

Cherokee Nation Code Annotated

Title 10A: Cherokee Nation Juvenile Code

Article 2

Chapter 6: Records

§ 2-6-109. Expungement of open juvenile court record

Cite as: 10A CNCA § 2-6-109

A. A person 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:

1. The person has attained twenty-one (21) years of age or older;
2. The person has not been arrested for any adult criminal offense and no charge, indictment, or information has been filed or is pending against the person at the time of the petition for an expungement;
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 juvenile proceedings.

B. 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 Attorney General, the Department of Juvenile Justice, the Cherokee Nation Marshal Service, 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. Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may 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. 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 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.

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 Attorney General and only to those persons and for such purposes named in the petition.

F. Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or otherwise, require an applicant to disclose any information contained in any expunged juvenile 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. Nothing in this section shall be construed to authorize the physical destruction of any juvenile records.

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

J. 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. Subsequent to records being sealed as provided herein, the Attorney General, the Department of Juvenile Justice, the Cherokee Nation Marshal Service, 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. 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 the Federal Rules of Evidence.

M. 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 through 4 of subsection A of this section. The petition shall be reviewed by the district or municipal judge with primary responsibility over the juvenile court docket.

Historical Data

LA 11-21, eff. March 15, 2021.