

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 3118

By: Seikel

AS INTRODUCED

An Act relating to children; amending 21 O.S. 1991, Sections 845, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last amended by Section 10, Chapter 386, O.S.L. 1997, and 846, as last amended by Section 3, Chapter 353, O.S.L. 1995, and as renumbered by Section 20, Chapter 353, O.S.L. 1995, Section 6, Chapter 353, O.S.L. 1995, as amended by Section 12, Chapter 200, O.S.L. 1996, Section 7, Chapter 353, O.S.L. 1995, Section 8, Chapter 353, O.S.L. 1995, Section 9, Chapter 353, O.S.L. 1995, as amended by Section 2, Chapter 212, O.S.L. 1996, Section 11, Chapter 353, O.S.L. 1995, as last amended by Section 126, Chapter 133, O.S.L. 1997, Section 14, Chapter 353, O.S.L. 1995, and 21 O.S. 1991, Section 843, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last amended by Section 127, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7102, 7103, 7106, 7107, 7108, 7109, 7111, 7114 and 7115), which relate to the Oklahoma Child Abuse Reporting and Prevention Act; modifying and adding terms; updating and clarifying language; prohibiting certain procedures to relieve any person from certain obligations; requiring

establishment of priority system for investigating child abuse reports; providing for procedures and determination of priority; requiring development of protocols for family assessments; providing for contents; providing procedures; providing for release of certain information for employment purposes; updating language; adding more information to be included in certain notices; providing content; removing certain restrictions for confidential information; amending 10 O.S. 1991, Section 1150.2, as last amended by Section 1, Chapter 223, O.S.L. 1995 (10 O.S. Supp. 1997, Section 1150.2), which relates to the Child Death Review Board; adding to powers and duties; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 21 O.S. 1991, Section 845, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last amended by Section 10, Chapter 386, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7102), is amended to read as follows:

Section 7102.

A. 1. a. It is the policy of this state to provide for the protection of children who have been abused ~~or~~ ~~neglected~~ and who may be further threatened by the conduct of persons responsible for the care and protection of such children.

b. Once any child of a family has been returned to a person named in the petition, a period of supervision by the court of not less than twelve (12) months shall occur prior to dismissal by the court, subject to the availability of funds.

c. Supervision by the Department during this period shall be in accordance with rules promulgated by the Department.

2. It is the policy of this state that in investigating allegations of child abuse ~~and neglect~~, in any necessary removal of a child from the home, in placements of a child required pursuant to the Oklahoma Child Abuse Reporting and Prevention Act ~~or~~ and in any administrative or judicial proceeding held pursuant to the provisions of the Oklahoma Child Abuse Reporting and Prevention Act, the best interests of the child shall be of paramount consideration.

B. As used in the Oklahoma Child Abuse Reporting and Prevention Act:

1. "Abuse ~~and neglect~~" means harm or threatened harm to a child's health or welfare by a person responsible for the child's health or welfare;

2. "Harm or threatened harm to a child's health or welfare" includes but is not limited to nonaccidental:

a. physical or mental injury~~;~~

b. sexual abuse~~;~~

c. sexual exploitation~~;~~ ~~or negligent treatment,~~

d. neglect ~~or maltreatment including but not limited to the failure or omission to provide adequate food, clothing, shelter, or medical care,~~ or

e. protection from harm or threatened harm;

3. "Child" means any person under the age of eighteen (18) years except any person convicted of a crime specified in Section 7306-1.1 of this title or any person who has been certified as an

adult pursuant to Section 7303-4.3 of this title and convicted of a felony;

4. "Person responsible for a child's health or welfare" includes a parent; a legal guardian; custodian; a foster parent; a person eighteen (18) years of age or older with whom the child's parent cohabitates or any other adult residing in the home of the child; an agent or employee of a public or private residential home, institution, facility or day treatment program as defined in Section 175.20 of this title; or an owner, operator, or employee of a child care facility as defined by Section 402 of this title;

5. "Sexual abuse" includes but is not limited to rape, incest and lewd or indecent acts or proposals, as defined by law, ~~by a person responsible for the child's health or welfare;~~

6. "Sexual exploitation" includes but is not limited to allowing, permitting, or encouraging a child to engage in prostitution, as defined by law, ~~by a person responsible for the child's health or welfare~~ or allowing, permitting, encouraging, or engaging in the lewd, obscene, or pornographic photographing, filming, or depicting of a child in those acts as defined by the state law, ~~by a person responsible for the child's health or welfare;~~

7. "Multidisciplinary personnel" means any team established pursuant to Section 7110 of this title of three or more persons who are trained in the prevention, identification, investigation, prosecution and treatment of child physical and sexual abuse cases and who are qualified to facilitate a broad range of interventions and services related to child abuse;

8. "Ruled out" means a report which is determined by a child protective services worker:

- a. to be false,
- b. to be unfounded,
- c. to be inherently improbable,

d. to involve an accidental injury where neglect was not a factor, or

e. as not constituting child abuse or neglect;

9. "Confirmed report" means a report which is determined by a child protective services worker, based upon some credible evidence, to constitute child abuse ~~or neglect~~;

10. "Uncertain report" means a report which is not ruled out by a child protective services worker, but which has inconclusive findings and for which there is insufficient evidence to determine whether child abuse ~~or neglect~~ has occurred;

11. "Child protective services worker" means a person employed by the Department of Human Services with sufficient experience or training as determined by the Department in child abuse prevention and identification;

12. "Department" means the Department of Human Services; ~~and~~

13. "Commission" means the Commission for Human Services; and

14. "Neglect" means failure or omission to provide:

a. the proper or necessary parental care by reason of the faults or habits of the persons responsible for a child's health or welfare,

b. proper or necessary subsistence, medical or surgical care, or other care necessary for the health, morals or well-being of the child, or

c. the special care made necessary by the physical or mental condition of the child.

The term "neglect" also includes a child who is found in a disreputable place or who is permitted to associate with vagrants, or vicious or immoral persons or a child who engages in a dangerous activity or is in a situation dangerous to life or limb or injurious to health or morals of the child or to others.

SECTION 2. AMENDATORY 21 O.S. 1991, Section 846, as last amended by Section 3, Chapter 353, O.S.L. 1995, and as renumbered by

Section 20, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7103), is amended to read as follows:

Section 7103. A. 1. Every:

- a. physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns, examining, attending or treating a child under the age of eighteen (18) years,
- b. registered nurse examining, attending or treating such a child in the absence of a physician or surgeon,
- c. teacher of any child under the age of eighteen (18) years, and
- d. other person

having reason to believe that a child under the age of eighteen (18) years ~~has had physical injury or injuries inflicted upon the child by other than accidental means where the injury appears to have been caused as a result of physical abuse, sexual abuse, or neglect~~ is a victim of abuse, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected ~~injury~~ abuse occurred. Such reports may be made by telephone, in writing, personally or by any other method prescribed by the Department. Any report of abuse ~~or neglect~~ made pursuant to this section shall be made in good faith.

2. Every physician or surgeon, including doctors of medicine, licensed osteopathic physicians, residents and interns, or any other health care professional attending the birth of a child who appears to be a child born in a condition of dependence on a controlled dangerous substance shall promptly report the matter to the county office of the Department of Human Services in the county in which such birth occurred.

3. No privilege or contract shall relieve any person from the requirement of reporting pursuant to this section.

4. The reporting obligations under this section are individual, and no employer, supervisor or administrator shall impede or inhibit the reporting obligations of any employee or other person. No employer, supervisor or administrator of a any employee or other person required to provide information pursuant to this section shall discharge, or in any manner discriminate or retaliate against, ~~any such~~ the employee or other person who in good faith provides such child abuse reports or information, testifies, or is about to testify in any proceeding involving child abuse ~~or neglect~~; provided, that ~~such~~ the person did not perpetrate or inflict such abuse ~~or neglect~~. Any ~~such~~ employer, supervisor or administrator who discharges, discriminates or retaliates against ~~such~~ the employee or other person shall be liable for damages, costs and attorney fees. Internal procedures to facilitate child abuse reporting and ~~apprise~~ inform employers, supervisors and administrators of ~~reports~~ reported suspected child abuse may be established provided that they are not inconsistent with the provisions of this section and that such procedures shall not relieve the employee or such other person from the individual reporting obligations required by this section.

5. Every physician or surgeon making a report of abuse ~~or neglect~~ as required by this subsection or examining a child to determine the likelihood of abuse, ~~sexual abuse, or neglect~~ and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, ~~or~~ and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department of Human Services conducting an investigation of alleged abuse ~~or neglect~~ in the case.

B. If the report is not made in writing in the first instance, it shall be reduced to writing by the Department of Human Services, in accordance with rules promulgated by the Commission for Human Services, as soon as may be after it is initially made by telephone or otherwise and shall contain the following information:

1. The names and addresses of the child and the child's parents or other persons responsible for the child's care;

2. The child's age;

3. The nature and extent of the ~~child's injuries~~ abuse, including any evidence of previous injuries;

4. The nature and extent of the child's dependence on a controlled dangerous substance; and

5. Any other information that the maker of the report believes might be helpful in establishing the cause of the injuries and the identity of the person or persons responsible therefor if such information or any part thereof is known to the person making the report.

C. Any person who knowingly and willfully fails to promptly report any incident as provided in this section may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

D. 1. Any person who knowingly and willfully makes a false report pursuant to the provisions of this section or a report that the person knows lacks factual foundation may be reported by the Department of Human Services to local law enforcement for criminal investigation and, upon conviction thereof, shall be guilty of a misdemeanor.

2. If a court determines that an accusation of child abuse ~~or~~ ~~neglect~~ made during a child custody proceeding is false and the person making the accusation knew it to be false at the time the accusation was made, the court may impose a fine, not to exceed Five

Thousand Dollars (\$5,000.00) and reasonable attorney fees incurred in recovering the sanctions, against the person making the accusation. The remedy provided by this paragraph is in addition to paragraph 1 of this subsection or to any other remedy provided by law.

E. 1. Nothing in this section shall be construed to mean a child is abused ~~or neglected~~ for the sole reason the parent, guardian or person having custody or control of a child, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child.

2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a child, pursuant to the Oklahoma Children's Code, and ordering whatever action may be necessary, including medical treatment, to protect the child's health or welfare.

F. Nothing contained in this section shall be construed to exempt or prohibit any person from reporting any suspected child abuse ~~or neglect~~ pursuant to subsection A of this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 7105.1 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall adopt a priority system for the investigation of child abuse reports received pursuant to the Oklahoma Child Abuse Reporting and Prevention Act. The priority system shall be adopted pursuant to rules promulgated by the Commission for Human Services. The Department shall assign the highest priorities to investigations based on the reported severity and immediacy of the alleged harm to the child.

B. 1. The Department shall develop protocol for providing family assessments in response to:

- a. reports of child abuse which, based on the nature of the report indicates that the severity and immediacy of the alleged abuse to the child does not require more than a preliminary inquiry or investigation. If law enforcement officers are involved in the investigation, they shall provide written agreement to refer the case to family assessment. The reason for the termination of the child abuse investigation process shall be documented in the record,
- b. investigations of reported child abuse which result in an uncertain report, and
- c. investigations of reported child abuse which result in a ruled out report but may include child neglect.

2. In developing protocol for the provision of family assessments and services pursuant to this subsection, the Department shall:

- a. assess any service needs of the family. The assessment of risk and service needs shall be based on information gathered from the family and other sources,
- b. provide services or assist the child and family in obtaining services which are voluntary and time limited unless it is later determined by the Department based on the assessment of risk that there will be a high risk of abuse or neglect if the family refuses to accept the services. The Department shall identify services for families where it is determined that the child is at high risk of future abuse or neglect. The Department shall thoroughly document in the record its attempt to provide voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect to the child. If

the family continues to refuse voluntary services or the child needs to be protected, the Department may commence an investigation,

- c. commence an immediate investigation if at any time during the family assessment or services the Department determines that an investigation is required. The Department staff who have conducted the assessment may remain involved in the provision of services to the child and family,
- d. document, at the time the case is closed, the outcome of the family assessment, any service provided and the removal of risk to the child, if it existed, and
- e. collaborate with the community to identify comprehensive local services and assure access to those services for children and families where there is risk of further abuse or neglect.

SECTION 4. AMENDATORY Section 6, Chapter 353, O.S.L. 1995, as amended by Section 12, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7106), is amended to read as follows:

Section 7106. A. 1. Any county office of the Department of Human Services receiving a child abuse ~~or neglect~~ report as provided in Section 7103 of this title shall promptly investigate said report in accordance with priority guidelines established by the Department of Human Services. ~~The Department may assign priorities to investigations based on the severity and immediacy of the alleged harm to the child. The Department shall adopt the priority system pursuant to rules promulgated by the Commission for Human Services.~~ The primary purpose of the investigation shall be the protection of the child.

2. If an investigation by the Department of Human Services of any report of child abuse shows that the incident reported was the result of the reasonable exercise of parental discipline as defined

in Section 844 of Title 21 of the Oklahoma Statutes, then the investigation will proceed no further. If such incident was the result of the reasonable exercise of parental discipline, all records regarding the incident shall be expunged.

B. As necessary to complete a thorough investigation, the county office or the Department shall determine:

1. The nature, extent and cause of the abuse ~~or neglect~~;
2. The identity of the person responsible for the abuse ~~or neglect~~;
3. The names and conditions of any other children in the home;
4. An evaluation of the parents or persons responsible for the care of the child;
5. The adequacy of the home environment;
6. The relationship of the child to the parents or persons responsible for the care of the child; and
7. All other pertinent data.

C. 1. The investigation shall include a visit to the child's home, unless there is reason to believe that there is an extreme safety risk to the child or worker or it appears that the referral has been made in bad faith, and shall also include an interview with and examination of the subject child. The interview with and examination of the child may be conducted at any reasonable time and at any place, including but not limited to the child's school. It shall be the responsibility of the Department of Human Services to notify the parents of a child who has been interviewed at a school. The investigation may include an interview with the child's parents or any other person responsible for a child's health or welfare and an interview with and examination of any child in the home.

2. The investigation may include a medical, psychological, or psychiatric examination of any child in that home. If admission to the home, school, or any place where the child may be located cannot be obtained, then the district court having jurisdiction, upon

application by the district attorney and upon cause shown, shall order the parents or the persons responsible for the health or welfare of the child, or the person in charge of any place where the child may be located, to allow entrance for the interview, the examination and the investigation. If the parents or person responsible for the child's health or welfare does not consent to a medical, psychological or psychiatric examination of the child that is requested by the county office or the Department, the district court having jurisdiction, upon application by the district attorney and upon cause shown, shall order the examination to be made at the times and places designated by the court.

3. The investigation may include an inquiry into the possibility that the child, a parent or a person responsible for the child's health or welfare has a history of mental illness. If a parent or person responsible for the child's health or welfare does not allow the county office or the Department to have access to mental health records or treatment plans, requested by the county office or the Department, which may relate to the abuse ~~or neglect~~, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, shall by order allow the county office or the Department to have access to the records pursuant to terms and conditions prescribed by the court.

4. a. If the court determines that the parent or person responsible for the child's health or welfare is indigent, the court shall appoint an attorney to represent the parent or person responsible for the child's health or welfare at the hearing to obtain mental health records.

b. A parent or person responsible for the child's health or welfare is entitled to notice and a hearing when the county office or the Department seeks a court

order to allow a medical, psychological or psychiatric examination or access to mental health records.

- c. Access to mental health records does not constitute a waiver of confidentiality.

5. The investigation of sexual abuse or serious physical abuse or both sexual abuse and serious physical abuse shall be conducted, when appropriate and possible, using a multidisciplinary approach.

D. If, before the investigation is complete, the opinion of the child protective services worker is that immediate removal of the child is necessary to protect the child from further abuse ~~or neglect~~, the child protective services worker shall recommend that the child be taken into custody pursuant to the Oklahoma Children's Code.

E. The county office shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the appropriate district attorney's office.

F. ~~1. Whenever, after a~~ Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the preliminary inquiry or investigation, the Department of Human Services ~~determines that an alleged abuse or neglect of a child:~~

~~a. was perpetrated by someone other than a person~~

~~responsible for the child's health and welfare, and~~

~~b. does not appear to be attributable to failure on the~~

~~part of a person responsible for the child's health or welfare to provide protection for the child,~~

~~the Department shall immediately verbally notify an appropriate~~

~~local law enforcement agency for the purpose of conducting a~~

~~possible criminal investigation. The verbal notification to the~~

~~local law enforcement agency shall be followed by written referral.~~

~~After making the referral, the Department shall not be responsible~~

~~for further investigation of the case unless notice is received from~~

~~the law enforcement agency as provided by paragraph 2 of this~~

~~subsection. The Commission for Human Services shall promulgate rules for the implementation of the provisions of this subsection. Such rules shall include but not be limited to provision for adequate and appropriate inquiry or investigation by the Department prior to notification of a local law enforcement agency.~~

~~2. Any law enforcement agency conducting an investigation of alleged child physical abuse or neglect shall provide the local child welfare office of the Department of Human Services with a copy of the report of its investigation.~~

~~3. Whenever, in the course of a criminal investigation related to child abuse or neglect, a law enforcement agency determines that there is cause to believe that the alleged abuse or neglect was perpetrated by a person responsible for the health and welfare of the child or is attributable to failure on the part of a person responsible for the child's health or welfare to provide protection for the child, the law enforcement agency shall immediately contact the county office for the purpose of an investigation by that office. If the notification is verbal, the notification to the county office shall be followed by a written referral of a child abuse report shall comply with Part 1 of Article III of the Oklahoma Children's Code.~~

G. If the Department has reason to believe that a parent of the child or other person may remove the child from the state before the investigation is completed, the Department may request the district attorney to file an application for a temporary restraining order in any district court in the State of Oklahoma without regard to continuing jurisdiction of the child. After a hearing on the application, the court may enter a temporary restraining order prohibiting the parent or other person from removing the child from the state pending completion of the investigation if the court finds that the county office or the Department has probable cause to conduct the investigation.

SECTION 5. AMENDATORY Section 7, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7107), is amended to read as follows:

Section 7107. A. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, the reports required by Section ~~3~~ 7103 of this ~~act~~ title or any other information acquired pursuant to the Oklahoma Child Abuse Reporting and Prevention Act shall be confidential and may be disclosed only as provided in Section 7111 of this title and the Oklahoma Children's Code.

B. Except as otherwise provided by the Oklahoma Child Abuse Reporting and Prevention Act, any violation of the confidentiality requirements of the Oklahoma Child Abuse Reporting and Prevention Act shall be a misdemeanor punishable by up to six (6) months in jail or by a fine of Five Hundred Dollars (\$500.00) or by both fine and imprisonment.

SECTION 6. AMENDATORY Section 8, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7108), is amended to read as follows:

Section 7108. A. As soon as possible after initiating an investigation of a ~~parent or other person having responsibility for the health or welfare of a~~ report of child abuse pursuant to the Oklahoma Child Abuse Reporting and Prevention Act, the ~~county office~~ child protective services worker conducting the investigation shall provide to the parent or person a brief and easily understood ~~summary of~~ written description of the investigation process. Such notice shall include:

1. ~~The~~ A statement that the investigation is being undertaken by the Department of Human Services pursuant to the requirements of the Oklahoma Child Abuse Reporting and Prevention Act in response to a report of child abuse;

2. A statement that the identity of the person who reported the incident of abuse is confidential and may not even be known to the Department since the report could have been made anonymously;

3. A statement that the investigation is required by law to be conducted in order to enable the Department of Human Services to identify incidents of abuse in order to provide protective or preventive social services to families who are in need of such services;

4. A statement that upon completion of the investigation the parent or other person will receive a letter from the Department which will inform such parent or other person:

- a. that the Department has found insufficient evidence of abuse, or
- b. that there appears to be probable cause to suspect the existence of child abuse in the judgment of the Department;

5. An explanation of the procedures of the Department of Human Services for conducting an investigation of alleged child abuse ~~or~~ neglect, including:

- a. a description of the circumstances under which the Department would seek to remove the child from the home through the judicial system, and
- b. an explanation that the law requires the Department to refer all reports of alleged criminal child abuse ~~or~~ neglect to a law enforcement agency for a separate determination of whether a criminal violation occurred;

~~2.~~ 6. The procedures to follow if there is a complaint regarding the actions of the Department or to request a review of the findings made by the Department in the investigation;

~~3.~~ 7. The person's right to review all records filed with the court concerning the investigation, provided the review shall not

include the name of the person who filed the report specified in Section ~~3~~ 7103 of this ~~act~~ title, and provided the review would not jeopardize an ongoing criminal investigation or adjudicatory hearing;

~~4.~~ 8. The person's right to seek legal counsel;

~~5.~~ 9. References to the statutory and regulatory provisions governing child abuse ~~and neglect~~ and how the person may obtain copies of those provisions; and

~~6.~~ 10. The process the person may use to acquire access to the child if the child is removed from the home.

B. If the Department determines that a family assessment may be needed, the Department shall, at the time of the initial contact, provide the parent of the child with the following information:

1. The purpose of the contact with the family;

2. The name of the child protective services worker responding and such person's office telephone number; and

3. The assessment process to be followed during the Department's intervention with the family including the possible services available and expectations of the family.

SECTION 7. AMENDATORY Section 9, Chapter 353, O.S.L. 1995, as amended by Section 2, Chapter 212, O.S.L. 1996 (10 O.S. Supp. 1997, Section 7109), is amended to read as follows:

Section 7109. A. The Department of Human Services may provide information to a person or agency that provides professional services such as medical examination of or therapeutic intervention with a victim of abuse ~~and neglect~~. This information may include, but is not limited to:

1. The investigative determination; or

2. The services offered and provided.

B. The Department shall forward to any hospital or any physician, including, but not limited to, doctors of medicine and dentistry, licensed osteopathic physicians, residents and interns,

reporting the ~~physical abuse or sexual abuse~~ of a child pursuant to Section 7103 of this title, information including the investigative determination, the services offered or provided, and such other information deemed necessary by the Department. Such information shall be entered and maintained in the child's medical records.

C. 1. The Department of Human Services shall forward to the school principal of the school in which a child is enrolled making a child abuse report pursuant to Section 7103 of this title a summary of any confirmed report of sexual abuse or severe physical abuse of the Department concerning the child. The summary shall include a brief description of the circumstances of sexual abuse or serious physical abuse, the name of the parent or person responsible for the child's health or welfare, and the name of a Department employee who serves as a contact person regarding the case.

2. The Department shall not release data that would identify the person who made the initial child abuse ~~or neglect~~ report, other than an employee of the Department, or who cooperated in a subsequent investigation unless a court of competent jurisdiction orders release of the information for good cause shown.

3. The school principal shall forward to the receiving school all confirmed reports of sexual abuse and severe physical abuse 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.

4. Records maintained and transmitted pursuant to this section shall be confidential and shall be maintained and transmitted in the same manner as Special Education records or other such records, pursuant to Title 70 of the Oklahoma Statutes. Access to such records may be made available by the principal or designee to a person designated to assist in the treatment of or with services provided to the child. Such records shall be destroyed when the student reaches eighteen (18) years of age.

D. The transmission of and access to such records shall not constitute a waiver of confidentiality.

~~E. 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.~~

~~F.~~ It shall be unlawful pursuant to the Oklahoma Child Abuse Reporting and Prevention Act for the Commission for Human Services, or any employee working under the direction of the Department of Human Services, 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.

~~G.~~ F. Any person to whom disclosure is made shall not disclose to any other person reports or other information obtained pursuant to this section.

~~H.~~ G. The Department shall submit the summary of confirmed sexual abuse or severe physical abuse of a child on forms developed by the Department. Such forms shall contain a warning that the information contained therein is confidential and may only be released to a person designated by the principal to assist in the treatment of or with services provided to a child.

SECTION 8. 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 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, which shall be suitably cross-indexed, of all such reported findings.

C. The central registry 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;

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

2. Information relating to whether the registry contains a confirmed report or uncertain report of child abuse or child neglect may be released for employment purposes if the responsibilities or duties of a new, prospective or existing employee involve working with or directly providing care for children.

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 person employed in the central registry who permits the data and information stored in the registry 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).

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

SECTION 9. AMENDATORY Section 14, Chapter 353, O.S.L. 1995 (10 O.S. Supp. 1997, Section 7114), is amended to read as follows:

Section 7114. A. 1. In addition to any other costs which a court is authorized to require a defendant to pay, upon conviction of any offense involving child abuse ~~or neglect~~, the court may require that the defendant pay court-appointed attorney fees for the ~~victim~~ child to any local or state agency incurring the cost or any other person or entity providing services to or on behalf of the child, and the cost of any medical examinations conducted on the ~~victim~~ child in order to determine the nature or extent of the abuse ~~or neglect~~.

2. If the court determines that the defendant has the ability to pay all or part of the ~~medical-examination~~ costs, the court may set the amount to be reimbursed and order the defendant to pay that sum to the local or state agency or other person or entity incurring the cost in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

3. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

B. 1. In addition to any other costs which a court is authorized to require a defendant to pay, upon conviction of any offense involving sexual abuse, the court may require that the defendant pay, to the local or state agency incurring the cost, the

cost of any medical examinations conducted on the ~~victim~~ child for the collection and preservation of evidence.

2. If the court determines that the defendant has the ability to pay all or part of the cost of the medical examination, the court may set the amount to be reimbursed and order the defendant to pay that sum to the local or state agency incurring the cost, in the manner in which the court believes reasonable and compatible with the defendant's financial ability.

3. In making the determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

4. In no event shall a court penalize an indigent defendant by imposing an additional period of imprisonment in lieu of payment.

C. 1. The court shall require the defendant to pay, upon conviction of any offense involving the sexual or physical abuse of a child, for the psychological evaluation to determine the extent of counseling necessary for the victim of the abuse and any necessary psychological counseling deemed necessary to rehabilitate the ~~victim~~ child.

2. Such evaluations and counseling may be performed by psychiatrists, psychologists, licensed professional counselors or social workers. The results of the examination shall be included in the court records and in information contained in the central registry.

SECTION 10. AMENDATORY 21 O.S. 1991, Section 843, as renumbered by Section 20, Chapter 353, O.S.L. 1995, and as last amended by Section 127, Chapter 133, O.S.L. 1997 (10 O.S. Supp. 1997, Section 7115), is amended to read as follows:

Section 7115. Any ~~parent or other~~ person who shall willfully or maliciously engage in child abuse ~~or neglect~~ or who shall otherwise willfully or maliciously injure, torture, maim, use unreasonable

force upon a child under the age of eighteen (18), or sexually abuse, or sexually exploit ~~or otherwise abuse or neglect~~ such child, or any person responsible for the health or welfare of a child who shall willfully or maliciously cause, procure or permit any of said acts to be done, shall upon conviction be guilty of a felony. The fine for a violation of this section shall not be less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00). As used in this section, "permit" means to authorize or allow for the care of a child by an individual when the person authorizing or allowing such care knows or reasonably should know that the child will be placed at risk of abuse as proscribed by this section.

SECTION 11. AMENDATORY 10 O.S. 1991, Section 1150.2, as last amended by Section 1, Chapter 223, O.S.L. 1995 (10 O.S. Supp. 1997, Section 1150.2), is amended to read as follows:

Section 1150.2 A. There is hereby re-created until July 1, 2000, in accordance with the Oklahoma Sunset Law, Section 3901 et seq. of Title 74 of the Oklahoma Statutes, the Child Death Review Board within the Oklahoma Commission on Children and Youth. The Board shall have the power and duty to:

1. Conduct case reviews of deaths and near deaths of children in this state;
2. Develop accurate statistical information and identification of deaths of children due to abuse and neglect;
3. Improve the ability to provide protective services to the surviving siblings of a child or children who die of abuse or neglect and who may be living in a dangerous environment; ~~and~~
4. ~~Improve~~ Examine and improve policies, procedures and practices within the agencies that serve children, including the child protection system;
5. Review the extent to which the state child protection system is coordinated with foster care and adoption programs and evaluate

whether the state is efficiently discharging their child protection responsibilities under the Child Abuse Prevention and Treatment Act state plan; and

6. Establish two local child death review boards in the state and appoint volunteer members to such boards who are broadly representative of the community in which such boards are established. The members appointed must have expertise in the prevention and treatment of child abuse and neglect, and should include, but should not be limited to, children's attorneys, child advocates and court appointed special advocate volunteers. The local boards will have such duties and responsibilities as the Board designates and will review cases assigned by the Board and in their geographical area. Each local board established shall meet not less than once every three (3) months. The Board shall, subject to approval of the Oklahoma Commission on Children and Youth, promulgate such other rules as necessary for the implementation and administration of the local boards.

B. In carrying out its duties and responsibilities the Board shall:

1. Establish criteria for cases involving the death or near death of a child subject to specific, in-depth review by the Board;

2. Conduct a specific case review of those cases where the cause of death or near death is or may be related to abuse or neglect of a child;

3. Establish and maintain statistical information related to the deaths of children, including, but not limited to, demographic and medical diagnostic information;

4. Review the policies, practices, and procedures of the child protection system and the extent to which such system is coordinated with foster care and adoption programs and make specific recommendations to the entities comprising the child protection system for actions necessary for the improvement of the system;

5. As necessary and appropriate, for the protection of the siblings of a child who dies and whose siblings are deemed to be living in a dangerous environment, refer specific cases to the Department of Human Services or the appropriate district attorney for further investigation;

6. Request and obtain a copy of all records and reports pertaining to a child whose case is under review including, but not limited to:

- a. the medical examiner's report,
- b. hospital records,
- c. school records,
- d. court records,
- e. prosecutorial records,
- f. local, state, and federal law enforcement records, including, but not limited to, the Oklahoma State Bureau of Investigation (OSBI),
- g. fire department records,
- h. State Department of Health records, including birth certificate records,
- i. medical and dental records,
- j. Department of Mental Health and Substance Abuse Services and other mental health records,
- k. emergency medical service records, and
- l. Department of Human Services' files.

Confidential information provided to the Board shall be maintained by the Board in a confidential manner as otherwise required by state and federal law. For purposes of this section, any disclosure of such confidential information by the Board, its local boards, or their members not authorized by law shall be subject to damages, costs and attorney fees;

7. All information, documents and records in possession of the Board shall be confidential and not subject to subpoena or discovery

in any civil or criminal proceedings; provided, however, information, documents and records otherwise available from other sources shall not be exempt from subpoena or discovery through those sources solely because such information, documents and records were presented to or reviewed by the Board;

8. Conduct reviews of specific cases of deaths and near deaths of children and request the preparation of additional information and reports as determined to be necessary by the Board including, but not limited to, clinical summaries from treating physicians, chronologies of contact, and second opinion autopsies;

9. Recommend, when appropriate, amendment of the cause or manner of death listed on the death certificate; and

10. Subject to the approval of the Oklahoma Commission on Children and Youth, exercise all incidental powers necessary and proper for the implementation and administration of the Child Death Review Board Act, Section 1150 et seq. of this title.

C. The review and discussion of individual cases of death or near death of a child shall be conducted in executive session and in compliance with the confidentiality requirements of ~~Section 846 of Title 21~~ Article V of the Oklahoma ~~Statutes~~ Children's Code. All other business shall be conducted in accordance with the provisions of the Oklahoma Open Meeting Act, ~~Section 301 et seq. of Title 25 of the Oklahoma Statutes~~. All discussions of individual cases and any writings produced by or created for the Board in the course of its remedial measure and recommended by the Board as the result of a review of an individual case of the death or near death of a child, shall be privileged and shall not be admissible in evidence in any proceeding. The Board shall periodically conduct meetings to discuss organization and business matters and any actions or recommendations aimed at improvement of the child protection system which shall be subject to the Oklahoma Open Meeting Act. Part of any meeting of the Board may be specifically designated as a

business meeting of the Board subject to the Oklahoma Open Meeting Act.

D. 1. The Board shall submit an annual statistical report on the incidence and causes of death of children in this state during the past calendar year and submit a copy of this report, including its recommendations, to the Governor, the Oklahoma Commission on Children and Youth, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before January 31 of each year.

2. The Oklahoma Commission on Children and Youth shall review the report of the Board and, as appropriate, incorporate the findings and recommendations into the annual Commission report and State Plan for Services to Children and Youth.

E. The term "near death", for purposes of this section, means the child is in serious or critical condition, as certified by a physician.

SECTION 12. This act shall become effective July 1, 1998.

SECTION 13. 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.

46-2-9109

KSM