

ENGROSSED SENATE
BILL NO. 395

BY: WRIGHT, FRANKLIN, PIERCE,
HENDRICK, FAIR, COLE (Tom),
FORD and GUSTAFSON of the
SENATE

and

STEIDLEY of the HOUSE

AN ACT RELATING TO CHILDREN; AMENDING 10 O.S. 1981,
SECTION 1125, AS AMENDED BY SECTION 10, CHAPTER
363, O.S.L. 1989 (10 O.S. SUPP. 1990, SECTION
1125), WHICH RELATES TO JUVENILE RECORDS; MAKING
CERTAIN RECORDS PUBLIC WITHOUT COURT ORDER;
MODIFYING STATUTORY REFERENCE; MAKING CERTAIN
RECORDS CONFIDENTIAL; PROVIDING EXCEPTION;
AUTHORIZING CERTAIN ACCESS WITHOUT COURT ORDER;
ALLOWING THE COURT TO RELEASE RECORDS; AUTHORIZING
CENTRAL REPOSITORY FOR RECORDS; ALLOWING CERTAIN
PERSONS TO HAVE ACCESS TO RECORDS; PROVIDING FOR
CORRECTION OF RECORDS; AUTHORIZING DELINQUENCY
TRIALS TO BE OPEN TO THE PUBLIC; PROVIDING FOR
SECOND OR SUBSEQUENT FELONY ARREST TO BE PUBLIC;
DEFINING TERMS; AUTHORIZING PROCEDURE TO SEAL
CERTAIN RECORDS; STATING CONDITIONS FOR SEALING
RECORDS; AUTHORIZING COURT TO UNSEAL RECORDS FOR
CAUSE; PROVIDING FOR CERTAIN EXAMINATION OR
INSPECTION OF RECORDS; PROVIDING PROCEDURE FOR
CHALLENGING ACCURACY OF RECORDS; AUTHORIZING ACCESS
TO INFORMATION FOR RESEARCH FOR CERTAIN PURPOSES;
PROVIDING FOR RELEASE OF RECORDS BETWEEN JUVENILE

JUSTICE OR CARE AGENCIES; PROVIDING EXCEPTION;
STATING PENALTY FOR VIOLATION; PROVIDING FOR
EXPUNGEMENT OF RECORDS; DIRECTING JUVENILE JUSTICE
AND CARE AGENCIES TO DEVELOP PROCEDURES FOR ROUTINE
DESTRUCTION OF RECORDS; EXEMPTING THE DEPARTMENT OF
PUBLIC SAFETY FROM THE PROVISIONS OF THIS ACT;
CONSTRUING PROVISIONS OF THIS ACT; PROVIDING FOR
CODIFICATION; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 10 O.S. 1981, Section 1125, as amended by Section 10, Chapter 363, O.S.L. 1989 (10 O.S. Supp. 1990, Section 1125), is amended to read as follows:

Section 1125. The court shall make and keep records of all cases brought before it. Such records shall be open to public inspection only by order of the court to persons having a legitimate interest therein, except second and subsequent felony adjudications or convictions shall be open to the public without order of the court and that all records of proceedings in adoption cases and all papers and books relating thereto shall remain confidential as provided by law. The court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required. Nothing in this section shall be construed to prohibit inspection by any person who is entitled to inspect such records pursuant to any provision of ~~Title 10 of the Oklahoma Statutes~~ this title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1507 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The following records are confidential and shall not be open to the general public except as permitted by this act:

1. Juvenile court records, which include both legal and social records;

2. Juvenile social service, child protective service agency or multidisciplinary team records, whether contained in court files or in agency files. This shall include all records made by any public or private agency or institution that now has or has had the child or the child's family under its custody, care or supervision;

3. Juvenile probation agency records, whether contained in court files or in probation agency files;

4. Juvenile parole agency records, whether contained in court files or in parole agency files;

5. Juvenile prosecuting attorney records relating to juvenile cases; and

6. Juvenile law enforcement records, including fingerprints and photographs.

B. Access to the records listed in subsection A of this section is permitted without court order for official use to the following:

1. All courts;

2. All probation or parole agencies;

3. All attorneys general, prosecutors or district attorneys;

4. All social service or protective service agencies or multidisciplinary teams;

5. All law enforcement agencies;

6. All schools attended by the minor;

7. All persons, agencies or institutions that have responsibility for the custody, care, control or treatment of the minor; and

8. The Department of Corrections.

C. The juvenile court may issue an order releasing juvenile records to any person, agency or institution asserting a legitimate interest in a case or in the proceedings of the juvenile court.

D. Juvenile records may be sent to a central repository, which may be computerized. The central repository may be accessed by all agencies and organizations listed in subsection B of this section.

E. The juvenile, the juvenile's parents and guardians and the juvenile's attorney may have access to the legal records maintained on the juvenile that are in the possession of the juvenile court without court order. The juvenile's attorney may have access to the social records maintained on the juvenile that are in the possession of the juvenile court and to the records listed in subsection A of this section for use in the legal representation of the juvenile. The juvenile on whom records are maintained may petition the court to correct any information that is incorrect.

F. Second and subsequent delinquency felony trials or court proceedings may be open to the public. Any information heard by a person in attendance at the delinquency trial or court proceedings shall not be construed to be confidential, however, no legal records, social records or other written information shall be provided to the public except as provided by the provisions of this act.

G. Second and subsequent felony arrest and disposition records shall be open to the public.

H. As used in this act:

1. "Legal records" means petitions, dockets, motions, findings, orders and other papers filed with the court other than social records.

2. "Social records" means social studies and medical, psychological, clinical or other treatment reports or studies filed with the court.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1508 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon motion to the court by any person previously subject to this act or such person's parents or guardian, and upon reasonable notice to all interested parties including the victim, if any, the court may seal all records of any juvenile justice or care agency in the case under the following conditions:

1. Three years have elapsed from the later of:

- a. the final discharge of such person from the supervision of any agency charged with supervising juvenile offenders, or
- b. the date of an order of the court, and

2. No court or criminal proceeding is pending against such person;

3. No proceeding is pending which involves the establishment of a diversion agreement with the person; and

4. The juvenile has never been convicted of or adjudicated delinquent for any of the following:

- a. murder,
- b. kidnapping for purposes of extortion,
- c. robbery with a dangerous weapon,
- d. rape in the first degree,
- e. use of firearm or other offensive weapon while committing a felony,
- f. arson in the first degree,
- g. burglary with explosives,
- h. shooting with intent to kill,
- i. manslaughter in the first degree,
- j. nonconsensual sodomy, or

k. manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance.

B. Upon motion by any interested party for good cause, and notice to the juvenile and his parents or guardian, the court may order any record unsealed or order access to information within sealed records.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1509 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Upon motion to the court and reasonable notice to all interested parties, any person who reasonably believes that he is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may move the court for an order authorizing that person to inspect such records. The court shall grant the motion to examine records unless it finds that in the best interest of justice or of such person the records or parts of them should remain confidential.

B. Upon motion to the court and reasonable notice to all interested parties, any person who reasonably believes that he is included in the records of a juvenile justice or care agency may challenge the accuracy of any information concerning such person in the record or challenge the agency's continued possession of the record. If the court grants the motion, it shall order the record or information corrected or destroyed.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1510 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment, or to individuals or agencies engaged in legitimate research for educational, scientific,

or public purposes. This includes records sealed pursuant to Section 3 of this act.

B. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the record or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents or guardians will remain confidential.

C. Except as otherwise provided in this section, records retained or produced by any juvenile justice or care agency may be released to other participants in the juvenile justice or care system and to the adult criminal justice system unless the court explicitly orders otherwise.

D. Violation of any provision of this section shall, upon conviction, be deemed a misdemeanor.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1511 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. As used in this act, "expunge a record" means to destroy the record or file of the juvenile.

B. In the event a delinquency proceeding against a juvenile is terminated in favor of such juvenile, all juvenile justice and care agencies shall expunge all records other than the official court file of a juvenile in connection with a given case and not make them available to any person or public or private agency, unless any interested party files a written motion, with not less than eight (8) days notice to such juvenile, and at the hearing on the motion demonstrates to the court that the interests of justice require that such records not be expunged.

C. For the purposes of this section, a delinquency proceeding shall be considered terminated in favor of a juvenile if:

1. The petition is withdrawn;
2. No petition has been filed within the applicable period of limitations;
3. The petition is dismissed; or
4. The juvenile has not been diverted or charged with any offense within twelve months from the date the juvenile completes a diversion agreement.

D. Every juvenile justice or care agency shall develop procedures for the routine destruction of all expunged records other than the official court file.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1512 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Whenever a record is sealed and remains sealed or is expunged, with respect to the matter in which the record was sealed or expunged, the proceedings in the case shall be treated as if they never occurred, and the person the subject of the record and his parent or guardian may inform any person or organization including employers, banks, insurance companies, credit companies, and schools that he was not taken into custody, did not appear before the court, did not enter into any diversion agreement, or was not adjudicated delinquent.

B. Any agency shall reply to any inquiry concerning sealed records that records are confidential and that no information can be given about the existence or nonexistence of records concerning an individual. The court shall authorize a person the subject of sealed records to inspect such records only upon such person's request.

C. The Department of Public Safety shall, in its discretion, be exempt from any or all of the provisions of this act for records of a juvenile relating to adjudication or diversion for violations pursuant to Section 11-902 of Title 47 of the Oklahoma Statutes.

D. Nothing in this section may be construed to prevent the victim or members of the victim's family from divulging the identity of the alleged or proven juvenile offender or his family when necessary in a civil proceeding, or to limit the use of a prior adjudication or diversion when otherwise permissible under state or federal law.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 11th day of March, 1991.

President of the Senate

Passed the House of Representatives the ____ day of _____, 1991.

Speaker of the House of Representatives