

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

☐ FLOOR AMENDMENT

No. _____

☐ COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend House Bill No. 1234, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Sykes

Sykes-TEK-FS-Req#3660
4/25/2018 4:57 PM

(Floor Amendments Only) Date and Time Filed: _____

☐ Untimely

☐ Amendment Cycle Extended

☐ Secondary Amendment

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

FLOOR SUBSTITUTE
FOR ENGROSSED

HOUSE BILL NO. 1234

By: Osburn (Mike) of the House

and

Sykes of the Senate

FLOOR SUBSTITUTE

[juvenile judicial proceedings - destruction of
court records - repealer - effective date]

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 2-6-108, as
amended by Section 19, Chapter 404, O.S.L. 2013 (10A O.S. Supp.
2017, Section 2-6-108), is amended to read as follows:

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

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

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

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

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

4 (2) notice to the court by the Office of Juvenile

5 Affairs or a juvenile bureau of final discharge

6 of such person from the supervision of the Office

7 of Juvenile Affairs or juvenile bureau, and

8 b. the person has not been found guilty of or admitted to

9 the commission of a subsequent criminal offense in

10 either a juvenile or adult proceeding, and

11 c. no juvenile or adult proceeding for a criminal offense

12 is pending;

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

14 a. the case has been dismissed, or

15 b. no petition has been filed pending fulfillment of

16 conditions of a voluntary probation, or

17 c. a petition has been filed but no adjudication has

18 occurred pending the fulfillment of conditions of a

19 preadjudicatory probation;

20 3. When a juvenile participates in a court-approved alternative
21 diversion program for first-time offenders 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; or

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

5 a. the juvenile presents satisfactory evidence to the
6 court that the juvenile has successfully completed the
7 program, and

8 b. the court dismisses the case at the conclusion of the
9 deferral period.

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

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

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

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

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

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

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

3 1. In subsequent cases against the same child pursuant to this
4 title;

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

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

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

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

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

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

18 G. Any person or agency having a legitimate interest in a
19 delinquency case or proceeding may petition the court for an order
20 unsealing a juvenile court record. Upon the filing of a petition to
21 unseal any juvenile court record, the court shall set a date for a
22 hearing and shall provide thirty (30) days of notice to all
23 interested parties. The hearing may be closed at the discretion of
24 the court. If, after a hearing, the court determines that there is

1 any reason enumerated in subsection F of this section and it is
2 necessary for the protection of a legitimate public or private
3 interest to unseal the record, the court shall order the record
4 unsealed.

5 ~~H. Any record ordered to be sealed pursuant to this section, if~~
6 ~~not unsealed within ten (10) years of the order, shall be~~
7 ~~obliterated or destroyed at the end of the ten year period.~~

8 SECTION 2. 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.

24

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.~~

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

17 ~~L.~~ K. Nothing herein shall prohibit the introduction of
18 evidence regarding actions sealed pursuant to the provisions of this
19 section at any hearing or trial for purposes of impeaching the
20 credibility of a witness or as evidence of character testimony
21 pursuant to Section 2608 of Title 12 of the Oklahoma Statutes.

22 ~~M.~~ L. A person who has attained eighteen (18) years of age or
23 older may petition the district or municipal court in which the
24 juvenile court record is located for an order to expunge all or any

1 part of the record pertaining to matters involving truancy provided
2 the person has met the criteria set forth in paragraphs 2 through 4
3 of subsection A of this section. The petition shall be reviewed by
4 the district or municipal judge with primary responsibility over the
5 juvenile court docket.

6 SECTION 3. AMENDATORY 20 O.S. 2011, Section 1005, is
7 amended to read as follows:

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

~~electronic data or other nonjudicial entries. The judicial records
subject to disposal or destruction shall be:~~

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

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

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

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

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

1 ~~b. all probate cases after a twenty-year period has~~
2 ~~elapsed since any pleading has been filed or any~~
3 ~~action taken in the case;~~

4 ~~3. Actions brought for money judgment only in which a dismissal~~
5 ~~or release and satisfaction has been filed for more than one (1)~~
6 ~~year;~~

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

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

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

14 ~~5. Felony criminal records of unadjudicated cases and~~
15 ~~adjudicated cases:~~

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

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

22 ~~c. felony criminal records of adjudicated cases, where~~
23 ~~the sentence imposed was death, life without parole,~~
24 ~~or life, after a fifty-year period has elapsed since~~

1 ~~any pleading has been filed or any action taken in the~~
2 ~~case;~~

3 ~~6. Misdemeanor records of unadjudicated cases and adjudicated~~
4 ~~cases:~~

5 ~~a. misdemeanor cases that have been dismissed and no~~
6 ~~pleading or any action taken in the case for more than~~
7 ~~one (1) year,~~

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

11 ~~7. Juvenile cases. This shall include, but not be limited to,~~
12 ~~cases filed concerning delinquents, children in need of supervision,~~
13 ~~deprived children, children in need of treatment, children in need~~
14 ~~of shelter, and other related juvenile filings:~~

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

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

21 ~~B. The All paper judicial records of any civil, criminal or~~
22 ~~juvenile case, any exhibits related to such case and the appearance~~
23 ~~docket books or sheets on which they are entered, prior to their~~
24 ~~disposal or destruction, shall be stored and preserved on at least~~

1 two microfilm records, optical ~~disks~~, discs or other appropriate
2 medium as determined by the court clerk, one of which shall be
3 placed in the Archives and Records Division of the Oklahoma
4 Department of Libraries or in a bank or other appropriate local
5 depository and the other shall be available for public use in the
6 court clerk's office. The copy in the Department of Libraries or
7 other depository shall be available for replacement in case of
8 functional failure of the one available for public use. The cost of
9 the storage medium and equipment for viewing and copying shall be
10 paid out of the court fund, upon approval by the Chief Justice of
11 the Supreme Court. Records reproduced from microfilm, optical ~~disk~~,
12 ~~and disc or~~ other media produced pursuant to the provisions of this
13 section shall be received in evidence and have the same legal
14 efficacy as the original.

15 ~~C. Traffic cases. The court clerk of each district court shall~~
16 ~~destroy the judicial records of traffic cases and the appearance~~
17 ~~docket books or sheets on which they are entered after a five year~~
18 ~~period has elapsed since any pleading has been filed or any action~~
19 ~~taken in the case, except in the case of a conviction for driving~~
20 ~~under the influence of intoxicating liquor or any narcotic drug,~~
21 ~~which records shall be destroyed after a ten-year period has elapsed~~
22 ~~since any pleading has been filed or any action taken in the case.~~

23 ~~D. Records of criminal property cases brought pursuant to~~
24 ~~Section 1321 et seq. of Title 22 of the Oklahoma Statutes shall be~~

1 ~~subject to disposal or destruction after a two-year period has~~
2 ~~elapsed since any pleading has been filed or any action taken in the~~
3 ~~case.~~

4 B. All paper judicial records of any civil, criminal or
5 juvenile case, any exhibits related to such case and the appearance
6 docket books or sheets on which they are entered, that have been
7 stored and preserved pursuant to subsection A of this section, shall
8 be subject to disposal or destruction after a ten-year period has
9 elapsed since any pleading has been filed or any action taken in the
10 case; provided, however, records of domestic relations cases that
11 involve a minor shall not be subject to disposal or destruction
12 until five (5) years after the date the minor reaches the age of
13 majority. Notice of records eligible for disposal or destruction
14 shall be provided to the Offices of the District Attorney and Public
15 Defender, if applicable. Additionally, notice shall be published by
16 the court clerk on the OSCN website and one time in a newspaper of
17 general circulation in the county or counties of the judicial
18 district. If any interested person submits an objection in writing
19 to the court clerk to the disposal or destruction of any paper
20 judicial records within sixty (60) days after service of notice, the
21 presiding judge of the judicial district shall set a public hearing
22 to approve or disapprove the disposal or destruction, in total or in
23 part, of any paper judicial records eligible for disposal or
24 destruction pursuant to this section.

1 SECTION 4. REPEALER 20 O.S. 2011, Sections 1005.1, 1006
2 and 1008, are hereby repealed.

3 SECTION 5. This act shall become effective November 1, 2018.

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5 56-2-3660 TEK 4/25/2018 4:57:53 PM

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