

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1031

By: Murphey

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5  
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,  
8 Section 7106, as renumbered by Section 216, Chapter  
9 233, O.S.L. 2009, and as last amended by Section 2,  
10 Chapter 278, O.S.L. 2010 (10A O.S. Supp. 2010,  
11 Section 1-2-105), which relates to child welfare  
12 investigations; requiring the recording of certain  
13 investigative interviews; 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 7106, as  
17 renumbered by Section 216, Chapter 233, O.S.L. 2009, and as last  
18 amended by Section 2, Chapter 278, O.S.L. 2010 (10A O.S. Supp. 2010,  
19 Section 1-2-105), is amended to read as follows:

20 Section 1-2-105. A. 1. Any county office of the Department of  
21 Human Services receiving a child abuse or neglect report shall  
22 promptly respond to the report by initiating an investigation of the  
23 report or an assessment of the family in accordance with priority  
24 guidelines established by the Department. The Department may  
prioritize reports of alleged child abuse or neglect based on the

1 severity and immediacy of the alleged harm to the child. The  
2 Department shall adopt a priority system pursuant to rules  
3 promulgated by the Commission for Human Services. The primary  
4 purpose of the investigation or assessment shall be the protection  
5 of the child.

6 2. If an investigation or assessment conducted by the  
7 Department in response to any report of child abuse or neglect shows  
8 that the incident reported was the result of the reasonable exercise  
9 of parental discipline involving the use of ordinary force,  
10 including, but not limited to, spanking, switching, or paddling, the  
11 investigation or assessment will proceed no further and all records  
12 regarding the incident shall be expunged.

13 B. 1. The investigation or assessment shall include a visit to  
14 the home of the child, unless there is reason to believe that there  
15 is an extreme safety risk to the child or worker or it appears that  
16 the referral has been made in bad faith. The visit shall include an  
17 interview with and examination of the subject child and may be  
18 conducted at any reasonable time and at any place including, but not  
19 limited to, the child's school. The Department shall notify the  
20 person responsible for the health, safety, and welfare of the child  
21 that the child has been interviewed at a school. The investigation  
22 or assessment may include an interview with the parents of the child  
23 or any other person responsible for the health, safety, or welfare

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1 of the child and an interview with and examination of any child in  
2 the home.

3 2. The investigation or assessment may include a medical,  
4 psychological, or psychiatric examination of any child in the home.  
5 If admission to the home, school, or any place where the child may  
6 be located cannot be obtained, then the district court having  
7 jurisdiction, upon application by the district attorney and upon  
8 cause shown, shall order the person responsible for the health,  
9 safety, or welfare of the child, or the person in charge of any  
10 place where the child may be located, to allow entrance for the  
11 interview, the examination, and the investigation or assessment. If  
12 the person responsible for the health, safety, or welfare of the  
13 child does not consent to a medical, psychological, or psychiatric  
14 examination of the child that is requested by the Department, the  
15 district court having jurisdiction, upon application by the district  
16 attorney and upon cause shown, shall order the examination to be  
17 made at the times and places designated by the court.

18 3. The investigation or assessment may include an inquiry into  
19 the possibility that the child or a person responsible for the  
20 health, safety, or welfare of the child has a history of mental  
21 illness. If the person responsible for the child's health, safety,  
22 or welfare does not allow the Department to have access to  
23 behavioral health records or treatment plans requested by the  
24 Department, which may be relevant to the alleged abuse or neglect,

1 the district court having jurisdiction, upon application by the  
2 district attorney and upon good cause shown, shall by order allow  
3 the Department to have access to the records pursuant to terms and  
4 conditions prescribed by the court.

5 4. a. If the court determines that the subject of the  
6 behavioral health records is indigent, the court shall  
7 appoint an attorney to represent that person at the  
8 hearing to obtain behavioral health records.

9 b. A person responsible for the health, safety, or  
10 welfare of the child is entitled to notice and a  
11 hearing when the Department seeks a court order to  
12 allow a psychological or psychiatric examination or  
13 access to behavioral health records.

14 c. Access to behavioral health records does not  
15 constitute a waiver of confidentiality.

16 5. The investigation of a report of sexual abuse or serious  
17 physical abuse or both sexual abuse and serious physical abuse shall  
18 be conducted, when appropriate and possible, using a  
19 multidisciplinary team approach as provided by Section 1-9-102 of  
20 this title. Law enforcement and the Department shall exchange  
21 investigation information.

22 C. 1. Every physician, surgeon, or other health care provider  
23 making a report of abuse or neglect as required by this section or  
24 examining a child to determine the likelihood of abuse or neglect

1 and every hospital or related institution in which the child was  
2 examined or treated shall provide copies of the results of the  
3 examination or copies of the examination on which the report was  
4 based and any other clinical notes, x-rays, photographs, and other  
5 previous or current records relevant to the case to law enforcement  
6 officers conducting a criminal investigation into the case and to  
7 employees of the Department conducting an assessment or  
8 investigation of alleged abuse or neglect in the case.

9       2. As necessary in the course of conducting an assessment or  
10 investigation, the Department may request and obtain, without a  
11 court order, copies of all prior medical records of a child  
12 including, but not limited to, hospital records, medical, and dental  
13 records. The physician-patient privilege shall not constitute  
14 grounds for failure to produce such records.

15       D. If, before the assessment or investigation is complete, the  
16 Department determines that immediate removal of the child is  
17 necessary to protect the child from further abuse or neglect, the  
18 Department shall recommend that the child be taken into custody.

19       E. The Department shall make a complete written report of the  
20 investigation. The investigation report, together with its  
21 recommendations, shall be submitted to the appropriate district  
22 attorney's office. Reports of assessment recommendations shall be  
23 submitted to appropriate district attorneys.

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1 F. The Department, where appropriate and in its discretion,  
2 shall identify prevention and intervention-related services  
3 available in the community and refer the family to or arrange for  
4 such services when an investigation or assessment indicates the  
5 family would benefit from such services, or the Department may  
6 provide such services directly. The Department shall document in  
7 the record its attempts to provide, refer or arrange for the  
8 provision of, voluntary services and shall determine within sixty  
9 (60) days whether the family has accessed those services directly  
10 related to safety of the child. If the family refuses voluntary  
11 services or does not access those services directly related to  
12 safety of the child, and it is determined by the Department that the  
13 child's surroundings endanger the health, safety, or welfare of the  
14 child, the Department may recommend that the child be placed in  
15 protective or emergency custody or that a petition be filed.

16 G. If the Department has reason to believe that a person  
17 responsible for the health, safety, and welfare of the child may  
18 remove the child from the state before the investigation is  
19 completed, the Department may request the district attorney to file  
20 an application for a temporary restraining order in any district  
21 court in the State of Oklahoma without regard to continuing  
22 jurisdiction of the child. Upon cause shown, the court may enter a  
23 temporary restraining order prohibiting the parent or other person

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1 from removing the child from the state pending completion of the  
2 assessment or investigation.

3 H. The Director of the Department or designee may request an  
4 investigation be conducted by the Oklahoma State Bureau of  
5 Investigation or other law enforcement agency in cases where it  
6 reasonably believes that criminally injurious conduct including, but  
7 not limited to, physical or sexual abuse of a child has occurred.

8 I. The Department shall ensure the audio of interviews  
9 conducted pursuant to this section shall be recorded and the  
10 recording shall be maintained in the applicable case file.

11 SECTION 2. This act shall become effective November 1, 2011.

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13 53-1-6286 SDR 12/14/10

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