

STATE OF OKLAHOMA

1st Session of the 57th Legislature (2019)

HOUSE BILL 1275

By: Lawson

AS INTRODUCED

An Act relating to children; amending 10A O.S. 2011, Section 1-2-108, as amended by Section 1, Chapter 29, O.S.L. 2015 (10A O.S. Supp. 2018, Section 1-2-108), which relates to the Oklahoma Children's Code; updating language; establishing a Child Safety Registry; specifying beginning date for Registry; directing contents of Registry; providing for maintenance of Registry by the Department of Human Services; directing Department to promulgate rules; requiring cooperation with other states to create a national system; describing process for placing a name in the Registry; listing criteria for the Department to use; prescribing preponderance of the evidence standard; including consideration of specified factors; allowing for provisional placement of name on Registry; listing criteria for removal of name; authorizing request to remove name from Registry in certain cases; setting waiting period for petition following a denial; directing Department to develop policy and procedures for removal; providing for administrative hearing after placement or removal of name; specifying standard of review; mandating hearing compliance with certain laws; authorizing certain disclosure of name on Registry; requiring Department to promulgate rules for release of information upon request; limiting disclosure to certain listed persons, entities or legal proceedings; prohibiting release of identifying information about person making the report; providing exception; construing provision; requiring notation of provisional placement if disclosed; proscribing disclosure of information to a third party; requiring notice when certain child transfers schools; authorizing Department to charge reasonable fees for certain disclosure material; excluding payment of fee

1 by certain agency or person; providing for  
2 codification; and providing effective dates.

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

5 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-2-108, as  
6 amended by Section 1, Chapter 29, O.S.L. 2015 (10A O.S. Supp. 2018,  
7 Section 1-2-108), is amended to read as follows:

8 Section 1-2-108. A. There is hereby established within the  
9 Department of Human Services an information system for the  
10 maintenance of all reports of child abuse, sexual abuse, sexual  
11 exploitation, and neglect made pursuant to the provisions of the  
12 Oklahoma Children's Code.

13 B. The Children and Family Services Division of the Department  
14 shall be responsible for maintaining a suitably cross-indexed system  
15 of all the reports.

16 C. The records maintained shall contain, but shall not be  
17 limited to:

18 1. All information in the written report required by Section 1-  
19 2-101 of this title;

20 2. A record of the final disposition of the report including  
21 services offered and services accepted;

22 3. The plan for rehabilitative treatment; and

23 4. Any other relevant information.  
24

1 D. Data and information maintained and related to individual  
2 cases shall be confidential ~~and shall be made available only~~ except  
3 as authorized by state or federal law.

4 E. The ~~Commission for~~ Department of Human Services shall  
5 promulgate rules governing the availability of such data and  
6 information.

7 F. Rules promulgated by the ~~Commission~~ Department shall  
8 encourage cooperation with other states in exchanging reports in  
9 order to effect a national registration system.

10 G. No person shall allow the data and information maintained to  
11 be released except as authorized by ~~Chapter VI of the Oklahoma~~  
12 ~~Children's Code~~ law.

13 H. Records obtained by the Department shall be maintained by  
14 the Department until otherwise provided by law.

15 I. Beginning July 1, 2021, there is a Child Safety Registry  
16 established within the Department which shall contain records of all  
17 cases in which allegations of child abuse, sexual abuse, sexual  
18 exploitation and neglect made on or after July 1, 2021, pursuant to  
19 the provisions of the Oklahoma Children's Code are determined after  
20 investigation to be substantiated. The Children and Family Services  
21 Division of the Department shall be responsible for maintaining the  
22 Child Safety Registry.

23 J. The Department shall promulgate rules necessary to establish  
24 a Child Safety Registry pursuant to this act. Rules promulgated by

1 the Department shall encourage cooperation with other states in  
2 exchanging substantiated reports to create a national registration  
3 system.

4 SECTION 2. NEW LAW A new section of law to be codified  
5 in the Oklahoma Statutes as Section 1-2-108.1 of Title 10A, unless  
6 there is created a duplication in numbering, reads as follows:

7 A. An individual's name shall be placed in the Child Safety  
8 Registry established in Section 1-2-108 of Title 10A of the Oklahoma  
9 Statutes after notice to the person if:

10 1. After the safety assessment or investigation provided for in  
11 Section 1-2-102 of Title 10A of the Oklahoma Statutes the Department  
12 of Human Services determines that a report of heinous and shocking  
13 abuse or heinous and shocking neglect as defined in Section 1-1-105  
14 of Title 10A of the Oklahoma Statutes has been substantiated;

15 2. The finding of substantiated heinous and shocking abuse or  
16 heinous and shocking neglect has been reviewed by an internal  
17 Central Registry Review Committee of the Department and the  
18 Committee has determined that the individual should be placed on the  
19 Child Safety Registry.

20 a. Criteria for making this determination shall be set by  
21 the Department and shall include but not be limited  
22 to:  
23 (1) the age of the individual at the time of the  
24 offense(s),

- (2) the length of time since the offense(s) occurred,
- (3) the number and types of offenses for which the individual was convicted or findings were made,
- (4) the circumstances surrounding commission of the offense(s) that demonstrate willful intent,
- (5) the likelihood the individual will re-offend, and
- (6) other documentation submitted indicating that the health, safety and well-being of children are or are not endangered.

b. The review committee standard to determine registration by preponderance of the evidence shall include consideration of:

- (1) the individual's history of behavior likely to create a reasonable risk of harm to children,
- (2) whether the individual is unsafe with children, either alone or in a group, and
- (3) whether a criminal conviction or deferred sentence resulted from the individual's behavior, the punishment rendered and whether the individual successfully completed the sentence, probation or treatment program.

c. The determination shall be based upon a majority decision of the members of the Committee;

1        3. The individual is eighteen (18) years of age or older at the  
2 time the act or omission occurred and after proper notice does not  
3 make timely request for an administrative hearing;

4        4. The individual makes timely request for an administrative  
5 hearing and upon completion of the administrative hearing process,  
6 the determination by the Department that the allegations were  
7 substantiated is upheld by the administrative law judge; and

8        5. The alleged offender is a child at the time of the act or  
9 omission and an administrative hearing is held, unless the child  
10 appears in person with the advice of counsel or by counsel  
11 affirmatively waives the administrative hearing, and upon completion  
12 of the administrative hearing process, the determination by the  
13 Department that the allegations were substantiated is upheld by the  
14 administrative law judge.

15        B. An alleged offender's name may be provisionally placed on  
16 the Child Safety Registry at the request of the Department if  
17 ordered by the administrative law judge after a finding that there  
18 is a likelihood that the offender may attempt to gain access to  
19 children before the completion of the administrative hearing process  
20 and that such access would reasonably create a risk to the safety of  
21 children.

22        SECTION 3.        NEW LAW        A new section of law to be codified  
23 in the Oklahoma Statutes as Section 1-2-108.2 of Title 10A, unless  
24 there is created a duplication in numbering, reads as follows:

1       An individual's name shall remain in the Child Safety Registry  
2 until:

3       1. The name is removed pursuant to Section 4 of this act or  
4 other law;

5       2. The name is removed under a rule promulgated by the  
6 Department of Human Services;

7       3. The name is provisionally placed in the Child Safety  
8 Registry and the individual subsequently prevails at an  
9 administrative hearing; or

10      4. The individual prevails upon judicial appeal.

11      SECTION 4.       NEW LAW       A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1-2-108.3 of Title 10A, unless  
13 there is created a duplication in numbering, reads as follows:

14      A. 1. The individual may petition the Department of Human  
15 Services, requesting that the individual's name be removed from the  
16 Child Safety Registry if the individual has not had a subsequent  
17 substantiated report of child abuse or neglect for one (1) year and  
18 more than five (5) years have passed since the individual's name was  
19 placed on the Child Safety Registry.

20      2. If the Department denies the request for removal of the name  
21 from the Child Safety Registry, the individual shall wait one (1)  
22 year from the date of the request for removal before filing a new  
23 petition with the Department requesting that the individual's name  
24 be removed from the Registry.

1        3. The Department shall develop policy and procedures to assist  
2 in determining whether to remove a name from the Registry.

3        B. In all cases involving placement or removal of a name on the  
4 Registry, the individual may request an administrative hearing  
5 within thirty (30) days from receipt of the Department's decision  
6 and notice. The standard of review for the administrative hearing  
7 shall be whether the Department abused its discretion.

8        C. All hearings shall be held pursuant to Article II of the  
9 Administrative Procedures Act.

10       SECTION 5.       NEW LAW       A new section of law to be codified  
11 in the Oklahoma Statutes as Section 1-2-108.4 of Title 10A, unless  
12 there is created a duplication in numbering, reads as follows:

13       A. Substantiated reports of heinous and shocking abuse or  
14 heinous and shocking neglect placed on the Child Safety Registry are  
15 confidential and shall be disclosed only to an employer or volunteer  
16 agency for purposes of screening an employee, applicant or volunteer  
17 who is or will be engaged in employment or activity with children  
18 upon submission of a signed release from the employee applicant or  
19 volunteer that is notarized or signed under penalty of perjury in  
20 compliance with Section 426 of Title 12 of the Oklahoma Statutes.  
21 For purposes of this subsection the Department of Human Services  
22 shall release only the following information on substantiated  
23 reports to the employer or agency:

1        1. That the employee, applicant or volunteer has a  
2 substantiated report;

3        2. The date the investigation was completed; and

4        3. The type of substantiated report.

5        B. The Department shall promulgate rules under which it may  
6 disclose or release, if requested, information relating to  
7 substantiated reports of child abuse obtained from the Child Safety  
8 Registry, to the following:

9        1. A person or agency that provides services such as medical  
10 examination or an assessment interview with, or diagnosis of, care  
11 for, treatment of or supervision of a victim of abuse, a juvenile  
12 offender or a juvenile aggressor;

13        2. A federal, state or local government entity, or any agent of  
14 the entity, needing the information to carry out its  
15 responsibilities under law to protect or treat children from abuse  
16 or neglect;

17        3. Any person who is the subject of a substantiated report;

18        4. A civil or administrative proceeding connected with the  
19 administration of the Department's Child Welfare Services when the  
20 court or hearing officer determines that the information is relevant  
21 for the determination of an issue before the court or agency;

22        5. An audit or similar activity conducted in connection with  
23 the administration of a plan or program by any governmental agency  
24 that may by law conduct the audit or activity;

1       6. A properly constituted authority, including  
2 multidisciplinary child abuse teams investigating a report of known  
3 or suspected child abuse or neglect or providing services to a child  
4 or family that is the subject of a report;

5       7. Child abuse citizen review panels described in the Child  
6 Abuse Prevention and Treatment Act, Section 5106a of Title 42 of the  
7 United States Code;

8       8. The Child Death Review Board created in Section 1150.2 of  
9 Title 10 of the Oklahoma Statutes;

10      9. Legal proceedings including:

11           a. a grand jury when the information in the record is  
12               relevant to the determination of an issue before the  
13               grand jury,

14           b. a court in a criminal case when the information in the  
15               record is relevant to the determination of an issue  
16               before the court. The court may disclose the report  
17               to parties under the terms of a protective order  
18               issued by the court, and

19           c. a court in a child custody or similar civil case when  
20               the information in the record is relevant for the  
21               determination of a health or safety issue concerning a  
22               child before the court. The court may disclose the  
23               report to the parties under the terms of a protective  
24               order issued by the court;

1        10. The current foster parents of a child who is a subject of a  
2 report;

3        11. A court-appointed special advocate or guardian ad litem  
4 upon presentation of an order of appointment for a child who is a  
5 subject of a report;

6        12. The attorney of a child who is the subject of a report; and

7        13. The custodial and noncustodial parents, guardians and legal  
8 custodians of the child who are identified as the offender.

9        C. The Department shall not release data that would identify  
10 the person who made the report unless a court of competent  
11 jurisdiction orders release of the information after the court has  
12 reviewed in camera the record related to the report and has found  
13 good cause to believe that the report was falsely made or that  
14 release of the information will serve legitimate purposes and will  
15 not jeopardize the reporter. Provided, upon request, the  
16 information identifying the reporter shall be disclosed to the  
17 prosecuting attorney or law enforcement.

18        D. Nothing in this act shall be construed to prevent subsequent  
19 disclosure by the subject of the report.

20        E. If an alleged offender's name has been provisionally placed  
21 in the Child Safety Registry, any disclosure by the Department shall  
22 include the notation that the name has only been provisionally  
23 placed in the Registry.

1 F. 1. Any person or agency to whom disclosure is made shall  
2 not disclose to any other person a report or other information  
3 obtained pursuant to this section. Provided, the person or agency  
4 may consult an attorney regarding information provided by the  
5 Department.

6 2. A school district or a school counselor shall forward all  
7 substantiated reports of child abuse received from the Department  
8 when a child transfers from one school district to another and shall  
9 notify the Department of the child's new school and address, if  
10 known.

11 SECTION 6. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 1-2-108.5 of Title 10A, unless  
13 there is created a duplication in numbering, reads as follows:

14 A. The Department of Human Services may charge:

15 1. A reasonable fee not to exceed Fifteen Dollars (\$15.00) for  
16 researching, copying or mailing records from a child abuse  
17 investigative file; and

18 2. A reasonable fee for reproducing copies of electronic media  
19 such as audio tapes, video tapes, compact discs, DVDs and  
20 photographs.

21 B. A fee shall not be charged to:

22 1. A nonprofit or volunteer agency that requests searches of  
23 the investigative files; or

24 2. A person who is indigent.

1       SECTION 7.   Section 1 of this act shall become effective  
2 November 1, 2019.   Sections 2 through 6 of this act shall become  
3 effective July 1, 2021.

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5       57-1-5091       EK       12/17/18

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