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HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was re-referred

HB3135

By: Steele of the House and Treat of the Senate

Title: Children; relating to the disclosure of certain records in child abuse or neglect cases; authorizing release to tribes; allowing DHS to provide certain information related to the abuse or neglect of children; effective date.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from Amendment No. 1 and that the attached 2nd Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HOUSE CONFEREES

Billy _____

Cox Douglas G Cox M.P.

Derby _____

Enns John Enns

Fourkiller _____

Kern Sally Kern

Nelson Gaston Nelson

Peterson Pam Peterson

Pruett R. Pruet

Roberts (Sean) _____

Sanders Mike Sanders

Scott _____

Mr. Speaker Chris Steeb

HB3135 CCR2 A

SENATE CONFEREES

Treat

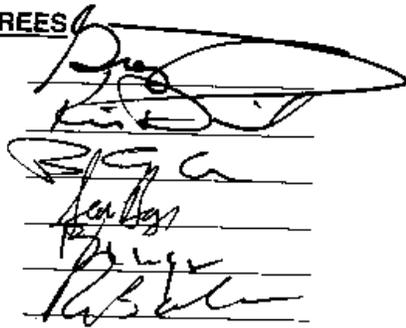
David

Crain

Burrage

Bingman

Balfenger



Handwritten signatures of Senate conferees: Treat, David, Crain, Burrage, Bingman, and Balfenger.

House Action _____ Date _____ Senate Action _____ Date _____

House Action _____ Date _____ Senate Action _____ Date _____

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 2ND CONFERENCE COMMITTEE

4 SUBSTITUTE

5 FOR ENGROSSED

6 HOUSE BILL NO. 3135

By: Steele, Rousselot, Nelson,
Ownbey and Peterson of the
House

7 and

8 Treat of the Senate

9
10 2ND CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to children; amending 10A O.S. 2011,
12 Sections 1-6-102 and 1-6-105, which relate to the
13 disclosure of certain records in child abuse or
14 neglect cases; authorizing the release of certain
15 information to tribes; specifying tribes shall
16 maintain confidentiality; defining terms; directing
17 Department of Human Services to maintain certain
18 information; directing Department to conduct certain
19 review and make certain report; specifying deadline
20 requirement; directing Department to make certain
21 notification; requiring the release of certain
22 information by the Department in certain child death
23 or near-death cases; specifying requirements;
24 requiring Department to publish certain information
on website; specifying requirements; specifying
certain information shall not be disclosed; and
providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-6-102, is
amended to read as follows:

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

- 5 1. Juvenile court records;
- 6 2. Agency records;
- 7 3. District attorney's records;
- 8 4. Law enforcement records;
- 9 5. Nondirectory education records; and
- 10 6. Social records.

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

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

24

1 D. 1. In a proceeding where the child custody or visitation is
2 at issue, the safety analysis records of the Department shall be
3 produced to the court when a parent, legal guardian, or child who is
4 the subject of such record obtains a court order directing the
5 production of the records.

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

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

22 3. Upon filing the motion for production of safety analysis
23 records, the court may, in its discretion, enter an ex parte order
24

1 for production of safety analysis records that shall be
2 substantially in the following form:

3 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

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

- 10 a. The Oklahoma Department of Human Services
11 ("Department" or "DHS") shall produce a copy of its
12 safety analysis records to this court on or before ____
13 day of _____, 20__.
- 14 b. The Department shall be permitted to redact or omit
15 information in its safety analysis records which may
16 identify the reporter of alleged child abuse or
17 neglect.
- 18 c. All information contained in the safety analysis
19 records of the Department is confidential under
20 Oklahoma law and shall be disclosed only to the
21 parties, the attorneys of the parties, and those
22 persons employed by or acting on behalf of the parties
23 and the attorneys of the parties whose aid is
24

1 necessary to the prosecution or defense of the child
2 custody or visitation issue.

3 d. No confidential information whether contained in
4 pleadings, briefs, discovery, or other documents shall
5 be filed except under seal with the legend "THIS
6 DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS
7 SUBJECT TO A PROTECTIVE ORDER OF THE COURT".

8 e. No person or entity shall utilize any information
9 contained in the safety analysis records for any
10 purpose other than the prosecution or defense of the
11 child custody or visitation issues in this case.

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

17 g. Any violation of this order shall be subject to
18 prosecution for contempt of court.

19 IT IS SO ORDERED this ___ day of _____, 20__.

20 4. This subsection shall not apply to:

21 a. deprived child proceedings brought pursuant to the
22 Oklahoma Children's Code,

23 b. discovery of safety analysis records by a person or
24 entity who is not the subject of those records, or

1 c. discovery of safety analysis records in criminal,
2 other civil, or administrative proceedings.

3 5. The party who has obtained a court order for the safety
4 analysis records of the Department shall provide the Department with
5 the names and other identifying information concerning the subjects
6 of the safety analysis records.

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

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

14 8. A court order entered pursuant to this subsection which
15 purports to require the Department to produce all agency records
16 shall be deemed to require only the production of the safety
17 analysis records of the Department.

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

1 10. Except as provided by this subsection or other law,
2 confidential records may be inspected, released, disclosed,
3 corrected, or expunged only by the procedure set forth in subsection
4 E of this section.

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

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

18 2. Upon the filing of the petition or motion, the court shall
19 set a date for a hearing and shall require notice of not less than
20 twenty (20) days to the agency or person holding the records and the
21 person who is the subject of the record if such person is eighteen
22 (18) years of age or older or to the parents of a child less than
23 eighteen (18) years of age who is the subject of the record, to the
24 attorneys, if any, of such person, child or parents and any other

1 interested party as ordered by the court. The court may also enter
2 an ex parte order compelling the person or agency holding the
3 records to either produce the records to the court on or before the
4 date set for hearing or file an objection or appear for the hearing.
5 The court may shorten the time allowed for notice due to exigent
6 circumstances;

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

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

19 F. The court may, for good cause shown, prohibit the release of
20 such confidential records or testimony or authorize a release of the
21 confidential information or testimony upon such conditions as the
22 court deems necessary and appropriate, subject to the provisions of
23 this section.

24

1 G. Any public or private agency, entity, or professional person
2 required to produce confidential records pursuant to this section
3 may require payment of fees from the party seeking the records prior
4 to any records being produced, including a research fee not
5 exceeding Twenty Dollars (\$20.00) per hour and a copy fee not to
6 exceed fifty cents (\$0.50) per page and Five Dollars (\$5.00) per
7 copy of each video tape or disk; provided, the court may waive such
8 costs in a criminal action based upon indigence of a defendant. The
9 Department shall not be permitted to assess fees for records
10 produced pursuant to subsection D of this section.

11 H. Nothing in Section 620.6 of Title 10 of the Oklahoma
12 Statutes and this chapter shall be construed as:

13 1. Authorizing the inspection of records or the disclosure of
14 information contained in records relating to the provision of
15 benefits or services funded, in whole or in part, with federal
16 funds, except in accord with federal statutes and regulations
17 governing the receipt or use of such funds;

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

22 3. Abrogating any privilege, including the attorney-client
23 privilege, or affecting any limitation on such privilege found in
24 any other statutes;

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

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

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

12 7. Authorizing the disclosure of information which identifies
13 any person who has reported an allegation of known or suspected
14 child abuse or neglect unless such disclosure is specifically
15 ordered by the court;

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

20 9. Prohibiting the disclosure of confidential information to
21 any educational institution, facility, or educator to the extent
22 necessary to enable the educator to better provide educational
23 services and activities for a child and provide for the safety of
24 students; ~~or~~

1 10. Prohibiting the Department from obtaining, without a court
2 order, nondirectory education records pertaining to a child in the
3 legal custody of the Department; or

4 11. Prohibiting the Department from providing records to a
5 federally recognized Indian tribe for any individual who has applied
6 for foster care placement, adoptive placement, or guardianship
7 placement through the tribe; provided, that the tribe shall be
8 required to maintain the confidentiality of the records.

9 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-6-105, is
10 amended to read as follows:

11 Section 1-6-105. A. ~~For purposes of~~ When used in this section,
12 ~~the term "near death" means the child is in serious or critical~~
13 ~~condition, as certified by a physician, as a result of abuse or~~
14 ~~neglect~~ unless the context otherwise requires:

15 1. "Abuse" means harm or threatened harm or failure to protect
16 from harm or threatened harm to the health, safety, or welfare of a
17 child by a person responsible for the child, including but not
18 limited to nonaccidental physical or mental injury, sexual abuse, or
19 sexual exploitation. Provided, however, that nothing contained in
20 this act shall prohibit any parent from using ordinary force as a
21 means of discipline including, but not limited to, spanking,
22 switching, or paddling;

23 2. "Identifying information" means information that identifies
24 an individual, including the individual's:

1 a. name, address, date of birth, occupation, place of
2 employment and telephone number,

3 b. employer identification number, mother's maiden name,
4 Social Security number, or any identification number
5 issued by a governmental entity, or

6 c. unique biometric data, including the fingerprints,
7 voice print, or retina or iris image of the
8 individual;

9 3. "Near death" means a child is in serious or critical
10 condition as verified by a physician, a registered nurse or other
11 licensed health care provider. Verification of medical condition of
12 a child may be given in person or by telephone, mail, electronic
13 mail or facsimile; and

14 4. "Person responsible for a child" means "person responsible
15 for a child's health, safety or welfare" as provided in Section 1-1-
16 105 of this title but shall also include any person who has
17 voluntarily accepted the duty of supervising a child or who has been
18 directed or authorized to supervise a child by the person
19 responsible for the child's health, safety or welfare.

20 ~~B. When a person responsible for a child has been charged by~~
21 ~~information or indictment with committing a crime resulting in the~~
22 ~~death or near death of the child, there shall be a presumption that~~
23 ~~the best interest of the public is served by public disclosure of~~
24 ~~certain information concerning:~~

1 ~~1. The circumstances of the investigation of the death or near~~
2 ~~death of the child; and~~

3 ~~2. Any other investigations concerning that child, or other~~
4 ~~children while living in the same household.~~

5 E. Department of Human Services information shall be maintained
6 by the Department as required by federal law as a condition of the
7 allocation of federal monies to the state. All exceptions for the
8 public release of Department information shall be construed as
9 openly as possible consistent with federal law.

10 C. Upon receipt of a report of the death or near death of a
11 child resulting from suspected abuse or neglect, the Department
12 shall conduct a child death or near death review and produce a
13 written report within forty-five (45) days.

14 D. If the Department has reasonable cause to suspect that a
15 child death or near death is the result of abuse or neglect, the
16 Department shall notify the Governor, the President Pro Tempore of
17 the Senate and the Speaker of the House of Representatives of the
18 initial investigative findings of the child protective services
19 review. Notice shall be communicated securely no later than twenty-
20 four (24) hours after determination of the reasonable suspicion.

21 E. Not later than five (5) business days after the date of a
22 child death or near death in cases where there is reasonable cause
23 to suspect abuse or neglect, the Department shall release upon
24 request:

1 1. The age and sex of the child;

2 2. The date of death or near-death incident;

3 3. Whether the child was in the custody of the Department at
4 the time of the child's death or near death;

5 4. Whether the child resided with the child's parent, guardian,
6 or person responsible for the care of the child at the time of the
7 child's death or near death; and

8 5. Whether the child was under the supervision of the child's
9 parent, guardian or person responsible for the child at the time of
10 the death or near death of the child.

11 F. If, after a child abuse or neglect investigation is
12 completed, the Department determines a child's death or near death
13 was caused by abuse or neglect, the Department shall promptly
14 release the following information:

15 1. The information described in subsection E of this section;

16 2. The name of the abused or neglected child; provided, that
17 the name shall not be disclosed in a case of a near death unless the
18 name has previously been disclosed;

19 3. The name of the offender if due process has been satisfied
20 or if the offender has been arrested and charged with a crime
21 associated with the death or near death of the child;

22 4. In cases in which the death or near death of the child
23 occurred while the child was living with the child's parent,
24 guardian, or person responsible for the care of the child:

- 1 a. the circumstances of the death or near death of the
2 child,
- 3 b. a summary of the child's involvement with the
4 Department while the child was living with the parent,
5 guardian, or person responsible for the care of the
6 child,
- 7 c. the disposition of any report created as a result of
8 the child's involvement with the Department while the
9 child was living with the parent, guardian, or person
10 responsible for the care of the child,
- 11 d. a description of the services, if any, that were
12 provided by the Department as a result of the child's
13 involvement with the Department while the child was
14 living with the parent, guardian, or person
15 responsible for the care of the child,
- 16 e. the results of any risk or safety assessment completed
17 by the Department relating to the child,
- 18 f. the date each report was assessed and completed,
- 19 g. whether the Department confirmed abuse or neglect,
- 20 h. whether any reports were referred to the district
21 attorney and the date of the referrals,
- 22 i. the dates of any judicial proceedings prior to the
23 death or near death of the child,
- 24

1 j. a summary of the recommendations submitted by each
2 participant at the judicial proceedings including
3 recommendations made at the hearing as they relate to
4 custody or placement of the child,

5 k. the rulings of the court,

6 l. specific recommendations made and services rendered by
7 the Department described in any progress reports of a
8 pending case submitted to the court,

9 m. a summary of the status of the child's case at the
10 time of the death or near death, including, without
11 limitation, whether the child's case was closed by the
12 Department before the death or near death,

13 n. similar information for any other investigations
14 concerning that child, or other children while living
15 in the same household,

16 o. a summary of statutory and policy violations,
17 including notice of any personnel actions taken by the
18 Department, and

19 p. recommendations for policy changes or practice
20 improvements based upon the interactions between the
21 Department, the child who died or nearly died and the
22 person responsible for the care of the child; and

23 5. In cases in which the death or near death of the child
24 occurred while the child was in the custody of the Department and

1 the person responsible for the supervision of the child was the
2 suspected perpetrator, the following information:

3 a. the circumstances of the death or near death of the
4 child,

5 b. information regarding the certification of the person
6 with whom the child was residing at the time of death
7 or near death,

8 c. a summary of any previous reports of abuse or neglect
9 investigated by the Department relating to the person
10 responsible for the custodial care of the child,
11 including the disposition of any investigation
12 resulting from a report,

13 d. any policy violations, including notice of any action
14 taken by the Department regarding a violation,

15 e. records of any training completed by the person
16 responsible for the custodial care of the child,

17 f. similar information for any other investigations
18 concerning that child, or other children while living
19 in the same household,

20 g. a summary of licensing actions taken by the
21 Department, and

22 h. recommendations for policy changes or practice
23 improvements based upon the interactions between the
24 Department and the child who died or nearly died.

1 G. If the Department is unable to release the information
2 required by subsection E of this section before forty-five (45) days
3 after receiving a report of the death or near death of a child the
4 Department shall publish on the website of the Department the reason
5 for the delay and the date the Department will release the report.

6 H. 1. At any time subsequent to seven (7) days, but no more
7 than forty-five (45) days, of the date the person responsible for
8 the child has been criminally charged, ~~the Department of Human~~
9 ~~Services,~~ the district attorney, the district court clerk, and the
10 judge having jurisdiction over the case, upon request, shall release
11 certain information to the public as follows:

- 12 a. a confirmation shall be provided by the Department as
- 13 to whether a report has been made concerning the
- 14 alleged victim or other children while living in the
- 15 same household and whether an investigation has begun,
- 16 b. confirmation shall be provided by the Department as to
- 17 whether previous reports have been made and the dates
- 18 thereof, a summary of those previous reports, the
- 19 dates and outcome of any investigations or actions
- 20 taken by the Department in response to a previous
- 21 report of child abuse or neglect, and the specific
- 22 recommendation made to the district attorney and any
- 23 subsequent action taken by the district attorney,

1 c. the dates of any judicial proceedings prior to the
2 death or near death of the child,

3 d. recommendations submitted by each participant in
4 writing at the judicial proceedings including
5 recommendations made at the hearing as they relate to
6 custody or placement of a child, and

7 e. the rulings of the court.

8 2. Specific recommendations made and services rendered by the
9 Department described in any progress reports of a pending case
10 submitted to the court may be disclosed by the Department.

11 ~~D.~~ I. 1. At any time subsequent to seven (7) days after the
12 Oklahoma Commission on Children and Youth shall, upon request,
13 release certain information to the public within sixty (60) days of
14 the request as follows:

15 a. a confirmation shall be provided by the Commission as
16 to whether a report of suspected child abuse or
17 neglect has been made concerning the alleged victim or
18 other children while living in the same household and
19 whether an investigation has begun,

20 b. confirmation shall be provided by the Commission as to
21 whether previous reports of suspected child abuse or
22 neglect have been made and the dates thereof, a
23 summary of those previous reports, the dates and
24 outcome of any investigations or actions taken by the

1 Department and the Commission in response to any
2 previous report of child abuse or neglect, and the
3 specific recommendation made to the district attorney
4 and any subsequent action taken by the district
5 attorney,

6 c. the dates of any judicial proceedings prior to the
7 death or near death of the child,

8 d. recommendations submitted by the Department and the
9 Commission shall be provided in writing including
10 recommendations made at the hearing as they relate to
11 custody or placement of a child, ~~and~~

12 e. the rulings of the court, and

13 f. any relevant information listed in subsections F and H
14 of this section.

15 2. Specific recommendations made by the Commission described in
16 any progress reports of a pending case submitted to the court may be
17 disclosed by the Commission.

18 ~~E. Any~~ J. Unless specifically authorized by this section, any
19 public disclosure of information pursuant to this section shall not
20 identify:

21 1. Identify or provide an any identifying description
22 information of any complainant or reporter of child abuse or
23 neglect, and shall not identify the name;

1 2. Identify or provide any identifying information of the
2 victim, the child victim's siblings or other children living in the
3 same household, the parent or other person responsible for the
4 child, or any other member of the household, ~~other than~~ or the
5 person criminally charged or Department employees, agents or
6 contractors. Nonspecific descriptors, such as father, mother,
7 stepparent, or sibling may be used; or

8 3. Violate other state or federal law as required pursuant to
9 subsection A of Section 1-6-102 of this title.

10 SECTION 3. This act shall become effective November 1, 2012.

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12 53-2-10573 SDR 05/23/12

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