

05/22/2012 12:48:45 PM

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB3135

By: Steele of the House and Treat of the Senate

Title: Children; relating to the disclosure of certain confidential records; 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 Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

HOUSE CONFEREES

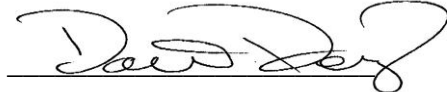
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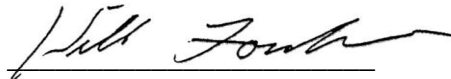
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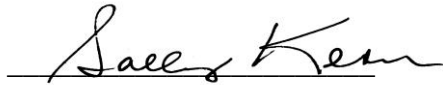
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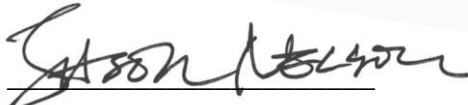
Fourkiller



Kern



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Peterson



Pruett



Roberts (Sean)



Sanders

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HB3135 CCR A

SENATE CONFEREES

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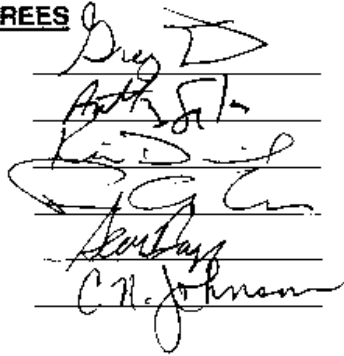
Sykes

David

Crain

Burrage

Johnson
(Constance)

Handwritten signatures of the Senate conferees: Greg D., Arthur S., David, Crain, Burrage, and C.H. Johnson.

House Action _____ Date _____ Senate Action _____ Date _____

House Action _____ Date _____ Senate Action _____ Date _____

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 3135

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

and

Treat of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to children; amending 10A O.S. 2011, Sections 1-6-102 and 1-6-105, which relate to the disclosure of certain records in child abuse or neglect cases; authorizing the release of certain information to tribes; specifying tribes shall maintain confidentiality; defining terms; directing Department of Human Services to maintain certain information; directing Department to conduct certain investigation and make certain report; specifying deadline requirement; directing Department to make certain notification; requiring the release of certain information by the Department in certain child death or near-death cases; specifying requirements; requiring Department to publish certain information on website; specifying requirements; authorizing the release of certain confidential information; 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:

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

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

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

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

16 C. Except as authorized by Section 620.6 of Title 10 of the
17 Oklahoma Statutes and this chapter and except as otherwise
18 specifically provided by state and federal laws pertaining to
19 education records, medical records, drug or alcohol treatment
20 records, law enforcement, or social service records, the records
21 listed in subsection A of this section shall be confidential and
22 shall be inspected, released, disclosed, corrected or expunged only
23 pursuant to an order of the court. A subpoena or subpoena duces
24

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

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

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

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

24

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

5 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

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

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

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

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

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

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

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

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

21 4. This subsection shall not apply to:

22 a. deprived child proceedings brought pursuant to the
23 Oklahoma Children's Code,
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- 1 b. discovery of safety analysis records by a person or
2 entity who is not the subject of those records, or
3 c. discovery of safety analysis records in criminal,
4 other civil, or administrative proceedings.

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

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

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

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

20 9. An employee of the Department shall not be compelled to
21 testify about the safety analysis records except upon a court order
22 directing such testimony. Any subpoena or subpoena duces tecum
23 purporting to compel disclosure of safety analysis records or
24

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

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

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

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

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

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

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

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

21 F. The court may, for good cause shown, prohibit the release of
22 such confidential records or testimony or authorize a release of the
23 confidential information or testimony upon such conditions as the
24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 11. Prohibiting the Department from disclosing records to an
8 employee of a federally recognized Indian tribe when the Indian
9 tribal employee, in the performance of the official duties of the
10 employee, is seeking to authorize or approve an individual as a
11 tribal foster or adoptive parent, or legal guardian in a tribal
12 court; provided, the Department shall limit the disclosure to
13 summaries or information directly necessary for the purpose of the
14 tribal authorization or approval. The tribe shall maintain the
15 confidentiality of Department records in accordance with federal and
16 state confidentiality requirements.

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

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

23 1. "Abuse" means harm or threatened harm or failure to protect
24 from harm or threatened harm to the health, safety, or welfare of a

1 child by a person responsible for the child, including but not
2 limited to nonaccidental physical or mental injury, sexual abuse, or
3 sexual exploitation. Provided, however, that nothing contained in
4 this act shall prohibit any parent from using ordinary force as a
5 means of discipline including, but not limited to, spanking,
6 switching, or paddling;

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

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

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

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

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

22 4. "Person responsible for a child" means "person responsible
23 for a child's health, safety or welfare" as provided in Section 1-1-
24 105 of this title but shall also include any person who has

1 voluntarily accepted the duty of supervising a child or who has been
2 directed or authorized to supervise a child by the person
3 responsible for the child's health, safety or welfare.

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

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

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

13 ~~C.~~ Department of Human Services information shall be maintained
14 by the Department as required by federal law as a condition of the
15 allocation of federal monies to the state. All exceptions for the
16 public release of Department information shall be construed as
17 openly as possible consistent with federal law.

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

22 D. If the Department has reasonable cause to suspect that a
23 child death or near death is the result of abuse or neglect, the
24 Department shall notify the Governor, the President Pro Tempore of

1 the Senate and the Speaker of the House of Representatives of the
2 initial investigative findings of the child protective services
3 investigation. Notice shall be communicated securely no later than
4 twenty-four (24) hours after determination of the reasonable
5 suspicion.

6 E. Not later than five (5) business days after the date of a
7 child death or near death, the Department shall release:

8 1. The age and sex of the child;

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

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

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

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

18 6. Whether the Department is conducting a child abuse or
19 neglect investigation.

20 F. If, after the child abuse or neglect investigation is
21 completed, the Department determines the death or near death was not
22 a result of abuse or neglect, the Department shall promptly release
23 a report limited to the information required pursuant to subsection
24

1 E of this section and a statement that: "The investigation has been
2 completed and the report of abuse or neglect has been ruled out".

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

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

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

11 3. The name of the offender if due process has been satisfied
12 or if the offender has been arrested and charged with the abuse or
13 neglect of the child;

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

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

19 b. a summary of the child's involvement with the
20 Department while the child was living with the parent,
21 guardian, or person responsible for the care of the
22 child,

23 c. the disposition of any report created as a result of
24 the child's involvement with the Department while the

- 1 child was living with the parent, guardian, or person
2 responsible for the care of the child,
- 3 d. a description of the services, if any, that were
4 provided by the Department as a result of the child's
5 involvement with the Department while the child was
6 living with the parent, guardian, or person
7 responsible for the care of the child,
- 8 e. the results of any risk or safety assessment completed
9 by the Department relating to the child,
- 10 f. the date each report was assessed and completed,
- 11 g. whether the Department confirmed abuse or neglect,
- 12 h. whether any reports were referred to the district
13 attorney and the date of the referrals,
- 14 i. the dates of any judicial proceedings prior to the
15 death or near death of the child,
- 16 j. a summary of the recommendations submitted by each
17 participant at the judicial proceedings including
18 recommendations made at the hearing as they relate to
19 custody or placement of the child,
- 20 k. the rulings of the court,
- 21 l. specific recommendations made and services rendered by
22 the Department described in any progress reports of a
23 pending case submitted to the court,
- 24

- 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 improvements based upon the interactions between the Department and the child who died or nearly died; 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 custodial care of the child was the alleged 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

1 responsible for the custodial care of the child,
2 including the disposition of any investigation
3 resulting from a report,

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

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

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

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

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

16 H. If the Department is unable to release the information
17 required by subsection E of this section before forty-five (45) days
18 after receiving a report of the death or near death of a child the
19 Department shall publish on the website of the Department the reason
20 for the delay and the date the Department will release the report.

21 I. Otherwise confidential information may be disclosed for the
22 purpose of clarifying or correcting the record when information has
23 already been made public through another source, such as disclosure
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1 by the subject of the report, a law enforcement officer or the
2 court.

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

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

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

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

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

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

3 e. the rulings of the court.

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

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

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

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

1 and any subsequent action taken by the district
2 attorney,

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

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

9 e. the rulings of the court, and

10 f. any relevant information listed in subsections G and J
11 of this section.

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

15 ~~E. Any~~ L. Unless specifically authorized by this section, any
16 public disclosure of information pursuant to this section shall not
17 identify:

18 1. Identify or provide ~~an~~ any identifying ~~description~~
19 information of any complainant or reporter of child abuse or
20 neglect, ~~and shall not identify the name;~~

21 2. Identify or provide any identifying information of the
22 victim, the child victim's siblings or other children living in the
23 same household, the parent or other person responsible for the
24 child, or any other member of the household, ~~other than~~ or the

1 person criminally charged or Department employees, agents or
2 contractors. Nonspecific descriptors, such as father, mother,
3 stepparent, or sibling may be used; or

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

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

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8 53-2-10557 SDR 05/21/12
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