STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2618 By: Johnson (Rob)

AS INTRODUCED

An Act relating to crimes and punishments; amending 21 O.S. 1991, Section 846, as last amended by Section 4, Chapter 208, O.S.L. 1993 (21 O.S. Supp. 1993, Section 846), which relates to child abuse reports; requiring child abuse reports relating to certain infants born to mothers with substance abuse problems; and providing an effective date.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 846, as last amended by Section 4, Chapter 208, O.S.L. 1993 (21 O.S. Supp. 1993, Section 846), is amended to read as follows:

Section 846. A. 1. Every:

a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years,

b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,

c. teacher of any child under the age of eighteen (18) years, and

d. other person

having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual abuse, or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance <u>or in a condition which the physician or surgeon has reason to believe was caused by the mother exposing the child to harmful substances such as intoxicating liquors or controlled dangerous substances</u> shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred.

3. Every physician or surgeon making a report of abuse or neglect as required by this subsection or examining a child to determine the likelihood of abuse, sexual abuse, or neglect and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the examination or the examination on which the report was based and any other clinical notes or records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse or neglect in the case.

B. It shall be a misdemeanor for any person to knowingly and willfully fail to promptly report any incident as provided in this section. If the report is not made in writing in the first instance, it shall be reduced to writing by the maker thereof as

soon as may be after it is initially made by telephone or otherwise and shall contain the names and addresses of the child and his parents or other persons responsible for his care, the child's age, the nature and extent of the child's injuries, including any evidence of previous injuries, the nature and extent of the child's dependence on a controlled dangerous substance and any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

C. 1. The county office receiving any report as provided in this section shall investigate said report in accordance with priority guidelines established by the Department of Human Services and if the county office finds evidence of abuse and neglect forward its findings to the district attorney's office in the county wherein the suspected injury occurred together with its recommendation as to disposition. In addition, a copy of the findings shall be sent to the Child Welfare Division of the Department of Human Services for the purposes set forth in subsection D of this section.

2. Whenever, after a preliminary inquiry or investigation, the Department of Human Services determines that an alleged abuse or neglect of a child was:

a. perpetrated by someone other than a person responsible for the child's health and welfare, and

b. does not appear to be attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child,

the Department shall immediately verbally notify an appropriate local law enforcement agency for the purpose of conducting a possible criminal investigation. The verbal notification to the local law enforcement agency shall be followed by written referral. After making the referral, the Department shall not be responsible

for further investigation of the case unless notice is received from the law enforcement agency as provided by paragraph 3 of this subsection. The Department of Human Services shall promulgate rules and regulations for the implementation of the provisions of this subsection. Said rules and regulations shall include but not be limited to provision for adequate and appropriate inquiry or investigation by the Department prior to notification of a local law enforcement agency.

3. Any law enforcement agency receiving a referral as provided in this subsection shall provide the Department of Human Services' local child welfare office with a copy of the report of its investigation resulting from a referral from the Department. Whenever, in the course of a criminal investigation related to child abuse or neglect, a law enforcement agency determines that there is cause to believe that the alleged abuse or neglect was perpetrated by a person responsible for the health and welfare of the child or is attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child, the law enforcement agency shall immediately verbally contact the local child welfare office for the purpose of an investigation by that office. The verbal notification to the local child welfare office shall be followed by a written referral.

D. The Child Welfare Division of the Department of Human Services shall be responsible for maintaining a permanent central registry, suitably cross-indexed, of all such reported findings. Any information contained in the central registry shall be available to any county office and to any district attorney's office or public law enforcement agency investigating a report of suspected child abuse or neglect. The Department of Human Services may promulgate rules and regulations in furtherance of the provisions of this subsection.

E. 1. All records concerning child abuse shall be confidential and shall be open to inspection only to persons duly authorized by the state or United States in connection with the performance of their official duties.

2. It shall be unlawful and a misdemeanor for the Commission, or any employee working under the direction of the Department of Human Services, any other public officer or employee, or any court-appointed special advocate to furnish or permit to be taken off of the records any information therein contained for commercial, political or any other unauthorized purpose.

F. 1. Nothing in this section shall be construed to mean a child is abused or neglected for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a child, pursuant to Section 1107 of Title 10 of the Oklahoma Statutes, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

3. Nothing contained in this subsection shall be construed to exempt or prohibit any person from reporting any suspected child abuse or neglect pursuant to subsection A of this section.

G. 1. In every case filed under Section 843 of this title, the judge of the district court shall appoint an attorney-at-law to appear for and represent a child who is the alleged subject of child abuse in such case. The attorney may be allowed a reasonable fee for such services to be paid from the court fund to be fixed by the district court. The attorney shall be given access to all reports relevant to the case and to any reports of examination of the

child's parents or other custodian made pursuant to this section. The attorney shall be charged with the representation of the child's best interests. To that end, he shall make such further investigation that he deems necessary to ascertain the facts, to interview witnesses, examine and cross-examine witnesses at the preliminary hearing and trial, make recommendations to the court and participate further in the proceedings to the degree appropriate for adequately representing the child.

2. A court-appointed special advocate as defined by Section 1109 of Title 10 of the Oklahoma Statutes may be appointed to represent a child who is the alleged subject of child abuse or neglect. The court-appointed special advocate shall be given access to all reports relevant to the case and to any reports of examination of the child's parents or other custodian made pursuant to this section.

3. At such time as the information maintained by the registry provided for by subsection D of this section is indexed by perpetrator and the necessary and appropriate due process procedures are established by the Department of Human Services, a court-appointed special advocate organization, in accordance with the policies and rules of the Department, may utilize the registry for the purpose of completing background screenings of volunteers with the organization.

SECTION 2. This act shall become effective September 1, 1994.

44-2-8643 MCD