

SHORT TITLE: Crimes and punishments; providing for child abuse and neglect registry; Oklahoma Commission on Children and Youth to maintain index; codification; effective date; emergency.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 364

By: Cain of the Senate

and

Seikel of the House

AS INTRODUCED

An Act relating to crimes and punishments; providing for establishment and maintenance of certain registry of findings of child abuse or neglect; requiring certain information to be available to certain entities; providing for promulgation of rules; directing the Oklahoma Commission on Children and Youth to maintain certain index; specifying method of identification of certain persons; requiring certain state agencies to forward certain information to the Oklahoma Commission on Children and Youth; providing for notice to be given to the alleged perpetrator; providing for contents of notice; providing time limit for certain request; providing for request for amendment of a confirmed finding within certain time frame; providing for a request for an administrative hearing within certain time limit; specifying results of failure to submit certain request; providing for delay of certain notice; requiring certain proof by the Department of Human Services; allowing reinvestigation report to be considered complete evidence; allowing admissibility of relevant evidence subject to rebuttal; providing for protection of child

witnesses; requiring closed hearing and confidentiality; requiring the Oklahoma Commission on Children and Youth to make certain inquiry; requiring the Oklahoma Commission on Children and Youth to furnish certain information; providing for promulgation of rules by the Oklahoma Commission on Children and Youth; construing act; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 846.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

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

B. 1. The Oklahoma Commission on Children and Youth shall maintain an index of perpetrators of serious physical abuse of children and child sexual abuse or exploitation, identifying those persons who have committed such abuse by:

- a. a confirmed finding by the Department of Human Services of serious physical abuse of children or child sexual abuse or exploitation which was not contested by the alleged perpetrator as provided in this section,
- b. a final order sustaining a finding of the Department of Human Services following an administrative hearing as provided in this section,
- c. a final notice of discharge issued to a permanent classified state employee which contains an allegation of serious physical abuse of children or child sexual abuse or exploitation, if no appeal of the discharge was timely filed pursuant to Section 840-6.5 of Title 74 of the Oklahoma Statutes,
- d. a final order issued by the Oklahoma Merit Protection Commission dismissing an appeal by a permanent classified state employee discharged for serious physical abuse of children or child sexual abuse or exploitation or sustaining an allegation of such conduct,
- e. a judicial finding, if the alleged perpetrator contested or could have contested the finding, or
- f. a conviction, or entry of a plea of guilty or nolo contendere, when the perpetrator has been charged with a violation of Sections 843, 888, 1021, 1021.2, 1021.3, 1087, 1088, 1114, 1119 or 1123 of Title 21 of the Oklahoma Statutes.

2. Any state agency which has issued a final, unappealed notice of discharge as described in this subsection shall promptly forward such notice to the Oklahoma Commission on Children and Youth. The Oklahoma Merit Protection Commission shall forward any final order as described in this subsection issued by the Oklahoma Merit

Protection Commission to the Oklahoma Commission on Children and Youth. Any court making a finding of serious physical abuse of children or child sexual abuse or exploitation as described in this subsection and any district attorney prosecuting an action which results in a conviction or plea as described in this subsection shall forward the finding, conviction, or plea and such other information as may be necessary for an understanding of the facts upon which the finding, conviction or plea is based, to the Oklahoma Commission on Children and Youth.

C. In the case of a confirmed finding by the Department of Human Services of serious physical abuse of children or child sexual abuse or exploitation, notice shall be given to the alleged perpetrator. The notice shall contain a summary of the evidence supporting the finding and shall advise the recipient of the right to submit a written statement in response to the finding and to request amendment of the finding. The notice shall further advise the recipient of the disclosure of the finding authorized by this section and shall clearly state that failure to request amendment of the finding within thirty (30) days after receipt of the notice shall prevent any further proceedings to contest the finding or any resulting disclosure authorized by this section. If the alleged perpetrator requests an amendment of a confirmed finding, the Department of Human Services may amend the finding to uncertain or unfounded. The Department of Human Services shall respond to the request of the alleged perpetrator for an amendment of a confirmed finding within fifteen (15) days. If the Department of Human Services refuses to amend a confirmed finding, the Department shall forward its finding to the Oklahoma Commission on Children and Youth and the alleged perpetrator shall have the right to an administrative hearing conducted by the Oklahoma Commission on Children and Youth pursuant to Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma

Statutes. A request for an administrative hearing shall be submitted in writing to the Oklahoma Commission on Children and Youth within twenty (20) days after notification by the Department of Human Services of the denial of the requested amendment. Failure to submit a timely request for an administrative hearing as provided in this section shall bar any action by the alleged perpetrator relating to any disclosure authorized by this section. The notice required by this section may be delayed when any administrative or judicial proceeding is pending or reasonably anticipated and the proceeding may result in a finding, final order, conviction, or plea required to be entered on the index of perpetrators of serious physical abuse of children or child sexual abuse or exploitation.

D. At an administrative hearing held pursuant to this section, the Department of Human Services shall prove by a preponderance of the evidence that the alleged perpetrator committed the acts alleged. The investigative report of the Department of Human Services shall be considered competent evidence at the hearing. Relevant evidence of specialized knowledge relating to child abuse shall be admissible, if offered, subject to rebuttal by the alleged perpetrator. Reasonable measures shall be taken when necessary to protect the welfare of child witnesses, including, but not limited to, those measures described in Sections 1147 and 1148 of Title 10 of the Oklahoma Statutes. The hearing shall be closed and all confidential information disclosed for purposes of the hearing shall remain confidential and subject to redisclosure only as authorized by law.

E. On or after October 1, 1995, every operator of a child care facility, as defined in Section 402 of Title 10 of the Oklahoma Statutes, and any person responsible for the selection of court-appointed special advocates shall inquire of the Oklahoma Commission on Children and Youth and the Oklahoma Commission on Children and Youth shall inform the operator or person whether any person who is

actively being considered for employment in a child care facility or for appointment as a court-appointed special advocate is listed on the index of perpetrators of serious physical abuse of children or child sexual abuse or exploitation. The Oklahoma Commission on Children and Youth shall furnish a summary of the facts and circumstances which caused the person who is the subject of the inquiry to be listed on the index, but the summary shall not include any information which identifies or could be reasonably used to identify any individual other than the perpetrator, except as such information has been previously disclosed or authorized for disclosure by a court. The Oklahoma Commission on Children and Youth may promulgate rules in furtherance of the provisions of this subsection.

F. Nothing in this section shall be construed to relieve any operator of a child care facility or other person from any duty to take appropriate action consistent with applicable law for the protection of children. The administrative proceeding required by this section shall not be construed as creating any right not expressly described in this section, including, but not limited to, any right to employment.

SECTION 2. This act shall become effective July 1, 1995.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-1-0250

CJ