

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 715

6 By: Paxton

7 COMMITTEE SUBSTITUTE

8 An Act relating to protective orders; creating the  
9 Protection from Workplace Violence Act; providing  
10 short title; defining terms; authorizing employer to  
11 seek emergency and final order after certain violence  
12 or threat; giving court discretion to extend certain  
13 order; authorizing extension of certain order to  
14 other workplaces; establishing procedures for filing  
15 petition for certain order; requiring filing of  
16 complaint with law enforcement prior to petition for  
17 certain order; clarifying jurisdiction and venue for  
18 certain order; requiring Administrative Office of the  
19 Courts to develop certain form; prohibiting  
20 assessment of certain fees and costs; providing  
21 exception; establishing procedures for certain ex  
22 parte hearing; authorizing issuance of certain order;  
23 stating effect of certain order; requiring inclusion  
24 of certain information on certain order; requiring  
service of certain petition, order and notice of  
hearing; establishing requirements for certain  
service; requiring notice of certain order to law  
enforcement; requiring 24-hour access to certain  
information; creating offenses for violation of  
certain order; establishing punishments for violation  
of certain order; prohibiting suspended or deferred  
sentence for violation of certain order; authorizing  
use of Global Positioning System monitoring as  
condition of sentence for certain violations;  
authorizing warrantless arrest of certain person;  
establishing prima facie evidence of validity of  
certain order; providing immunity from liability for  
certain arrest; creating offense for falsifying  
certain order; establishing punishment for certain  
offense; requiring inclusion of certain statement in

1 certain order; authorizing certain persons to file  
2 for expungement of certain orders; defining terms;  
3 establishing procedures for certain expungement;  
4 construing provisions; providing for codification;  
5 and providing an effective date.

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

7 SECTION 1. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 62 of Title 22, unless there is  
9 created a duplication in numbering, reads as follows:

10 This act shall be known and may be cited as the "Protection from  
11 Workplace Violence Act".

12 SECTION 2. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 62.1 of Title 22, unless there  
14 is created a duplication in numbering, reads as follows:

15 As used in the Protection from Workplace Violence Act:

16 1. "Course of conduct" means a pattern of conduct composed of a  
17 series of two or more separate acts over a period of time, however  
18 short, evidencing a continuity of purpose. Course of conduct does  
19 not include constitutionally protected activity or conduct that  
20 serves a legitimate purpose;

21 2. "Credible threat of violence" is a knowing and willful  
22 statement or course of conduct that would place a reasonable person  
23 in fear for his or her safety, or the safety of his or her immediate  
24 family, and that serves no legitimate purpose;

1       3. "Employee" means any person who supplies labor for  
2 remuneration to his or her employer in this state and shall not  
3 include an independent contractor, subcontractor or an employee of  
4 an independent contractor;

5       4. "Employer" means any person, firm, corporation, partnership,  
6 association, nonprofit organization or public employer, which has  
7 one or more employees within this state, or which has offered or may  
8 offer employment to one or more individuals in this state;

9       5. "Plaintiff" refers to an employer seeking relief pursuant to  
10 this Act;

11       6. "Public employer" means the State of Oklahoma or any  
12 political subdivision thereof, including any department, agency,  
13 board, commission, institution, authority, public trust,  
14 municipality, county, district or instrumentalities thereof;

15       7. "Unlawful violence" means any assault or battery, or  
16 stalking as prohibited in Section 1173 of Title 21 of the Oklahoma  
17 Statutes, but shall not include lawful acts of self-defense or  
18 defense of others; and

19       8. "Victim" or "victims" refers to an employee or employees on  
20 whose behalf relief is being sought pursuant to this Act.

21       SECTION 3.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section 62.2 of Title 22, unless there  
23 is created a duplication in numbering, reads as follows:

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1       A. An employer whose employee has suffered unlawful violence or  
2 a credible threat of violence from any individual, which can  
3 reasonably be construed to be carried out or to have been carried  
4 out at the workplace, may seek relief under the provisions of the  
5 Protection from Workplace Violence Act on behalf of the employee  
6 and, at the discretion of the court, any number of other employees  
7 at the workplace, and, if appropriate, other employees at other  
8 workplaces of the employer. Upon a showing of good cause, the court  
9 may include other named family or household members of the employee,  
10 or other persons employed at the employee's workplace or workplaces  
11 in an emergency ex parte order or final protective order issued  
12 under the Protection from Workplace Violence Act. This Act shall  
13 not be construed as expanding, diminishing, altering or modifying  
14 the duty, if any, of an employer to provide a safe workplace for  
15 employees and other persons.

16       B. The employer may file a petition for a protective order with  
17 the district court in the county in which the employer is located,  
18 the county in which the defendant resides, or the county in which  
19 the unlawful violence or credible threat of violence occurred. The  
20 employee must file a complaint against the defendant with the proper  
21 law enforcement agency before an employer may file a petition for a  
22 protective order with the district court. The employer shall  
23 provide a copy of the complaint that was filed by the employee with  
24 the law enforcement agency at the full hearing if the complaint is

1 not available from the law enforcement agency. Failure to provide a  
2 copy of the complaint filed by the employee with the law enforcement  
3 agency shall constitute a frivolous filing and the court may assess  
4 attorney fees and court costs against the employer pursuant to  
5 paragraph 2 of subsection C of this section. The filing of a  
6 petition for a protective order shall not require jurisdiction or  
7 venue of the criminal offense if either the employer is located or  
8 the defendant resides in the county. The petition forms shall be  
9 provided by the clerk of the court. The Administrative Office of  
10 the Courts shall develop a standard form for the petition.

11 C. 1. Except as otherwise provided by this section, no filing  
12 fee, service of process fee, attorney fees or any other fee or costs  
13 shall be charged to the employer or employee at any time for filing  
14 a petition for a protective order whether a protective order is  
15 granted or not granted. The court may assess court costs, service  
16 of process fees, attorney fees, other fees and filing fees against  
17 the defendant at the hearing on the petition, if a protective order  
18 is granted against the defendant; provided, the court shall have  
19 authority to waive the costs and fees if the court finds that the  
20 party does not have the ability to pay the costs and fees.

21 2. If the court makes specific findings that a petition for a  
22 protective order has been filed frivolously, the court may assess  
23 attorney fees and court costs against the employer.

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1 SECTION 4. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 62.3 of Title 22, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. If a plaintiff requests an emergency ex parte order pursuant  
5 to Section 3 of this act, the court shall hold an ex parte hearing  
6 on the same day the petition is filed, if the court finds sufficient  
7 grounds within the scope of the Protection from Workplace Violence  
8 Act stated in the petition to hold such a hearing. The court may,  
9 for good cause shown at the hearing, issue any emergency ex parte  
10 order that it finds necessary to protect the victim or victims from  
11 immediate and present danger of unlawful violence. The emergency ex  
12 parte order shall be in effect until after the full hearing is  
13 conducted. Provided, if the defendant, after having been served,  
14 does not appear at the hearing, the emergency ex parte order shall  
15 remain in effect until the defendant is served with the permanent  
16 order. If the terms of the permanent order are the same as those in  
17 the emergency order, or are less restrictive, then it is not  
18 necessary to serve the defendant with the permanent order. The  
19 Administrative Office of the Courts shall develop a standard form  
20 for emergency ex parte protective orders.

21 B. An emergency ex parte protective order authorized by this  
22 section shall include the name, sex, race, date of birth of the  
23 defendant, and the dates of issue and expiration of the protective  
24 order.

1           SECTION 5.           NEW LAW           A new section of law to be codified  
2 in the Oklahoma Statutes as Section 62.4 of Title 22, unless there  
3 is created a duplication in numbering, reads as follows:

4           A.   1.   A copy of a petition for a protective order, notice of  
5 hearing and a copy of any emergency ex parte order issued by the  
6 court shall be served upon the defendant in the same manner as a  
7 bench warrant. In addition, if the service is to be in another  
8 county, the court clerk may issue service to the sheriff by  
9 facsimile or other electronic transmission for service by the  
10 sheriff. Any fee for service of a petition for protective order,  
11 notice of hearing, and emergency ex parte order shall only be  
12 charged pursuant to subsection C of Section 3 of this act and, if  
13 charged, shall be the same as the sheriff's service fee plus mileage  
14 expenses.

15           2.   Emergency ex parte orders shall be given priority for  
16 service and can be served twenty-four (24) hours a day when the  
17 location of the defendant is known. When service cannot be made  
18 upon the defendant by the sheriff, the sheriff may contact another  
19 law enforcement officer or a private investigator or private process  
20 server to serve the defendant.

21           3.   An emergency ex parte order, a petition for protective  
22 order, and a notice of hearing shall have statewide validity and may  
23 be transferred to any law enforcement jurisdiction to effect service  
24 upon the defendant.

1           4. The return of service shall be submitted to the sheriff's  
2 office in the court where the petition, notice of hearing or order  
3 was issued.

4           B. 1. Within fourteen (14) days of the filing of the petition  
5 for a protective order, the court shall schedule a full hearing on  
6 the petition, if the court finds sufficient grounds within the scope  
7 of the Protection from Workplace Violence Act stated in the petition  
8 to hold such a hearing, regardless of whether an emergency ex parte  
9 order has been previously issued, requested or denied.

10          2. If service has not been made on the defendant at the time of  
11 the hearing, the court shall, at the request of the petitioner,  
12 issue a new emergency order reflecting a new hearing date and direct  
13 service to issue.

14          3. A petition for a protective order shall, upon the request of  
15 the petitioner, renew every fourteen (14) days with a new hearing  
16 date assigned until the defendant is served. A petition for a  
17 protective order shall not expire unless the petitioner fails to  
18 appear at the hearing or fails to request a new order. A petitioner  
19 may move to dismiss the petition and emergency or final order at any  
20 time; however, a protective order must be dismissed by court order.

21          4. Failure to serve the defendant shall not be grounds for  
22 dismissal of a petition or an ex parte order unless the victim  
23 requests dismissal or fails to appear for the hearing thereon.

1           5. A final protective order shall be granted or denied within  
2 six (6) months of service on the defendant unless all parties agree  
3 that a temporary protective order remain in effect; provided, a  
4 victim or victims shall have the right to request a final protective  
5 order hearing at any time after the passage of six (6) months.

6           C. Final protective orders authorized by this section shall be  
7 on a standard form developed by the Administrative Office of the  
8 Courts.

9           D. When necessary to protect the victim or victims and when  
10 authorized by the court, protective orders granted pursuant to the  
11 provisions of this section may be served upon the defendant by a  
12 peace officer, sheriff, constable, or policeman or other officer  
13 whose duty it is to preserve the peace, as defined by Section 99 of  
14 Title 21 of the Oklahoma Statutes.

15           SECTION 6.           NEW LAW           A new section of law to be codified  
16 in the Oklahoma Statutes as Section 62.5 of Title 22, unless there  
17 is created a duplication in numbering, reads as follows:

18           A. Within twenty-four (24) hours of the return of service of  
19 any ex parte or final protective order, the clerk of the issuing  
20 court shall send certified copies thereof to all appropriate law  
21 enforcement agencies designated by the plaintiff. A certified copy  
22 of any extension, modification, vacation, cancellation or consent  
23 agreement concerning a final protective order shall be sent within  
24 twenty-four (24) hours by the clerk of the issuing court to those

1 law enforcement agencies receiving the original orders pursuant to  
2 this section and to any law enforcement agencies designated by the  
3 court.

4 B. Any law enforcement agency receiving copies of the documents  
5 listed in subsection A of this section shall be required to ensure  
6 that other law enforcement agencies have access twenty-four (24)  
7 hours a day to the information contained in the documents which may  
8 include entry of information about the ex parte or final protective  
9 order in the National Crime Information Center database.

10 SECTION 7. NEW LAW A new section of law to be codified  
11 in the Oklahoma Statutes as Section 62.6 of Title 22, unless there  
12 is created a duplication in numbering, reads as follows:

13 A. Except as otherwise provided by this section, any person  
14 who:

15 1. Has been served with an ex parte or final protective order  
16 and is in violation of such protective order, upon conviction, shall  
17 be guilty of a misdemeanor and shall be punished by a fine of not  
18 more than One Thousand Dollars (\$1,000.00) or by a term of  
19 imprisonment in the county jail of not more than one (1) year, or by  
20 both such fine and imprisonment; and

21 2. After a previous conviction of a violation of a protective  
22 order, is convicted of a second or subsequent offense pursuant to  
23 the provisions of this section shall, upon conviction, be guilty of  
24 a felony and shall be punished by a term of imprisonment in the

1 custody of the Department of Corrections for not less than one (1)  
2 year nor more than three (3) years, or by a fine of not less than  
3 Two Thousand Dollars (\$2,000.00) nor more than Ten Thousand Dollars  
4 (\$10,000.00), or by both such fine and imprisonment.

5 B. 1. Any person who has been served with an ex parte or final  
6 protective order who violates the protective order and causes  
7 physical injury or physical impairment to the plaintiff or to any  
8 other person named in said protective order shall, upon conviction,  
9 be guilty of a misdemeanor and shall be punished by a term of  
10 imprisonment in the county jail for not less than twenty (20) days  
11 nor more than one (1) year. In addition to the term of  
12 imprisonment, the person may be punished by a fine not to exceed  
13 Five Thousand Dollars (\$5,000.00).

14 2. Any person who is convicted of a second or subsequent  
15 violation of a protective order which causes physical injury or  
16 physical impairment to a plaintiff or to any other person named in  
17 the protective order shall be guilty of a felony and shall be  
18 punished by a term of imprisonment in the custody of the Department  
19 of Corrections of not less than one (1) year nor more than five (5)  
20 years, or by a fine of not less than Three Thousand Dollars  
21 (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), or by  
22 both such fine and imprisonment.

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1           3. In determining the term of imprisonment required by this  
2 section, the jury or sentencing judge shall consider the degree of  
3 physical injury or physical impairment to the victim.

4           4. The provisions of this subsection shall not affect the  
5 applicability of Sections 644, 645, 647 and 652 of Title 21 of the  
6 Oklahoma Statutes.

7           C. The minimum sentence of imprisonment issued pursuant to the  
8 provisions of paragraph 2 of subsection A and paragraph 1 of  
9 subsection B of this section shall not be subject to statutory  
10 provisions for suspended sentences, deferred sentences or probation,  
11 provided the court may subject any remaining penalty under the  
12 jurisdiction of the court to the statutory provisions for suspended  
13 sentences, deferred sentences or probation.

14           D. At no time, under any proceeding, may a person protected by  
15 a protective order be held to be in violation of that protective  
16 order. Only a defendant against whom a protective order has been  
17 issued may be held to have violated the order.

18           E. In addition to any other penalty specified by this section,  
19 the court may order a defendant to use an active, real-time, twenty-  
20 four-hour Global Positioning System (GPS) monitoring device as a  
21 condition of a sentence. The court may further order the defendant  
22 to pay costs and expenses related to the GPS device and monitoring.

1 SECTION 8. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 62.7 of Title 22, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. Pursuant to paragraph 7 of Section 196 of Title 22 of the  
5 Oklahoma Statutes, a peace officer, without a warrant, shall arrest  
6 and take into custody a person if the peace officer has reasonable  
7 cause to believe that:

8 1. An emergency ex parte or final protective order has been  
9 issued and served upon the person, pursuant to the Protection from  
10 Workplace Violence Act;

11 2. A true copy and proof of service of the order has been filed  
12 with the law enforcement agency having jurisdiction of the area in  
13 which the employer is located or any employee, family or household  
14 member named in the order resides or a certified copy of the order  
15 and proof of service is presented to the peace officer as provided  
16 in subsection B of this section;

17 3. The person named in the order has received notice of the  
18 order and has had a reasonable time to comply with such order; and

19 4. The person named in the order has violated the order or is  
20 then acting in violation of the order.

21 B. A copy of a protective order shall be prima facie evidence  
22 that such order is valid in this state when such documentation is  
23 presented to a law enforcement officer by the plaintiff, defendant,  
24 or another person on behalf of a person named in the order. Any law

1 enforcement officer may rely on such evidence to make an arrest for  
2 a violation of such order, if there is reason to believe the  
3 defendant has violated or is then acting in violation of the order  
4 without justifiable excuse. When a law enforcement officer relies  
5 upon the evidence specified in this subsection, such officer and the  
6 employing agency shall be immune from liability for the arrest of  
7 the defendant if it is later proved that the evidence was false.

8 C. Any person who knowingly and willfully presents any false or  
9 materially altered protective order to any law enforcement officer  
10 to effect an arrest of any person shall, upon conviction, be guilty  
11 of a felony punishable by imprisonment in the custody of the  
12 Department of Corrections for a period not to exceed two (2) years,  
13 or by a fine not exceeding Five Thousand Dollars (\$5,000.00) and  
14 shall, in addition, be liable for any civil damages to the  
15 defendant.

16 SECTION 9. NEW LAW A new section of law to be codified  
17 in the Oklahoma Statutes as Section 62.8 of Title 22, unless there  
18 is created a duplication in numbering, reads as follows:

19 In addition to any other provisions required by the Protection  
20 from Workplace Violence Act, or otherwise required by law, each ex  
21 parte or final protective order issued pursuant to the Protection  
22 from Workplace Violence Act shall have a statement printed in bold-  
23 faced type or in capital letters containing the following  
24 information:

1           1. The filing or nonfiling of criminal charges and the  
2 prosecution of the case shall not be determined by a person who is  
3 protected by the protective order, but shall be determined by the  
4 prosecutor;

5           2. No person, including a person who is protected by the order,  
6 may give permission to anyone to ignore or violate any provision of  
7 the order. During the time in which the order is valid, every  
8 provision of the order shall be in full force and effect unless a  
9 court changes the order;

10          3. The order shall be in effect for a fixed period of five (5)  
11 years unless extended, modified, vacated or rescinded by the court;

12          4. A violation of the order is punishable by a fine of up to  
13 One Thousand Dollars (\$1,000.00) or imprisonment for up to one (1)  
14 year in the county jail, or by both such fine and imprisonment. A  
15 violation of the order which causes injury is punishable by  
16 imprisonment for twenty (20) days to one (1) year in the county jail  
17 or a fine of up to Five Thousand Dollars (\$5,000.00), or by both  
18 such fine and imprisonment; and

19          5. Possession of a firearm or ammunition by a defendant while  
20 an order is in effect may subject the defendant to prosecution for a  
21 violation of federal law even if the order does not specifically  
22 prohibit the defendant from possession of a firearm or ammunition.

1 SECTION 10. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 62.9 of Title 22, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. Persons authorized to file a motion for expungement of  
5 victim protective orders (VPOs) issued pursuant to the Protection  
6 from Workplace Violence Act in this state must be within one of the  
7 following categories:

8 1. An ex parte order was issued to the plaintiff but later  
9 terminated due to dismissal of the petition before the full hearing,  
10 or denial of the petition upon full hearing, or failure of the  
11 plaintiff to appear for full hearing, and at least ninety (90) days  
12 have passed since the date set for full hearing;

13 2. The plaintiff filed an application for a victim protective  
14 order and failed to appear for the full hearing and at least ninety  
15 (90) days have passed since the date last set by the court for the  
16 full hearing, including the last date set for any continuance,  
17 postponement or rescheduling of the hearing;

18 3. The plaintiff or defendant has had the order vacated and  
19 three (3) years have passed since the order to vacate was entered;  
20 or

21 4. The plaintiff or defendant is deceased.

22 B. For purposes of this section:  
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1        1. "Expungement" means the sealing of victim protective order  
2 (VPO) court records from public inspection, but not from law  
3 enforcement agencies, the court or the district attorney;

4        2. "Plaintiff" means the employer that sought the original  
5 victim protective order (VPO) for cause on behalf of an employee or  
6 employees; and

7        3. "Defendant" means the person or persons to whom the victim  
8 protective order (VPO) was directed.

9        C. 1. Any person qualified under subsection A of this section  
10 may petition the district court of the district in which the  
11 protective order pertaining to the person is located for the  
12 expungement and sealing of the court records from public inspection.  
13 The face of the petition shall state whether the defendant in the  
14 protective order has been convicted of any violation of the  
15 protective order and whether any prosecution or complaint is pending  
16 in this state or any other state for a violation or alleged  
17 violation of the protective order that is sought to be expunged.  
18 The petition shall further state the authority pursuant to  
19 subsection A of this section for eligibility for requesting the  
20 expungement. The other party to the protective order shall be  
21 mailed a copy of the petition by certified mail within ten (10) days  
22 of filing the petition. A written answer or objection may be filed  
23 within thirty (30) days of receiving the notice and petition.

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1           2. Upon the filing of a petition, the court shall set a date  
2 for a hearing and shall provide at least a thirty-day notice of the  
3 hearing to all parties to the protective order, the district  
4 attorney, and any other person or agency whom the court has reason  
5 to believe may have relevant information related to the sealing of  
6 the victim protective order (VPO) court record.

7           3. Without objection from the other party to the victim  
8 protective order (VPO) or upon a finding that the harm to the  
9 privacy of the person in interest or dangers of unwarranted adverse  
10 consequences outweigh the public and safety interests of the parties  
11 to the protective order in retaining the records, the court may  
12 order the court record, or any part thereof, to be sealed from  
13 public inspection. Any order entered pursuant to this section shall  
14 not limit or restrict any law enforcement agency, the district  
15 attorney or the court from accessing said records without the  
16 necessity of a court order. Any order entered pursuant to this  
17 subsection may be appealed by any party to the protective order or  
18 by the district attorney to the Oklahoma Supreme Court in accordance  
19 with the rules of the Oklahoma Supreme Court.

20           4. Upon the entry of an order to expunge and seal from public  
21 inspection a victim protective order (VPO) court record, or any part  
22 thereof, the subject official actions shall be deemed never to have  
23 occurred, and the persons in interest and the public may properly  
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1 reply, upon any inquiry in the matter, that no such action ever  
2 occurred and that no such record exists with respect to the persons.

3 5. Inspection of the protective order court records included in  
4 the expungement order issued pursuant to this section may thereafter  
5 be permitted only upon petition by the persons in interest who are  
6 the subjects of the records, or without petition by the district  
7 attorney or a law enforcement agency in the due course of  
8 investigation of a crime.

9 6. Employers, educational institutions, state and local  
10 government agencies, officials, and employees shall not require, in  
11 any application or interview or otherwise, an applicant to disclose  
12 any information contained in sealed protective order court records.  
13 An applicant need not, in answer to any question concerning the  
14 records, provide information that has been sealed, including any  
15 reference to or information concerning the sealed information and  
16 may state that no such action has ever occurred. The application  
17 may not be denied solely because of the refusal of the applicant to  
18 disclose protective order court records information that has been  
19 sealed.

20 7. The provisions of this section shall apply to all protective  
21 order court records existing in the district courts of this state  
22 on, before and after the effective date of this section.

23 8. Nothing in this section shall be construed to authorize the  
24 physical destruction of any court records, except as otherwise

1 provided by law for records no longer required to be maintained by  
2 the court.

3 9. For the purposes of this section, sealed materials which are  
4 recorded in the same document as unsealed material may be recorded  
5 in a separate document, and sealed, then obliterated in the original  
6 document.

7 10. For the purposes of this act, district court index  
8 reference of sealed material shall be destroyed, removed or  
9 obliterated.

10 11. Any record ordered to be sealed pursuant to this section  
11 may be obliterated or destroyed at the end of the ten-year period.

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

17 SECTION 11. This act shall become effective November 1, 2019.

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