

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR

HOUSE BILL NO. 1685

By: Larason

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10 O.S. 1991, Sections 1125.1 and 1125.2, which relate to confidential records; providing for inspection, release, disclosure, correction or expungement of certain records; requiring notice to certain persons; exempting certain persons from certain production requirements; adding to list of persons and entities eligible to obtain certain records without court order; making certain restrictions on the release of certain records; specifying release and disclosure of certain records of Department of Human Services to certain persons; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1125.1, is amended to read as follows:

Section 1125.1 A. Except as provided by this section and except as otherwise specifically provided by state and federal laws, the following records are confidential and shall not be open to the general public or inspected or their contents disclosed:

1. Juvenile court records;
2. Agency records;
3. District attorney's records;
4. Law enforcement records;
5. Nondirectory education records;
6. Social records.

B. Except as authorized by Sections ~~9~~ 620.6 and 1125 through ~~14~~ 1125.4 of this ~~act~~ title and except as otherwise specifically provided by state and federal laws pertaining to the confidentiality of records and information and the inspection, release, disclosure, correction or expungement of such

information, including but not limited to state and federal laws pertaining to education records, medical records, drug or alcohol treatment records, law enforcement, or social service records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the court.

C. An order of the court authorizing the inspection, release, disclosure, correction or expungement of confidential records shall be entered by the court only after a review of the records by the court and a determination by the court, with due regard for the confidentiality of the records and the privacy of persons identified in the records, that a compelling reason exists and such inspection, release or disclosure is necessary for the protection of a legitimate public or private interest.

1. Any order authorizing the disclosure, release or inspection of said records pursuant to this subsection may be conditioned on such terms and restrictions as the court deems necessary and appropriate.

2. Upon the filing of a petition for an order of the court pursuant to this section, the court shall set a date for a hearing and shall provide for reasonable notice to ~~all interested parties~~ the agency holding the records and the person who is the subject of the record if said person is eighteen (18) years of age or older or to the parents of a child less than age eighteen (18) who is the subject of the record, to the attorneys, if any, of such person, child or parents and any other interested party as ordered by the court. The hearing may be closed at the court's discretion.

3. The Department of Human Services shall not be required to produce confidential records or information listed in subsection A of this section pursuant to a subpoena duces tecum issued in a divorce or custody action except upon the filing of a petition as required by this subsection.

D. Any agency or person may seek an order from the juvenile court prohibiting the release of information subject to disclosure without an order of the court pursuant to Sections ~~9~~ 620.6 and

1125 through ~~14~~ 1125.4 of this ~~act~~ title. The court may, for good cause shown, prohibit the release of such information or authorize release of the information upon such conditions as the court deems necessary and appropriate.

E. In accordance with the provisions of the Serious and Habitual Juvenile Offender Act and Section ~~14~~ 620.6 of this ~~act~~ title:

1. Information included in the records listed in subsection A of this section may be entered in and maintained in the Juvenile Justice Information System and other automated information systems related to services to children and youth; and

2. Said information systems may be accessed by participating agencies as defined by subsection B of Section ~~9~~ 1125 of this ~~act~~ title.

F. Nothing in Sections ~~9~~ 620.6 and 1125 through ~~14~~ 1125.4 of this ~~act~~ title shall be construed as:

1. Authorizing the inspection of records or the disclosure of information contained in records relating to the provision of benefits or services funded, in whole or in part, with federal funds, except in accord with federal statutes and regulations governing the receipt or use of such funds;

2. Authorizing the disclosure of information required to be kept confidential by Sections 55.1, 57, 60.17 or 60.29 of this title;

3. Abrogating any privilege, including the attorney-client privilege, or affecting any limitation on such privilege found in any other statutes;

4. Limiting or otherwise affecting access of parties to a juvenile proceeding to records filed with or submitted to the court;

5. Limiting or otherwise affecting access of agencies to information subject to disclosure, review, or inspection by contract or as a condition for the receipt of public funds or participation in any program administered by the agency;

6. Prohibiting the Department of Human Services from summarizing the outcome of an investigation to the person who

reported a known or suspected instance of child abuse or neglect;  
and

7. Prohibiting the person or agency conducting a preliminary inquiry, relating to an alleged delinquent act as authorized by Section 1103 of this title, from providing information as to the disposition of the matter by the district attorney to the person or agency which referred the matter, including whether a petition was filed or an alternative action taken and the basis for such and the terms of any agreement entered into by the child for payment of restitution, including community services.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1125.2, is amended to read as follows:

Section 1125.2 A. Juvenile court records may be inspected, and their contents shall be disclosed, without a court order to the following:

1. The court having the child currently before it in any proceeding pursuant to Title 10 of the Oklahoma Statutes, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and court-appointed special advocates, ~~and members;~~

2. Members of review boards established pursuant to Sections ~~1050.2~~ 1115.2, 1116.2 and, 1116.6 and 1150.2 of this title. The information which may be inspected without a court order pursuant to this section shall include but may not be limited to:

- a. psychological and medical records,
- b. placement history and information, including the names and addresses of foster parents,
- c. family assessments,
- d. treatment or service plans, and
- e. school records;

~~2.~~ 3. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to Title 10 of the Oklahoma Statutes or the prosecution of crimes against children;

~~3.~~ 4. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of Title 10 of the Oklahoma Statutes or representing a child pursuant to subsection B of Section 846 of Title 21 of the Oklahoma Statutes. Said attorney may also access other records listed in subsection A of Section ~~10~~ 1125.1 of this ~~act~~ title for use in the legal representation of the child;

~~4.~~ 5. Employees of juvenile bureaus established by Section 1201 of Title 10 of the Oklahoma Statutes in the course of their official duties pursuant to Title 10 of the Oklahoma Statutes, and employees of the Department of Human Services in the course of their official duties pursuant to Title 10 and Title 56 of the Oklahoma Statutes;

~~5.~~ 6. Employees of a law enforcement agency in the course of their official duties pertaining to: ~~a.~~ investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody, ~~or b.;~~

7. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this ~~subparagraph~~ paragraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation; provided, records pertaining to any alleged or adjudicated abuse or neglect of the person shall not be inspected or disclosed;

~~6.~~ 8. The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;

~~7.~~ 9. The Department of Human Services or other public or private agency or individual having court-ordered custody or custody pursuant to Department of Human Services placement of the child who is the subject of the record; ~~and~~

~~8.~~ 10. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child;

11. A federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-603, and the Oklahoma Indian Child Welfare Act; provided such Indian tribe, in the course of its official duties, is:

- a. investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody, or
- b. providing services to or for the benefit of a child including but not limited to protective, emergency, social and medical services.

The records that are to be provided to Indian tribes under this subsection shall include all case records, reports and documents as defined in Section 1125 of this title; and

12. Multidisciplinary teams designated by the Department of Human Services investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of a report.

B. In accordance with the rules adopted for such purpose pursuant to the Serious and Habitual Juvenile Offender Act and Section ~~14~~ 620.6 of this ~~act~~ title, the records listed in subsection A of Section ~~10~~ 1125.1 of this ~~act~~ title may be inspected and their contents disclosed without a court order to the following:

1. Participating agencies as defined by Section ~~9~~ 1125 of this ~~act~~ title;

~~2. Multidisciplinary teams designated by the Department of Human Services, court-appointed special advocates and members of review boards appointed pursuant to Sections 1050.2, 1116.2 and 1116.6 of this title;~~

~~3.~~ The following, provided that the inspection of records and disclosure authorized by this paragraph ~~may~~ shall be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure:

- a. pursuant to the provisions of Title 10 of the Oklahoma Statutes, a person, agency, hospital or clinic authorized or directed by the court or the Department of Human Services to care for, treat, examine, evaluate or supervise a child or to treat, examine, or evaluate the parent, legal guardian or other adult person living in the home of the child,
- b. a legally recognized school that is not a participating agency in which the child who is the subject of the record is currently enrolled, and
- c. individuals or agencies engaged in legitimate research for educational, scientific or public purposes or for the purpose of an audit authorized by law. No information identifying the subjects of the records shall be made available or disclosed unless it is essential to the research or audit purpose; and

~~4.~~ 3. The chairman of any standing or special committee of the Legislature where a subpoena, authorized by law, has been issued by the committee requesting the records.

C. Records and their contents disclosed without an order of the court as provided by this section shall remain confidential. The use of such information shall be limited to the purposes for which disclosure is authorized. It shall be unlawful and a misdemeanor for any person to furnish any record or disclose any information contained therein for commercial, political or any other unauthorized purpose.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1125.2A of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Department of Human Services agency records pertaining to a child may be inspected and their contents disclosed without a court order to the following:

1. The court having the child currently before it in any proceeding pursuant to Title 10 of the Oklahoma Statutes, any district court or tribal court to which such proceedings may be

transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, court-appointed special advocates, and members of review boards established pursuant to Section 1150.2 of this title;

2. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to Title 10 of the Oklahoma Statutes or the prosecution of crimes against children;

3. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of Title 10 of the Oklahoma Statutes or representing a child pursuant to subsection B of Section 846 of Title 21 of the Oklahoma Statutes. Said attorney may also access other records listed in subsection A of Section 1125.1 of this title for use in the legal representation of the child;

4. Employees of juvenile bureaus established by Section 1201 of Title 10 of the Oklahoma Statutes in the course of their official duties pursuant to Title 10 of the Oklahoma Statutes;

5. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state or recognized tribe in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;

6. Employees of a law enforcement agency in the course of their official duties pertaining to the investigation of a crime committed or alleged to have been committed by a person under eighteen (18) years of age. Records or information disclosed pursuant to this subparagraph may consist of summaries or may be limited to the information or records necessary for the purpose of the investigation; provided, records pertaining to any alleged or adjudicated abuse or neglect of the person shall not be inspected or disclosed;

7. The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of this title;

8. Members of multidisciplinary teams designated by the Department of Human Services, investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of the report;

9. A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

10. Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision or other services to a child who is the subject of a report or record of delinquency, child abuse or neglect, or other adjudicatory category, provided the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure; and

11. Any Indian tribe or state or county child protective services or child welfare agency providing for or supervising the diagnosis, care, treatment, supervision or other services provided such child.

B. Nothing in this section shall be construed as prohibiting the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment, protection or supervision of a child alleged to be abused or neglected.

SECTION 4. This act shall become effective September 1, 1993.

44-1-6620

KSM