

1 ENGROSSED SENATE
2 BILL NO. 1834

By: Rosino of the Senate

and

West (Tammy) of the House

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6 An Act relating to the Oklahoma Children's Code;
7 amending 10A O.S. 2011, Section 1-6-102, as last
8 amended by Section 1, Chapter 256, O.S.L. 2014 (10A
9 O.S. Supp. 2019, Section 1-6-102), which relates to
confidential records; adding exception to certain
disclosure requirements; and providing an effective
date.

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

13 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-6-102, as
14 last amended by Section 1, Chapter 256, O.S.L. 2014 (10A O.S. Supp.
15 2019, Section 1-6-102), is amended to read as follows:

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

- 20 1. Juvenile court records;
- 21 2. Agency records;
- 22 3. District attorney's records;
- 23 4. Court Appointed Special Advocate records pertaining to a
24 child welfare case;

- 1 5. Law enforcement records;
- 2 6. Nondirectory education records; and
- 3 7. Social records.

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

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

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

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

- 1 a. the movant is a parent, legal guardian, or child who
2 is the subject of the safety analysis records,
3 b. child custody or visitation is at issue,
4 c. that upon receipt from the court, the safety analysis
5 records shall be kept confidential and disclosed only
6 to the movant, the attorneys of the movant, those
7 persons employed by or acting on behalf of the movant
8 and the attorneys of the movant whose aid is necessary
9 to the prosecution or defense of the child custody or
10 visitation issue, and
11 d. that a copy of the motion is being provided to the
12 parties, the attorney of the child, if any, and the
13 guardian ad litem, if any.

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

18 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

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

- 3 a. The Oklahoma Department of Human Services
4 ("Department" or "DHS") shall produce a copy of its
5 safety analysis records to this court on or before ___
6 day of _____, 20__.
- 7 b. The Department shall be permitted to redact or omit
8 information in its safety analysis records which may
9 identify the reporter of alleged child abuse or
10 neglect.
- 11 c. All information contained in the safety analysis
12 records of the Department is confidential under
13 Oklahoma law and shall be disclosed only to the
14 parties, the attorneys of the parties, and those
15 persons employed by or acting on behalf of the parties
16 and the attorneys of the parties whose aid is
17 necessary to the prosecution or defense of the child
18 custody or visitation issue.
- 19 d. No confidential information whether contained in
20 pleadings, briefs, discovery, or other documents shall
21 be filed except under seal with the legend "THIS
22 DOCUMENT CONTAINS CONFIDENTIAL INFORMATION AND IS
23 SUBJECT TO A PROTECTIVE ORDER OF THE COURT".
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- 1 e. No person or entity shall utilize any information
2 contained in the safety analysis records for any
3 purpose other than the prosecution or defense of the
4 child custody or visitation issues in this case.
- 5 f. The release by counsel or any other person for any
6 reason of identifiers such as social security or tax
7 ID numbers that may be contained in the Department
8 records and which belong to any person or entity is
9 strictly prohibited.
- 10 g. Any violation of this order shall be subject to
11 prosecution for contempt of court.

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

13 4. This subsection shall not apply to:

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

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

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

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

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

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

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

22 E. When confidential records may be relevant in a criminal,
23 civil, or administrative proceeding, an order of the court
24 authorizing the inspection, release, disclosure, correction, or

1 expungement of confidential records shall be entered by the court
2 only after a judicial review of the records and a determination of
3 necessity pursuant to the following procedure:

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

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

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

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

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

18 G. Any public or private agency, entity, or professional person
19 required to produce confidential records pursuant to this section
20 may require payment of fees from the party seeking the records prior
21 to any records being produced, including a research fee not
22 exceeding Twenty Dollars (\$20.00) per hour and a copy fee not to
23 exceed fifty cents (\$0.50) per page and Five Dollars (\$5.00) per
24 copy of each video tape or disk; provided, the court may waive such

1 costs in a criminal action based upon indigence of a defendant. The
2 Department shall not be permitted to assess fees for records
3 produced pursuant to subsection D of this section or in the
4 provision of records to the Office of Juvenile Affairs pursuant to
5 paragraph 13 of subsection H of this section.

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

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

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

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

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

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

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

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

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

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

20 10. Prohibiting the disclosure of confidential information to
21 any educational institution, facility, or educator to the extent
22 necessary to enable the educator to better provide educational
23 services and activities for a child and provide for the safety of
24 students;

1 11. Prohibiting the Department from obtaining, without a court
2 order, nondirectory education records pertaining to a child in the
3 legal custody of the Department;

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

9 13. Prohibiting the Department from providing records to the
10 Office of Juvenile Affairs for any individual who has applied for
11 foster care; or

12 14. Prohibiting the disclosure of agency records to Department
13 employees whose official duties include the audit or investigation
14 of programs, services, administrative or employment matters
15 involving the Department or the Medicaid program; provided, the
16 records and information accessed must be limited to the purposes for
17 which the disclosure is authorized.

18 SECTION 2. This act shall become effective November 1, 2020.
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