STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

HOUSE BILL 3477 By: Nelson

AS INTRODUCED

An Act relating to children; amending 10A O.S. 2011, Section 1-6-105, as amended by Section 2, Chapter 343, O.S.L. 2012 (10A O.S. Supp. 2013, Section 1-6-105), which relates to child death or near death reports; providing statements expressing sympathy by Department of Human Services are inadmissible; and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-6-105, as amended by Section 2, Chapter 343, O.S.L. 2012 (10A O.S. Supp. 2013, Section 1-6-105), is amended to read as follows:

Section 1-6-105. A. When used in this section, unless the context otherwise requires:

1. "Abuse" means harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation. Provided, however, that nothing contained in this act shall prohibit any parent from using ordinary force as a

means of discipline including, but not limited to, spanking, switching, or paddling;

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

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

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

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

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

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

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

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

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

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

1. The age and sex of the child;

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

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

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

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

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

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

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

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

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

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

b. a summary of the child's involvement with the Department while the child was living with the parent,

guardian, or person responsible for the care of the child,

c. the disposition of any report created as a result of the child's involvement with the Department while the child was living with the parent, guardian, or person responsible for the care of the child,

d. a description of the services, if any, that were provided by the Department as a result of the child's involvement with the Department while the child was living with the parent, guardian, or person responsible for the care of the child,

e. the results of any risk or safety assessment completed by the Department relating to the child,

f. the date each report was assessed and completed,

g. whether the Department confirmed abuse or neglect,

h. whether any reports were referred to the district attorney and the date of the referrals,

i. the dates of any judicial proceedings prior to the death or near death of the child,

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

k. the rulings of the court,

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

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

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

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

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

5. In cases in which the death or near death of the child occurred while the child was in the custody of the Department and the person responsible for the supervision of the child was the suspected perpetrator, the following information:

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

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

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

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

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

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

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

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

G. If the Department is unable to release the information required by subsection E of this section before forty-five (45) days after receiving a report of the death or near death of a child, the

Department shall publish on the website of the Department the reason for the delay and the date the Department will release the report.

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

a. a confirmation shall be provided by the Department as to whether a report has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,

b. confirmation shall be provided by the Department as to whether previous reports have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department in response to a previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,

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

d. recommendations submitted by each participant in writing at the judicial proceedings including

recommendations made at the hearing as they relate to custody or placement of a child, and

e. the rulings of the court.

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

I. 1. At any time subsequent to seven (7) days after the date the person responsible for the child has been criminally charged, the Oklahoma Commission on Children and Youth shall, upon request, release certain information to the public within sixty (60) days of the request as follows:

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

b. confirmation shall be provided by the Commission as to whether previous reports of suspected child abuse or neglect have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department and the Commission in response to any previous report of child abuse or neglect, and the specific recommendation made to the district attorney

and any subsequent action taken by the district attorney,

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

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

e. the rulings of the court, and

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

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

J. Unless specifically authorized by this section, any public disclosure of information pursuant to this section shall not:

1. Identify or provide any identifying information of any complainant or reporter of child abuse or neglect;

2. Identify or provide any identifying information of the victim, the child victim's siblings or other children living in the same household, the parent or other person responsible for the child, or any other member of the household, or the person criminally charged or Department employees, agents or contractors.

Nonspecific descriptors, such as father, mother, stepparent, or sibling may be used; or

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

K. Any and all statements, affirmations, gestures, or conduct expressing apology, sympathy, commiseration, condolence, compassion, sorrow or a general sense of benevolence which are made by the Department of Human Services or an employee of the Department to the public or to the family or foster parents of a child which relate solely to discomfort, pain, suffering, injury, tragedy, near death or death of a child shall be inadmissible as evidence of an admission of liability or wrongdoing or as evidence of an admission against interest.

SECTION 2. This act shall become effective November 1, 2014.

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