

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 384

By: Brown of the Senate

and

Boyd (Laura) of the
House

(children and crimes and punishments - criminal history
and investigation - effective date)

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

"(children - amending 9 sections in Title 10 - child care
facilities - criminal investigations - effective
date)

SECTION 1. AMENDATORY 10 O.S. 1991, Section 404.1, as
amended by Section 4, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1994,
Section 404.1), is amended to read as follows:

Section 404.1 A. The owner or administrator of a child care
facility, other than a foster family home or a day care center,
providing full-time care or twenty-four-hour supervised care shall
arrange, prior to employment, for a criminal history investigation
conducted by the Oklahoma State Bureau of Investigation for an
applicant for employment.

B. Every owner or administrator of a day care center and a family day care home shall arrange, prior to employment, for a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for an applicant for employment and for any adult residing in a family day care home.

C. A conviction for a crime shall not be an absolute bar to employment, but shall be considered in relation to specific employment duties and responsibilities.

D. Information received pursuant to this section by an owner or administrator of a child care facility or a day care center shall be maintained in a confidential manner, in a file that is separate from employment records, and may be transmitted to the Department of Human Services for child care facility licensing purposes. Whenever an applicant is subsequently employed by ~~said~~ the owner or administrator of a child care facility or a day care center, said such information shall not be made a part of that individual's personnel records; provided, however, the information may be released to another child care facility or day care center in response to a request from an owner or administrator of a child care facility or day care center who is considering the individual for employment in a position that requires direct contact with children. Information to be covered by this section shall include, but not be limited to, information received by an owner or administrator pursuant to the criminal history investigation conducted by the Oklahoma State Bureau of Investigation, and any other information relevant to the individual's ability to perform tasks that require direct contact with children.

E. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall include a search of Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act, Section 581 et seq. of Title 57 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 406, as amended by Section 6, Chapter 122, O.S.L. 1993 (10 O.S. Supp. 1994, Section 406), is amended to read as follows:

Section 406. A. The Department of Human Services shall have authority at any reasonable time to investigate and examine the conditions of any child care facility in which a licensee hereunder receives and maintains children, and shall have authority at any time to require the facility to provide information pertaining to children in its care.

B. 1. The State Department of Health may visit any licensee at the request of the Department to advise on matters affecting the health of children and to inspect the sanitation of the buildings used for their care.

2. The State Fire Marshal may visit any licensee at the request of the Department to advise on matters affecting the safety of children and to inspect the condition of the buildings used for their care.

C. 1. Upon receipt of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act, Section 401 et seq. of this title, or any licensing standard promulgated by the Department, the Department shall conduct a full investigation. If upon investigation, it is determined that there are reasonable grounds to believe that a facility is in violation of the Oklahoma Child Care Facilities Licensing Act or of any standard or rule promulgated pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, ~~Section 401 et seq. of this title,~~ the Department shall ~~give written notice to the alleged violator specifying the cause of~~ document the complaint and ~~require the facility to submit a plan for correcting~~ plans to correct the violations ~~within a specified period of time.~~ When the Department determines that the violation has a direct impact on the health, safety or well-being of

one or more of the children cared for by the facility, the Department shall require immediate correction of the violation.

2. The notice shall include notice that failure to correct the violations can result in the revocation of the license of the facility or the filing of an injunction pursuant to Section 409 of this title, or both.

3. If the facility refuses to correct the violation or fails to complete the plan of correction, the Department may initiate proceedings to revoke the license of the facility, request an injunction, or both.

D. Upon the completion of the investigation of a complaint against any child care facility alleging a violation of the provisions of the Oklahoma Child Care Facilities Licensing Act or any licensing standard promulgated by the Department, the Department shall clearly designate its findings on the first page of the report of the investigation. The findings shall state whether the complaint was substantiated or unsubstantiated.

E. Information obtained by the Department or Division from any licensee regarding children or their parents or other relatives shall be deemed confidential and privileged communications and shall be properly safeguarded and shall not be accessible to anyone except as herein provided unless upon order of a court of competent jurisdiction.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1104.2, as last amended by Section 32, Chapter 290, O.S.L. 1994 (10 O.S. Supp. 1994, Section 1104.2), is amended to read as follows:

Section 1104.2 A. Any person sixteen (16) or seventeen (17) years of age who is charged with murder, kidnapping, robbery with a dangerous weapon, robbery in the first degree, rape in the first degree, rape by instrumentation, use of firearm or other offensive weapon while committing a felony, arson in the first degree, burglary with explosives, burglary in the first or second degree

after three or more adjudications for committing either burglary in the first degree or burglary in the second degree, shooting with intent to kill, discharging a firearm, crossbow or other weapon from a vehicle pursuant to subsection B of Section 652 of Title 21 of the Oklahoma Statutes, intimidating a witness, manslaughter in the first degree, sodomy, trafficking in illegal drugs, manufacturing, distributing, dispensing, or possessing with intent to manufacture, distribute, or dispense a controlled dangerous substance, or assault and battery with a deadly weapon, shall be considered as an adult.

B. Any person thirteen (13), fourteen (14) or fifteen (15) years of age who is charged with murder in the first degree shall be considered as an adult.

C. Upon the arrest and detention, such accused person shall have all the statutory and constitutional rights and protections of an adult accused of a crime, but shall be detained in a jail cell or ward entirely separate from prisoners who are eighteen (18) years of age or over.

D. 1. Upon the filing of an information against such accused person, a warrant shall be issued which shall set forth the rights of the accused person, and the rights of the parents, guardian or next friend of the accused person to be present at the preliminary hearing, to have an attorney present and to make application for certification of such accused person as a child to the juvenile division of the district court. The warrant shall be personally served together with a certified copy of the information on the accused person and on a custodial parent, guardian or next friend of the accused person.

2. When personal service of a custodial parent, guardian or next friend of the accused person cannot be effected, service may be made by certified mail to such person's last-known address, requesting a return receipt from the addressee only. If delivery is refused, notice may be given by mailing the warrant and a copy of

the information on the accused person by regular first class mail to the address where the person to be notified refused delivery of the notice sent by certified mail. Where the address of a custodial parent, guardian or next friend is not known, or if the mailed warrant and copy of the information on the accused person is returned for any reason other than refusal of the addressee to accept delivery, after a distinct and meaningful search of all reasonably available sources to ascertain the whereabouts of a custodial parent, guardian or next friend has been conducted, the court may order that notice of the hearing be given by publication one time in a newspaper of general circulation in the county. In addition, the court may order other means of service of notice that the court deems advisable or in the interests of justice.

3. Before service by publication is ordered, the court shall conduct an inquiry to determine whether a distinct and meaningful search has been made of all reasonably available sources to ascertain the whereabouts of any party for whom notice by publication is sought.

E. The accused person shall file a motion for certification as a child before the start of the criminal preliminary hearing. Upon the filing of such motion, the complete juvenile record of the accused shall be made available to the district attorney and the accused person.

At the conclusion of the state's case at the criminal preliminary hearing, the accused person may offer evidence to support the motion for certification as a child.

The court shall rule on the certification motion of the accused person before ruling on whether to bind the accused over for trial. When ruling on the certification motion of the accused person, the court shall give consideration to the following guidelines, listed in order of importance:

1. Whether the alleged offense was committed in an aggressive, violent, premeditated or willful manner;

2. Whether the offense was against persons or property, greater weight being given for retaining the accused person within the adult criminal system for offenses against persons, especially if personal injury resulted;

3. The record and past history of the accused person, including previous contacts with law enforcement agencies and juvenile or criminal courts, prior periods of probation and commitments to juvenile institutions; and

4. The prospects for adequate protection of the public if the accused person is processed through the juvenile system.

The court, in its decision on the certification motion of the accused person, need not detail responses to each of the above considerations, but shall state that the court has considered each of the guidelines in reaching its decision.

F. Upon completion of the criminal preliminary hearing, if the accused person is certified as a child to the juvenile division of the district court, then all adult court records relative to the accused person and this charge shall be expunged and any mention of the accused person shall be removed from public record.

G. An order certifying a person as a child or denying the request for certification as a child pursuant to subsection F of this section shall be a final order, appealable when entered.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1125, is amended to read as follows:

Section 1125. A. The court shall make and keep records of all cases brought before it. The court shall devise and cause to be printed such forms for social and legal records and such other papers as may be required.

B. As used in this title:

1. "Records" shall include but not be limited to written or printed documents, papers, logs, reports, files, case notes, films, photographs, audio or visual tape recordings, and shall include information entered into and maintained in an automated or computerized information system;

2. "Juvenile court record" means legal and social records other than adoption records, including but not limited to agency, law enforcement and district attorney's records, filed with the court that are related to a child who is the subject of a court proceeding pursuant to the provisions of ~~Title 10 of the Oklahoma Statutes~~ this title;

3. "Agency record" means records prepared, obtained or maintained by a public or private agency with regard to a child who is or has been under its care, custody or supervision or to a family member or other person living in the home of such child and shall include but not be limited to:

- a. any study, plan, recommendation, assessment or report made or authorized to be made by such agency for the purpose of determining or describing the history, diagnosis, custody, condition, care or treatment of such child, or
- b. any records made in the course of any investigation or inquiry conducted by an agency to determine whether a child is or may be a deprived child, a delinquent child, a child in need of supervision or a child in need of treatment;

4. "District attorney's records" means any records prepared or obtained by an office of a district attorney relating to juvenile cases and any records prepared or obtained for the prosecution of crimes against children that constitute a legal or social record of a child as defined by this section;

5. "Law enforcement records" means any contact, incident or similar reports, arrest records, disposition records, detention records, fingerprints, or photographs related to a child and shall include but not be limited to reports of investigations or inquiries conducted by a law enforcement agency to determine whether a child is or may be subject to the provisions of this title as a deprived child, a delinquent child, a child in need ~~of~~ of supervision or a child in need of treatment. Law enforcement records pertaining to juveniles shall be maintained separately from records pertaining to adults;

6. "Nondirectory education records" means any records maintained by a public or private school, including a vocational-technical school, regarding a child who is or has been a student at the school which are categorized as private or confidential records pursuant to the federal Family Educational Rights and Privacy Act of 1974 and any rules promulgated pursuant to said act;

7. "Legal record" means any petition, docket, motion, finding, order, judgment, pleading, paper or other document, other than social records, filed with the court;

8. "Social record" means social studies and medical, psychological, clinical or other treatment reports or studies, educational records and agency records other than legal records filed with the court;

9. "Participating agency" means any public or private agency that has entered into a contract or an interagency agreement under the Interlocal Cooperation Act in accordance with the rules and guidelines adopted pursuant to Section ~~14~~ 620.6 of this ~~act~~ title or the Serious and Habitual Juvenile Offender Act for the purpose of accessing and sharing information necessary for the care, treatment, and supervision of children and youth; and

10. "Child protection system" means public and private agencies, medical personnel, courts, law enforcement agencies and

legal, education and social service professionals with responsibilities related to child abuse and neglect pursuant to Section of this act.

SECTION 5. AMENDATORY 10 O.S. 1991, Section 1125.1, as amended by Section 1, Chapter 306, O.S.L. 1993 (10 O.S. Supp. 1994, 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. The limitation of subsection A of this section shall not apply to statistical information and information of a general nature obtained pursuant to the provisions of this act.

C. 1. The confidentiality restrictions required by subsection A of this section for juvenile court records shall not apply:

- a. upon the certification of a juvenile pursuant to Section 1112 of this title,
- b. upon the charging or certification of a juvenile pursuant to Section 1104.2 of this title,
- c. to a violation, by a child fourteen (14) or more years of age, of any provision of Title 47 of the Oklahoma Statutes or of any city ordinance or county resolution which relates to the regulation of traffic on the roads, highways or streets or the operation of self-propelled or nonself-propelled vehicles of any kind in this state,

- d. to a juvenile who has been previously adjudicated delinquent and who is subsequently arrested or charged with any crime or delinquent act, or
- e. to a juvenile adjudicated a delinquent for committing a delinquent act which, if committed by an adult, would be a crime against the person or a crime involving a dangerous weapon.

2. The court having jurisdiction shall note on the juvenile court record of such juvenile offenders that said record is no longer confidential.

D. When a delinquent child has escaped or run away from a training school or other institutional placement for delinquents, the name and description of the child may be released to the public by the agency having custody of the child as necessary and appropriate for the protection of the public and the apprehension of the child.

E. Except as authorized by Sections 620.6 and 1125 through 1125.4 of this 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.~~ F. 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 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.~~ G. 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 620.6 and 1125 through 1125.4 of this 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.~~ H. In accordance with the provisions of the Serious and Habitual Juvenile Offender Act and Section 620.6 of this 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 1125 of this title.~~

~~F. Nothing~~ or as otherwise authorized by this section.

I. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and information of a general nature for research purposes. Such authorization shall be in writing and state specifically the type of information which may be reviewed.

Each person granted permission to inspect confidential reports and records for research purposes shall present a notarized statement to the court stating that the names of juveniles, parents and such other persons required by the court to be confidential will remain confidential.

J. Except as otherwise specifically provided or authorized, nothing in Sections 620.6 and 1125 through 1125.4 of this 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 but not limited to 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 but not limited to community services.

SECTION 6. AMENDATORY 10 O.S. 1991, Section 1125.2, as last amended by Section 2, Chapter 306, O.S.L. 1993 (10 O.S. Supp. 1994, 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 upon showing of proper credentials:

1. The court having the child currently before it in any proceeding pursuant to this title, 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;

2. Members of review boards established pursuant to Sections 1115.2, 1116.2, 1116.6 and 1150.2 of this title and child protection teams. In addition to juvenile court records, members of such

review boards may inspect, without a court order, information including but 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;

3. A district attorney and the employees of an office of a district attorney in the course of their official duties pursuant to this title or the prosecution of crimes against children;

4. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title 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;

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

6. Employees of a law enforcement agency 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;

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 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;

8. Persons and agencies authorized by Section 1125.2C of this title;

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

~~9.~~ 10. 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;

~~10.~~ 11. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child; and

~~11.~~ 12. 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 and is the biological child of a member of an Indian tribe pursuant to the Federal Indian Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child Welfare Act, Section 40 et seq. of this title; 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, or
- c. the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the

subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

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.

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

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

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

- a. pursuant to the provisions of this title, 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~~ an 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

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 7. AMENDATORY Section 3, Chapter 306, O.S.L. 1993 (10 O.S. Supp. 1994, Section 1125.2A), is amended to read as follows:

Section 1125.2A 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 upon showing of proper credentials:

1. The court having the child currently before it in any proceeding pursuant to ~~Title 10 of the Oklahoma Statutes~~ this title, 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~~ the Child Death Review Board;

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~~ this title 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~~ this title 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~~ this title in the course of their official duties pursuant to ~~Title 10 of the Oklahoma Statutes~~ this title;

5. Employees of a law enforcement agency of this or another state and employees of a child protective service of another state or federally recognized Indian 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. Persons and agencies authorized by Section 1125.2C of this title;

9. Members of multidisciplinary teams or child protection 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.~~ 10. A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected;

~~10.~~ 11. 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;

~~11.~~ 12. Any federally recognized 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; ~~and~~

~~12.~~ 13. The parents of the child who is the subject of such records; provided that records pertaining to any alleged or adjudicated abuse or neglect of said child shall not be inspected or disclosed pursuant to this paragraph; and

14. Any person or agency for research purposes, if all of the following conditions are met:

- a. the person or agency conducting such research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Department of Human Services to conduct such research, and
- b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to such documents by unauthorized persons is prohibited; that no identifying information is included in documents

generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed.

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 8. AMENDATORY 10 O.S. 1991, Section 1125.3, is amended to read as follows:

Section 1125.3 ~~A. The confidentiality restrictions otherwise provided by law for juvenile court records shall not apply:~~

~~1. Upon the adjudication of a juvenile offender for a serious act or for habitual criminal acts as defined in Section 2 of this act. The court having jurisdiction shall note on the juvenile court record of such juvenile offenders that said record is no longer confidential;~~

~~2. Upon the certification of a juvenile pursuant to Section 1112 of Title 10 of the Oklahoma Statutes; or~~

~~3. Upon the charging or certification of a juvenile pursuant to Section 1104.2 of Title 10 of the Oklahoma Statutes.~~

~~B. The confidentiality restrictions provided by law for law enforcement records pertaining to juveniles shall not apply to the arrest records of juveniles defined by Section 2 of this act as serious offenders or habitual juvenile offenders or to juveniles charged or certified pursuant to Section 1104.2 of Title 10 of the Oklahoma Statutes or certified pursuant to Section 1112 of Title 10 of the Oklahoma Statutes.~~

~~C.~~ Except as provided by this ~~subsection~~ section, the fingerprinting of persons under the age of eighteen (18) shall be as otherwise provided by law for the fingerprinting of adults.

1. When a child is detained or arrested in the course of an investigation of a criminal offense and:

- a. a comparison of the fingerprints of the child with fingerprints found during the investigation of the offense is negative, or
- b. a court finds that the child did not commit the alleged offense,

all law enforcement records of the arrest and, if applicable, juvenile court and agency records shall be amended to reflect said facts immediately after the comparison or court finding;

2. Fingerprints obtained pursuant to this ~~subsection~~ section shall be retained in a central state depository and in a local depository maintained by a duly constituted law enforcement agency;

3. Fingerprints obtained and maintained pursuant to this ~~subsection~~ section may be used only by law enforcement officers for comparison purposes in connection with the investigation of a crime or to establish identity in instances of death, serious illness, runaways, or emergency; and

4. If a child is reported to a law enforcement agency as a missing child or a custodial parent, legal guardian or legal custodian of a child requests the issuance of a fingerprint card pursuant to the provisions of the Oklahoma Minor Identification Act, the provisions of the Oklahoma Minor Identification Act shall apply. With the voluntary and informed consent of the parent, legal guardian or legal custodian of the child, fingerprints obtained and maintained pursuant to the Oklahoma Minor Identification Act may be used by law enforcement officers as provided by paragraph 3 of this ~~subsection~~ section.

~~D. When a delinquent child has escaped or run away from a training school or other institutional placement for delinquents, the name and description of the child may be released to the public by the agency having custody of the child as necessary and appropriate for the protection of the public and the apprehension of the child.~~

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1125.2C of Title 10, unless there is created a duplication in numbering, reads as follows:

A. When rules pertaining to the federal Child Abuse Prevention and Treatment Act which provide for expanded disclosure and sharing of records and reports with persons and entities who have a reason for the records and reports to protect children from child abuse and neglect are promulgated by the Administration of Children, Youth and Families of the federal Department of Health and Human Services, the Oklahoma Commission for Human Services shall promulgate emergency and permanent rules which will provide for disclosure of all relevant information to any federal, state or local governmental entity, or any agent of such entity, with a predetermined need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect. Rules shall provide for the disclosure of all relevant information concerning reports of child abuse and neglect to the persons or entities authorized by law to receive such information. The entities include, but are not limited to:

1. The agencies or organizations, including but not limited to designated multidisciplinary case consultation teams, child protection teams, law enforcement entities, and child protective services agencies, mandated by federal or state law to receive and investigate reports of known and suspected child abuse and neglect;

2. The state protection and advocacy agency as authorized by the Developmental Disabilities Act, Pub. L. 101-496, 42 U.S.C. 6042 (a) (2) (B);

3. A person legally authorized to place a child in protective custody when the person has before him a child whom he reasonably suspects may be abused or neglected and the person requires the information in the report or record in order to determine whether to place the child in protective custody;

4. The public prosecuting attorney representing any child protective services agency when relevant and necessary to a specified pending case;

5. The parties to a court or grand jury proceeding in which information in the records is legally relevant and necessary for determination of an issue before such court, provided that prior to such disclosure the judge has reviewed the records, in camera, has determined the relevancy and necessity of such disclosure, and has limited disclosure to such legally relevant information under an appropriate protective order;

6. A child named in the report or record alleged to have been abused or neglected, or such child's legal guardian, or legal representative, including an attorney, guardian ad litem, or Court Appointed Special Advocate (CASA) appointed to represent the child's interests in a pending case;

7. The coroner or medical examiner when such individual is determining the cause of death of a child;

8. A child fatality review team authorized by law;

9. Any of the authorized entities in other states or military enclaves or Indian tribal organizations where the child, family or person about whom a report has been made may be found;

10. Prospective foster and adoptive parents prior to placing a child in their care; and

11. Persons and entities with a legal duty to protect children from child abuse and neglect when carrying out background or employment and volunteer-related screening of current and prospective employees or volunteers who are or may become engaged in contact with children.

B. All regulations in this section are equally applicable to and between states. Additionally, disclosure to an Indian tribal organization or military enclave may be made only when the entity

agrees to the restrictions on redisclosure specified in subsection G of this section.

C. Nothing in this section shall be interpreted to:

1. Prevent a properly constituted authority from summarizing the outcome of an investigation to the person or official who reported the known or suspected instance of child abuse or neglect; or

2. Affect the state's laws or procedures concerning the confidentiality of its criminal court or its criminal justice system.

D. The Department of Health and Human Services and the Comptroller General of the United States or any of their representatives shall have access to records, as required under 45 CFR 74.24.

E. Disclosure of child protective services information to the media shall be limited to confirmation of factual details with respect to how the case was handled that do not violate the privacy rights of the child and the child's parents or guardians. Further confidential information may be released to the media only with the express written permission of the individuals involved, or their representatives.

F. When bona fide research or evaluation projects are being conducted by a person, agency or organization not authorized as an agent of the state, information identifying the individuals named in a report or record shall be omitted. If identifying information is essential to the research or evaluation, prior written approval shall be obtained from the court or from the Department of Human Services. In addition, consent of the child's representative shall be obtained before release of identifying information pertaining to the child, and prior written consent of the parents or guardian or their representative shall be obtained before release of identifying information pertaining to them.

G. Authorized recipients of child protective services information must maintain confidentiality and prevent redisclosure of information to other persons or entities, unless written authorization is first obtained by the authority that originally disclosed the information. This authorization must be obtained on a case-by-case basis.

H. The person or agency making child protective services information available to authorized recipients shall withhold the identity of the person reporting known or suspected child abuse and neglect as well as the identity of any other person whose life or safety may be endangered by such disclosure.

SECTION 10. This act shall become effective November 1, 1995."

Passed the House of Representatives the 12th day of April, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate