

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 HOUSE BILL 2930

By: Branham

4  
5  
6 AS INTRODUCED

7 An Act relating to children; creating the Oklahoma  
8 Reunification Act; allowing parents to petition for  
reinstatement of parental rights; amending 10A O.S.  
9 2011, Section 1-6-102, as last amended by Section 1,  
Chapter 256, O.S.L. 2014 (10A O.S. Supp. 2019,  
10 Section 1-6-102), which relates to confidential  
records; allowing access to records for parents  
11 seeking reinstatement of parental rights; providing  
for codification; and providing an effective date.

12  
13  
14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

15 SECTION 1. NEW LAW A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1-4-910 of Title 10A, unless  
17 there is created a duplication in numbering, reads as follows:

18 A. This section shall be known and may be cited as the  
19 "Oklahoma Reunification Act".

20 B. An individual may, by application, request the court to  
21 reinstate their previously terminated or relinquished parental  
22 rights under the following circumstances:

23 1. The individual voluntarily relinquished their parental  
24 rights while incarcerated for a crime that was later reclassified

1 from a felony to a misdemeanor under Oklahoma law or after being  
2 charged with a crime, for which they were subsequently incarcerated,  
3 that was later reclassified from a felony to a misdemeanor; or

4 2. The individual's parental rights were terminated at trial  
5 while incarcerated for a crime that was later reclassified from a  
6 felony to a misdemeanor under Oklahoma law or after being charged  
7 with a crime, for which they were subsequently incarcerated, that  
8 was later reclassified from a felony to a misdemeanor and their  
9 incarceration, or pending incarceration, was a factor in the filing  
10 of the petition to terminate parental rights.

11 C. This section shall only apply in the event that the child's  
12 permanency plan has not been achieved through either adoption or  
13 permanent guardianship.

14 D. If after a preliminary hearing to consider the parent's  
15 apparent fitness the court finds by a preponderance of the evidence  
16 that the best interests of the child may be served by reinstatement  
17 of parental rights, the court shall order that a hearing on the  
18 merits of the motion be held.

19 E. The court shall cause prior notice of any hearing to be  
20 given to the Department of Human Services and the child. The court  
21 shall also order the Department to give prior notice of any hearing  
22 to:

- 23 1. The current foster parent or relative guardian of the child;
- 24 2. The guardian ad litem of the child, if any; and

1           3. The child's tribe, if applicable.

2           F. The court shall conditionally grant the application if it  
3 finds by clear and convincing evidence that the child's permanency  
4 plan has not been achieved and the reinstatement of parental rights  
5 is in the child's best interest. In determining whether  
6 reinstatement is in the child's best interest, the court shall  
7 consider, but is not limited to, the following:

8           1. Whether the parent whose rights are to be reinstated is a  
9 fit parent and has remedied the conditions that led to the  
10 termination or relinquishment of parental rights;

11           2. Whether the reinstatement of parental rights will present a  
12 risk to the health, safety and welfare of the child; and

13           3. Other material changes in circumstances that may have  
14 occurred which warrant the granting of the application.

15           G. In determining whether the child's permanency plan has been  
16 achieved, the Department shall provide to the court, and the court  
17 shall review, information related to any efforts to achieve the  
18 permanency plan.

19           H. If the court conditionally grants the application under  
20 subsection F of this section, the case shall be continued for six  
21 (6) months and a temporary order of reinstatement of parental rights  
22 entered. During this period, the child shall be placed in the  
23 custody of the parent. The Department shall develop a permanency  
24 plan for the child reflecting the plan to be reunification and shall

1 provide or ensure that transition services are provided to the  
2 family, as appropriate.

3 I. If the child must be removed from the custody of the parent  
4 due to abuse or neglect allegations prior to the expiration of the  
5 conditional six-month period, the court shall dismiss the  
6 application for reinstatement of parental rights if the court finds  
7 that the allegations have been proven by a preponderance of the  
8 evidence.

9 J. The court shall hold a hearing after the conditional six-  
10 month period. If the placement with the parent has been successful,  
11 the court shall enter a final order of reinstatement of parental  
12 rights, which shall restore all rights, powers, privileges,  
13 immunities, duties and obligations of the parent regarding the  
14 child, including those relating to custody, control and support of  
15 the child. The court shall close the deprived action and direct the  
16 court clerk's office to provide a certified copy of the final order  
17 of reinstatement of parental rights to the parent at no cost.

18 K. Any proceeding to reinstate parental rights is a separate  
19 action from the termination of parental rights proceeding and does  
20 not vacate the original termination of parental rights. An order  
21 granted under this section reinstates the parental rights to the  
22 child and acknowledges that the conditions of the parent and child  
23 have changed since the time of the termination of parental rights  
24 and that reunification is now appropriate.

1 L. This section is retroactive and shall apply to:

2 1. Any child who is under the jurisdiction of the district  
3 court as a deprived child at the time of the hearing to reinstate  
4 parental rights regardless of the date when parental rights were  
5 terminated or voluntarily relinquished; and

6 2. The sibling group of a child when, at the discretion of the  
7 court, parental rights to one child of the sibling group have been  
8 reinstated.

9 M. The district attorney, the Department and its employees are  
10 not liable for civil damages resulting from any act or omission in  
11 providing services under this section unless the act or omission  
12 constitutes gross negligence. This section does not create any duty  
13 and shall not be construed to create a duty where none exists. This  
14 section does not create a cause of action against the district  
15 attorney, the Department or its employees concerning the original  
16 order of termination of parental rights.

17 SECTION 2. AMENDATORY 10A O.S. 2011, Section 1-6-102, as  
18 last amended by Section 1, Chapter 256, O.S.L. 2014 (10A O.S. Supp.  
19 2019, Section 1-6-102), is amended to read as follows:

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

24 1. Juvenile court records;

- 1        2. Agency records;
- 2        3. District attorney's records;
- 3        4. Court Appointed Special Advocate records pertaining to a
- 4 child welfare case;
- 5        5. Law enforcement records;
- 6        6. Nondirectory education records; and
- 7        7. Social records.

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

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

21        D. 1. In a proceeding where the child custody or visitation is  
22 at issue, the safety analysis records of the Department shall be  
23 produced to the court when a parent, legal guardian, or child who is

24

1 the subject of such record obtains a court order directing the  
2 production of the records.

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

6 a. the movant is a parent, legal guardian, or child who  
7 is the subject of the safety analysis records,

8 b. child custody or visitation is at issue,

9 c. that upon receipt from the court, the safety analysis  
10 records shall be kept confidential and disclosed only  
11 to the movant, the attorneys of the movant, those  
12 persons employed by or acting on behalf of the movant  
13 and the attorneys of the movant whose aid is necessary  
14 to the prosecution or defense of the child custody or  
15 visitation issue, and

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

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

23 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

24

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

8 a. The Oklahoma Department of Human Services  
9 ("Department" or "DHS") shall produce a copy of its  
10 safety analysis records to this court on or before \_\_\_\_  
11 day of \_\_\_\_\_, 20\_\_.

12 b. The Department shall be permitted to redact or omit  
13 information in its safety analysis records which may  
14 identify the reporter of alleged child abuse or  
15 neglect.

16 c. All information contained in the safety analysis  
17 records of the Department is confidential under  
18 Oklahoma law and shall be disclosed only to the  
19 parties, the attorneys of the parties, and those  
20 persons employed by or acting on behalf of the parties  
21 and the attorneys of the parties whose aid is  
22 necessary to the prosecution or defense of the child  
23 custody or visitation issue.

1 d. No confidential information whether contained in  
2 pleadings, briefs, discovery, or other documents shall  
3 be filed except under seal with the legend "THIS  
4 DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS  
5 SUBJECT TO A PROTECTIVE ORDER OF THE COURT".

6 e. No person or entity shall utilize any information  
7 contained in the safety analysis records for any  
8 purpose other than the prosecution or defense of the  
9 child custody or visitation issues in this case.

10 f. The release by counsel or any other person for any  
11 reason of identifiers such as Social Security or tax  
12 ID numbers that may be contained in the Department  
13 records and which belong to any person or entity is  
14 strictly prohibited.

15 g. Any violation of this order shall be subject to  
16 prosecution for contempt of court.

17 IT IS SO ORDERED this \_\_\_ day of \_\_\_\_\_, 20\_\_.

18 4. This subsection shall not apply to:

19 a. deprived child proceedings brought pursuant to the  
20 Oklahoma Children's Code,

21 b. discovery of safety analysis records by a person or  
22 entity who is not the subject of those records, or

23 c. discovery of safety analysis records in criminal,  
24 other civil, or administrative proceedings.

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

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

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

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

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

22           10. Except as provided by this subsection or other law,  
23 confidential records may be inspected, released, disclosed,  
24

1 corrected, or expunged only by the procedure set forth in subsection  
2 E of this section.

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

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

16 2. Upon the filing of the petition or motion, the court shall  
17 set a date for a hearing and shall require notice of not less than  
18 twenty (20) days to the agency or person holding the records and the  
19 person who is the subject of the record if such person is eighteen  
20 (18) years of age or older or to the parents of a child less than  
21 eighteen (18) years of age who is the subject of the record, to the  
22 attorneys, if any, of such person, child or parents and any other  
23 interested party as ordered by the court. The court may also enter  
24 an ex parte order compelling the person or agency holding the

1 records to either produce the records to the court on or before the  
2 date set for hearing or file an objection or appear for the hearing.  
3 The court may shorten the time allowed for notice due to exigent  
4 circumstances;

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

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

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

22 G. Any public or private agency, entity, or professional person  
23 required to produce confidential records pursuant to this section  
24 may require payment of fees from the party seeking the records prior

1 to any records being produced, including a research fee not  
2 exceeding Twenty Dollars (\$20.00) per hour and a copy fee not to  
3 exceed fifty cents (\$0.50) per page and Five Dollars (\$5.00) per  
4 copy of each video tape or disk; provided, the court may waive such  
5 costs in a criminal action based upon indigence of a defendant. The  
6 Department shall not be permitted to assess fees for records  
7 produced pursuant to subsection D of this section or in the  
8 provision of records to the Office of Juvenile Affairs pursuant to  
9 paragraph 13 of subsection H of this section.

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

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

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

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

24

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

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

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

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

16           8. Authorizing the disclosure of a recording or a transcription  
17 of a hotline referral which identifies any person who has reported  
18 an allegation of known or suspected child abuse or neglect, unless  
19 the disclosure is specifically ordered by the court;

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

24

1 10. Prohibiting the disclosure of confidential information to  
2 any educational institution, facility, or educator to the extent  
3 necessary to enable the educator to better provide educational  
4 services and activities for a child and provide for the safety of  
5 students;

6 11. Prohibiting the Department from obtaining, without a court  
7 order, nondirectory education records pertaining to a child in the  
8 legal custody of the Department;

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

14 13. Prohibiting the Department from providing records to the  
15 Office of Juvenile Affairs for any individual who has applied for  
16 foster care.

17 I. A parent who was a party to a juvenile deprived action whose  
18 parental rights were voluntarily relinquished or terminated may  
19 obtain a copy of the juvenile court records filed up until the time  
20 of their termination or relinquishment for the purposes of applying  
21 for reinstatement of parental rights under Section 1 of this act.

22 J. For the purposes of petitioning for reinstatement of  
23 parental rights under Section 1 of this act, a parent whose rights  
24 have been terminated or voluntarily relinquished may obtain a sworn

1 affidavit from the Department of Human Services regarding the status  
2 of their child's permanency plan. Upon request of the parent, the  
3 Department shall provide the affidavit within sixty (60) days of  
4 receiving the request.

5 SECTION 3. This act shall become effective November 1, 2020.

6

7 57-2-9131 JW 11/26/19

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24