

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 460

By: Griffin of the Senate

and

Nelson of the House

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to child abuse; amending 10A O.S.
11 2011, Sections 1-2-101 and 1-6-102, as amended by
12 Section 1, Chapter 343, O.S.L. 2012 (10A O.S. Supp.
13 2012, Section 1-6-102), which relate to the Oklahoma
14 Children's Code; requiring Department of Human
15 Services to electronically record hotline referrals;
16 directing Department retain recording for certain
17 time period; describing nature of recording;
18 permitting disclosure of recording in limited
19 circumstances; requiring Department to redact
20 identifying information in certain cases; construing
21 provision; and providing an effective date.

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

23 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-2-101, is
24 amended to read as follows:

 Section 1-2-101. A. 1. The Department of Human Services shall
establish a statewide centralized hotline for the reporting of child
abuse or neglect to the Department.

1 2. The Department shall provide hotline-specific training
2 including, but not limited to, interviewing skills, customer service
3 skills, narrative writing, necessary computer systems, making case
4 determinations, and identifying priority situations.

5 3. The Department is authorized to contract with third parties
6 in order to train hotline workers.

7 4. The Department shall develop a system to track the number of
8 calls received, and of that number:

- 9 a. the number of calls screened out,
- 10 b. the number of referrals assigned, and
- 11 c. the number of calls in which the allegations were
12 later found to be unsubstantiated or ruled out.

13 5. The Department shall electronically record each referral
14 received by the hotline and establish a secure means of retaining
15 the recordings for ninety (90) days. The recordings shall be
16 confidential and subject to disclosure only in those cases in which
17 criminal charges related to the referral have been filed and
18 pursuant to the requirements of subsection E of Section 1-6-102 of
19 this title. If the court orders the disclosure of the referral, the
20 Department shall redact any information identifying the reporting
21 party unless otherwise ordered by the court.

22 B. 1. Every person having reason to believe that a child under
23 the age of eighteen (18) years is a victim of abuse or neglect shall
24 report the matter promptly to the Department of Human Services.

1 Reports shall be made to the hotline provided for in subsection A of
2 this section. Any allegation of abuse or neglect reported in any
3 manner to a county office shall immediately be referred to the
4 hotline by the Department. Provided, however, that in actions for
5 custody by abandonment, provided for in Section 7 2-117 of ~~this act~~
6 Title 30 of the Oklahoma Statutes, there shall be no reporting
7 requirement.

8 2. Every physician, surgeon, or other health care professional
9 including doctors of medicine, licensed osteopathic physicians,
10 residents and interns, or any other health care professional
11 attending the birth of a child who tests positive for alcohol or a
12 controlled dangerous substance shall promptly report the matter to
13 the Department.

14 3. No privilege or contract shall relieve any person from the
15 requirement of reporting pursuant to this section.

16 4. The reporting obligations under this section are individual,
17 and no employer, supervisor, or administrator shall interfere with
18 the reporting obligations of any employee or other person or in any
19 manner discriminate or retaliate against the employee or other
20 person who in good faith reports suspected child abuse or neglect,
21 or who provides testimony in any proceeding involving child abuse or
22 neglect. Any employer, supervisor, or administrator who discharges,
23 discriminates or retaliates against the employee or other person
24 shall be liable for damages, costs and attorney fees.

1 5. Every physician, surgeon, or other health care professional
2 making a report of abuse or neglect as required by this subsection
3 or examining a child to determine the likelihood of abuse or neglect
4 and every hospital or related institution in which the child was
5 examined or treated shall provide, upon request, copies of the
6 results of the examination or copies of the examination on which the
7 report was based and any other clinical notes, x-rays, photographs,
8 and other previous or current records relevant to the case to law
9 enforcement officers conducting a criminal investigation into the
10 case and to employees of the Department of Human Services conducting
11 an investigation of alleged abuse or neglect in the case.

12 C. Any person who knowingly and willfully fails to promptly
13 report suspected child abuse or neglect or who interferes with the
14 prompt reporting of suspected child abuse or neglect may be reported
15 to local law enforcement for criminal investigation and, upon
16 conviction thereof, shall be guilty of a misdemeanor.

17 D. 1. Any person who knowingly and willfully makes a false
18 report pursuant to the provisions of this section or a report that
19 the person knows lacks factual foundation may be reported to local
20 law enforcement for criminal investigation and, upon conviction
21 thereof, shall be guilty of a misdemeanor.

22 2. If a court determines that an accusation of child abuse or
23 neglect made during a child custody proceeding is false and the
24 person making the accusation knew it to be false at the time the

1 accusation was made, the court may impose a fine, not to exceed Five
2 Thousand Dollars (\$5,000.00) and reasonable attorney fees incurred
3 in recovering the sanctions, against the person making the
4 accusation. The remedy provided by this paragraph is in addition to
5 paragraph 1 of this subsection or to any other remedy provided by
6 law.

7 E. Nothing contained in this section shall be construed to
8 exempt or prohibit any person from reporting any suspected child
9 abuse or neglect pursuant to subsection B of this section.

10 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-6-102, as
11 amended by Section 1, Chapter 343, O.S.L. 2012 (10A O.S. Supp. 2012,
12 Section 1-6-102), is amended to read as follows:

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

- 17 1. Juvenile court records;
 - 18 2. Agency records;
 - 19 3. District attorney's records;
 - 20 4. Law enforcement records;
 - 21 5. Nondirectory education records; and
 - 22 6. Social records.
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1 B. The limitation of subsection A of this section shall not
2 apply to statistical information and other abstract information
3 obtained pursuant to the provisions of the Oklahoma Children's Code.

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

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

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

- 22 a. the movant is a parent, legal guardian, or child who
23 is the subject of the safety analysis records,
24 b. child custody or visitation is at issue,

1 c. that upon receipt from the court, the safety analysis
2 records shall be kept confidential and disclosed only
3 to the movant, the attorneys of the movant, those
4 persons employed by or acting on behalf of the movant
5 and the attorneys of the movant whose aid is necessary
6 to the prosecution or defense of the child custody or
7 visitation issue, and

8 d. that a copy of the motion is being provided to the
9 parties, the attorney of the child, if any, and the
10 guardian ad litem, if any.

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

15 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

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

22 a. The Oklahoma Department of Human Services
23 ("Department" or "DHS") shall produce a copy of its
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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.
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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
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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. Authorizing the disclosure of a recording or a transcription
6 of a hotline referral which identifies any person who has reported
7 an allegation of known or suspected child abuse or neglect, unless
8 the disclosure is specifically ordered by the court;

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

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

18 ~~10.~~ 11. Prohibiting the Department from obtaining, without a
19 court order, nondirectory education records pertaining to a child in
20 the legal custody of the Department; or

21 ~~11.~~ 12. Prohibiting the Department from providing records to a
22 federally recognized Indian tribe for any individual who has applied
23 for foster care placement, adoptive placement, or guardianship
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1 placement through the tribe; provided, that the tribe shall be
2 required to maintain the confidentiality of the records.

3 SECTION 3. This act shall become effective November 1, 2013.
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5 COMMITTEE REPORT BY: COMMITTEE ON HUMAN SERVICES, dated 04/02/2013 -
6 DO PASS, As Amended.
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