

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

As Amended

BILL NO. 3135

and

Treat of the Senate

[children - amending 10A O.S., Section 1-6-102 -
confidential records - Department of Human Services -
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;
4. Law enforcement records;
5. Nondirectory education records; and

1 6. Social records.

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

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

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

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

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

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

12 3. Upon filing the motion for production of safety analysis

13 records, the court may, in its discretion, enter an ex parte order

14 for production of safety analysis records that shall be

15 substantially in the following form:

16 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

17 NOW on this _____ day of _____, 20__, the court finds that child

18 custody or visitation is at issue in the above styled and numbered

19 proceeding and the disclosure of the safety analysis records of the

20 Oklahoma Department of Human Services pursuant to Section 1-6-102 of

21 this title is necessary and relevant to the court's determination of

22 the child's best interests. The court therefore orders as follows:

- 23 a. The ~~Oklahoma~~ Department of Human Services
- 24 ("Department" or "DHS") shall produce a copy of its

1 safety analysis records to this court on or before ____
2 day of _____, 20__.

3 b. The Department shall be permitted to redact or omit
4 information in its safety analysis records which may
5 identify the reporter of alleged child abuse or
6 neglect.

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

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

20 e. No person or entity shall utilize any information
21 contained in the safety analysis records for any
22 purpose other than the prosecution or defense of the
23 child custody or visitation issues in this case.
24

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

6 g. Any violation of this order shall be subject to
7 prosecution for contempt of court.

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

9 4. This subsection shall not apply to:

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

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

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

23 7. The safety analysis records provided by the Department to
24 the court pursuant to this subsection shall not be subject to

1 judicial review and shall be released by the court only to the
2 litigants in the case under a protective order.

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

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

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

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

23 1. A petition or motion shall be filed with the court
24 describing with specificity the confidential records being sought

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

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

19 3. At the hearing, should the court find that a compelling
20 reason does not exist for the confidential records to be judicially
21 reviewed, the matter shall be dismissed; otherwise, the court shall
22 order that the records be produced for a judicial review. The
23 hearing may be closed at the discretion of the court; and
24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 11. Prohibiting the Department from providing, upon request, a
18 summary of an individual's child welfare history to an individual
19 who has made application with a federally recognized Indian tribe to
20 be a foster or adoptive placement resource or a legal guardian for a
21 minor child; or

22 12. Prohibiting the Department of Human Services from
23 disclosing information concerning alleged child abuse or neglect
24 that has been made public by any federal, state or tribal law

1 enforcement agency provided the disclosure is limited to
2 confirmation of the child victim's safety and whether the child
3 victim has been taken into custody.

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

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

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

15 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 4-3-12 - DO PASS,
16 As Amended.