

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1791

By: Griffin of the Senate

and

6 Nelson of the House

7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to children; amending 10A O.S. 2011,
11 Sections 1-6-102, as last amended by Section 2,
12 Chapter 374, O.S.L. 2013 and 1-6-103 (10A O.S. Supp.
13 2013, Section 1-6-102) which relate to confidential
14 records; prohibiting Department of Human Services
15 from assessing fees for certain records; permitting
16 Office of Juvenile Affairs to access foster care
17 records from Department; allowing disclosure of
18 Department records to members of Fetal and Infant
19 Mortality Review; and providing an effective date.

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

21 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-6-102, as
22 last amended by Section 2, Chapter 374, O.S.L. 2013 (10A O.S. Supp.
23 2013, Section 1-6-102), is amended to read as follows:

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

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

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

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

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

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

6 b. child custody or visitation is at issue,

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

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

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

21 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

22 NOW on this _____ day of _____, 20__, the court finds that child
23 custody or visitation is at issue in the above styled and numbered
24 proceeding and the disclosure of the safety analysis records of the

1 Oklahoma Department of Human Services pursuant to Section 1-6-102 of
2 this title is necessary and relevant to the court's determination of
3 the child's best interests. The court therefore orders as follows:

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

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

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

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

- 1 e. No person or entity shall utilize any information
2 contained in the safety analysis records for any
3 purpose other than the prosecution or defense of the
4 child custody or visitation issues in this case.
- 5 f. The release by counsel or any other person for any
6 reason of identifiers such as social security or tax
7 ID numbers that may be contained in the Department
8 records and which belong to any person or entity is
9 strictly prohibited.
- 10 g. Any violation of this order shall be subject to
11 prosecution for contempt of court.

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

13 4. This subsection shall not apply to:

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

20 5. The party who has obtained a court order for the safety
21 analysis records of the Department shall provide the Department with
22 the names and other identifying information concerning the subjects
23 of the safety analysis records.
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1 6. Upon receipt of a court order to produce its safety analysis
2 records, the Department shall be given a minimum of five (5)
3 judicial days to deliver the records to the court.

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

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

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

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

22 E. When confidential records may be relevant in a criminal,
23 civil, or administrative proceeding, an order of the court
24 authorizing the inspection, release, disclosure, correction, or

1 expungement of confidential records shall be entered by the court
2 only after a judicial review of the records and a determination of
3 necessity pursuant to the following procedure:

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

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

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

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

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

18 G. Any public or private agency, entity, or professional person
19 required to produce confidential records pursuant to this section
20 may require payment of fees from the party seeking the records prior
21 to any records being produced, including a research fee not
22 exceeding Twenty Dollars (\$20.00) per hour and a copy fee not to
23 exceed fifty cents (\$0.50) per page and Five Dollars (\$5.00) per
24 copy of each video tape or disk; provided, the court may waive such

1 costs in a criminal action based upon indigence of a defendant. The
2 Department shall not be permitted to assess fees for records
3 produced pursuant to subsection D of this section or in the
4 provision of records to the Office of Juvenile Affairs pursuant to
5 paragraph 13 of subsection H of this section.

6 H. 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. Authorizing the disclosure of a recording or a transcription
13 of a hotline referral which identifies any person who has reported
14 an allegation of known or suspected child abuse or neglect, unless
15 the disclosure is specifically ordered by the court;

16 9. 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 10. 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;

1 11. 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 12. 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; or

9 13. Prohibiting the Department from providing records to the
10 Office of Juvenile Affairs for any individual who has applied for
11 foster care.

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

14 Section 1-6-103. A. Juvenile court records and Department of
15 Human Services agency records pertaining to a child may be
16 inspected, and their contents shall be disclosed, without a court
17 order to the following persons upon showing of proper credentials
18 and pursuant to their lawful duties:

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

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

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

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

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

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

21 7. The Office of Juvenile Affairs;

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

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

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

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

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

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

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

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

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

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

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

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

21 15. Any member of a city-county Health Department Fetal Infant
22 Mortality Review (FIMR) in the performance of the official duties of
23 the member concerning investigations of fetal and infant
24

1 mortalities; provided, disclosure shall be limited to information
2 directly related to the purpose of such disclosure.

3 B. In addition to the persons listed in subsection A of this
4 section, juvenile court records may be inspected, and their contents
5 shall be disclosed, without a court order to the following persons
6 upon showing of proper credentials and pursuant to their lawful
7 duties:

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

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

- 20 a. psychological and medical records,
- 21 b. placement history and information, including the names
22 and addresses of foster parents,
- 23 c. family assessments,
- 24 d. treatment or service plans, and

1 e. school records;

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

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

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

12 C. In addition to the persons and entities named in subsection
13 A of this section, Department of Human Services agency records may
14 be inspected, and their contents shall be disclosed, without a court
15 order to the following persons upon showing of proper credentials
16 and pursuant to their lawful duties:

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

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

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

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

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

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

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

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

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

6 7. The Oklahoma Health Care Authority; and

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

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

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

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

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SECTION 3. This act shall become effective November 1, 2014.

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