

1 **SENATE FLOOR VERSION**

2 April 10, 2018

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 1234

6 By: Osburn (Mike) of the House

7 and

8 Stanislawski of the Senate

9 **[ Court Records Protection and Modernization Act -  
10 juvenile judicial proceedings - destruction of court  
11 records - noncodification ]**

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

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

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

17 SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-6-108, as  
18 amended by Section 19, Chapter 404, O.S.L. 2013 (10A O.S. Supp.  
19 2017, Section 2-6-108), is amended to read as follows:

20 Section 2-6-108. A. No adjudication by the court upon the  
21 status of a child in a juvenile proceeding shall operate to impose  
22 any of the civil disabilities ordinarily resulting from conviction  
23 of a crime, nor shall a child be deemed a criminal by reason of a  
24 juvenile adjudication.

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

4 1. When the person has been alleged to be delinquent and:

5 a. one (1) year has elapsed from the later of:

6 (1) dismissal or closure of the case by the court, or

7 (2) notice to the court by the Office of Juvenile  
8 Affairs or a juvenile bureau of final discharge  
9 of such person from the supervision of the Office  
10 of Juvenile Affairs or juvenile bureau, and

11 b. the person has not been found guilty of or admitted to  
12 the commission of a subsequent criminal offense in  
13 either a juvenile or adult proceeding, and

14 c. no juvenile or adult proceeding for a criminal offense  
15 is pending;

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

17 a. the case has been dismissed, or

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

20 c. a petition has been filed but no adjudication has  
21 occurred pending the fulfillment of conditions of a  
22 preadjudicatory probation;

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

1 a. the juvenile presents satisfactory evidence to the  
2 court that the juvenile has successfully completed the  
3 program, and

4 b. the court dismisses the case at the conclusion of the  
5 deferral period; or

6 4. When a juvenile participates in a court-approved military  
7 mentor program and:

8 a. the juvenile presents satisfactory evidence to the  
9 court that the juvenile has successfully completed the  
10 program, and

11 b. the court dismisses the case at the conclusion of the  
12 deferral period.

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

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

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

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

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

16 E. Members of the judiciary, district attorneys, the defendant,  
17 the defendant's counsel and employees of juvenile bureaus, the  
18 Office of Juvenile Affairs assigned juvenile court intake  
19 responsibilities, and the Department of Corrections may access  
20 records that have been sealed pursuant to this section without a  
21 court order for the purpose of determining whether to dismiss an  
22 action, seek a voluntary probation, file a petition, or for purposes  
23 of sentencing or placement in a case where the person who is the  
24 subject of the sealed record is alleged to have committed a

1 subsequent juvenile delinquent act or any adult criminal offense.  
2 Provided, any record sealed pursuant to this section may be used in  
3 a subsequent juvenile delinquent or adult prosecution only after the  
4 issuance of a court order unsealing the record.

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

7 1. In subsequent cases against the same child pursuant to this  
8 title;

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

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

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

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

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

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

22 G. Any person or agency having a legitimate interest in a  
23 delinquency case or proceeding may petition the court for an order  
24 unsealing a juvenile court record. Upon the filing of a petition to

1 unseal any juvenile court record, the court shall set a date for a  
2 hearing and shall provide thirty (30) days of notice to all  
3 interested parties. The hearing may be closed at the discretion of  
4 the court. If, after a hearing, the court determines that there is  
5 any reason enumerated in subsection F of this section and it is  
6 necessary for the protection of a legitimate public or private  
7 interest to unseal the record, the court shall order the record  
8 unsealed.

9 H. Any record ordered to be sealed pursuant to this section, if  
10 not unsealed within ten (10) years of the order, shall be  
11 obliterated or destroyed at the end of the ten-year period;  
12 provided, that the records may be destroyed after the respective  
13 case has been adjudicated if, prior to their disposal or  
14 destruction, they are reproduced on microfilm, optical disc or other  
15 media produced pursuant to rules of the Oklahoma Supreme Court. The  
16 Supreme Court of Oklahoma shall establish rules regulating the  
17 electronic storage of judicial records provided in this subsection.

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

20 Section 2-6-109. A. A person who is the subject of a juvenile  
21 court record, that is not confidential as provided by law, may  
22 petition the district court in which the juvenile court record is  
23 located for an order to expunge all or any part of the record  
24

1 pertaining to the person, except basic identification information;  
2 provided:

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

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

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

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

14 B. Upon the filing of a petition for expungement of a juvenile  
15 court record, the court shall set a date for a hearing, which  
16 hearing may be closed at the court's discretion, and shall provide a  
17 thirty (30) days' notice of the hearing to the district attorney,  
18 the Office of Juvenile Affairs, the Oklahoma State Bureau of  
19 Investigation, and any other person or agency whom the court has  
20 reason to believe may have relevant information related to the  
21 expungement of any record.

22 C. Upon a finding that the harm to privacy of the person in  
23 interest or dangers of unwarranted adverse consequences outweigh the  
24 public interest in retaining the records, the court may order the

1 records, or any part thereof except basic identification  
2 information, to be expunged. If the court finds that neither  
3 expungement of the records nor maintaining of the records unsealed  
4 by the agency would serve the ends of justice, the court may enter  
5 an appropriate order limiting access to the records. Any order  
6 entered pursuant to the provisions of this subsection shall specify  
7 those agencies to which the court order shall apply.

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

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

19 F. Employers, educational institutions, state and local  
20 government agencies, officials, and employees shall not, in any  
21 application or interview or otherwise, require an applicant to  
22 disclose any information contained in any expunged juvenile records.  
23 An applicant need not, in answer to any question concerning arrest,  
24 juvenile and criminal records, provide information that has been



1 expunged, including any reference to or information concerning  
2 expungement and may state that no such action has ever occurred.  
3 Such an application may not be denied solely because of the  
4 applicant's refusal to disclose information that has been expunged.

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

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

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

13 J. Any record ordered to be expunged pursuant to this section  
14 shall be sealed and, if not unsealed within ten (10) years of the  
15 expungement order, may be obliterated or destroyed at the end of the  
16 ten-year period; provided, that the records may be destroyed after  
17 the respective case has been adjudicated if, prior to their disposal  
18 or destruction, they are reproduced on microfilm, optical disc or  
19 other media produced pursuant to rules of the Oklahoma Supreme  
20 Court. The Supreme Court of Oklahoma shall establish rules  
21 regulating the electronic storage of judicial records provided in  
22 this subsection.

23 K. Subsequent to records being sealed as provided herein, the  
24 district attorney, the Office of Juvenile Affairs, the Oklahoma

1 State Bureau of Investigation, or other interested person or agency  
2 may petition the court for an order unsealing any records. Upon  
3 filing of a petition, the court shall set a date for hearing, which  
4 hearing may be closed at the court's discretion, and shall provide  
5 thirty (30) days' notice to all interested parties. If, upon  
6 hearing, the court determines there has been a change of conditions  
7 or that there is a compelling reason to unseal the records, the  
8 court may order all or a portion of the records unsealed.

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

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

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

24

1       Section 1005. A. ~~Unless there is an objection by the presiding~~  
2 ~~administrative judge or the chief judge of the district court, the~~  
3 The court clerk is authorized to dispose of the judicial records  
4 enumerated in this subsection by first offering all or part of the  
5 records to the Archives and Records Division of the Oklahoma  
6 Department of Libraries for preservation as historical research  
7 materials, and by destroying all those which are not accepted by the  
8 Division. Nothing shall prohibit the presiding administrative judge  
9 or the chief judge of the district court from entering an order for  
10 the destruction of records prior to the time limits enumerated in  
11 this subsection for good cause shown. In the record destruction  
12 process, any officer may rely upon computerized lists or other  
13 electronic data provided by the Administrative Office of the Courts  
14 or its OCIS/OSCN system. For purposes of determining the time  
15 periods in this chapter, the officer may disregard entries or  
16 actions taken in the subject cases, such as accounting, internal  
17 electronic data or other nonjudicial entries. ~~The~~ Except as  
18 provided in subsection B of this section, the judicial records  
19 subject to disposal or destruction shall be:

20       1. Domestic relations cases. This shall include, but not be  
21 limited to, cases filed concerning divorce, separate maintenance,  
22 annulment, reciprocal actions for enforcement of support, child  
23 custody, domestic abuse, foreign judgments in domestic relations  
24 cases, income assignments relating to an order of support,

1 paternity, appeal on administrative order relating to support or  
2 paternity, habeas corpus relating to children, and other domestic-  
3 related filings:

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

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

10 2. Probate cases. This shall include, but not be limited to,  
11 cases filed concerning the probating of estates, guardianships,  
12 conservatorships, protective services to the elderly, powers of  
13 attorney, and trusts:

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

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

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

23 4. Civil (CJ and CS) records of cases:  
24

- 1 a. civil (CJ and CS) cases that have been dismissed and  
2 no pleading has been filed or any action taken in the  
3 case for more than one (1) year, and  
4 b. all other civil (CJ and CS) cases after a ten-year  
5 period has elapsed since any pleading has been filed  
6 or any action taken in the case;

7 5. Felony criminal records of unadjudicated cases and  
8 adjudicated cases:

- 9 a. felony criminal cases that have been dismissed and no  
10 pleading or any action taken in the case for more than  
11 one (1) year,  
12 b. felony criminal records of adjudicated cases after a  
13 ten-year period has elapsed since any pleading has  
14 been filed or any action taken in the case, and  
15 c. felony criminal records of adjudicated cases, where  
16 the sentence imposed was death, life without parole,  
17 or life, after a fifty-year period has elapsed since  
18 any pleading has been filed or any action taken in the  
19 case;

20 6. Misdemeanor records of unadjudicated cases and adjudicated  
21 cases:

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

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

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

8           a. juvenile cases that have been dismissed and no  
9           pleading has been filed or any action taken in the  
10          case for more than one (1) year, and

11          b. all juvenile cases after a twenty-year period has  
12          elapsed since any pleading has been filed or any  
13          action taken in the case.

14          B. The paper judicial records and the appearance docket books  
15 or sheets on which they are entered may be destroyed after the  
16 respective case has been adjudicated; provided, that prior to their  
17 disposal or destruction, they shall be stored on at least two  
18 microfilm records, optical ~~disks~~, discs or other appropriate medium,  
19 one of which shall be placed in the Archives and Records Division of  
20 the Oklahoma Department of Libraries or in a bank or other  
21 appropriate local depository and the other shall be available for  
22 public use in the court clerk's office. The copy in the Department  
23 of Libraries or other depository shall be available for replacement  
24 in case of functional failure of the one available for public use.

1 The cost of the storage medium and equipment for viewing and copying  
2 shall be paid out of the court fund, upon approval by the Chief  
3 Justice of the Supreme Court. Records reproduced from microfilm,  
4 optical ~~disk,~~ and disc or other media produced pursuant to the  
5 provisions of this section shall be received in evidence and have  
6 the same legal efficacy as the original. Paper records that are not  
7 reproduced from microfilm, optical disc or other media produced  
8 pursuant to this subsection shall be kept and maintained for the  
9 time period provided in subsection A of this section.

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

1 D. Records of criminal property cases brought pursuant to  
2 ~~Section~~ Sections 1321 ~~et seq.~~ through 1327 of Title 22 of the  
3 Oklahoma Statutes shall be subject to disposal or destruction after  
4 a two-year period has elapsed since any pleading has been filed or  
5 any action taken in the case; provided, that the records may be  
6 destroyed after the respective case has been adjudicated if, prior  
7 to their disposal or destruction, they are reproduced on microfilm,  
8 optical disc or other media produced pursuant to procedures in  
9 subsection B of this section.

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

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

15 Section 1005.1 A. All paper records which have been recorded  
16 on microfilm, microfiche, compact disc, or any other recognized  
17 technological means may be destroyed after the respective case has  
18 been adjudicated or as otherwise provided by law. With the  
19 exception of felony conviction records, probate, adoption, quiet  
20 title, ejectment, partition, marriage and divorce records, and  
21 Indian deed approval records, all court records which have not been  
22 recorded on microfilm, microfiche, compact disc, or any other  
23 recognized technological means and in which no activity has occurred  
24 for twenty-two (22) years, may be destroyed or may be given as



1 historical research materials to an appropriate organization as  
2 determined by the court clerk of the district court.

3 B. ~~Small claims cases and justice of the peace court records~~  
4 ~~shall not be subject to microfilm or other permanent recording~~  
5 ~~requirements.~~ The court clerk of each district court shall destroy  
6 the judicial records of justice of the peace courts including docket  
7 books on which they are entered, and small claims cases including  
8 the docket books and sheets on which they are entered after a five-  
9 year period has elapsed since any pleading has been filed or any  
10 action taken in the case; provided, that the records may be  
11 destroyed after the respective case has been adjudicated if, prior  
12 to their disposal or destruction, they are reproduced on microfilm,  
13 optical disc or other media produced pursuant to rules of the  
14 Oklahoma Supreme Court.

15 C. The Supreme Court of Oklahoma shall establish rules  
16 regulating the electronic storage of judicial records provided in  
17 this section.

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

20 Section 1006. A. ~~Unless there is an objection by the chief~~  
21 ~~judge of the district court, the~~ The court clerk is authorized to  
22 destroy all exhibits in all domestic relations cases in which there  
23 has been no activity for more than twenty (20) years, and exhibits  
24 in all other civil cases in which there has been no activity for

1 more than ten (10) years; provided, that the exhibits may be  
2 destroyed if, prior to their disposal or destruction, they are  
3 reproduced on microfilm, optical disc or other media produced  
4 pursuant to rules of the Oklahoma Supreme Court.

5 B. The chief judge may direct a court reporter to destroy a  
6 court reporter's notes after the expiration of ten (10) years from  
7 the date of a proceeding, or, if a proceeding has not resulted in an  
8 appeal upon which a request has been made to transcribe the  
9 proceeding, all notes of a court reporter may be destroyed  
10 immediately upon completion of transcription of a proceeding;  
11 provided, that the notes may be destroyed if, prior to their  
12 disposal or destruction, they are reproduced on microfilm, optical  
13 disc or other media produced pursuant to rules of the Oklahoma  
14 Supreme Court.

15 C. No pleadings or judgments shall be destroyed under the  
16 provisions of this section; provided, that the pleadings or  
17 judgments may be destroyed if, prior to their disposal or  
18 destruction, they are reproduced on microfilm, optical disc or other  
19 media produced pursuant to rules of the Oklahoma Supreme Court.

20 D. The Supreme Court of Oklahoma shall establish rules  
21 regulating the electronic storage of judicial records provided in  
22 this section.

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

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

6 1. One (1) year. All marriage health certificates~~;~~;

7 2. Two (2) years. All instruments relating to beer, bingo,  
8 process servers, foreign process servers, closing out sale, and pool  
9 hall licenses including the applications, affidavits of residence,  
10 orders for hearing, notices of hearing, affidavits of posting and  
11 mailing and duplicate beer license~~;~~; and

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

23 B. The documents provided in paragraphs 1, 2 and 3 of  
24 subsection A of this section may be destroyed after filing in the

1 court clerk's office, and the required time period to store the  
2 documents shall not apply if, prior to their disposal or  
3 destruction, they are reproduced on microfilm, optical disc or other  
4 media produced pursuant to rules of the Oklahoma Supreme Court. The  
5 Supreme Court of Oklahoma shall establish rules regulating the  
6 electronic storage of judicial records provided in this subsection.

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
22 April 10, 2018 - DO PASS AS AMENDED  
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