

An Act

ENROLLED HOUSE
BILL NO. 3135

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

and

Treat and Brinkley of the
Senate

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 review 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; specifying certain information shall not be disclosed; and providing an effective date.

SUBJECT: Children

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
6. Social records.

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

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

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

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

- a. the movant is a parent, legal guardian, or child who is the subject of the safety analysis records,
- b. child custody or visitation is at issue,
- c. that upon receipt from the court, the safety analysis records shall be kept confidential and disclosed only to the movant, the attorneys of the movant, those

persons employed by or acting on behalf of the movant and the attorneys of the movant whose aid is necessary to the prosecution or defense of the child custody or visitation issue, and

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

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

CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

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

- a. The Oklahoma Department of Human Services ("Department" or "DHS") shall produce a copy of its safety analysis records to this court on or before ____ day of _____, 20__.
- b. The Department shall be permitted to redact or omit information in its safety analysis records which may identify the reporter of alleged child abuse or neglect.
- c. All information contained in the safety analysis records of the Department is confidential under Oklahoma law and shall be disclosed only to the parties, the attorneys of the parties, and those persons employed by or acting on behalf of the parties and the attorneys of the parties whose aid is necessary to the prosecution or defense of the child custody or visitation issue.
- d. No confidential information whether contained in pleadings, briefs, discovery, or other documents shall be filed except under seal with the legend "THIS

DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS SUBJECT TO A PROTECTIVE ORDER OF THE COURT".

- e. No person or entity shall utilize any information contained in the safety analysis records for any purpose other than the prosecution or defense of the child custody or visitation issues in this case.
- f. The release by counsel or any other person for any reason of identifiers such as social security or tax ID numbers that may be contained in the Department records and which belong to any person or entity is strictly prohibited.
- g. Any violation of this order shall be subject to prosecution for contempt of court.

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

4. This subsection shall not apply to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. "Abuse" means harm or threatened harm or failure to protect from harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child, including but not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation. Provided, however, that nothing contained in this act shall prohibit any parent from using ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling;

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

- a. name, address, date of birth, occupation, place of employment and telephone number,
- b. employer identification number, mother's maiden name, Social Security number, or any identification number issued by a governmental entity, or
- c. unique biometric data, including the fingerprints, voice print, or retina or iris image of the individual;

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

4. "Person responsible for a child" means "person responsible for a child's health, safety or welfare" as provided in Section 1-1-105 of this title but shall also include any person who has voluntarily accepted the duty of supervising a child or who has been directed or authorized to supervise a child by the person responsible for the child's health, safety or welfare.

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

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

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

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

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

D. If the Department has reasonable cause to suspect that a child death or near death is the result of abuse or neglect, the Department shall notify the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives of the initial investigative findings of the child protective services review. Notice shall be communicated securely no later than twenty-four (24) hours after determination of the reasonable suspicion.

E. Not later than five (5) business days after the date of a child death or near death in cases where there is reasonable cause to suspect abuse or neglect, the Department shall release upon request:

1. The age and sex of the child;

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

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

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

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

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

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

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

3. The name of the offender if due process has been satisfied or if the offender has been arrested and charged with a crime associated with the death or near death of the child;

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

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

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

c. the disposition of any report created as a result of the child's involvement with the Department while the child was living with the parent, guardian, or person responsible for the care of the child,

d. a description of the services, if any, that were provided by the Department as a result of the child's involvement with the Department while the child was living with the parent, guardian, or person responsible for the care of the child,

- e. the results of any risk or safety assessment completed by the Department relating to the child,
- f. the date each report was assessed and completed,
- g. whether the Department confirmed abuse or neglect,
- h. whether any reports were referred to the district attorney and the date of the referrals,
- i. the dates of any judicial proceedings prior to the death or near death of the child,
- j. a summary of the recommendations submitted by each participant at the judicial proceedings including recommendations made at the hearing as they relate to custody or placement of the child,
- k. the rulings of the court,
- l. specific recommendations made and services rendered by the Department described in any progress reports of a pending case submitted to the court,
- 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 practice improvements based upon the interactions between the Department, the child who died or nearly died and the person responsible for the care of the child; 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 supervision of the child was the suspected 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 responsible for the custodial care of the child, including the disposition of any investigation resulting from a report,
- d. any policy violations, including notice of any action taken by the Department regarding a violation,
- e. records of any training completed by the person responsible for the custodial care of the child,
- f. similar information for any other investigations concerning that child, or other children while living in the same household,
- g. a summary of licensing actions taken by the Department, and
- h. recommendations for policy changes or practice improvements based upon the interactions between the Department and the child who died or nearly died.

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

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

- a. a confirmation shall be provided by the Department as to whether a report has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,
- b. confirmation shall be provided by the Department as to whether previous reports have been made and the dates thereof, a summary of those previous reports, the dates and outcome of any investigations or actions taken by the Department in response to a previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,
- c. the dates of any judicial proceedings prior to the death or near death of the child,
- d. recommendations submitted by each participant in writing at the judicial proceedings including recommendations made at the hearing as they relate to custody or placement of a child, and
- e. the rulings of the court.

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

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

- a. a confirmation shall be provided by the Commission as to whether a report of suspected child abuse or neglect has been made concerning the alleged victim or other children while living in the same household and whether an investigation has begun,
- b. confirmation shall be provided by the Commission as to whether previous reports of suspected child abuse or neglect have been made and the dates thereof, a summary of those previous reports, the dates and

outcome of any investigations or actions taken by the Department and the Commission in response to any previous report of child abuse or neglect, and the specific recommendation made to the district attorney and any subsequent action taken by the district attorney,

- c. the dates of any judicial proceedings prior to the death or near death of the child,
- d. recommendations submitted by the Department and the Commission shall be provided in writing including recommendations made at the hearing as they relate to custody or placement of a child, ~~and~~
- e. the rulings of the court, and
- f. any relevant information listed in subsections F and H of this section.

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

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

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

2. Identify or provide any identifying information of the victim, the child victim's siblings or other children living in the same household, the parent or other person responsible for the child, or any other member of the household, ~~other than~~ or the person criminally charged or Department employees, agents or contractors. Nonspecific descriptors, such as father, mother, stepparent, or sibling may be used; or

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

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

Passed the House of Representatives the 25th day of May, 2012.

Presiding Officer of the House of
Representatives

Passed the Senate the 25th day of May, 2012.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this _____
day of _____, 20____,
at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma the _____ day of
_____, 20____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this _____
_____ day of _____, 20____,
at _____ o'clock _____ M.

By: _____