

SB 664

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THE STATE SENATE
Monday, February 26, 2007

Senate Bill No. 664
As Amended

SENATE BILL NO. 664 - By: LEFTWICH of the Senate and PETERS of the House.

[domestic abuse - juvenile court records - victims of rape
- Victim Services Unit of the Office of the Attorney General
- effective date]

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7307-1.4, as amended by Section 2, Chapter 53, O.S.L. 2005 (10 O.S. Supp. 2006, Section 7307-1.4), is amended to read as follows:

Section 7307-1.4 A. Juvenile court records which are confidential may be inspected, and their contents shall be disclosed, without a court order to the following persons upon showing of proper credentials and pursuant to lawful duties:

1. The judge having the child currently before the court in any proceeding pursuant to the Oklahoma Juvenile Code, or any judge of the district court or tribal court to which such proceedings may be transferred;

2. Employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court;

1 3. Members of review boards established pursuant to Sections
2 1116.2 and 1116.6 of this title. In addition to juvenile court
3 records, any member of such review boards may inspect, without a
4 court order, information including but not limited to:

- 5 a. psychological and medical records,
- 6 b. placement history and information, including the names
7 and addresses of foster parents,
- 8 c. family assessments,
- 9 d. treatment or service plans, and
- 10 e. school records;

11 4. A district attorney and the employees of an office of a
12 district attorney in the course of their official duties;

13 5. The attorney representing a child who is the subject of a
14 juvenile proceeding pursuant to the provisions of this chapter. The
15 attorney representing a child or considering representing a child in
16 a juvenile proceeding may also access other records listed in
17 subsection A of Section 7307-1.2 of this title for use in the legal
18 representation of the child;

19 6. Employees of juvenile bureaus in the course of their
20 official duties;

21 7. Employees of the Department of Juvenile Justice in the
22 course of their official duties;

1 8. Employees of a law enforcement agency in the course of their
2 official duties pertaining to the investigation of a crime committed
3 or alleged to have been committed by a person under eighteen (18)
4 years of age. Records or information disclosed pursuant to this
5 paragraph may consist of summaries or may be limited to the
6 information or records necessary for the purpose of the
7 investigation;

8 9. The Oklahoma Commission on Children and Youth;

9 10. The Department of Juvenile Justice or other public or
10 private agency or any individual having court-ordered custody or
11 custody pursuant to Department of Juvenile Justice placement of the
12 child who is the subject of the record;

13 11. The Department of Human Services;

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

16 13. Any federally recognized Indian tribe in which the child
17 who is the subject of the record is a member, or is eligible to
18 become a member of the tribe due to the child being the biological
19 child of a member of an Indian tribe pursuant to the Federal Indian
20 Child Welfare Act, P.L. 95-608, and the Oklahoma Indian Child
21 Welfare Act; provided such Indian tribe member, in the course of
22 official duties:

- 1 a. is investigating a report of known or suspected child
2 abuse or neglect or crimes against children or for the
3 purpose of determining whether to place a child in
4 protective custody, or
- 5 b. is providing services to or for the benefit of a child
6 including but not limited to protective, emergency,
7 social and medical services;

8 14. Any federally recognized Indian tribe in which the tribe,
9 the tribal court or the tribal child welfare program has asserted
10 jurisdiction or intervened in any case in which the child is the
11 subject of the proceedings or is a party to the proceedings pursuant
12 to the authority provided in the Oklahoma Indian Child Welfare Act.

13 The records that are to be provided to Indian tribes pursuant to
14 the provisions of this subsection shall include all case records,
15 reports and documents as defined in this chapter;

16 15. The Governor or to any person the Governor designates, in
17 writing;

18 16. Any federal official of the United States Department of
19 Health and Human Services;

20 17. Any member of the Legislature, upon the written approval of
21 the Speaker of the House of Representatives or the President Pro
22 Tempore of the Senate;

1 18. Employees of the Department of Corrections in the course of
2 their official duties;

3 19. Employees of the United States Probation Office, in the
4 course of their official duties; and

5 20. Domestic violence and sexual assault advocates employed by
6 a certified domestic violence or sexual assault program pursuant to
7 Section ~~3-313~~ 18p-6 of Title ~~43A~~ 74 of the Oklahoma Statutes,
8 working within a law enforcement agency or court in the course of
9 their assigned duties.

10 B. Records and their contents disclosed without an order of the
11 court as provided by the provisions of this section shall remain
12 confidential. The use of any information shall be limited to the
13 purposes for which disclosure is authorized. It shall be unlawful
14 for any person to furnish any confidential record or disclose any
15 confidential information contained in any juvenile record for
16 commercial, political or any other unauthorized purpose. Any person
17 violating the provisions of this section shall, upon conviction, be
18 guilty of a misdemeanor.

19 SECTION 2. AMENDATORY 22 O.S. 2001, Section 40.1, as
20 amended by Section 2, Chapter 466, O.S.L. 2002 (22 O.S. Supp. 2006,
21 Section 40.1), is amended to read as follows:

22 Section 40.1 Upon the preliminary investigation of any rape or
23 forcible sodomy, it shall be the duty of the officer who interviews

1 the victim of the rape or forcible sodomy to inform the victim, or a
2 responsible adult if the victim is a minor child or an incompetent
3 person, of the twenty-four-hour statewide telephone communication
4 service established by the ~~Department of Mental Health and Substance~~
5 ~~Abuse Services~~ Office of the Attorney General for victims of sexual
6 assault pursuant to Section ~~3-314~~ 18p-5 of Title ~~43A~~ 74 of the
7 Oklahoma Statutes and to give notice to the victim or such
8 responsible adult of certain rights of the victim. The notice shall
9 consist of handing such victim or responsible adult a written
10 statement in substantially the following form:

11 "As a victim of the crime of rape or forcible sodomy, you have
12 certain rights. These rights are as follows:

13 1. The right to request that charges be pressed against your
14 assailant;

15 2. The right to request protection from any harm or threat of
16 harm arising out of your cooperation with law enforcement and
17 prosecution efforts as far as facilities are available and to be
18 provided with information on the level of protection available;

19 3. The right to be informed of financial assistance and other
20 social services available to victims, including information on how
21 to apply for the assistance and services;

22 4. The right to a free medical examination for the procurement
23 of evidence to aid in the prosecution of your assailant; and

1 5. The right to be informed by the district attorney of other
2 victim's rights available pursuant to Section 215.33 of Title 19 of
3 the Oklahoma Statutes."

4 The written notice shall also include the telephone number of the
5 twenty-four-hour statewide telephone communication service
6 established by the ~~Department of Mental Health and Substance Abuse~~
7 ~~Services~~ Office of the Attorney General in Section ~~3-314~~ 18p-5 of
8 Title ~~43A~~ 74 of the Oklahoma Statutes.

9 SECTION 3. AMENDATORY Section 3, Chapter 53, O.S.L. 2005
10 (22 O.S. Supp. 2006, Section 58), is amended to read as follows:

11 Section 58. A. Criminally injurious conduct, as defined by the
12 Oklahoma Crime Victims Compensation Act, which appears to be or is
13 reported by the victim to be domestic abuse, as defined in Section
14 60.1 of Title 22 of the Oklahoma Statutes, or domestic abuse by
15 strangulation, domestic abuse resulting in great bodily harm, or
16 domestic abuse in the presence of a child, as defined in Section 644
17 of Title 21 of the Oklahoma Statutes, shall be reported according to
18 the standards for reporting as set forth in subsection B of this
19 section.

20 B. Except as provided for in Section 7104 of Title 10 of the
21 Oklahoma Statutes, any physician, surgeon, resident, intern,
22 physician's assistant, registered nurse, or any other health care
23 professional examining, attending, or treating the victim of what

1 appears to be domestic abuse or is reported by the victim to be
2 domestic abuse, as defined in Section 60.1 of Title 22 of the
3 Oklahoma Statutes, or domestic abuse by strangulation, domestic
4 abuse resulting in great bodily harm, or domestic abuse in the
5 presence of a child, as defined in Section 644 of Title 21 of the
6 Oklahoma Statutes, shall not be required to report any incident of
7 what appears to be or is reported to be domestic abuse, domestic
8 abuse by strangulation, domestic abuse resulting in great bodily
9 harm, or domestic abuse in the presence of a child if:

10 1. Committed upon the person of an adult who is over the age of
11 eighteen (18) years; and

12 2. The person is not an incapacitated adult.

13 C. Any physician, surgeon, resident, intern, physician's
14 assistant, registered nurse, or any other health care professional
15 examining, attending, or treating a victim shall be required to
16 report any incident of what appears to be or is reported to be
17 domestic abuse, domestic abuse by strangulation, domestic abuse
18 resulting in great bodily harm, or domestic abuse in the presence of
19 a child, if requested to do so either orally or in writing by the
20 victim. A report of any incident shall be promptly made orally or
21 by telephone to the nearest law enforcement agency in the county
22 wherein the domestic abuse occurred or, if the location where the
23 conduct occurred is unknown, the report shall be made to the law

1 enforcement agency nearest to the location where the injury is
2 treated.

3 D. In all cases of what appears to be or is reported to be
4 domestic abuse, the physician, surgeon, resident, intern,
5 physician's assistant, registered nurse, or any other health care
6 professional examining, attending, or treating the victim of what
7 appears to be domestic abuse shall clearly and legibly document the
8 incident and injuries observed and reported, as well as any
9 treatment provided or prescribed.

10 E. In all cases of what appears to be or is reported to be
11 domestic abuse, the physician, surgeon, resident, intern,
12 physician's assistant, registered nurse, or any other health care
13 professional examining, attending or treating the victim of what
14 appears to be domestic abuse shall refer the victim to domestic
15 violence and victim services programs, including providing the
16 victim with the twenty-four-hour statewide telephone communication
17 service established by Section ~~3-314~~ 18p-5 of Title ~~43A~~ 74 of the
18 Oklahoma Statutes.

19 F. Every physician, surgeon, resident, intern, physician's
20 assistant, registered nurse, or any other health care professional
21 making a report of domestic abuse pursuant to this section or
22 examining a victim of domestic abuse to determine the likelihood of
23 domestic abuse, and every hospital or related institution in which

1 the victim of domestic abuse was examined or treated shall, upon the
2 request of a law enforcement officer conducting a criminal
3 investigation into the case, provide copies of the results of the
4 examination or copies of the examination on which the report was
5 based, and any other clinical notes, x-rays, photographs, and other
6 previous or current records relevant to the case to the
7 investigating law enforcement officer.

8 SECTION 4. AMENDATORY Section 1, Chapter 348, O.S.L.
9 2005 (74 O.S. Supp. 2006, Section 18p-1), is amended to read as
10 follows:

11 Section 18p-1. A. There is hereby created within the Office of
12 the Attorney General a Victims Services Unit.

13 B. The duty of the Unit is to provide services for persons who
14 require domestic violence or sexual assault services through a
15 domestic violence or sexual assault program.

16 C. As used in this act, "domestic violence program" or "sexual
17 assault program" means an agency, organization, facility or person
18 that offers, provides or engages in the offering of any shelter,
19 residential services or support services to:

20 1. Victims or survivors of domestic abuse as defined in Section
21 60.1 of Title 22 of the Oklahoma Statutes, any dependent children of
22 such victim or survivor, and any other member of the family or
23 household of such victim or survivor;

- 1 2. Victims or survivors of sexual assault;
- 2 3. Persons who are homeless as a result of domestic abuse or
- 3 sexual assault or both domestic abuse and sexual assault; and
- 4 4. ~~Persons who commit domestic abuse~~ Victims of stalking,
- 5 and which may provide other services, including, but not limited to,
- 6 counseling, case management, referrals or other similar services to
- 7 victims or survivors of domestic abuse, ~~or~~ sexual assault or
- 8 stalking.

9 D. As used in this act, "batterers intervention program" or

10 "batterers treatment program" means an agency, organization,

11 facility or person who offers, provides or engages in the offering

12 of counseling or intervention services to persons who commit

13 domestic abuse.

14 SECTION 5. AMENDATORY Section 3, Chapter 348, O.S.L.

15 2005 (74 O.S. Supp. 2006, Section 18p-3), is amended to read as

16 follows:

17 Section 18p-3. A. The Attorney General is hereby authorized

18 and directed to enter into agreements and to contract for the

19 shelter and other services that are needed for victims of domestic

20 abuse, ~~or~~ sexual assault or batterers intervention programs. Any

21 domestic violence, ~~or~~ sexual assault or batterers intervention

22 program providing services pursuant to certification by the Attorney

23 General or a contract or subcontract with the Attorney General and

1 receiving funds from the Attorney General or any contractor with the
2 Attorney General shall be subject to the provisions of the
3 administrative rules of the Attorney General.

4 B. 1. Except as otherwise provided by paragraph 3 of this
5 subsection, the case records, case files, case notes, client
6 records, or similar records of a domestic violence or sexual assault
7 program certified by the Attorney General or of any employee or
8 trained volunteer of a program regarding an individual who is
9 residing or has resided in such program or who has otherwise
10 utilized or is utilizing the services of any domestic violence or
11 sexual assault program or counselor shall be confidential and shall
12 not be disclosed.

13 2. For purposes of this subsection, the term "client records"
14 shall include, but not be limited to, all communications, records,
15 and information regarding clients of domestic violence and sexual
16 assault programs.

17 3. The case records, case files, or case notes of programs
18 specified in paragraph 1 of this subsection shall be confidential
19 and shall not be disclosed except with the written consent of the
20 individual, or in the case of the individual's death or disability,
21 of the individual's personal representative or other person
22 authorized to sue on the individual's behalf or by court order for
23 good cause shown by the judge in camera.

1 C. The district court shall not order the disclosure of the
2 address of a domestic violence shelter, the location of any person
3 seeking or receiving services from a domestic violence or sexual
4 assault program, or any other information which is required to be
5 kept confidential pursuant to subsection B of this section.

6 D. The home address, personal telephone numbers and social
7 security number of board members, staff and volunteers of certified
8 domestic violence and sexual assault programs shall not be construed
9 to be open records pursuant to the Oklahoma Open Records Act.

10 SECTION 6. AMENDATORY Section 6, Chapter 348, O.S.L.
11 2005 (74 O.S. Supp. 2006, Section 18p-6), is amended to read as
12 follows:

13 Section 18p-6. A. Effective July 1, 2005, all administrative
14 rules promulgated by the Department of Mental Health and Substance
15 Abuse Services relating to domestic violence and sexual assault
16 programs shall be transferred to and become a part of the
17 administrative rules of the Office of the Attorney General. The
18 Office of Administrative Rules in the Secretary of State's office
19 shall provide adequate notice in the Oklahoma Register of the
20 transfer of such rules, and shall place the transferred rules under
21 the Administrative Code section of the Attorney General. Such rules
22 shall continue in force and effect as rules of the Office of the
23 Attorney General from and after July 1, 2005, and any amendment,

1 repeal or addition to the transferred rules shall be under the
2 jurisdiction of the Attorney General.

3 B. The Attorney General shall adopt and promulgate rules and
4 standards for certification of batterers intervention and domestic
5 violence programs and for private facilities and organizations which
6 offer domestic and sexual assault services in this state. These
7 facilities shall be known as "certified domestic violence shelters"
8 or "certified domestic violence programs" or "certified sexual
9 assault programs" or "certified treatment programs for batterers",
10 as applicable.

11 C. Applications for certification as a certified domestic
12 violence shelter, domestic violence program, sexual assault program
13 or treatment program for batterers, pursuant to the provisions of
14 this section, shall be made to the Office of the Attorney General on
15 prescribed forms. The Attorney General may certify the shelter or
16 program for a period of three (3) years subject to renewal as
17 provided in the rules promulgated by the Attorney General. Nothing
18 in this section shall preclude the Office of the Attorney General
19 from making inspection visits to a shelter or program to determine
20 contract or program compliance.

21 D. Licensed physicians, licensed psychologists, licensed social
22 workers, individual members of the clergy, licensed marital and
23 family therapists, licensed behavioral practitioners, and licensed

1 professional counselors shall be exempt from certification
2 requirements; provided, however, these exemptions shall only apply
3 to individual professional persons in private practice and not to
4 any domestic violence program or sexual assault program operated by
5 such person.

6 E. Facilities providing services for persons who commit
7 domestic abuse, victims or survivors of domestic abuse or sexual
8 assault and any dependent children of such victims or survivors
9 shall comply with standards promulgated by the Attorney General;
10 provided, that the certification requirements and standards
11 promulgated by the Attorney General shall not apply to programs and
12 services offered by the Department of Health, the Department of
13 Mental Health and Substance Abuse Services, the Department of
14 Corrections or the Department of Human Services. The batterers
15 intervention, domestic violence or sexual assault programs certified
16 pursuant to the provisions of this section shall cooperate with
17 inspection personnel of this state and shall promptly file all
18 reports required by the Attorney General. Failure to comply with
19 rules and standards of the Attorney General shall be grounds for
20 revocation of certification, after proper notice and hearing.

21 F. The Attorney General is hereby authorized to collect from
22 each applicant the sum of One Hundred Fifty Dollars (\$150.00) to
23 help defray the costs incurred in the certification process.

1 SECTION 7. AMENDATORY Section 7, Chapter 348, O.S.L.
2 2005 (74 O.S. Supp. 2006, Section 18p-7), is amended to read as
3 follows:

4 Section 18p-7. A. The Attorney General or any district
5 attorney, in such person's discretion, may bring an action for an
6 injunction against any batterers intervention, domestic violence
7 program or sexual assault program found to be in violation of the
8 provisions of Title 74 of the Oklahoma Statutes or of any order or
9 determination of the Attorney General.

10 B. In any action for an injunction brought pursuant to this
11 section, any findings of the Attorney General or district attorney,
12 after hearing and due notice, shall be prima facie evidence of the
13 facts found therein.

14 SECTION 8. This act shall become effective November 1, 2007.

15 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-21-07 - DO
16 PASS, As Amended and Coauthored.