

STATE OF OKLAHOMA

2nd Session of the 53rd Legislature (2012)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 3135

By: Nelson

COMMITTEE SUBSTITUTE

An Act relating to children; amending 10A O.S. 2011, Section 1-6-102, which relates to the disclosure of certain confidential records; authorizing the release of certain information to tribes; allowing the Department of Human Services to provide certain information related to the abuse or neglect of children; specifying limitations; authorizing Department to withhold information in certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-6-102, 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;

1 4. Law enforcement records;

2 5. Nondirectory education records; and

3 6. Social records.

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

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

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

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

- 1 a. the movant is a parent, legal guardian, or child who
2 is the subject of the safety analysis records,
3 b. child custody or visitation is at issue,
4 c. that upon receipt from the court, the safety analysis
5 records shall be kept confidential and disclosed only
6 to the movant, the attorneys of the movant, those
7 persons employed by or acting on behalf of the movant
8 and the attorneys of the movant whose aid is necessary
9 to the prosecution or defense of the child custody or
10 visitation issue, and
11 d. that a copy of the motion is being provided to the
12 parties, the attorney of the child, if any, and the
13 guardian ad litem, if any.

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

18 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

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

- 1 a. The ~~Oklahoma~~ Department of Human Services
2 ("Department" or "DHS") shall produce a copy of its
3 safety analysis records to this court on or before ____
4 day of _____, 20__.
- 5 b. The Department shall be permitted to redact or omit
6 information in its safety analysis records which may
7 identify the reporter of alleged child abuse or
8 neglect.
- 9 c. All information contained in the safety analysis
10 records of the Department is confidential under
11 Oklahoma law and shall be disclosed only to the
12 parties, the attorneys of the parties, and those
13 persons employed by or acting on behalf of the parties
14 and the attorneys of the parties whose aid is
15 necessary to the prosecution or defense of the child
16 custody or visitation issue.
- 17 d. No confidential information whether contained in
18 pleadings, briefs, discovery, or other documents shall
19 be filed except under seal with the legend "THIS
20 DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS
21 SUBJECT TO A PROTECTIVE ORDER OF THE COURT".
- 22 e. No person or entity shall utilize any information
23 contained in the safety analysis records for any
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1 purpose other than the prosecution or defense of the
2 child custody or visitation issues in this case.

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

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

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

11 4. This subsection shall not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 9. Prohibiting the disclosure of confidential information to
12 any educational institution, facility, or educator to the extent
13 necessary to enable the educator to better provide educational
14 services and activities for a child and provide for the safety of
15 students; ~~or~~

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

19 11. Prohibiting the Department from providing, upon request, a
20 summary of an individual's child welfare history to an individual
21 who has made application with a federally recognized Indian tribe to
22 be a foster or adoptive placement resource or a legal guardian for a
23 minor child; or
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1 12. Prohibiting the Department of Human Services from
2 disclosing information concerning alleged child abuse or neglect
3 that has been made public by any federal, state or tribal law
4 enforcement agency provided the disclosure is limited to
5 confirmation of the child victim's safety and whether the child
6 victim has been taken into custody.

7 I. Any disclosure of information pursuant to this section shall
8 not identify or provide an identifying description of any
9 complainant or reporter of child abuse or neglect, and shall not
10 disclose the name of any child victim's siblings or other children
11 living in the same household, the parent or person responsible for
12 the health, safety or welfare of the child, or any other member of
13 the household, other than a person criminally charged.

14 J. The Department shall not be required to disclose any
15 information if the Department reasonably believes that disclosure
16 may endanger the safety or well-being of any person.

17 SECTION 2. This act shall become effective November 1, 2012.

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