

1 **SENATE FLOOR VERSION**

2 April 4, 2016

3 **AS AMENDED**

4 ENGROSSED HOUSE

5 BILL NO. 2491

6 By: Coody (Ann) of the House

7 and

8 Fields of the Senate

9 **[children - Oklahoma Children's Code - notify
10 military authorities of certain child abuse and
11 neglect reports - effective date]**

12 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

13 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-2-102, as
14 last amended by Section 1, Chapter 363, O.S.L. 2014 (10A O.S. Supp.
15 2015, Section 1-2-102), is amended to read as follows:

16 Section 1-2-102. A. 1. Upon receipt of a report that a child
17 may be abused, neglected or drug-endangered, the Department of Human
18 Services shall conduct a safety analysis.

19 2. The Department may employ or contract with active or retired
20 social work, medical and law enforcement professionals who shall be
21 strategically placed throughout the state to:

- 22 a. provide investigation support and to assist
23 caseworkers with assessment decisions and intervention
24 activities,

- 1 b. serve as consultants to caseworkers in all aspects of
2 their duties, and
- 3 c. designate persons who shall act as liaisons within the
4 Department whose primary functions are to develop
5 relationships with local law enforcement agencies and
6 courts.

7 3. The Department shall forward a report of its assessment or
8 investigation and findings to any district attorney's office which
9 may have jurisdiction to file a petition pursuant to Section 1-4-101
10 of this title.

11 4. If the child is a member of an active duty military family,
12 the Department shall notify the designated federal authorities at
13 the federal military installation where the active duty service
14 member is assigned that the Department has received a report that
15 such child may be abused, neglected or drug-endangered.

16 5. Whenever the Department determines there is a child that
17 meets the definition of a "drug-endangered child", as defined in
18 Section 1-1-105 of this title, or a child has been diagnosed with
19 fetal alcohol syndrome, the Department shall conduct an
20 investigation of the allegations and shall not limit the evaluation
21 of the circumstances to an assessment.

22 B. 1. If, upon receipt of a report alleging abuse or neglect
23 or during the assessment or investigation, the Department determines
24 that:

1 a. the alleged perpetrator is someone other than a person
2 responsible for the child's health, safety, or
3 welfare, and

4 b. the alleged abuse or neglect of the child does not
5 appear to be attributable to failure on the part of a
6 person responsible for the child's health, safety, or
7 welfare to provide protection for the child,

8 the Department shall immediately make a referral, either verbally or
9 in writing, to the appropriate local law enforcement agency for the
10 purpose of conducting a possible criminal investigation.

11 2. After making the referral to the law enforcement agency, the
12 Department shall not be responsible for further investigation
13 unless:

14 a. the Department has reason to believe the alleged
15 perpetrator is a parent of another child, not the
16 subject of the criminal investigation, or is otherwise
17 a person responsible for the health, safety, or
18 welfare of another child,

19 b. notice is received from a law enforcement agency that
20 it has determined the alleged perpetrator is a parent
21 of or a person responsible for the health, safety, or
22 welfare of another child not the subject of the
23 criminal investigation, or

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1 c. the appropriate law enforcement agency requests the
2 Department to assist in the investigation. If funds
3 and personnel are available, as determined by the
4 Director of the Department or a designee, the
5 Department may assist law enforcement in interviewing
6 children alleged to be victims of physical or sexual
7 abuse.

8 3. If, upon receipt of a report alleging abuse or neglect or
9 during the assessment or investigation, the Department determines
10 that the alleged abuse or neglect of the child involves:

11 a. a child in the custody of the Office of Juvenile
12 Affairs, and

13 b. at the time of the alleged abuse or neglect, such
14 child was placed in a secure facility operated by the
15 Office of Juvenile Affairs, as defined by Section 2-1-
16 103 of ~~Title 10A of the Oklahoma Statutes~~ this title,

17 the Department shall immediately make a referral, either verbally or
18 in writing, to the appropriate law enforcement agency for the
19 purpose of conducting a possible criminal investigation. After
20 making the referral to the law enforcement agency, the Department
21 shall not be responsible for further investigation.

22 C. 1. Any law enforcement agency receiving a referral as
23 provided in this section shall provide the Department with a copy of
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1 the report of any investigation resulting from a referral from the
2 Department.

3 2. Whenever, in the course of any criminal investigation, a law
4 enforcement agency determines that there is cause to believe that a
5 child, other than a child in the custody of the Office of Juvenile
6 Affairs and placed in an Office of Juvenile Affairs secure juvenile
7 facility, may be abused or neglected by reason of the acts,
8 omissions, or failures on the part of a person responsible for the
9 health, safety, or welfare of the child, the law enforcement agency
10 shall immediately contact the Department for the purpose of an
11 investigation.

12 D. If, upon receipt of a report alleging abuse or neglect, the
13 Department determines that the family has been the subject of a
14 deprived petition, the Department shall conduct a thorough
15 investigation of the allegations and shall not limit the evaluation
16 of the circumstances to an assessment. In addition, if the family
17 has been the subject of three (3) or more referrals, the Department
18 shall conduct a thorough investigation of the allegations and shall
19 not limit the evaluation of the circumstances to an assessment.

20 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-2-105, as
21 amended by Section 2, Chapter 355, O.S.L. 2014 (10A O.S. Supp. 2015,
22 Section 1-2-105), is amended to read as follows:

23 Section 1-2-105. A. 1. Any county office of the Department of
24 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 Department. The primary purpose of the
8 investigation or assessment shall be the protection of the child.
9 For investigations or assessments, the Department shall give special
10 consideration to the risks of any minor, including a child with a
11 disability, who is unable to communicate effectively about abuse,
12 neglect or other safety threat or who is in a vulnerable position
13 due to the inability to communicate effectively.

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

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

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

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

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

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

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

21 c. Access to behavioral health records does not
22 constitute a waiver of confidentiality.

23 5. The investigation of a report of sexual abuse or serious
24 physical abuse or both sexual abuse and serious physical abuse shall

1 be conducted, when appropriate and possible, using a
2 multidisciplinary team approach as provided by Section 1-9-102 of
3 this title. Law enforcement and the Department shall exchange
4 investigation information.

5 6. The investigation or assessment shall include an inquiry
6 into whether the person responsible for the health, safety or
7 welfare of the child is an active duty service member of the
8 military or the spouse of an active duty service member. The
9 Department shall collect and report information related to the
10 military affiliation of the person or spouse responsible for the
11 health, safety or welfare of the child to the designated federal
12 authorities at the federal military installation where the service
13 member is assigned as provided by paragraph 4 of subsection A of
14 Section 1-2-102 of this title.

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

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

9 D. If, before the assessment or investigation is complete, the
10 Department determines that immediate removal of the child is
11 necessary to protect the child from further abuse or neglect, the
12 Department shall recommend that the child be taken into custody.

13 E. The Department shall make a complete written report of the
14 investigation. The investigation report, together with its
15 recommendations, shall be submitted to the appropriate district
16 attorney's office. Reports of assessment recommendations shall be
17 submitted to appropriate district attorneys.

18 F. The Department, where appropriate and in its discretion,
19 shall identify prevention_ and intervention-related services
20 available in the community and refer the family to or arrange for
21 such services when an investigation or assessment indicates the
22 family would benefit from such services, or the Department may
23 provide such services directly. The Department shall document in
24 the record its attempts to provide, refer or arrange for the

1 provision of⁷ voluntary services and shall determine within sixty
2 (60) days whether the family has accessed those services directly
3 related to safety of the child. If the family refuses voluntary
4 services or does not access those services directly related to
5 safety of the child, and it is determined by the Department that the
6 child's surroundings endanger the health, safety, or welfare of the
7 child, the Department may recommend that the child be placed in
8 protective or emergency custody or that a petition be filed.

9 G. If the Department has reason to believe that a person
10 responsible for the health, safety, and welfare of the child may
11 remove the child from the state before the investigation is
12 completed, the Department may request the district attorney to file
13 an application for a temporary restraining order in any district
14 court in the State of Oklahoma without regard to continuing
15 jurisdiction of the child. Upon cause shown, the court may enter a
16 temporary restraining order prohibiting the parent or other person
17 from removing the child from the state pending completion of the
18 assessment or investigation.

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

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1 I. Child Welfare Services, in collaboration with the
2 Developmental Disabilities Services Division, shall implement a
3 protocol to be used in cases where the subject child is a child with
4 a disability who has complex medical needs, and the protocol shall
5 include, but not be limited to: resource coordination, medical
6 consultation or medical evaluation, when needed.

7 SECTION 3. AMENDATORY 10A O.S. 2011, Section 1-6-103, as
8 last amended by Section 4, Chapter 355, O.S.L. 2014 (10A O.S. Supp.
9 2015, Section 1-6-103), is amended to read as follows:

10 Section 1-6-103. A. Juvenile court records and Department of
11 Human Services agency records pertaining to a child may be
12 inspected, and their contents shall be disclosed, without a court
13 order to the following persons upon showing of proper credentials
14 and pursuant to their lawful duties:

15 1. The court having the child currently before it in any
16 proceeding pursuant to this title, any district court or tribal
17 court to which such proceedings may be transferred, employees and
18 officers of the court in the performance of their duties, including
19 but not limited to guardians ad litem appointed by the court, and
20 court-appointed special advocates;

21 2. A district attorney, United States Attorney, or Attorney
22 General of this or another state and the employees of such offices
23 in the course of their official duties pursuant to this title or the
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1 prosecution of crimes against children, or upon their request in
2 their official capacity as advisor in a grand jury proceeding;

3 3. The attorney representing a child who is the subject of a
4 proceeding pursuant to the provisions of this title or other
5 proceeding where child custody or visitation is at issue;

6 4. Employees of juvenile bureaus in the course of their
7 official duties pursuant to this title, and employees of the
8 Department of Human Services in the course of their official duties;

9 5. Employees of a law enforcement agency of this or another
10 state or military enclave and employees of a child protective
11 service of another state or military enclave in the course of their
12 official duties pertaining to investigations of a report of known or
13 suspected child abuse or neglect or crimes against children or for
14 the purpose of determining whether to place a child in protective
15 custody;

16 6. The Oklahoma Commission on Children and Youth as provided by
17 Sections 601.2 and 601.6 of Title 10 of the Oklahoma Statutes;

18 7. The Office of Juvenile Affairs;

19 8. A federally recognized Indian tribe in which the child who
20 is the subject of the record is a member or is eligible to become a
21 member of the tribe and is the biological child of a member of an
22 Indian tribe pursuant to the provisions of the Federal Indian Child
23 Welfare Act and the Oklahoma Indian Child Welfare Act; provided such
24 Indian tribe, in the course of its official duties, is:

- 1 a. investigating a report of known or suspected child
2 abuse or neglect or crimes against children or for the
3 purpose of determining whether to place a child in
4 protective custody,
- 5 b. providing services to or for the benefit of a child
6 including, but not limited to, protective, emergency,
7 social and medical services, or
- 8 c. the tribe, the tribal court or the tribal child
9 welfare program has asserted jurisdiction or
10 intervened in any case in which the child is the
11 subject of the proceedings or is a party to the
12 proceedings pursuant to the authority provided in the
13 Oklahoma Indian Child Welfare Act.

14 The records that are to be provided to Indian tribes under this
15 subsection shall include all case records, reports, and documents as
16 defined in Section 1-6-101 of this title;

17 9. The Governor or to any person the Governor designates, in
18 writing;

19 10. Any federal official of the United States Department of
20 Health and Human Services;

21 11. Any member of the Legislature approved in writing by the
22 Speaker of the House of Representatives or the President Pro Tempore
23 of the Senate;

1 12. A foster parent, with regard to records concerning the
2 social, medical, psychological, or educational needs of a child
3 currently placed with that foster parent or of a child being
4 considered for placement with that foster parent;

5 13. An employee of any state or federal corrections or law
6 enforcement agency in the performance of the official duties of the
7 employee concerning presentence investigations or supervision of a
8 parent of an alleged or adjudicated deprived child, or the legal
9 guardian, custodian, or any other adult member of the child's home
10 who is responsible for the health, safety, or welfare of the child;

11 14. An employee of a state agency of this or another state in
12 the performance of the official duties of the employee concerning
13 the establishment of paternity or the establishment or enforcement
14 of a child support order or other entitlement for the benefit of a
15 child; provided, disclosure shall be limited to information directly
16 related to the purpose of such disclosure; ~~and~~

17 15. Any member of a city-county Health Department Fetal Infant
18 Mortality Review (FIMR) in the performance of the official duties of
19 the member concerning investigations of fetal and infant
20 mortalities; provided, disclosure shall be limited to information
21 directly related to the purpose of such disclosure; and

22 16. Any designated federal authorities at the federal military
23 installation where a service member is assigned, when the child is a
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1 member of an active duty military family, as provided by paragraph 4
2 of subsection A of Section 1-2-102 of this title.

3 B. In addition to the persons listed in subsection A of this
4 section, juvenile court records may be inspected, and their contents
5 shall be disclosed, without a court order to the following persons
6 upon showing of proper credentials and pursuant to their lawful
7 duties:

8 1. Employees of court-appointed special advocate programs, as
9 defined in Section 1-1-105 of this title, in the course of their
10 official duties pertaining to recruiting, screening, training,
11 assigning cases, supervising, and supporting volunteers in their
12 roles as guardian ad litem pursuant to Section 1-4-306 of this
13 title;

14 2. Members of postadjudication review boards established
15 pursuant to the provisions of Section 1116.2 of Title 10 of the
16 Oklahoma Statutes, the Child Death Review Board, and
17 multidisciplinary personnel. In addition to juvenile court records,
18 members of such postadjudication review boards may inspect, without
19 a court order, information that includes, but is not limited to:

- 20 a. psychological and medical records,
21 b. placement history and information, including the names
22 and addresses of foster parents,
23 c. family assessments,
24 d. treatment or service plans, and

1 e. school records;

2 3. The Department of Human Services or other public or private
3 agency or individual having court-ordered custody or physical
4 custody pursuant to Department placement of the child, or conducting
5 a child abuse or neglect investigation of the child who is the
6 subject of the record. In addition to juvenile court records,
7 employees of the Department may inspect, without a court order and
8 upon a showing of proper credentials and pursuant to their lawful
9 duties, information that includes, but is not limited to:

10 a. psychological and medical records, and

11 b. nondirectory education records;

12 4. The child who is the subject of the record and the parents,
13 legal guardian, custodian, or foster parent of such child; and

14 5. A person authorized by the court to conduct bona fide
15 research, provided such research may not publish the names or
16 identities of parents, children, or other persons contained in the
17 records.

18 C. In addition to the persons and entities named in subsection
19 A of this section, Department of Human Services agency records may
20 be inspected, and their contents shall be disclosed, without a court
21 order to the following persons upon showing of proper credentials
22 and pursuant to their lawful duties:

23 1. Postadjudicatory review boards, court-appointed special
24 advocates, and members of the Child Death Review Board;

1 2. Any district court which has ordered a home study by the
2 Department in an action for divorce, annulment, custody of a child,
3 or appointment of a legal guardian of a child, or any subsequent
4 proceeding in such actions; provided, however, the Department may
5 limit disclosure in the home study to summaries or to information
6 directly related to the purpose of the disclosure;

7 3. Members of multidisciplinary teams or multidisciplinary
8 personnel designated by the Department, investigating a report of
9 known or suspected child abuse or neglect or providing services to a
10 child or family which is the subject of the report;

11 4. A physician who has before him or her a child whom the
12 physician reasonably suspects may be abused or neglected or any
13 health care or mental health professionals involved in the
14 evaluation or treatment of the child or the parents, legal guardian,
15 foster parent, custodian, or other family members of the child;

16 5. Any public or private agency or person authorized by the
17 Department to diagnose, or provide care, treatment, supervision, or
18 other services to a child who is the subject of a report or record
19 of child abuse or neglect; provided, the Department may limit such
20 disclosure to summaries or to information directly necessary for the
21 purpose of such disclosure;

22 6. Any person or agency for research purposes, if all of the
23 following conditions are met:

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1 a. the person or agency conducting the research is
2 employed by the State of Oklahoma or is under contract
3 with this state and is authorized by the Department to
4 conduct the research, and

5 b. the person or agency conducting the research ensures
6 that all documents containing identifying information
7 are maintained in secure locations and access to the
8 documents by unauthorized persons is prohibited; that
9 no identifying information is included in documents
10 generated from the research conducted; and that all
11 identifying information is deleted from documents used
12 in the research when the research is completed;

13 7. The Oklahoma Health Care Authority; and

14 8. A medical examiner when such person is determining the cause
15 of death of a child.

16 D. In accordance with the rules promulgated for such purpose
17 pursuant to Section 620.6 of Title 10 of the Oklahoma Statutes,
18 records listed in subsection A of Section 1-6-102 of this title may
19 be inspected and their contents disclosed without a court order to
20 participating agencies.

21 E. The court may disclose to an employee of an out-of-state
22 entity, licensed to perform adoption home studies in that state,
23 whether the prospective adoptive parent has had parental rights to a
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1 child terminated in Oklahoma or whether the prospective adoptive
2 parent has relinquished parental rights to a child in Oklahoma.

3 F. Nothing in this section shall be construed as prohibiting
4 the Department from disclosing such confidential information as may
5 be necessary to secure appropriate care, treatment, protection or
6 supervision of a child alleged to be abused or neglected.

7 SECTION 4. This act shall become effective November 1, 2016.

8 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
9 April 4, 2016 - DO PASS AS AMENDED

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