

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2905

By: Boyd (Laura)

AS INTRODUCED

An Act relating to children; amending 10 O.S. 1991, Section 601.1, as last amended by Section 185, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 601.1), which relates to the Oklahoma Commission on Children and Youth; modifying membership of the Commission; providing for attendance reporting; amending 10 O.S. 1991, Section 1119, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7003-8.1), which relates to placement custody; modifying procedures for obtaining criminal history background for certain individuals; defining term; amending 10 O.S. 1991, Section 1125.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 5, Chapter 350, O.S.L. 1997 and Section 3, Chapter 306, O.S.L. 1993, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 9, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Sections 7005-1.2 and 7005-1.4), which relate to court records of children; specifying time period for certain notices; expanding certain information which may be disclosed; providing that

reunification services shall not be provided to parents under certain circumstances; providing for reasonable services for certain parents; requiring permanency hearing within certain time period; providing for certain assessments; 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 601.1, as last amended by Section 185, Chapter 352, O.S.L. 1995 (10 O.S. Supp. 1997, Section 601.1), is amended to read as follows:

Section 601.1 A. There is hereby created the Oklahoma Commission on Children and Youth which shall be composed of sixteen (16) members. The membership shall include:

1. The Director of the Department of Human Services, the State Commissioner of Health, the Commissioner of the Department of Mental Health and Substance Abuse Services, the State Superintendent of Public Instruction, and the Chairman of the SJR 13 Oversight Committee, ~~or their designees. A designee shall be a person knowledgeable regarding programs and services for children and youth provided by the agency the designee represents and shall have authority to act on the Commission for the designating officer;~~

2. The Executive Director of the Office of Juvenile Affairs ~~or a designee. A designee shall be a person knowledgeable regarding programs and services for children and youth provided by the Office of Juvenile Affairs and shall have authority to act on the Commission for the Executive Director of the Office of Juvenile Affairs;~~

3. ~~Five~~ Four members who shall be appointed by the Governor from a list submitted by the governing board of each of the following organizations:

- a. a statewide association of children's institutions and agencies,
- b. ~~a statewide association of youth services,~~
- ~~e.~~ the Oklahoma Bar Association,
- ~~d.~~ c. the Oklahoma District Attorney's Association, and
- ~~e.~~ d. a statewide court-appointed Special Advocate Association;

4. One member appointed by the Governor who shall represent one of the metropolitan juvenile bureaus;

5. One member from the public at large, appointed by the Governor;

6. One member, from the public at large, appointed by the Speaker of the House of Representatives;

7. One member, from the public at large, appointed by the President Pro Tempore of the Senate; ~~and~~

8. One member elected by the Oklahoma Planning and Coordinating Council for Services to Children and Youth as provided by Section 601.8 of this title. Said elected member shall serve a two-year term and may be reelected; and

9. The executive director of the Oklahoma Association of Youth Services.

The appointed members shall have had active experience in services to children and youth, shall serve for a term of two (2) years, and may be reappointed.

B. The Oklahoma Commission on Children and Youth shall report the attendance of the members of the Commission on a monthly basis to the Governor, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, the Chairman of the House

Committee on Community and Family Responsibilities, and the Chairman  
of the Senate Committee on Human Services.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1119, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 11, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7003-8.1), is amended to read as follows:

Section 7003-8.1 A. In placing a child in the custody of an individual or in the custody of a private agency or institution, the court shall, if at all possible, select a person or an agency or institution governed by persons of the same religious faith as that of the parents of the child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child, or, if the religious faith of the child is not ascertainable, then of the faith of either of the parents. It shall be left to the discretion of the judge to place children where their total needs will best be served. Under no circumstances shall a child be placed in the custody of an individual subject to the Oklahoma Sex Offenders Registration Act or an individual who is married to or living with an individual subject to the Oklahoma Sex Offenders Registration Act. No individual that has been convicted of any crime involving domestic abuse or is married to or living with a person convicted of a crime involving domestic abuse shall receive custody of a child unless that person is able to show by clear and convincing evidence that the child will not be at risk by such placement.

B. Prior to placing a child in the custody of an individual, the court shall inquire as to whether the individual has been previously convicted of a felony or a relevant misdemeanor or has any felony or relevant misdemeanor charges pending. Prior to the custody order being entered, the person shall respond by certified affidavit or through sworn testimony to the court and shall provide an Oklahoma criminal history record obtained pursuant to Section

150.9 of Title 74 of the Oklahoma Statutes, ~~or~~ and a local background check obtained from a county sheriff upon payment of Ten Dollars (\$10.00) to the sheriff's office in the county of residence of the individual. For purposes of this subsection, "relevant misdemeanor" may include, but shall not be limited to, assault and battery, alcohol- or drug-related offenses, crimes involving domestic abuse and other offenses deemed relevant by the court.

C. For purposes of this section, the term "individual" shall not include a parent, legal guardian or legal custodian of the child.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1125.1, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 5, Chapter 350, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7005-1.2), is amended to read as follows:

Section 7005-1.2 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 other abstract information obtained pursuant to the provisions of this Code.

C. Except as authorized by Section 620.6 of this title and this article 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. Except as otherwise provided in Section 601.6 of this title, no subpoena or subpoena duces tecum purporting to compel disclosure of such information or record shall be valid.

D. 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. Except for district attorney's records, 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~~ three (3) judicial days' 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) years of age 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.

E. 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 Section 620.6 of this

title and this article. 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.

F. The court may authorize a designated person to review juvenile court confidential reports and records and collect statistical information and other abstract information 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 children, parents and such other persons required by the court to be confidential will remain confidential.

G. Nothing in Section 620.6 of this title and this article 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 papers, records, books or other information relating to the adoption of a child required to be kept confidential. The disclosure of such information shall be governed by the Oklahoma Adoption Act;

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 deprived 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; and

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.

H. The confidential records listed in subsection A of this section may be inspected and their contents disclosed without a court order to a school district in which the child who is the subject of the record is currently enrolled. The inspection of records and disclosure authorized by this subsection may be limited to summaries or to information directly necessary for the purpose of such inspection or disclosure. Upon request by the school district, the agency in possession of the records shall provide the requested information to the school district. Any records disclosed as provided by this subsection shall remain confidential. The use of any information shall be limited to the purposes for which disclosure is authorized.

SECTION 4. AMENDATORY Section 3, Chapter 306, O.S.L. 1993, as renumbered by Section 199, Chapter 352, O.S.L. 1995, and as last amended by Section 9, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7005-1.4), is amended to read as follows:

Section 7005-1.4 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 persons upon showing of proper credentials and pursuant to their lawful duties:

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, postadjudicatory review boards, court-appointed special advocates, and members of the Child Death Review Board;

2. Any district court which has ordered a home study by the Department in an action for divorce, annulment, custody of a child, or appointee of a guardian of a child, or any subsequent proceeding in such actions; however, the Department may limit disclosure in the home study to summaries or to information directly necessary for the purpose of the disclosure.

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;

3. 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 the laws relating to child abuse and neglect. Said attorney may also access other records listed in subsection A of Section 7005-1.2 of this title for use in the legal representation of the child;

4. Employees of juvenile bureaus in the course of their official duties;

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

7. The Office of Juvenile Affairs;

8. Persons and agencies authorized by Section 7005-1.7 of this title;

9. Members of multidisciplinary teams or multidisciplinary personnel 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;

10. A physician who has before him a child whom the physician reasonably suspects may be abused or neglected or any health care or mental health professionals involved in the evaluation or treatment of the child, the child's parents, guardian, custodian or other family members;

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 child abuse or neglect, provided the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure;

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;

13. A parent or guardian 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;

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;

15. A foster parent, with regard to records concerning the social, medical, psychological or educational needs of a child currently placed with that foster parent or of a child being considered for placement with that foster parent;

16. The Governor or to any person the Governor designates, in writing, and any federal official of the United States Department of Health and Human Services;

17. The Oklahoma Health Care Authority;

18. Any member of the Legislature approved by the Speaker of the House of Representatives or the President Pro Tempore of the Senate; and

19. Any person or agency authorized to receive any paper, record, book or other information pursuant to the Oklahoma Adoption Act pertaining to a child who is the subject of an adoption proceeding or the parents, grandparents or relatives of such child.

B. In accordance with the rules adopted for such purpose pursuant to Section 620.6 of this title, records may be inspected and their contents disclosed without a court order to participating agencies.

C. 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.

D. Records and their contents disclosed pursuant to 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 any unauthorized purpose.

E. In cases involving the death or serious injury of a child when a person responsible for the child has been charged by information or indictment with committing a crime resulting in the child's death or serious injury, there shall be a presumption that the best interest of the public will be served by public disclosure of certain information concerning the circumstances of the investigation of the death or serious injury of the child and any other investigations concerning that child, or other children living in the same household.

At any time subsequent to seven (7) days of the date the person responsible for the child has been criminally charged the Department of Human Services, the Oklahoma Commission on Children and Youth, or the district attorney may release the following information to the public:

1. A confirmation that a report has been made concerning the alleged victim or other children living in the same household and whether an investigation has begun;

2. Confirmation as to whether previous reports have been made and the dates thereof, the content of those previous reports, the dates and outcome of any investigations or actions taken by the Department of Human Services in response to any report of child abuse or neglect, and any actions taken by the district attorney after submission of any investigative report;

3. The dates of any judicial proceedings prior to the child's death or serious injury, a summary of each participant's recommendations made at the judicial proceedings, and the rulings of the court.

Any disclosure of information pursuant to this section shall not identify or provide an identifying description of any complainant or reporter of child abuse or neglect, and shall not identify the name of the child victim's siblings or other children living in the same household, the parent or other person responsible for the child or

any other member of the household, other than the person criminally charged.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7003-5.5c of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Reunification services need not be provided to a parent described in this section, when the court finds by clear and convincing evidence that:

1. The whereabouts of the parent is unknown. A finding pursuant to this paragraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in that search;

2. The child or a sibling of the child:

- a. had been previously adjudicated a deprived child pursuant to the Oklahoma Children's Code as a result of physical or sexual abuse,
- b. following the adjudication, the child had been removed from the custody of the parent of the child,
- c. has been returned to the custody of the parent from whom the child had been taken originally, and
- d. is being removed pursuant to the Oklahoma Children's Code, due to additional physical or sexual abuse;

3. The parent of the child has caused the death of another child through abuse;

4. The child has been adjudicated a deprived child pursuant to the Oklahoma Children's Code as a result of severe sexual abuse or the infliction of severe physical harm to the child, a sibling, or a half-sibling by a parent;

5. The parent is not receiving reunification services for a sibling or a half-sibling of the child pursuant to paragraph 2, 3 or 4 of this subsection;

6. The child was conceived by means of the commission of rape or by an act committed outside of this state which if committed in this state would constitute such an offense. This paragraph only applies to the parent who committed the offense or act;

7. The parent of the child willfully abandoned the child, and the court finds that the abandonment itself constituted a serious danger to the child. For purposes of this paragraph, a "serious danger" means that without the intervention of another person or agency, the child would have sustained severe or permanent disability, injury, illness, or death. For purposes of this paragraph, "willful abandonment" shall not be construed as actions taken in good faith by the parent without the intent of placing the child in serious danger;

8. a. The court ordered a permanent plan of adoption, guardianship, or long-term foster care for any siblings or half-siblings of the child because the parent failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent, or

b. The parental rights of a parent over any sibling or half-sibling of the child had been permanently severed and that, according to the findings of the court, this parent has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent;

9. The parent has been convicted of a Schedule S-1, S-2, S-3 or S-4 felony;

10. The parent of the child has a history of extensive, abusive and chronic use of drugs or alcohol and has resisted prior treatment for this problem during a three-year period immediately prior to the filing of the petition which brought that child to the court's

attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by the Oklahoma Children's Code on at least two prior occasions, even through the programs identified were available and accessible;

11. The parent is willing to consent to termination of parental rights; and

12. Reunification is not in the best interests of the child. The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, mental illness or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful.

B. 1. If the parent is incarcerated or institutionalized, the court shall order reasonable services unless the court determines, by clear and convincing evidence, those services would be detrimental to the child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors twelve (12) years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors.

2. Services may include, but shall not be limited to, the following:

- a. maintaining contact between parent and child through collect telephone calls,
- b. transportation services, where appropriate,
- c. visitation services, where appropriate, and

- d. reasonable services to extend family members or foster parents providing care for the child if the services are not detrimental to the child.

3. An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

C. When it is alleged that the parent is incapable of utilizing services due to mental incompetency, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within twelve (12) months.

D. If a court does not order reunification services, it shall conduct a permanency hearing within one hundred twenty (120) days of the dispositional hearing. However, the court shall not schedule a hearing so long as the other parent is being provided reunification services.

E. If the court orders a permanency hearing to be held, it shall direct the Department of Human Services to prepare an assessment regarding the likelihood that the child will be adopted if parental rights are terminated. The assessment shall include:

1. Current search efforts for an absent parent or parents;
2. A review of the amount of and nature of any contact between the child and the parents of the child since the time of placement;
3. An evaluation of the child's medical, developmental, scholastic, mental, and emotional status and an analysis of whether any of the child's characteristics would make it difficult to find a person willing to adopt the child;
4. A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent, guardian or foster parent, to include a social history including screening for criminal records and prior referrals for child abuse if not previously

completed, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship; and

5. The relationship of the child to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the child concerning placement and the adoption or guardianship, unless the child's age or physical, emotional or other condition precludes his or her meaningful response, and if so, a description of the condition.

SECTION 6. This act shall become effective November 1, 1998.

46-2-8018

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