

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1234

By: Osburn (Mike)

4
5
6 AS INTRODUCED

7 An Act relating to court records; creating the Court
8 Records Protection and Modernization Act; amending
9 10A O.S. 2011, Sections 2-6-108, as amended by
10 Sections 19, Chapter 404, O.S.L. 2013 and 2-6-109
11 (10A O.S. Supp. 2016, Section 2-6-108), which relate
12 to juvenile judicial proceedings; allowing certain
13 sealed and expunged records to be destroyed after
14 adjudication when electronically stored; authorizing
15 the Supreme Court of Oklahoma to establish rules;
16 amending 20 O.S. 2011, Sections 1005, 1005.1, 1006,
17 1007 and 1008, which relate to destruction of court
18 records; removing option for judge objection;
19 allowing certain paper judicial records be destroyed
20 upon adjudication of respective case; prohibiting
21 destruction if not reproduced electronically;
22 allowing traffic and criminal property case records
23 be destroyed after adjudication when electronically
24 stored; authorizing the Supreme Court of Oklahoma to
establish rules; allowing small claim case records be
destroyed after adjudication when electronically
stored; allowing certain documents filed with the
court clerk to be destroyed after filing when
electronically stored; allowing certain exhibits,
court reporter's notes, pleadings and judgments be
destroyed when electronically stored; allowing
certain depositions be destroyed when electronically
stored; providing for noncodification; and providing
an effective date.

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

1 SECTION 1. NEW LAW A new section of law not to be
2 codified in the Oklahoma Statutes reads as follows:

3 This act shall be known and may be cited as the "Court Records
4 Protection and Modernization Act".

5 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-6-108, as
6 amended by Section 19, Chapter 404, O.S.L. 2013 (10A O.S. Supp.
7 2016, Section 2-6-108), is amended to read as follows:

8 Section 2-6-108. A. No adjudication by the court upon the
9 status of a child in a juvenile proceeding shall operate to impose
10 any of the civil disabilities ordinarily resulting from conviction
11 of a crime, nor shall a child be deemed a criminal by reason of a
12 juvenile adjudication.

13 B. The court may sua sponte, upon motion by the state or upon
14 motion by the alleged delinquent, order the records of a person
15 alleged to be delinquent to be sealed as follows:

- 16 1. When the person has been alleged to be delinquent and:
17 a. one (1) year has elapsed from the later of:
18 (1) dismissal or closure of the case by the court, or
19 (2) notice to the court by the Office of Juvenile
20 Affairs or a juvenile bureau of final discharge
21 of such person from the supervision of the Office
22 of Juvenile Affairs or juvenile bureau, and
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1 b. the person has not been found guilty of or admitted to
2 the commission of a subsequent criminal offense in
3 either a juvenile or adult proceeding, and

4 c. no juvenile or adult proceeding for a criminal offense
5 is pending;

6 2. When a juvenile court intake has been completed and:

7 a. the case has been dismissed, or

8 b. no petition has been filed pending fulfillment of
9 conditions of a voluntary probation, or

10 c. a petition has been filed but no adjudication has
11 occurred pending the fulfillment of conditions of a
12 preadjudicatory probation;

13 3. When a juvenile participates in a court-approved alternative
14 diversion program for first-time offenders and:

15 a. the juvenile presents satisfactory evidence to the
16 court that the juvenile has successfully completed the
17 program, and

18 b. the court dismisses the case at the conclusion of the
19 deferral period; or

20 4. When a juvenile participates in a court-approved military
21 mentor program and:

22 a. the juvenile presents satisfactory evidence to the
23 court that the juvenile has successfully completed the
24 program, and

1 b. the court dismisses the case at the conclusion of the
2 deferral period.

3 The records may be sealed one (1) year after such dismissal or
4 completion of the conditions of a voluntary or preadjudicatory
5 probation, alternative diversion program for first-time offenders,
6 or military mentor program or upon the person attaining the age of
7 eighteen (18) years in the discretion of the court. Upon the
8 sealing of any record of a person alleged to be delinquent pursuant
9 to this title, the record and official actions subject to the order
10 shall be deemed never to have occurred, and the person who is the
11 subject of the record and all juvenile justice agencies may properly
12 reply upon any inquiry in the matter that no such action ever
13 occurred and no such record exists with respect to such person.

14 C. The Administrative Office of the Courts shall establish on
15 or before January 1, 1994, a system for sealing records as required
16 by subsection B of this section and records shall be sealed in
17 accordance with the procedures established pursuant to said system.

18 D. 1. The court clerk shall seal the juvenile court record
19 indicated in the court's order, except that a confidential index
20 shall be maintained for the purpose of locating records subject to
21 inspection or release pursuant to subsection F of this section.

22 2. When notified by the court clerk of a court order sealing a
23 juvenile court record, the law enforcement agency having records
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1 pertaining to the person shall seal the records as ordered, except
2 basic identification information shall be maintained.

3 3. Except where such documents are necessary to maintain state
4 or federal funding, the juvenile court personnel records pertaining
5 to the person shall be sealed.

6 E. Members of the judiciary, district attorneys, the defendant,
7 the defendant's counsel and employees of juvenile bureaus, the
8 Office of Juvenile Affairs assigned juvenile court intake
9 responsibilities, and the Department of Corrections may access
10 records that have been sealed pursuant to this section without a
11 court order for the purpose of determining whether to dismiss an
12 action, seek a voluntary probation, file a petition, or for purposes
13 of sentencing or placement in a case where the person who is the
14 subject of the sealed record is alleged to have committed a
15 subsequent juvenile delinquent act or any adult criminal offense.
16 Provided, any record sealed pursuant to this section may be used in
17 a subsequent juvenile delinquent or adult prosecution only after the
18 issuance of a court order unsealing the record.

19 F. The court may issue an order unsealing sealed juvenile court
20 records, for use for the following purposes:

21 1. In subsequent cases against the same child pursuant to this
22 title;

23 2. In an adult criminal proceeding pursuant to Section 2-2-403
24 or 2-5-101 of this title;

1 3. Upon conviction of a criminal offense in an adult
2 proceeding, in connection with the sentencing of such person;

3 4. If the person is placed in the custody or under the
4 supervision of the Department of Corrections;

5 5. In accordance with the guidelines adopted pursuant to the
6 Juvenile Offender Tracking Program and Section 620.6 of Title 10 of
7 the Oklahoma Statutes, for maintaining juvenile justice and criminal
8 justice statistical information;

9 6. For the purpose of a criminal investigation; or

10 7. When the court finds that there is a compelling reason and
11 it is in the interest of justice to order the record unsealed.

12 G. Any person or agency having a legitimate interest in a
13 delinquency case or proceeding may petition the court for an order
14 unsealing a juvenile court record. Upon the filing of a petition to
15 unseal any juvenile court record, the court shall set a date for a
16 hearing and shall provide thirty (30) days of notice to all
17 interested parties. The hearing may be closed at the discretion of
18 the court. If, after a hearing, the court determines that there is
19 any reason enumerated in subsection F of this section and it is
20 necessary for the protection of a legitimate public or private
21 interest to unseal the record, the court shall order the record
22 unsealed.

23 H. Any record ordered to be sealed pursuant to this section, if
24 not unsealed within ten (10) years of the order, shall be

1 obliterated or destroyed at the end of the ten-year period;
2 provided, that the records may be destroyed after the respective
3 case has been adjudicated if, prior to their disposal or
4 destruction, they are reproduced on microfilm, optical disk or other
5 media produced pursuant to rules of the Oklahoma Supreme Court. The
6 Supreme Court of Oklahoma shall establish rules regulating the
7 electronic storage of judicial records provided in this subsection.

8 SECTION 3. AMENDATORY 10A O.S. 2011, Section 2-6-109, is
9 amended to read as follows:

10 Section 2-6-109. A. A person who is the subject of a juvenile
11 court record, that is not confidential as provided by law, may
12 petition the district court in which the juvenile court record is
13 located for an order to expunge all or any part of the record
14 pertaining to the person, except basic identification information;
15 provided:

16 1. The person has attained twenty-one (21) years of age or
17 older;

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

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

1 4. All court costs, restitution, fines and other court-ordered
2 requirements have been completed for all juvenile proceedings.

3 B. Upon the filing of a petition for expungement of a juvenile
4 court record, the court shall set a date for a hearing, which
5 hearing may be closed at the court's discretion, and shall provide a
6 thirty (30) days' notice of the hearing to the district attorney,
7 the Office of Juvenile Affairs, the Oklahoma State Bureau of
8 Investigation, and any other person or agency whom the court has
9 reason to believe may have relevant information related to the
10 expungement of any record.

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

21 D. Upon the entry of an order to expunge any juvenile court
22 record, or any part thereof, the subject official actions shall be
23 deemed never to have occurred, and the person in interest and all
24 juvenile and criminal justice agencies may properly reply, upon any

1 inquiry in the matter, that no such action ever occurred and that no
2 such record exists with respect to the person.

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

8 F. Employers, educational institutions, state and local
9 government agencies, officials, and employees shall not, in any
10 application or interview or otherwise, require an applicant to
11 disclose any information contained in any expunged juvenile records.
12 An applicant need not, in answer to any question concerning arrest,
13 juvenile and criminal records, provide information that has been
14 expunged, including any reference to or information concerning
15 expungement and may state that no such action has ever occurred.
16 Such an application may not be denied solely because of the
17 applicant's refusal to disclose information that has been expunged.

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

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

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

3 J. Any record ordered to be expunged pursuant to this section
4 shall be sealed and, if not unsealed within ten (10) years of the
5 expungement order, may be obliterated or destroyed at the end of the
6 ten-year period; provided, that the records may be destroyed after
7 the respective case has been adjudicated if, prior to their disposal
8 or destruction, they are reproduced on microfilm, optical disk or
9 other media produced pursuant to rules of the Oklahoma Supreme
10 Court. The Supreme Court of Oklahoma shall establish rules
11 regulating the electronic storage of judicial records provided in
12 this subsection.

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

23 L. Nothing herein shall prohibit the introduction of evidence
24 regarding actions sealed pursuant to the provisions of this section

1 at any hearing or trial for purposes of impeaching the credibility
2 of a witness or as evidence of character testimony pursuant to
3 Section 2608 of Title 12 of the Oklahoma Statutes.

4 M. A person who has attained eighteen (18) years of age or
5 older may petition the district or municipal court in which the
6 juvenile court record is located for an order to expunge all or any
7 part of the record pertaining to matters involving truancy provided
8 the person has met the criteria set forth in paragraphs 2 through 4
9 of subsection A of this section. The petition shall be reviewed by
10 the district or municipal judge with primary responsibility over the
11 juvenile court docket.

12 SECTION 4. AMENDATORY 20 O.S. 2011, Section 1005, is
13 amended to read as follows:

14 Section 1005. A. ~~Unless there is an objection by the presiding~~
15 ~~administrative judge or the chief judge of the district court, the~~
16 The court clerk is authorized to dispose of the judicial records
17 enumerated in this subsection by first offering all or part of the
18 records to the Archives and Records Division of the Oklahoma
19 Department of Libraries for preservation as historical research
20 materials, and by destroying all those which are not accepted by the
21 Division. Nothing shall prohibit the presiding administrative judge
22 or the chief judge of the district court from entering an order for
23 the destruction of records prior to the time limits enumerated in
24 this subsection for good cause shown. In the record destruction

1 process, any officer may rely upon computerized lists or other
2 electronic data provided by the Administrative Office of the Courts
3 or its OCIS/OSCN system. For purposes of determining the time
4 periods in this chapter, the officer may disregard entries or
5 actions taken in the subject cases, such as accounting, internal
6 electronic data or other nonjudicial entries. The Except as
7 provided in subsection B of this section, the judicial records
8 subject to disposal or destruction shall be:

9 1. Domestic relations cases. This shall include, but not be
10 limited to, cases filed concerning divorce, separate maintenance,
11 annulment, reciprocal actions for enforcement of support, child
12 custody, domestic abuse, foreign judgments in domestic relations
13 cases, income assignments relating to an order of support,
14 paternity, appeal on administrative order relating to support or
15 paternity, habeas corpus relating to children, and other domestic-
16 related filings:

17 a. domestic relations cases that have been dismissed and
18 no pleading has been filed or any action taken in the
19 case for more than one (1) year, and
20 b. all domestic relations cases after a twenty-year
21 period has elapsed since any pleading has been filed
22 or any action taken in the case;

23 2. Probate cases. This shall include, but not be limited to,
24 cases filed concerning the probating of estates, guardianships,

1 conservatorships, protective services to the elderly, powers of
2 attorney, and trusts:

3 a. probate cases that have been dismissed and no pleading
4 has been filed or any action taken in the case for
5 more than one (1) year, and

6 b. all probate cases after a twenty-year period has
7 elapsed since any pleading has been filed or any
8 action taken in the case;

9 3. Actions brought for money judgment only in which a dismissal
10 or release and satisfaction has been filed for more than one (1)
11 year;

12 4. Civil (CJ and CS) records of cases:

13 a. civil (CJ and CS) cases that have been dismissed and
14 no pleading has been filed or any action taken in the
15 case for more than one (1) year, and

16 b. all other civil (CJ and CS) cases after a ten-year
17 period has elapsed since any pleading has been filed
18 or any action taken in the case;

19 5. Felony criminal records of unadjudicated cases and
20 adjudicated cases:

21 a. felony criminal cases that have been dismissed and no
22 pleading or any action taken in the case for more than
23 one (1) year,

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1 b. felony criminal records of adjudicated cases after a
2 ten-year period has elapsed since any pleading has
3 been filed or any action taken in the case, and

4 c. felony criminal records of adjudicated cases, where
5 the sentence imposed was death, life without parole,
6 or life, after a fifty-year period has elapsed since
7 any pleading has been filed or any action taken in the
8 case;

9 6. Misdemeanor records of unadjudicated cases and adjudicated
10 cases:

11 a. misdemeanor cases that have been dismissed and no
12 pleading or any action taken in the case for more than
13 one (1) year,

14 b. misdemeanor records of adjudicated cases after a five-
15 year period has elapsed since any pleading has been
16 filed or any action taken in the case; and

17 7. Juvenile cases. This shall include, but not be limited to,
18 cases filed concerning delinquents, children in need of supervision,
19 deprived children, children in need of treatment, children in need
20 of shelter, and other related juvenile filings:

21 a. juvenile cases that have been dismissed and no
22 pleading has been filed or any action taken in the
23 case for more than one (1) year, and
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1 b. all juvenile cases after a twenty-year period has
2 elapsed since any pleading has been filed or any
3 action taken in the case.

4 B. The paper judicial records and the appearance docket books
5 or sheets on which they are entered may be destroyed after the
6 respective case has been adjudicated; provided, that prior to their
7 disposal or destruction, they shall be stored on at least two
8 microfilm records, optical disks, or other appropriate medium, one
9 of which shall be placed in the Archives and Records Division of the
10 Oklahoma Department of Libraries or in a bank or other appropriate
11 local depository and the other shall be available for public use in
12 the court clerk's office. The copy in the Department of Libraries
13 or other depository shall be available for replacement in case of
14 functional failure of the one available for public use. The cost of
15 the storage medium and equipment for viewing and copying shall be
16 paid out of the court fund, upon approval by the Chief Justice of
17 the Supreme Court. Records reproduced from microfilm, optical disk,
18 ~~and~~ or other media produced pursuant to the provisions of this
19 section shall be received in evidence and have the same legal
20 efficacy as the original. Paper records that are not reproduced
21 from microfilm, optical disk or other media produced pursuant to
22 this subsection shall be kept and maintained for the time period
23 provided in subsection A of this section.

1 C. ~~Traffic cases.~~ The Except as otherwise provided in this
2 subsection, the court clerk of each district court shall destroy the
3 judicial records of traffic cases and the appearance docket books or
4 sheets on which they are entered after a five-year period has
5 elapsed since any pleading has been filed or any action taken in the
6 case, except in the case of a conviction for driving under the
7 influence of intoxicating liquor or any narcotic drug, which records
8 shall be destroyed after a ten-year period has elapsed since any
9 pleading has been filed or any action taken in the case. The court
10 clerk is authorized to destroy the judicial records and the
11 appearance docket books or sheets on which they are entered after
12 the respective case has been adjudicated if, prior to their disposal
13 or destruction, they are reproduced on microfilm, optical disk or
14 other media produced pursuant to procedures in subsection B of this
15 section.

16 D. Records of criminal property cases brought pursuant to
17 ~~Section~~ Sections 1321 ~~et seq.~~ through 1327 of Title 22 of the
18 Oklahoma Statutes shall be subject to disposal or destruction after
19 a two-year period has elapsed since any pleading has been filed or
20 any action taken in the case; provided, that the records may be
21 destroyed after the respective case has been adjudicated if, prior
22 to their disposal or destruction, they are reproduced on microfilm,
23 optical disk or other media produced pursuant to procedures in
24 subsection B of this section.

1 E. The Supreme Court of Oklahoma may establish rules regulating
2 the electronic storage of judicial records provided in this section.

3 SECTION 5. AMENDATORY 20 O.S. 2011, Section 1005.1, is
4 amended to read as follows:

5 Section 1005.1 A. All paper records which have been recorded
6 on microfilm, microfiche, compact disc, or any other recognized
7 technological means may be destroyed after the respective case has
8 been adjudicated or as otherwise provided by law. With the
9 exception of felony conviction records, probate, adoption, quiet
10 title, ejectment, partition, marriage and divorce records, and
11 Indian deed approval records, all court records which have not been
12 recorded on microfilm, microfiche, compact disc, or any other
13 recognized technological means and in which no activity has occurred
14 for twenty-two (22) years, may be destroyed or may be given as
15 historical research materials to an appropriate organization as
16 determined by the court clerk of the district court.

17 B. ~~Small claims cases and justice of the peace court records~~
18 ~~shall not be subject to microfilm or other permanent recording~~
19 ~~requirements.~~ The court clerk of each district court shall destroy
20 the judicial records of justice of the peace courts including docket
21 books on which they are entered, and small claims cases including
22 the docket books and sheets on which they are entered after a five-
23 year period has elapsed since any pleading has been filed or any
24 action taken in the case; provided, that the records may be

1 destroyed after the respective case has been adjudicated if, prior
2 to their disposal or destruction, they are reproduced on microfilm,
3 optical disk or other media produced pursuant to rules of the
4 Oklahoma Supreme Court.

5 C. The Supreme Court of Oklahoma shall establish rules
6 regulating the electronic storage of judicial records provided in
7 this section.

8 SECTION 6. AMENDATORY 20 O.S. 2011, Section 1006, is
9 amended to read as follows:

10 Section 1006. A. ~~Unless there is an objection by the chief~~
11 ~~judge of the district court, the~~ The court clerk is authorized to
12 destroy all exhibits in all domestic relations cases in which there
13 has been no activity for more than twenty (20) years, and exhibits
14 in all other civil cases in which there has been no activity for
15 more than ten (10) years; provided, that the exhibits may be
16 destroyed if, prior to their disposal or destruction, they are
17 reproduced on microfilm, optical disk or other media produced
18 pursuant to rules of the Oklahoma Supreme Court.

19 B. The chief judge may direct a court reporter to destroy a
20 court reporter's notes after the expiration of ten (10) years from
21 the date of a proceeding, or, if a proceeding has not resulted in an
22 appeal upon which a request has been made to transcribe the
23 proceeding, all notes of a court reporter may be destroyed
24 immediately upon completion of transcription of a proceeding;

1 provided, that the notes may be destroyed if, prior to their
2 disposal or destruction, they are reproduced on microfilm, optical
3 disk or other media produced pursuant to rules of the Oklahoma
4 Supreme Court.

5 C. No pleadings or judgments shall be destroyed under the
6 provisions of this section; provided, that the pleadings or
7 judgments may be destroyed if, prior to their disposal or
8 destruction, they are reproduced on microfilm, optical disk or other
9 media produced pursuant to rules of the Oklahoma Supreme Court.

10 D. The Supreme Court of Oklahoma shall establish rules
11 regulating the electronic storage of judicial records provided in
12 this section.

13 SECTION 7. AMENDATORY 20 O.S. 2011, Section 1007, is
14 amended to read as follows:

15 Section 1007. ~~The~~ A. Except as provided in subsection B of
16 this section, the court clerk in each county in Oklahoma is
17 authorized to destroy or sell for salvage the documents mentioned in
18 this section which have been on file or stored in the court clerk's
19 office for a period longer than the time specified below:

- 20 1. One (1) year. All marriage health certificates-; i
21 2. Two (2) years. All instruments relating to beer, bingo,
22 process servers, foreign process servers, closing out sale, and pool
23 hall licenses including the applications, affidavits of residence,
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1 orders for hearing, notices of hearing, affidavits of posting and
2 mailing and duplicate beer license-; and

3 3. Three (3) years. All duplicate receipts, duplicate
4 vouchers, mechanics' and materialmen's lien records, duplicate
5 deposit tickets, jury lists, juror and witness certificates, court
6 clerk's liens, court fund claims, jury and bailiff records, monthly
7 reports, statutory bonds, cost bonds, paid claims, procedural bonds,
8 court assignments, and court calendars including disposition docket
9 books containing entries which have been posted to the case file
10 docket sheet or computer printed docket sheet, appearance bonds and
11 search warrants in instances where no charges are filed, purchase
12 orders, court minutes and records pertaining to bondspersons'
13 licenses.

14 B. The documents provided in paragraphs 1, 2 and 3 of
15 subsection A of this section may be destroyed after filing in the
16 court clerk's office, and the required time period to store the
17 documents shall not apply if, prior to their disposal or
18 destruction, they are reproduced on microfilm, optical disk or other
19 media produced pursuant to rules of the Oklahoma Supreme Court. The
20 Supreme Court of Oklahoma shall establish rules regulating the
21 electronic storage of judicial records provided in this subsection.

22 SECTION 8. AMENDATORY 20 O.S. 2011, Section 1008, is
23 amended to read as follows:

1 Section 1008. In each county of this state, the court clerk is
2 hereby authorized to destroy, from time to time, depositions taken
3 in all civil cases, except adoptions, after a ten-year period, and
4 depositions taken in domestic relations cases may be destroyed after
5 a twenty-year period has elapsed since any pleading has been filed
6 or any action taken in the case; provided, that the depositions
7 taken in domestic relations cases may be destroyed if, prior to
8 their disposal or destruction, they are reproduced on microfilm,
9 optical disk or other media produced pursuant to rules of the
10 Oklahoma Supreme Court. The Supreme Court of Oklahoma shall
11 establish rules regulating the electronic storage of judicial
12 records provided in this subsection.

13 SECTION 9. This act shall become effective November 1, 2017.

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