

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 54th Legislature (2014)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3469

By: Nelson

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8 COMMITTEE SUBSTITUTE

9 An Act relating to children; creating the Quinten
10 Douglas Wood Act of 2014; amending 10A O.S. 2011,
11 Sections 1-2-105 and 1-4-201, which relate to the
12 Oklahoma Children's Code; directing Department
13 consider risks of child unable to communicate
14 effectively in investigations and assessments;
15 providing for removal if reasonable suspicion child
16 is unable to communicate effectively about abuse or
17 neglect; providing for noncodification; and providing
18 an effective date.

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

20 SECTION 1. NEW LAW A new section of law not to be
21 codified in the Oklahoma Statutes reads as follows:

22 This act shall be known and may be cited as the "Quinten Douglas
23 Wood Act of 2014".

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

26 Section 1-2-105. A. 1. Any county office of the Department of
27 Human Services receiving a child abuse or neglect report shall

1 promptly respond to the report by initiating an investigation of the
2 report or an assessment of the family in accordance with priority
3 guidelines established by the Department. The Department may
4 prioritize reports of alleged child abuse or neglect based on the
5 severity and immediacy of the alleged harm to the child. The
6 Department shall adopt a priority system pursuant to rules
7 promulgated by the ~~Commission for Human Services~~ Department. The
8 primary purpose of the investigation or assessment shall be the
9 protection of the child. For investigations or assessments, the
10 Department shall give special consideration to the risks of any
11 minor, including a child with a disability, who is unable to
12 communicate effectively about abuse, neglect or other safety threat
13 or who is in a vulnerable position due to the inability to
14 communicate effectively.

15 2. If an investigation or assessment conducted by the
16 Department in response to any report of child abuse or neglect shows
17 that the incident reported was the result of the reasonable exercise
18 of parental discipline involving the use of ordinary force,
19 including, but not limited to, spanking, switching, or paddling, the
20 investigation or assessment will proceed no further and all records
21 regarding the incident shall be expunged.

22 B. 1. The investigation or assessment shall include a visit to
23 the home of the child, unless there is reason to believe that there
24 is an extreme safety risk to the child or worker or it appears that

1 the referral has been made in bad faith. The visit shall include an
2 interview with and examination of the subject child and may be
3 conducted at any reasonable time and at any place including, but not
4 limited to, the child's school. The Department shall notify the
5 person responsible for the health, safety, and welfare of the child
6 that the child has been interviewed at a school. The investigation
7 or assessment may include an interview with the parents of the child
8 or any other person responsible for the health, safety, or welfare
9 of the child and an interview with and examination of any child in
10 the home.

11 2. The investigation or assessment may include a medical,
12 psychological, or psychiatric examination of any child in the home.
13 If admission to the home, school, or any place where the child may
14 be located cannot be obtained, then the district court having
15 jurisdiction, upon application by the district attorney and upon
16 cause shown, shall order the person responsible for the health,
17 safety, or welfare of the child, or the person in charge of any
18 place where the child may be located, to allow entrance for the
19 interview, the examination, and the investigation or assessment. If
20 the person responsible for the health, safety, or welfare of the
21 child does not consent to a medical, psychological, or psychiatric
22 examination of the child that is requested by the Department, the
23 district court having jurisdiction, upon application by the district
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1 attorney and upon cause shown, shall order the examination to be
2 made at the times and places designated by the court.

3 3. The investigation or assessment may include an inquiry into
4 the possibility that the child or a person responsible for the
5 health, safety, or welfare of the child has a history of mental
6 illness. If the person responsible for the child's health, safety,
7 or welfare does not allow the Department to have access to
8 behavioral health records or treatment plans requested by the
9 Department, which may be relevant to the alleged abuse or neglect,
10 the district court having jurisdiction, upon application by the
11 district attorney and upon good cause shown, shall by order allow
12 the Department to have access to the records pursuant to terms and
13 conditions prescribed by the court.

14 4. a. If the court determines that the subject of the
15 behavioral health records is indigent, the court shall
16 appoint an attorney to represent that person at the
17 hearing to obtain behavioral health records.

18 b. A person responsible for the health, safety, or
19 welfare of the child is entitled to notice and a
20 hearing when the Department seeks a court order to
21 allow a psychological or psychiatric examination or
22 access to behavioral health records.

23 c. Access to behavioral health records does not
24 constitute a waiver of confidentiality.

1 5. The investigation of a report of sexual abuse or serious
2 physical abuse or both sexual abuse and serious physical abuse shall
3 be conducted, when appropriate and possible, using a
4 multidisciplinary team approach as provided by Section 1-9-102 of
5 this title. Law enforcement and the Department shall exchange
6 investigation information.

7 C. 1. Every physician, surgeon, or other health care provider
8 making a report of abuse or neglect as required by this section or
9 examining a child to determine the likelihood of abuse or neglect
10 and every hospital or related institution in which the child was
11 examined or treated shall provide copies of the results of the
12 examination or copies of the examination on which the report was
13 based and any other clinical notes, x-rays, photographs, and other
14 previous or current records relevant to the case to law enforcement
15 officers conducting a criminal investigation into the case and to
16 employees of the Department conducting an assessment or
17 investigation of alleged abuse or neglect in the case.

18 2. As necessary in the course of conducting an assessment or
19 investigation, the Department may request and obtain, without a
20 court order, copies of all prior medical records of a child
21 including, but not limited to, hospital records, medical, and dental
22 records. The physician-patient privilege shall not constitute
23 grounds for failure to produce such records.

1 D. If, before the assessment or investigation is complete, the
2 Department determines that immediate removal of the child is
3 necessary to protect the child from further abuse or neglect, the
4 Department shall recommend that the child be taken into custody.

5 E. The Department shall make a complete written report of the
6 investigation. The investigation report, together with its
7 recommendations, shall be submitted to the appropriate district
8 attorney's office. Reports of assessment recommendations shall be
9 submitted to appropriate district attorneys.

10 F. The Department, where appropriate and in its discretion,
11 shall identify prevention and intervention-related services
12 available in the community and refer the family to or arrange for
13 such services when an investigation or assessment indicates the
14 family would benefit from such services, or the Department may
15 provide such services directly. The Department shall document in
16 the record its attempts to provide, refer or arrange for the
17 provision of, voluntary services and shall determine within sixty
18 (60) days whether the family has accessed those services directly
19 related to safety of the child. If the family refuses voluntary
20 services or does not access those services directly related to
21 safety of the child, and it is determined by the Department that the
22 child's surroundings endanger the health, safety, or welfare of the
23 child, the Department may recommend that the child be placed in
24 protective or emergency custody or that a petition be filed.

1 G. If the Department has reason to believe that a person
2 responsible for the health, safety, and welfare of the child may
3 remove the child from the state before the investigation is
4 completed, the Department may request the district attorney to file
5 an application for a temporary restraining order in any district
6 court in the State of Oklahoma without regard to continuing
7 jurisdiction of the child. Upon cause shown, the court may enter a
8 temporary restraining order prohibiting the parent or other person
9 from removing the child from the state pending completion of the
10 assessment or investigation.

11 H. The Director of the Department or designee may request an
12 investigation be conducted by the Oklahoma State Bureau of
13 Investigation or other law enforcement agency in cases where it
14 reasonably believes that criminally injurious conduct including, but
15 not limited to, physical or sexual abuse of a child has occurred.

16 SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-4-201, is
17 amended to read as follows:

18 Section 1-4-201. A. Pursuant to the provisions of this
19 section, a child may be taken into custody prior to the filing of a
20 petition:

21 1. By a peace officer or employee of the court, without a court
22 order if the officer or employee has reasonable suspicion that:

23 a. the child is in need of immediate protection due to an
24 imminent safety threat, ~~or~~

1 b. the circumstances or surroundings of the child are
2 such that continuation in the child's home or in the
3 care or custody of the parent, legal guardian, or
4 custodian would present an imminent safety threat to
5 the child, or

6 c. the child, including a child with a disability, is
7 unable to communicate effectively about abuse, neglect
8 or other safety threat or is in a vulnerable position
9 due to the inability to communicate effectively and
10 the child is in need of immediate protection; or

11 2. By an order of the district court issued upon the
12 application of the office of the district attorney. The application
13 presented by the district attorney may be supported by a sworn
14 affidavit which may be based upon information and belief. The
15 application shall state facts sufficient to demonstrate to the court
16 that a continuation of the child in the home or with the caretaker
17 of the child is contrary to the child's welfare and there is
18 reasonable suspicion that:

19 a. the child is in need of immediate protection due to an
20 imminent safety threat, ~~or~~

21 b. the circumstances or surroundings of the child are
22 such that continuation in the child's home or in the
23 care or custody of the parent, legal guardian, or
24

1 custodian would present an imminent safety threat to
2 the child, or

3 c. the child, including a child with a disability, is
4 unable to communicate effectively about abuse, neglect
5 or other safety threat or is in a vulnerable position
6 due to the inability to communicate effectively.

7 The application and order may be verbal and upon being advised by
8 the district attorney or the court of the verbal order, law
9 enforcement shall act on such order. If verbal, the district
10 attorney shall submit a written application and proposed order to
11 the district court within one (1) judicial day from the issuance of
12 the verbal order. Upon approval, the application and order shall be
13 filed with the court clerk; or

14 3. By order of the district court when the child is in need of
15 medical or behavioral health treatment in order to protect the
16 health, safety, or welfare of the child and the parent, legal
17 guardian, or custodian of the child is unwilling or unavailable to
18 consent to such medical or behavioral health treatment or other
19 action, the court shall specifically include in the emergency order
20 authorization for such medical or behavioral health evaluation or
21 treatment as it deems necessary.

22 B. 1. By January 1, 2010, the Department in consultation with
23 law enforcement and the district courts shall develop and implement
24 a system for joint response when a child is taken into protective

1 custody by a peace officer pursuant to paragraph 1 of subsection A
2 of this section. The system shall include:

- 3 a. designation of persons to serve as contact points for
4 peace officers, including at least one backup contact
5 for each initial contact point,
- 6 b. a protocol for conducting a safety evaluation at the
7 scene where protective custody is assumed to determine
8 whether the child faces an imminent safety threat and,
9 if so, whether the child can be protected through
10 placement with relatives or others without the
11 Department assuming emergency custody,
- 12 c. the development of reception centers for accepting
13 protective custody of children from peace officers
14 when the Department is unable to respond at the scene
15 within a reasonable time period,
- 16 d. a protocol for conducting a safety evaluation at the
17 reception center within twenty-three (23) hours of the
18 assumption of protective custody of a child to
19 determine whether the child faces an imminent safety
20 threat and, if so, whether the child can be protected
21 through placement with relatives or others without the
22 Department assuming emergency custody, and
- 23 e. a protocol, when the child cannot safely be left in
24 the home, for transporting a child to the home of a

1 relative, kinship care home, an emergency foster care
2 home, a shelter, or any other site at which the
3 Department believes the child can be protected,
4 provided that the Department shall utilize a shelter
5 only when the home of a relative, kinship care home,
6 or emergency foster care home is unavailable or
7 inappropriate.

8 2. Beginning January 1, 2010, no child taken into protective
9 custody under paragraph 1 of subsection A of this section shall be
10 considered to be in the emergency custody of the Department until
11 the Department has completed a safety evaluation and has concluded
12 that the child faces an imminent safety threat and the court has
13 issued an order for emergency custody.

14 3. If the safety evaluation performed by the Department of a
15 child taken into protective custody under paragraph 1 of subsection
16 A of this section indicates that the child does not face an imminent
17 safety threat, the Department shall restore the child to the custody
18 and control of the parent, legal guardian, or custodian of the
19 child.

20 ~~4. The Department shall report on the progress of the system to~~
21 ~~the Children's Services Oversight Committee established in Section~~
22 ~~22 of this act by March 1, 2010.~~

23 C. When an order issued by the district court pursuant to
24 subsection A of this section places the child in the emergency

1 custody of the Department of Human Services pending further hearing
2 specified by Section 1-4-203 of this title, an employee of the
3 Department may execute such order and physically take the child into
4 custody in the following limited circumstance:

5 1. The child is located in a hospital, school, or day care
6 facility; and

7 2. It is believed that assumption of the custody of the child
8 from the facility can occur without risk to the child or the
9 employee of the Department.

10 Otherwise, the order shall be executed and the child taken into
11 custody by a peace officer or employee of the court.

12 D. The court shall not enter a prepetition emergency custody
13 order removing a child from the home of the child unless the court
14 makes a determination:

15 1. That an imminent safety threat exists and continuation in
16 the home of the child is contrary to the welfare of the child; and

17 2. Whether reasonable efforts have been made to prevent the
18 removal of the child from the child's home; or

19 3. An absence of efforts to prevent the removal of the child
20 from the home of the child is reasonable because the removal is due
21 to an emergency and is for the purpose of providing for the safety
22 and welfare of the child.

23 E. Whenever a child is taken into custody pursuant to this
24 section:

1 1. The child may be taken to a kinship care home or an
2 emergency foster care home designated by the Department, or if no
3 such home is available, to a children's shelter located within the
4 county where protective or emergency custody is assumed or, if there
5 is no children's shelter within the county, to a children's shelter
6 designated by the court;

7 2. Unless otherwise provided by administrative order entered
8 pursuant to subsection F of this section, the child may be taken
9 before a judge of the district court or the court may be contacted
10 verbally for the purpose of obtaining an order for emergency
11 custody. The court may place the child in the emergency custody of
12 the Department or some other suitable person or entity pending
13 further hearing specified by Section 1-4-203 of this title;

14 3. The child may be taken directly to or retained in a health
15 care facility for medical treatment, when the child is in need of
16 emergency medical treatment to maintain the child's health, or as
17 otherwise directed by the court; or

18 4. The child may be taken directly to or retained in a
19 behavioral health treatment facility for evaluation or inpatient
20 treatment, in accordance with the provisions of the Inpatient Mental
21 Health and Substance Abuse Treatment of Minors Act, when the child
22 is in need of behavioral health care to preserve the child's health,
23 or as otherwise directed by the court; and
24

1 5. Unless otherwise provided by administrative order entered
2 pursuant to subsection F of this section, the district court of the
3 county where the custody is assumed shall be immediately notified,
4 verbally or in writing, that the child has been taken into custody.
5 If notification is verbal, written notification shall be sent to the
6 district court within one (1) judicial day of such verbal
7 notification.

8 F. The court may provide, in an administrative order issued
9 pursuant to this section, for the disposition of children taken into
10 custody and notification of the assumption of such custody.

11 1. Such order or rule shall be consistent with the provisions
12 of subsection E of this section and may include a process for
13 release of a child prior to an emergency custody hearing. The
14 administrative order shall not include a provision to modify
15 protective custody of a child to emergency custody of the Department
16 upon admission of a child to a shelter; and

17 2. The administrative order may require joint training of peace
18 officers and Department staff deemed necessary by the court to carry
19 out the provisions of the administrative order.

20 G. No child taken into custody pursuant to this section shall
21 be confined in any jail, adult lockup, or adult or juvenile
22 detention facility.

23 H. When a determination is made by the Department that there is
24 a significant risk of abuse or neglect, but there is not an imminent

1 safety threat to the child, the Department may recommend a court-
2 supervised and Department-monitored in-home placement. The
3 Department shall assist the family in obtaining the services
4 necessary to maintain the in-home care and correct the conditions
5 leading to the risk determination.

6 I. Any peace officer, employee of the court, or employee of the
7 Department is authorized to transport a child when acting pursuant
8 to this section. Such persons and any other person acting under the
9 direction of the court, who in good faith transports any child or
10 carries out duties pursuant to this section, shall be immune from
11 civil or criminal liability that may result by reason of such act.
12 For purposes of any proceedings, civil or criminal, the good faith
13 of any such person shall be presumed. This provision shall not
14 apply to damage or injury caused by the willful, wanton or gross
15 negligence or misconduct of a person.

16 J. A parent or person responsible for the child who is arrested
17 on a charge or warrant other than child abuse or neglect or an act
18 of child endangerment may designate another person to take physical
19 custody of the child. Upon this request, the peace officer may
20 release the child to the physical custody of the designated person.

21 SECTION 4. This act shall become effective November 1, 2014.
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23 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 02/26/2014 -
24 DO PASS, As Amended.