

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 2012

By: Cozort

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Sections 1125, 1125.2, as last amended by Section 2, Chapter 306, O.S.L. 1993, and Section 3, Chapter 306, O.S.L. 1993 (10 O.S. Supp. 1994, Sections 1125.2 and 1125.2A), which relate to children's records; modifying definitions; adding to list of persons and entities eligible to receive confidential information; providing for the forwarding of certain abuse records; prohibiting certain release; providing penalty; providing for mandatory release of certain records; making certain actions unlawful; providing for confidentiality; 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, 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;

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 ~~or~~ 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.

SECTION 2. 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 for official use 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. 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. The school administrator or principal, school nurse or school counselor of any school in which the child is enrolled;

9. Properly constituted authorities including but not limited to multidisciplinary case consultation teams, multidisciplinary child protection teams and child advocacy centers investigating a report of known or suspected child abuse or neglect, or determining a course of treatment and disposition for the child and family;

10. Physicians, or other health or mental health professionals or substance abuse program services providers, or an agency

authorized by a properly constituted authority to diagnose, care for, treat or supervise:

- a. a child whom such service provider reasonably suspects may be abused or neglected, or
- b. a member of the child's family, or
- c. a person who allegedly abused or neglected the child;

11. Properly constituted agencies responsible for the supervision of an alleged perpetrator of child abuse and neglect;

12. Persons, agencies, or organizations engaged in a bona fide research or evaluation project who have been authorized to conduct such research or evaluation as an agent of the state. If a person, agency or organization conducting research has not been so authorized, information identifying the individuals named in a report or record shall be omitted. If such a person or entity wishes to conduct in-depth examination of specific individuals, or longitudinal investigations which require identifying information that is essential to the research or evaluation, prior written permission shall be obtained from the child or the child's representative for release of information pertaining to such child, and prior written consent of the parents or guardian for release of information pertaining to the parents or guardian. The Department of Human Services shall also give prior written approval if the child is subject to the Department;

13. State or local officials responsible for administration of the child protective services system, or for oversight of the enabling or appropriating legislation, or for compilation of statistical information on abused and neglected children, their families or those who commit, or allegedly commit, child abuse and neglect, who need such information in the course of carrying out their official functions;

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

~~9.~~ 15. 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.~~ 16. The child who is the subject of the record and the parents, legal guardian, legal custodian or foster parent of said child; and

~~11.~~ 17. 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 records listed in subsection A of Section 1125.1 of this title 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 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 3. 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 for official use 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. The school administrator or principal, school nurse or school counselor of any school in which the child is enrolled;

9. Properly constituted authorities including but not limited to multidisciplinary case consultation teams, multidisciplinary child protection teams and child advocacy centers investigating a report of known or suspected child abuse or neglect, or determining a course of treatment and disposition for the child and family;

10. Physicians, mental health professionals or substance abuse program services providers, or an agency authorized by a properly constituted authority to diagnose, care for, treat or supervise:

a. a child whom such service provider reasonably suspects may be abused or neglected, or

b. a member of the child's family, or

c. a person who allegedly abused or neglected the child;

11. Properly constituted agencies responsible for the supervision of an alleged perpetrator of child abuse and neglect;

12. Persons, agencies, or organizations engaged in a bona fide research or evaluation project who have been authorized to conduct such research or evaluation as an agent of the state. If a person, agency or organization conducting research has not been so authorized, information identifying the individuals named in a report or record shall be omitted. If such a person or entity wishes to conduct in-depth examination of specific individuals, or longitudinal investigations which require identifying information that is essential to the research or evaluation, prior written permission shall be obtained from the child or child's representative for release of information pertaining to such child, and prior written consent of the parents or guardian for release of information pertaining to the parents or guardian. The Department of Human Services shall also give prior written approval;

13. State or local officials responsible for administration of the child protective services system, or for oversight of the enabling or appropriating legislation, or for compilation of statistical information on abused and neglected children, their families or those who commit, or allegedly commit, child abuse and neglect, who need such information in the course of carrying out their official functions;

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

~~10.~~ 16. 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.~~ 17. 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.~~ 18. 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.

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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1125.5 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall forward to the school principal of the school in which a child is enrolled a summary of any report of the Department confirming sexual abuse or severe physical abuse of the child. Provided, the Department shall not release data that would identify the person who made the initial child abuse report, or who cooperated in a subsequent investigation, other than an employee of the Department, unless a court of competent jurisdiction orders release of the information for good cause shown.

B. The school principal shall forward a summary of any report confirming sexual abuse or severe physical abuse of the child received from the Department whenever a child transfers from one school district to another, and shall notify the Department of the child's new school, and address, if known.

C. This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of child abuse if the disclosure would be prohibited by any federal law applicable to the reports or records relevant to the reports of child abuse.

D. It shall be unlawful and a misdemeanor for the Commission for Human Services, or any employee working under the direction of the Department of Human Services, teacher, counselor, nurse, 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.

E. Each school district in this state shall establish procedures which will identify school employees who may have access to child abuse summaries or records.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1125.6 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. While the Legislature reaffirms its belief that juvenile criminal records, in general, should be confidential, it is the intent of the Legislature in enacting this section to provide for a limited exception to that confidentiality in cases involving serious acts of violence. Further, it is the intent of the Legislature that even in these selected cases the dissemination of juvenile criminal records be as limited as possible, consistent with the need to work with a student in an appropriate fashion, and the need to protect potentially vulnerable school staff and other students over whom the school staff exercises direct supervision and responsibility.

B. A school district police or security department may provide written notice to the superintendent of the school district that a minor enrolled in a public school maintained by that school district, in kindergarten or any of grades 1 to 12, inclusive, has been found by a court of competent jurisdiction to have illegally used, sold, or possessed a controlled substance as defined in Title 63 of the Oklahoma Statutes or to have committed any crime listed in Section 1104.2 of Title 10 of the Oklahoma Statutes. The information may be expeditiously transmitted to any teacher, counselor, or administrator with direct supervisory or disciplinary responsibility over the minor, whom the superintendent, after consultation with the principal at the school of attendance, believes needs this information to work with the student in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

C. Any information received by a teacher, counselor, or administrator pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated by the teacher, counselor, or administrator. An intentional violation of the confidentiality provisions of this section, upon conviction thereof, shall be a misdemeanor, and shall be punishable by a fine not to exceed Five Hundred Dollars (\$500.00).

SECTION 6. This act shall become effective November 1, 1995.

45-1-5153 KSM