

1 **SENATE FLOOR VERSION**

2 February 25, 2020

3 SENATE BILL NO. 1834

By: Rosino of the Senate

4 and

5 West (Tammy) of the House

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7
8 An Act relating to the Oklahoma Children's Code;
9 amending 10A O.S. 2011, Section 1-6-102, as last
10 amended by Section 1, Chapter 256, O.S.L. 2014 (10A
11 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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14 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

- 22 1. Juvenile court records;
- 23 2. Agency records;
- 24 3. District attorney's records;

1 4. Court Appointed Special Advocate records pertaining to a
2 child welfare case;

3 5. Law enforcement records;

4 6. Nondirectory education records; and

5 7. Social records.

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

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

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

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

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

6 b. child custody or visitation is at issue,

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

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

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

21 CONFIDENTIAL RECORDS DISCLOSURE AND PROTECTIVE ORDER

22 NOW on this _____ day of _____, 20__, the court finds that
23 child custody or visitation is at issue in the above styled and
24 numbered proceeding and the disclosure of the safety analysis

1 records of the Oklahoma Department of Human Services pursuant to
2 Section 1-6-102 of this title is necessary and relevant to the
3 court's determination of the child's best interests. The court
4 therefore orders as follows:

5 a. The Oklahoma Department of Human Services
6 ("Department" or "DHS") shall produce a copy of its
7 safety analysis records to this court on or before ____
8 day of _____, 20__.

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

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

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

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

7 f. The release by counsel or any other person for any
8 reason of identifiers such as social security or tax
9 ID numbers that may be contained in the Department
10 records and which belong to any person or entity is
11 strictly prohibited.

12 g. Any violation of this order shall be subject to
13 prosecution for contempt of court.

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

15 4. This subsection shall not apply to:

16 a. deprived child proceedings brought pursuant to the
17 Oklahoma Children's Code,

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

20 c. discovery of safety analysis records in criminal,
21 other civil, or administrative proceedings.

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

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

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

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

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

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

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

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

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

1 The court may shorten the time allowed for notice due to exigent
2 circumstances;

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

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

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

20 G. Any public or private agency, entity, or professional person
21 required to produce confidential records pursuant to this section
22 may require payment of fees from the party seeking the records prior
23 to any records being produced, including a research fee not
24 exceeding Twenty Dollars (\$20.00) per hour and a copy fee not to

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

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

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

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

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

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

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

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

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

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

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

22 10. Prohibiting the disclosure of confidential information to
23 any educational institution, facility, or educator to the extent
24 necessary to enable the educator to better provide educational

1 services and activities for a child and provide for the safety of
2 students;

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

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

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

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

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

21 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
22 February 25, 2020 - DO PASS

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