

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2787

By: Billy

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5  
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,  
8 Section 7005-1.2, as amended by Section 72, Chapter  
9 233, O.S.L. 2009, and as renumbered by Section 270,  
10 Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2009,  
11 Section 1-6-102), which relates to confidentiality of  
12 certain records; providing for expungement of certain  
13 investigative records; and providing an effective  
14 date.

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

16 SECTION 1. AMENDATORY 10 O.S. 2001, Section 7005-1.2, as  
17 amended by Section 72, Chapter 233, O.S.L. 2009, and as renumbered  
18 by Section 270, Chapter 233, O.S.L. 2009 (10A O.S. Supp. 2009,  
19 Section 1-6-102), is amended to read as follows:

20 Section 1-6-102. A. Except as provided by this section and  
21 except as otherwise specifically provided by state and federal laws,  
22 the following records are confidential and shall not be open to the  
23 general public or inspected or their contents disclosed:

- 24 1. Juvenile court records;
2. Agency records;
3. District attorney's records;

- 1 4. Law enforcement records;
- 2 5. Nondirectory education records; and
- 3 6. Social records.

4 B. The limitation of subsection A of this section shall not  
5 apply to statistical information and other abstract information  
6 obtained pursuant to the provisions of the Oklahoma Children's Code.

7 C. Except as authorized by Section 620.6 of Title 10 of the  
8 Oklahoma Statutes and this chapter and except as otherwise  
9 specifically provided by state and federal laws pertaining to  
10 education records, medical records, drug or alcohol treatment  
11 records, law enforcement, or social service records, the records  
12 listed in subsection A of this section shall be confidential and  
13 shall be inspected, released, disclosed, corrected or expunged only  
14 pursuant to an order of the court. A subpoena or subpoena duces  
15 tecum purporting to compel testimony or disclosure of such  
16 information or record shall be invalid.

17 D. Any agency record created as part of a child welfare  
18 investigation resulting in a finding of no abuse or neglect shall be  
19 expunged upon the request of the subject or subjects investigated.  
20 The Department of Human Services shall develop a form providing for  
21 the expungement of records which may be completed at Department  
22 offices or online without court order.

23 E. 1. In a proceeding where the child custody or visitation is  
24 at issue, the safety analysis records of the Department shall be

1 produced to the court when a parent, legal guardian, or child who is  
2 the subject of such record obtains a court order directing the  
3 production of the records.

4 2. The person or party seeking the records shall proceed by  
5 filing a motion for production of safety analysis records which  
6 contains the following averments:

- 7 a. the movant is a parent, legal guardian, or child who  
8 is the subject of the safety analysis records,
- 9 b. child custody or visitation is at issue,
- 10 c. that upon receipt from the court, the safety analysis  
11 records shall be kept confidential and disclosed only  
12 to the movant, the attorneys of the movant, those  
13 persons employed by or acting on behalf of the movant  
14 and the attorneys of the movant whose aid is necessary  
15 to the prosecution or defense of the child custody or  
16 visitation issue, and
- 17 d. that a copy of the motion is being provided to the  
18 parties, the attorney of the child, if any, and the  
19 guardian ad litem, if any.

20 3. Upon filing the motion for production of safety analysis  
21 records, the court may, in its discretion, enter an ex parte order  
22 for production of safety analysis records that shall be  
23 substantially in the following form:

24 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

1 NOW on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the court finds that child  
2 custody or visitation is at issue in the above styled and numbered  
3 proceeding and the disclosure of the safety analysis records of the  
4 Oklahoma Department of Human Services pursuant to Section 1-6-102 of  
5 this title is necessary and relevant to the court's determination of  
6 the child's best interests. The court therefore orders as follows:

7 a. The Oklahoma Department of Human Services  
8 ("Department" or "DHS") shall produce a copy of its  
9 safety analysis records to this court on or before \_\_\_\_  
10 day of \_\_\_\_\_, 20\_\_.

11 b. The Department shall be permitted to redact or omit  
12 information in its safety analysis records which may  
13 identify the reporter of alleged child abuse or  
14 neglect.

15 c. All information contained in the safety analysis  
16 records of the Department is confidential under  
17 Oklahoma law and shall be disclosed only to the  
18 parties, the attorneys of the parties, and those  
19 persons employed by or acting on behalf of the parties  
20 and the attorneys of the parties whose aid is  
21 necessary to the prosecution or defense of the child  
22 custody or visitation issue.

23 d. No confidential information whether contained in  
24 pleadings, briefs, discovery, or other documents shall

1 be filed except under seal with the legend "THIS  
2 DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS  
3 SUBJECT TO A PROTECTIVE ORDER OF THE COURT".

4 e. No person or entity shall utilize any information  
5 contained in the safety analysis records for any  
6 purpose other than the prosecution or defense of the  
7 child custody or visitation issues in this case.

8 f. The release by counsel or any other person for any  
9 reason of identifiers such as social security or tax  
10 ID numbers that may be contained in the Department  
11 records and which belong to any person or entity is  
12 strictly prohibited.

13 g. Any violation of this order shall be subject to  
14 prosecution for contempt of court.

15 IT IS SO ORDERED this \_\_\_ day of \_\_\_\_\_, 20\_\_.

16 4. This subsection shall not apply to:

- 17 a. deprived child proceedings brought pursuant to the  
18 Oklahoma Children's Code,  
19 b. discovery of safety analysis records by a person or  
20 entity who is not the subject of those records, or  
21 c. discovery of safety analysis records in criminal,  
22 other civil, or administrative proceedings.

23 5. The party who has obtained a court order for the safety  
24 analysis records of the Department shall provide the Department with

1 the names and other identifying information concerning the subjects  
2 of the safety analysis records.

3 6. Upon receipt of a court order to produce its safety analysis  
4 records, the Department shall be given a minimum of five (5)  
5 judicial days to deliver the records to the court.

6 7. The safety analysis records provided by the Department to  
7 the court pursuant to this subsection shall not be subject to  
8 judicial review and shall be released by the court only to the  
9 litigants in the case under a protective order.

10 8. A court order entered pursuant to this subsection which  
11 purports to require the Department to produce all agency records  
12 shall be deemed to require only the production of the safety  
13 analysis records of the Department.

14 9. An employee of the Department shall not be compelled to  
15 testify about the safety analysis records except upon a court order  
16 directing such testimony. Any subpoena or subpoena duces tecum  
17 purporting to compel disclosure of safety analysis records or  
18 testimony concerning such records without a court order shall be  
19 invalid.

20 10. Except as provided by this subsection or other law,  
21 confidential records may be inspected, released, disclosed,  
22 corrected, or expunged only by the procedure set forth in subsection  
23 E of this section.

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1        ~~E-~~ F. When confidential records may be relevant in a criminal,  
2 civil, or administrative proceeding, an order of the court  
3 authorizing the inspection, release, disclosure, correction, or  
4 expungement of confidential records shall be entered by the court  
5 only after a judicial review of the records and a determination of  
6 necessity pursuant to the following procedure:

7            1. A petition or motion shall be filed with the court  
8 describing with specificity the confidential records being sought  
9 and setting forth in detail the compelling reason why the  
10 inspection, release, disclosure, correction, or expungement of  
11 confidential records should be ordered by the court. A petition or  
12 motion that does not contain the required specificity or detail may  
13 be subject to dismissal by the court;

14            2. Upon the filing of the petition or motion, the court shall  
15 set a date for a hearing and shall require notice of not less than  
16 twenty (20) days to the agency or person holding the records and the  
17 person who is the subject of the record if such person is eighteen  
18 (18) years of age or older or to the parents of a child less than  
19 eighteen (18) years of age who is the subject of the record, to the  
20 attorneys, if any, of such person, child or parents and any other  
21 interested party as ordered by the court. The court may also enter  
22 an ex parte order compelling the person or agency holding the  
23 records to either produce the records to the court on or before the  
24 date set for hearing or file an objection or appear for the hearing.

1 The court may shorten the time allowed for notice due to exigent  
2 circumstances;

3 3. At the hearing, should the court find that a compelling  
4 reason does not exist for the confidential records to be judicially  
5 reviewed, the matter shall be dismissed; otherwise, the court shall  
6 order that the records be produced for a judicial review. The  
7 hearing may be closed at the discretion of the court; and

8 4. The judicial review of the records shall include a  
9 determination, with due regard for the confidentiality of the  
10 records and the privacy of persons identified in the records, as to  
11 whether an order should be entered authorizing the inspection,  
12 release, disclosure, correction, or expungement of the records based  
13 upon the need for the protection of a legitimate public or private  
14 interest.

15 ~~F.~~ G. The court may, for good cause shown, prohibit the release  
16 of such confidential records or testimony or authorize a release of  
17 the confidential information or testimony upon such conditions as  
18 the court deems necessary and appropriate, subject to the provisions  
19 of this section.

20 ~~G.~~ H. Any public or private agency, entity, or professional  
21 person required to produce confidential records pursuant to this  
22 section may require payment of fees from the party seeking the  
23 records prior to any records being produced, including a research  
24 fee not exceeding Twenty Dollars (\$20.00) per hour and a copy fee

1 not to exceed fifty cents (\$0.50) per page and Five Dollars (\$5.00)  
2 per copy of each video tape or disk; provided, the court may waive  
3 such costs in a criminal action based upon indigence of a defendant.  
4 The Department shall not be permitted to assess fees for records  
5 produced pursuant to subsection D of this section.

6 ~~H.~~ I. Nothing in Section 620.6 of Title 10 of the Oklahoma  
7 Statutes and this chapter shall be construed as:

8 1. Authorizing the inspection of records or the disclosure of  
9 information contained in records relating to the provision of  
10 benefits or services funded, in whole or in part, with federal  
11 funds, except in accord with federal statutes and regulations  
12 governing the receipt or use of such funds;

13 2. Authorizing the disclosure of papers, records, books or  
14 other information relating to the adoption of a child required to be  
15 kept confidential. The disclosure of such information shall be  
16 governed by the provisions of the Oklahoma Adoption Code;

17 3. Abrogating any privilege, including the attorney-client  
18 privilege, or affecting any limitation on such privilege found in  
19 any other statutes;

20 4. Limiting or otherwise affecting access of parties to a  
21 deprived proceeding to records filed with or submitted to the court;

22 5. Limiting or otherwise affecting access of agencies to  
23 information subject to disclosure, review, or inspection by contract  
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1 or as a condition for the receipt of public funds or participation  
2 in any program administered by the agency;

3 6. Prohibiting the Department of Human Services from  
4 summarizing the outcome of an investigation to the person who  
5 reported a known or suspected instance of child abuse or neglect or  
6 to any person providing services to a child who is or is alleged to  
7 be a victim of child abuse;

8 7. Authorizing the disclosure of information which identifies  
9 any person who has reported an allegation of known or suspected  
10 child abuse or neglect unless such disclosure is specifically  
11 ordered by the court;

12 8. Prohibiting the Department of Human Services from providing  
13 a summary of allegations and findings of an investigation involving  
14 a child care facility that does not disclose identities but that  
15 permits parents to evaluate the facility;

16 9. Prohibiting the disclosure of confidential information to  
17 any educational institution, facility, or educator to the extent  
18 necessary to enable the educator to better provide educational  
19 services and activities for a child and provide for the safety of  
20 students; or

21 10. Prohibiting the Department from obtaining, without a court  
22 order, nondirectory education records pertaining to a child in the  
23 legal custody of the Department.

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SECTION 2. This act shall become effective November 1, 2010.

52-2-8809            SDR            01/06/10