ENGROSSED HOUSE
BILL NO. 2736 By: Peters and Blackwell of the House

and

Brinkley of the Senate

An Act relating to children; amending 10A O.S. 2011, Sections 1-6-102 and 1-6-103, which relate to children's records in child welfare cases; authorizing the release of certain records to Indian tribes; specifying confidentiality shall be maintained; authorizing the inspection of certain records by tribes; specifying confidentiality shall be maintained; directing the Department of Human Services to outsource certain social services; specifying the Department shall retain certain responsibilities; defining term; providing for the selection of certain agencies; providing the Department authority to establish certain requirements; providing for the transfer or termination of certain employees; providing for the creation of a Steering Committee; providing for the appointment of Steering Committee members; providing for the selection of cochairs; directing certain Steering Committee members to make available certain resources; requiring certain staff to provide support to the Steering Committee; specifying requirements; providing for the submission of certain advisory plan; specifying required contents of plan; specifying the plan outcomes shall be based upon certain federal act; specifying plan shall be consistent with certain settlement agreement; directing Department to establish a quality assurance program; specifying requirements; requiring participating agencies to have certain accreditation; limiting services of unaccredited agencies; and providing for codification.

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:

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

1. Juvenile court records;

2. Agency records;

3. District attorney's records;

4. Law enforcement records;

5. Nondirectory education records; and

6. Social records.

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

C. Except as authorized by Section 620.6 of Title 10 of the Oklahoma Statutes and this chapter and except as otherwise specifically provided by state and federal laws pertaining to education records, medical records, drug or alcohol treatment records, law enforcement, or social service records, the records listed in subsection A of this section shall be confidential and shall be inspected, released, disclosed, corrected or expunged only pursuant to an order of the court. A subpoena or subpoena duces

tecum purporting to compel testimony or disclosure of such information or record shall be invalid.

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

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

a. the movant is a parent, legal guardian, or child who is the subject of the safety analysis records,

b. child custody or visitation is at issue,

c. that upon receipt from the court, the safety analysis records shall be kept confidential and disclosed only to the movant, the attorneys of the movant, those persons employed by or acting on behalf of the movant and the attorneys of the movant whose aid is necessary to the prosecution or defense of the child custody or visitation issue, and

d. that a copy of the motion is being provided to the parties, the attorney of the child, if any, and the guardian ad litem, if any.

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

CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

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

a. The Oklahoma Department of Human Services ("Department" or "DHS") shall produce a copy of its safety analysis records to this court on or before ___ day of _____, 20__.

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

c. All information contained in the safety analysis records of the Department is confidential under Oklahoma law and shall be disclosed only to the parties, the attorneys of the parties, and those persons employed by or acting on behalf of the parties

and the attorneys of the parties whose aid is necessary to the prosecution or defense of the child custody or visitation issue.

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

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

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

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

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

4. This subsection shall not apply to:

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

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

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

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

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

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

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

9. An employee of the Department shall not be compelled to testify about the safety analysis records except upon a court order directing such testimony. Any subpoena or subpoena duces tecum purporting to compel disclosure of safety analysis records or

testimony concerning such records without a court order shall be invalid.

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

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

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

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

eighteen (18) years of age who is the subject of the record, to the attorneys, if any, of such person, child or parents and any other interested party as ordered by the court. The court may also enter an ex parte order compelling the person or agency holding the records to either produce the records to the court on or before the date set for hearing or file an objection or appear for the hearing. The court may shorten the time allowed for notice due to exigent circumstances;

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

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

F. The court may, for good cause shown, prohibit the release of such confidential records or testimony or authorize a release of the confidential information or testimony upon such conditions as the

court deems necessary and appropriate, subject to the provisions of this section.

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

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

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

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

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

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

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

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

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

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

9. Prohibiting the disclosure of confidential information to any educational institution, facility, or educator to the extent

necessary to enable the educator to better provide educational services and activities for a child and provide for the safety of students; ~~or~~

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

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

SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-6-103, is amended to read as follows:

Section 1-6-103. A. Juvenile court records and Department of Human Services agency records pertaining to a child 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 their lawful duties:

1. The court having the child currently before it in any proceeding pursuant to this title, any district court or tribal court to which such proceedings may be transferred, employees and officers of the court in the performance of their duties, including but not limited to guardians ad litem appointed by the court, and court-appointed special advocates;

2. A district attorney, United States Attorney, or Attorney General of this or another state and the employees of such offices in the course of their official duties pursuant to this title or the prosecution of crimes against children, or upon their request in their official capacity as advisor in a grand jury proceeding;

3. The attorney representing a child who is the subject of a proceeding pursuant to the provisions of this title or other proceeding where child custody or visitation is at issue;

4. Employees of juvenile bureaus in the course of their official duties pursuant to this title, and employees of the Department of Human Services in the course of their official duties;

5. Employees of a law enforcement agency of this or another state or military enclave and employees of a child protective service of another state or military enclave in the course of their official duties pertaining to investigations of a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody;

6. The Oklahoma Commission on Children and Youth as provided by Sections 601.2 and 601.6 of Title 10 of the Oklahoma Statutes;

7. The Office of Juvenile Affairs;

8. A federally recognized Indian tribe in which the child who is the subject of the record is a member or is eligible to become a member of the tribe and is the biological child of a member of an

Indian tribe pursuant to the provisions of the Federal Indian Child Welfare Act and the Oklahoma Indian Child Welfare Act; provided such Indian tribe, in the course of its official duties, is:

a. investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody,

b. providing services to or for the benefit of a child including, but not limited to, protective, emergency, social and medical services, or

c. the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

The records that are to be provided to Indian tribes under this subsection shall include all case records, reports, and documents as defined in Section 1-6-101 of this title;

9. The Governor or to any person the Governor designates, in writing;

10. Any federal official of the United States Department of Health and Human Services;

11. Any member of the Legislature approved in writing by the Speaker of the House of Representatives or the President Pro Tempore of the Senate;

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

13. An employee of any state or federal corrections or law enforcement agency in the performance of the official duties of the employee concerning presentence investigations or supervision of a parent of an alleged or adjudicated deprived child, or the legal guardian, custodian, or any other adult member of the child's home who is responsible for the health, safety, or welfare of the child; and

14. An employee of a state agency of this or another state in the performance of the official duties of the employee concerning the establishment of paternity or the establishment or enforcement of a child support order or other entitlement for the benefit of a child; provided, disclosure shall be limited to information directly related to the purpose of such disclosure.

B. In addition to the persons listed in subsection A of this section, juvenile court records 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 their lawful duties:

1. Employees of court-appointed special advocate programs, as defined in Section 1-1-105 of this title, in the course of their official duties pertaining to recruiting, screening, training, assigning cases, supervising, and supporting volunteers in their roles as guardian ad litem pursuant to Section 1-4-306 of this title;

2. Members of postadjudication review boards established pursuant to the provisions of Section 1116.2 of Title 10 of the Oklahoma Statutes, the Child Death Review Board, and multidisciplinary personnel. In addition to juvenile court records, members of such postadjudication review boards may inspect, without a court order, information that includes, but is not limited to:

a. psychological and medical records,

b. placement history and information, including the names and addresses of foster parents,

c. family assessments,

d. treatment or service plans, and

e. school records;

3. The Department of Human Services or other public or private agency or individual having court-ordered custody or physical custody pursuant to Department placement of the child who is the subject of the record;

4. The child who is the subject of the record and the parents, legal guardian, custodian, or foster parent of such child; and

5. A person authorized by the court to conduct bona fide research, provided such research may not publish the names or identities of parents, children, or other persons contained in the records.

C. In addition to the persons and entities named in subsection A of this section, Department of Human Services agency records 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 their lawful duties:

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

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

3. <u>Any federally recognized Indian tribe for any individual who has applied for foster care placement, adoptive placement, or guardianship placement through the tribe; provided, that the tribe shall be required to maintain the confidentiality of the records;</u>

4. Members of multidisciplinary teams or multidisciplinary personnel designated by the Department, investigating a report of known or suspected child abuse or neglect or providing services to a child or family which is the subject of the report;

~~4.~~ 5. A physician who has before him or her a child whom the physician reasonably suspects may be abused or neglected or any health care or mental health professionals involved in the evaluation or treatment of the child or the parents, legal guardian, foster parent, custodian, or other family members of the child;

~~5.~~ 6. Any public or private agency or person authorized by the Department to diagnose, or provide care, treatment, supervision, or other services to a child who is the subject of a report or record of child abuse or neglect; provided, the Department may limit such disclosure to summaries or to information directly necessary for the purpose of such disclosure;

~~6.~~ 7. Any person or agency for research purposes, if all of the following conditions are met:

a. the person or agency conducting the research is employed by the State of Oklahoma or is under contract with this state and is authorized by the Department to conduct the research, and

b. the person or agency conducting the research ensures that all documents containing identifying information are maintained in secure locations and access to the

documents by unauthorized persons is prohibited; that no identifying information is included in documents generated from the research conducted; and that all identifying information is deleted from documents used in the research when the research is completed;

~~7.~~ 8. The Oklahoma Health Care Authority; and

~~8.~~ 9. A medical examiner when such person is determining the cause of death of a child.

D. In accordance with the rules promulgated for such purpose pursuant to Section 620.6 of Title 10 of the Oklahoma Statutes, records listed in subsection A of Section 1-6-102 of this title may be inspected and their contents disclosed without a court order to participating agencies.

E. The court may disclose to an employee of an out-of-state entity, licensed to perform adoption home studies in that state, whether the prospective adoptive parent has had parental rights to a child terminated in Oklahoma or whether the prospective adoptive parent has relinquished parental rights to a child in Oklahoma.

F. Nothing in this section shall be construed as prohibiting the Department from disclosing such confidential information as may be necessary to secure appropriate care, treatment, protection or supervision of a child alleged to be abused or neglected.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-9-123 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall outsource the recruitment, training and retention of all foster care homes and service providers, to include foster care, emergency foster care, therapeutic foster care, contracted foster care, kinship foster care and other out-of-home foster placements and intensive in-home services statewide. To improve the recruitment, training and retention of foster care providers, the Department shall also expand existing partnerships with other state agencies, private service providers and tribal entities. In addition, the Department shall cooperate with the Steering Committee established in subsection B of this section to initiate the process of outsourcing foster care, emergency foster care and therapeutic foster care, with the approval of the Oklahoma Legislature. The Department shall retain responsibility for child abuse and neglect investigations, referrals to law enforcement, participation in the court system, case management duties and adoptions. As used in this section, the term "outsourcing" means the Department shall contract with private agencies capable of improving the recruitment, training and retention of qualified foster care providers using objective, measurable criteria. In addition, "outsourcing" shall include contracts with child-placing agencies accredited pursuant to

subsection H of this section, as well as providers who are capable of providing in-home services and have experience tracking outcomes for those services. The Department shall establish all requirements and criteria necessary to improve the recruitment, training and retention of foster care service providers and shall have authority to terminate or discontinue contracts with providers unable to deliver measurable results. Any employee of the Department of Human Services whose position is eliminated as a result of the outsourcing of foster care services or child-placing services may be retained by the Department if a position is available.

B. A Steering Committee shall develop an advisory plan for the Legislature to consider for the outsourcing of recruitment, training and retention of foster care providers. The Steering Committee shall monitor and evaluate the progress of the implementation of outsourcing and provide recommendations to the Legislature on the implementation of outsourcing statewide. The plan shall provide for the expansion of existing partnerships and the creation of new relationships with other state agencies as well as private organizations with the ultimate goal of minimizing the harm to children whose lives have been disrupted because they have been removed or are at risk of being removed from their homes. The members of the Steering Committee shall be as follows:

1. The Director of the Department of Human Services or designee;

2. The Chief Executive Officer of the Oklahoma Health Care Authority or designee;

3. The Director of the Office of State Finance or designee;

4. The House author of this act who shall serve in an advisory capacity and shall not be a voting member of the Steering Committee;

5. The Senate author of this act who shall serve in an advisory capacity and shall not be a voting member of the Steering Committee;

6. Five members to be appointed by the Speaker of the House of Representatives, as follows:

a. one member representing a licensed child-placing agency without national accreditation who shall serve as cochair,

b. one member representing private child-placing agencies with experience in some aspect of foster care or therapeutic foster care,

c. one member who shall be a Department of Human Services employee who is a permanency planning worker,

d. one member who shall be a judge whose primary area of responsibility includes the trial and disposition of cases involving deprived children in an urban part of the state, and

e. one member representing a child placement agency located in a city or town with a population of less than twenty thousand (20,000) people;

7. Five members to be appointed by the President Pro Tempore of the Senate, as follows:

a. one member representing a licensed child-placing agency with national accreditation who shall serve as cochair,

b. one member representing a statewide association of foster parents who shall serve as cochair,

c. one member who shall be a Department of Human Services employee who is a foster care worker,

d. one member who shall be a judge who has responsibility for the trial and disposition of cases involving deprived children in a rural part of the state, and

e. one member representing a statewide organization of designated youth services organizations;

8. Three members to be appointed by the Governor, as follows:

a. one member representing an agency with experience in the management of a community- or faith-based social service,

b. one member who shall be a judge with experience in the trial and disposition of cases involving deprived children, and

c. one member who shall represent a nonprofit membership organization representing Indian child welfare programs in the state; and

9. Other members as may be appointed with the consent of a majority of the current members voting at a scheduled meeting, not to exceed a total of three additional members.

C. The members of the Steering Committee who are directors of state agencies shall make available agency resources as are necessary to carry out the provisions of this section. Department of Human Services' staff utilizing current agency resources shall support the Steering Committee. Support shall include gathering necessary information for the Steering Committee, hosting the Steering Committee meetings and conference calls, providing meeting announcements as well as agendas and minutes of the Steering Committee and subcommittees as directed by the cochairs and preparing reports for the review and approval of the Steering Committee.

D. The advisory plan shall be submitted for approval to the Speaker of the House of Representatives and the President Pro Tempore of the Senate no later than February 1, 2013. The advisory plan shall include a methodology for determining and transferring funds, including federal funds, that may be used to outsource the recruitment, training and retention of foster care providers as well as funding for the outsourcing of foster care, emergency foster care and therapeutic foster care. The methodology shall provide for the transfer of funds appropriated and budgeted for all services and programs that have been incorporated into the project. The advisory

plan shall provide for increasing the privatization of traditional and kinship foster care across the state. The advisory plan shall also identify areas or regions of the state in which the implementation of outsourcing would not be feasible due to a lack of service providers and shall recommend solutions designed to provide services statewide. The advisory plan shall include recommendations for reimbursement rates for private agencies, a minimum rate to be paid to foster parents, and an in-home intensive family stabilization and support rate for services to children at risk of removal as identified by the Department and referred to private contractors.

E. The advisory plan shall address expected workload, program experience and other requirements necessary for foster care improvement and any child-placing agencies which may qualify as service providers. Providers may include community organizations, faith-based groups, and private entities with experience in the field of child welfare.

F. The advisory plan shall include outcomes pertaining to child safety, permanency and well-being mutually agreed upon by the Steering Committee based upon standards established by the federal Adoption and Safe Families Act, Public Law 105-89. The advisory plan shall also be consistent with any requirement placed upon the Department pursuant to the settlement of litigation agreement completed in 2012.

G. The Department shall establish a quality assurance program for any outsourced services. The quality assurance program shall be based on standards established by the federal Adoption and Safe Families Act, Public Law 105-89, as well as by a national accrediting organization such as the Council on Accreditation of Services for Families and Children, Inc., the Commission on Accreditation of Rehabilitation Facilities, the Joint Commission on the Accreditation of Healthcare Organizations, or by another equivalent accreditation agency, or agencies, as the Secretary of the United States Department of Health and Human Services may recognize. The Department shall evaluate each contractor annually.

H. Agencies contracting with the Department for the outsourcing of child placement services shall be accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation, or by another equivalent accreditation agency, or agencies, as the Secretary of the United States Department of Health and Human Services may recognize. An agency lacking accreditation shall have a contract signed with an accredited agency and shall be limited to offering traditional foster care placements.

Passed the House of Representatives the 7th day of March, 2012.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

_____
Presiding Officer of the Senate