STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2837 By: Seikel

COMMITTEE SUBSTITUTE

An Act relating to the Department of Human Services and child abuse; amending Section 11, Chapter 353, O.S.L. 1995, as last amended by Section 126, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7111), which relates to child abuse; establishing a permanent system for maintenance of records relating to child abuse; removing requirements for statewide child abuse central registry; modifying contents; requiring maintaining of certain information; removing certain penalties; requiring confidentiality; establishing a registry of perpetrators of child sexual abuse, serious abuse or serious neglect; providing for contents; providing for reporting of certain notices; requiring notification; providing for contents; providing for request for hearings; authorizing amendments of certain findings; providing for administrative hearings; providing for proceedings; requiring confidentiality; requiring closed hearings; providing for appeals; authorizing certain facilities and agencies access to certain information; providing for a summary; defining terms; providing for civil and criminal immunity; providing for promulgation of rules; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 11, Chapter 353, O.S.L. 1995, as last amended by Section 126, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7111), is amended to read as follows:

Section 7111. A. There is hereby established within the Department of Human Services a ~~statewide central registry for~~ permanent system for maintaining records relating to child abuse, sexual abuse, and neglect made pursuant to the Oklahoma Child Abuse Reporting and Prevention Act. ~~Any additional requirements required by this section that are not already within the existing statewide central registry for child abuse, sexual abuse, and neglect shall be fully implemented by January 1, 1996.~~

B. The Child Welfare Division of the Department of Human Services shall be responsible for maintaining ~~the registry~~ a system, which shall be suitably cross-indexed, of all such reported findings.

C. The ~~central registry~~ records maintained shall contain, but shall not be limited to:

1. All information in the written report required by Section 7103 of this title;

2. A record of the final disposition of the report including services offered and services accepted;

3. The plan for rehabilitative treatment; and

4. ~~The names and identifying data, dates, and circumstances of any persons requesting or receiving information from the registry; and~~

~~5.~~ Any other information which might be helpful in furthering the purposes of this section.

D. Data and information maintained and related to individual cases ~~in the central registry~~ shall be confidential and shall be made available only as authorized by state or federal law.

E. The Commission for Human Services shall promulgate rules governing the availability of such data and information.

F. Rules promulgated by the Commission shall encourage cooperation with other states in exchanging reports in order to effect a national registration system.

G. ~~Any~~ No person ~~employed in the central registry who permits~~ shall allow the data and information ~~stored in the registry~~ maintained to be released ~~without authorization to persons or agencies other than those specified by law shall be guilty of a felony. The fine for a violation of this subsection shall not be more than One Thousand Dollars ($1,000.00)~~ except as authorized by Article V of the Oklahoma Children's Code.

H. Any court or agency records relating to confirmed, ruled out or ~~unconfirmed~~ uncertain reports shall be maintained by the court or agency until otherwise provided by law.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7111.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall maintain a registry of perpetrators of child sexual abuse, serious abuse, or serious neglect identifying those persons who have committed such abuse or neglect as evidenced by:

1. A confirmed finding by the Department of sexual abuse, serious abuse, or serious neglect which was not contested by the alleged perpetrator as provided in this section;

2. A final order sustaining a finding by the Department following an administrative hearing or judicial review as provided in this section;

3. a. A final notice of discharge issued to a permanent classified state employee which contains an allegation of child sexual abuse, serious abuse or serious neglect, if no appeal of the discharge was timely filed pursuant to Section 840-6.5 of Title 74 of the Oklahoma Statutes, or

b. A final order issued by the Oklahoma Merit Protection Commission dismissing an appeal by a permanent classified state employee discharged for child sexual abuse, serious abuse, serious neglect, or sustaining an allegation of such conduct;

4. A judicial finding, if the alleged perpetrator contested or could have contested the findings; or

5. A conviction, or entry of a plea of guilty or nolo contendere, when a minor is the victim and the perpetrator has been charged with a violation of Title 21 of the Oklahoma Statutes or Section 7115 of Title 10 of the Oklahoma Statutes and the crime involved serious abuse, serious neglect or sexual abuse as defined in this section.

B. 1. Any state agency which has issued a final, unappealed notice of discharge as described in this subsection shall promptly forward the notice to the Department of Human Services.

2. The Oklahoma Merit Protection Commission shall forward any final order as described in this subsection issued by the Oklahoma Merit Protection Commission to the Department.

3. Any court making a finding of child sexual abuse, serious abuse or serious neglect and any district attorney prosecuting an action which results in a conviction or plea 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 Department of Human Services.

C. 1. Prior to disclosure of any information for the purposes set forth in subsection F of this section, in the case of a confirmed finding by the Department, which has not been otherwise affirmed by a final notice, order or finding in a state court or administrative proceeding as set forth in this section, the Department shall notify, in writing, the individual named in the record as a perpetrator of the abuse or neglect.

2. The notice shall contain a summary of the evidence supporting a finding and shall advise the recipient to submit a written statement in response to the finding and to request amendment of the finding. The notice shall further advise the recipient that failure to request amendment of the finding within five (5) days after receipt of the notice shall prevent any further proceedings to contest the finding or any resultant disclosure authorized by subsection F of this section.

3. If the recipient requests amendment of a confirmed finding, the Department may amend the finding to uncertain or ruled out. The Department shall respond to such requests within ten (10) days. If the Department refuses to amend its confirmed finding, the recipient shall be advised of the right to an administrative hearing conducted by the Department.

4. A request for an administrative hearing must be submitted within five (5) days after notification of the denial of the requested amendment by the Department. Failure to submit a timely request for an administrative hearing as provided in this section shall bar any action by the recipient to further contest the

finding and any resultant disclosure authorized by subsection F of this section.

5. The notice of the Department required by this section may be delayed when an administrative or judicial proceeding is pending and the proceeding may result in a finding, final order, conviction, or plea required to be entered on the registry. During the period of such delay, the Department shall not disclose information for the purposes set forth in subsection E of this section.

D. 1. At an administrative hearing held pursuant to this section, the Department shall bear the burden of proving, by a preponderance of the evidence, that the Department's finding is not erroneous.

2. The Department's records concerning the finding shall be admissible at the hearing and shall be prima facie proof of the correctness of the Department's finding.

3. Reasonable measures shall be taken when necessary to protect the welfare of any child witness, including, but not limited to, the measures described in Sections 7003-4.2 and 7003-4.3 of Title 10 of the Oklahoma Statutes.

4. The identity of the complainant shall not be disclosed.

5. The hearing shall be closed and all confidential information disclosed for purpose of the hearing shall remain confidential and subject to redisclosure only as authorized by law.

E. 1. Any person aggrieved by the decision of the Department pursuant to this section may, within ten (10) days after the entry of the final order in the administrative hearing, appeal to the district court of the county in which the petitioner resides, by filing with the clerk of the court a verified petition.

2. Notice of such appeal shall be served on the Director of the Department within five (5) days of the date of its filing.

3. The Department shall, within ten (10) days of the service of such notice, file with the clerk of said court, a transcript of the proceedings had before it. The district court shall thereupon

be vested with jurisdiction to review the proceedings of the Department.

4. The filing of the petition for judicial review shall stay the listing of the petitioner's name upon the perpetrator registry and any resultant disclosure. The court shall conduct the review and render its decision within twenty (20) days following filing of the transcript. The petition and records filed shall not be subject to public inspection. The review by the court shall be of the record only and petitioner shall not be entitled to a de novo review. The decision of the court under this subsection shall not be subject to further appeal or review.

F. 1. Beginning January 1, 1999, an owner or operator of a child care facility, as defined in Section 402 of Title 10 of the Oklahoma Statutes, the Department of Human Services, the Office of Juvenile Affairs, and court-appointed special advocates may inquire, in writing, using a signed and notarized release form acceptable to the Department, as to whether a person actively being considered for employment in a child care facility, as a CASA volunteer, or as a contractor with the Department or Office of Juvenile Affairs is listed on the perpetrator registry.

2. The Department shall furnish to the person being considered, written confirmation as to whether they are listed on the perpetrator registry, and if listed, a summary of the facts and circumstances which caused them to be included on such registry.

3. In the case of a confirmed finding by the Department which has not been otherwise affirmed, the Department shall furnish such information only after the time to request an amendment has expired without any such request or the person has made request for amendment pursuant to the procedures set forth in this section, and the Department finding has been affirmed. The summary shall not include any information which does 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.

4. The owner, operator, or agency shall then determine on the basis of the information it has available whether to contract with or hire the applicant for employment or use the volunteer.

G. For purposes of this section:

1. "Serious abuse" means abuse or neglect that resulted in significant injury such as burns, fractures, head, genital or internal injuries; or abuse or neglect that had life-threatening consequences such as failure to thrive conditions, extreme malnutrition or dehydration, medical neglect involving a life-threatening illness or life-threatening conditions caused by impaired abilities of the person responsible for the child resulting from substance abuse, mental illness or other emotional conditions;

2. "Sexual abuse" means rape, incest, lewd or indecent acts or proposals and sexual exploitation, or any sexual activity between the perpetrator and the child for the purpose of sexually stimulating the child or the perpetrator; and

3. "Sexual exploitation" includes allowing or encouraging a child to engage in sexual acts with others, prostitution or in obscene photographs or filming or depicting of a child in a sexual manner, and exposure to adult sexuality such as allowing a child to observe pornography or adult sex acts.

H. The Department and its employees that provide information from the perpetrator registry and any person who receives such information as authorized by this section shall have no civil or criminal liability.

I. The Department shall promulgate rules in furtherance of the provisions of this section.

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.

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