the Office of Juvenile Affairs community placement, if the youthful offender fails to comply with a written plan of rehabilitation or fails substantially to achieve reasonable treatment objectives while in community or other nonsecure programs; or

5. Transfer the youthful offender to the custody or supervision of the Department of Corrections if the court finds by clear and convincing evidence that the youthful offender has:

a. after certification as a youthful offender, seriously injured or endangered the life or health of another person by such person's violent behavior,

b. escaped from the facility from which the youthful offender is being held,

c. committed a felony crime while in the custody or under the supervision of the Office of Juvenile Affairs as shown by a judgment entered following a verdict of guilty, a plea of guilty or nolo contendere, or as shown by clear and convincing evidence,

d. committed battery or assault and battery on a state employee or contractor of a juvenile facility while in the custody of such facility,

e. caused disruption in the facility, smuggled contraband into the facility, caused contraband to be smuggled into the facility, or engaged in other types of behavior which have endangered the life or health of other residents or staff of the facility, or

f. established a pattern of disruptive behavior not conducive to the established policies and procedures of the program.

The court, in its decision to transfer custody of the youthful offender to the custody of the Department of Corrections, shall detail findings of fact and conclusions of law addressing the grounds alleged in the motion of the state.

C. An order transferring custody of a youthful offender to the Department of Corrections shall be deemed an adult conviction and shall be recorded as such in the court records and criminal history records of the offender. Such order shall be a final order, appealable when entered. In addition to a judgment and sentence for an adult conviction, the court shall provide to the Department of Corrections a detailed memorandum or historical statement of the Youthful Offender Act as applied to the offender being transferred

to the Department of Corrections, including the date of the offense, the date of the adjudication as a youthful offender, the date of the filing of the motion to transfer custody of the offender to the adult criminal system, and the date of the imposition of the adult sentence.

D. The court shall grant time-served credits against the adult sentence imposed for any youthful offender transferred to the Department of Corrections. For the purpose of calculating time served to be applied toward any sentence imposed upon a youthful offender, in the event a youthful offender has been placed in the custody or under the supervision of the Office of Juvenile Affairs, the offender shall receive day-for-day credit for the time spent in the custody or under the supervision of the Office of Juvenile Affairs. Upon commitment to the Department of Corrections, a youthful offender shall also receive other credits as provided by law for an adult inmate.

E. If authorized by the court, review hearings, other than those scheduled for determinations as provided in paragraphs 1 through 5 of subsection B of this section, may be conducted via teleconference communications; provided, the attorney representing the youthful offender shall be present at the hearing. For purposes of this subsection, "teleconference communication" means participation by the youthful offender and facility staff in the hearing by interactive telecommunication devices which permit both visual and auditory communication among the necessary participants, the court, and the youthful offender.

SECTION 2. AMENDATORY 22 O.S. 2011, Section 18, is amended to read as follows:

Section 18. 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 district attorney subsequently dismissed the charge;

3. The factual innocence of the person was established by the use of deoxyribonucleic acid (DNA) evidence subsequent to

conviction, including a person who has been released from prison at the time innocence was established;

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

5. The person was arrested and no charges of any type, including charges for an offense different than that for which the person was originally arrested are filed ~~or charges are dismissed within one (1) year of the arrest, or all charges are dismissed on the merits~~ and the statute of limitations has expired or the prosecuting agency has declined to file charges;

6. ~~The statute of limitations on the offense had expired and no charges were filed;~~

~~7.~~ The person was under eighteen (18) years of age at the time the offense was committed and the person has received a full pardon for the offense;

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

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

9. The person was charged with a nonviolent felony offense, as set forth in Section 571 of Title 57 of the Oklahoma Statutes, the charge was dismissed following the successful completion of a deferred judgment or delayed sentence, the person has never been convicted of a misdemeanor or felony, no misdemeanor or felony charges are pending against the person, and at least ten (10) years have passed since the charge was dismissed;

10. The ~~offense~~ person was convicted of a misdemeanor offense, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the ~~judgment was entered~~ conviction;

~~9.~~ 11. The ~~offense~~ person was convicted of a nonviolent felony offense, as defined in Section 571 of Title 57 of the Oklahoma Statutes, the person has received a full pardon for the offense, the person has not been convicted of any other misdemeanor or felony, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the conviction; or

~~10.~~ 12. The person has been charged or arrested or is the subject of an arrest warrant for a crime that was committed by another person who has appropriated or used the person's name or other identification without the person's consent or authorization.

For purposes of this act, "expungement" shall mean the sealing of criminal records. Records expunged pursuant to ~~paragraph~~ paragraphs 8, 9, 10, 11 and 12 of this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes. Records expunged pursuant to paragraphs 8, 9, 10 and 11 of this section shall be admissible in any subsequent criminal prosecution to prove the existence of a prior conviction or prior deferred judgment without the necessity of a court order requesting the unsealing of said records.

SECTION 3. This act shall become effective November 1, 2012

Passed the House of Representatives the 15th day of March, 2012.

Presiding Officer of the House of Representatives

Passed the Senate the 25th day of April, 2012.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 20th

day of April, **20** 12,

at 2:32 **o'clock** PM.

By: Jessica P Byers

Approved by the Governor of the State of Oklahoma the 4th **day of**

May, **20** 12, **at** 11:10 **o'clock** AM.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

4th **day of** May, **20** 12,

at 1:47 **o'clock** PM.

By: Michelle R Day