

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 HOUSE BILL 2610

By: McDaniel (Jeannie)

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6 AS INTRODUCED

7 An Act relating to children; amending 10A O.S. 2011,
8 Section 1-2-108, as amended by Section 1, Chapter 29,
9 O.S.L. 2015 (10A O.S. Supp. 2015, Section 1-2-108),
10 which relates to the Oklahoma Children's Code;
11 establishing a Central Registry for Child Abuse
12 within the Department of Human Services; describing
13 contents of registry; directing responsibility for
14 registry maintenance; specifying who can be placed on
15 the registry; listing process for removing name from
16 registry; excluding unsubstantiated allegations from
17 registry; directing Department to promulgate rules
18 for registry; requiring cooperation with other
19 states; requiring name to remain on registry;
20 providing exception; mandating Department to classify
21 types of abuse for registry; describing removal
22 process for child offender; authorizing offender to
23 request administrative hearing; specifying standard
24 of review for hearing; requiring sharing of
information and records between the parties; stating
applicability of the Administrative Procedures Act;
declaring confidentiality of substantiated reports;
permitting fees for release of information; exempting
fees in certain cases; prohibiting release of
identifying data; providing exception; barring
disclosure except to an attorney; listing to whom
Department can disclose information; declaring
confidentiality of unsubstantiated or screened-out
reports; permitting fees for release of information;
exempting fees in certain cases; prohibiting release
of identifying data; providing exception; barring
disclosure except to an attorney; listing to whom
Department can disclose information; defining terms;
requiring subpoena duces tecum to be served on
custodian of records; describing response and
affidavit process by custodian; providing for

1 admissibility of records; providing for codification;
2 and providing an effective date.

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

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

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

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

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

19 1. All information in the written report required by Section 1-
20 2-101 of this title;

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

23 3. The plan for rehabilitative treatment; and

24 4. Any other relevant information.

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 Human Services shall promulgate rules~~
5 ~~governing the availability of such data and information.~~

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

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

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

14 F. There is hereby established within the Department a Central
15 Registry for Child Abuse which shall contain records of all cases in
16 which allegations of child abuse, sexual abuse, sexual exploitation
17 and neglect made pursuant to the provisions of the Oklahoma
18 Children's Code are determined after investigation to be
19 substantiated and any records of criminal or civil cases involving
20 child abuse, sexual abuse, sexual exploitation and neglect that the
21 Department may possess. The Children and Family Services Division
22 of the Department shall be responsible for maintaining the Central
23 Registry for Child Abuse.

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-2-108a of Title 10A, unless
3 there is created a duplication in numbering, reads as follows:

4 A. An offender's name shall be placed in the Central Registry
5 for Child Abuse after notice if:

6 1. The alleged offender is eighteen (18) years of age or older
7 at the time the act or omission occurred and does not timely request
8 an administrative hearing;

9 2. The alleged offender is a child at the time of the act or
10 omission and the child or the legal parent or legal guardian of the
11 child waived the administrative hearing;

12 3. The administrative law judge upheld the investigative
13 determination that the allegations were substantiated pursuant to a
14 preliminary administrative hearing; or

15 4. Upon completion of the administrative hearing process, the
16 investigative determination that the allegations were substantiated
17 by the Department of Human Services is upheld.

18 B. An offender's name shall remain in the Central Registry for
19 Child Abuse unless:

20 1. The name is removed pursuant to this title or another
21 statute;

22 2. The name is removed under a rule;

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1 3. The name is provisionally placed in the registry and the
2 alleged offender subsequently prevails at an administrative hearing;
3 or

4 4. The offender prevails upon appeal.

5 SECTION 3. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 1-2-108b of Title 10A, unless
7 there is created a duplication in numbering, reads as follows:

8 Records of all cases in which allegations are determined to be
9 unsubstantiated shall not be included in the Central Registry for
10 Child Abuse.

11 SECTION 4. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1-2-108c of Title 10A, unless
13 there is created a duplication in numbering, reads as follows:

14 The Department of Human Services shall promulgate rules
15 necessary to establish a Central Registry for Child Abuse pursuant
16 to this act. Rules promulgated by the Department shall encourage
17 cooperation with other states in exchanging substantiated reports in
18 order to effect a national registration system.

19 SECTION 5. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-2-108d of Title 10A, unless
21 there is created a duplication in numbering, reads as follows:

22 A. If an adult offender is found guilty of, pleads guilty to,
23 or pleads nolo contendere to an act that is the same act for which
24 the offender is named in the Central Registry for Child Abuse,

1 regardless of any subsequent expungement of the offense from the
2 offender's criminal record, the offender shall always remain in the
3 registry unless the conviction is reversed or vacated.

4 B. 1. The Department of Human Services shall identify by rule
5 the types of child abuse that shall automatically result in the
6 removal of the name of an offender from the registry.

7 2. If an offender has been entered into the registry as an
8 offender for the named types of child abuse identified under
9 paragraph 1 of this subsection, the offender's name shall be removed
10 from the registry on reports of this type of child abuse if the
11 offender has not had a subsequent substantiated report of this type
12 for one (1) year and more than one (1) year has passed since the
13 offender's name was placed on the registry.

14 C. 1. The Department shall identify by rule the types of child
15 abuse for which an offender can request that the offender's name be
16 removed from the registry.

17 2. a. If an offender has been entered into the registry as
18 an offender for the named types of child abuse
19 identified under paragraph 1 of this subsection, the
20 offender may petition the Department, requesting that
21 the offender's name be removed from the registry if
22 the offender has not had a subsequent substantiated
23 report of this type for one (1) year and more than one
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1 (1) year has passed since the offender's name was
2 placed on the registry.

3 b. If the Department denies the request for removal of
4 the name from the registry, the offender shall wait
5 one (1) year from the date of the request for removal
6 before filing a new petition with the Department,
7 requesting that the offender's name be removed from
8 the registry.

9 3. The Department shall develop policy and procedures to assist
10 in determining whether to remove the offender's name from the
11 registry.

12 D. Notwithstanding the provisions of this section, with regard
13 to an offender who was a child at the time of the act or omission
14 that resulted in a substantiated finding of child abuse, the
15 Department shall:

16 1. Not remove the offender's name from the registry if the
17 offender was found guilty of, pleaded guilty to, or pleaded nolo
18 contendere to a felony in district court as an adult for the act
19 that is the same act for which the offender is named in the registry
20 unless the conviction is reversed or vacated; or

21 2. Remove the offender's name from the registry if:

22 a. the juvenile has reached eighteen (18) years of age or
23 more than one (1) year has passed from the date of the
24 act or omission that caused the substantiated finding

1 of child abuse and there have been no subsequent acts
2 or omissions resulting in a substantiated finding of
3 child abuse, and

- 4 b. the offender can prove by a preponderance of the
5 evidence that the juvenile offender has been
6 rehabilitated.

7 If the Department denies the request for removal of the name
8 from the registry, the offender shall wait one (1) year from the
9 date of the request for removal before filing a new petition with
10 the Department, requesting that the offender's name be removed from
11 the registry.

12 E. 1. a. If the Department denies the request for removal of
13 the name from the registry, the offender may request
14 an administrative hearing within thirty (30) days from
15 receipt of the Department's decision and notice.

- 16 b. The standard of review for the administrative hearing
17 shall be whether the Department abused its discretion.

18 2. a. At least ten (10) days prior to the administrative
19 hearing, the alleged offender and the Department shall
20 share any information with the other party that the
21 party intends to introduce into evidence at the
22 administrative hearing that is not contained in the
23 record.

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- 1 b. If a party fails to timely share information, the
2 administrative law judge shall:
- 3 (1) grant a continuance,
 - 4 (2) allow the record to remain open for submission of
5 rebuttal evidence, or
 - 6 (3) reject the information as not relevant to the
7 rehabilitation of the offender or the incident of
8 child abuse.

9 F. All hearings shall be held pursuant to Article II of the
10 Administrative Procedures Act, Sections 308a through 323 of Title 75
11 of the Oklahoma Statutes.

12 SECTION 6. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1-2-108e of Title 10A, unless
14 there is created a duplication in numbering, reads as follows:

15 A. Substantiated reports of child abuse are confidential and
16 may be disclosed only as provided in this section.

17 B. 1. The Department of Human Services may charge:

18 a. a reasonable fee not to exceed Ten Dollars (\$10.00)
19 for researching, copying or mailing records from a
20 child abuse investigative file, and

21 b. a reasonable fee for reproducing copies of electronic
22 media such as audio tables, video tapes, compact
23 discs, DVDs and photographs.

24 2. A fee shall not be charged to:

1 a. a nonprofit or volunteer agency that requests searches
2 of the investigative files, or

3 b. a person who is indigent.

4 C. 1. The Department shall not release data that would
5 identify the person who made the report unless a court of competent
6 jurisdiction orders release of the information after the court has
7 reviewed in camera the record related to the report and has found it
8 has reason to believe that the reporter knowingly made a false
9 report.

10 2. Upon request, the identifying information shall be disclosed
11 to the prosecuting attorney or law enforcement.

12 D. 1. Any person or agency to whom disclosure is made shall
13 not disclose to any other person a report or other information
14 obtained pursuant to this section. Provided, the person or agency
15 may consult an attorney regarding information provided by the
16 Department.

17 2. A school district or a school counselor shall forward all
18 substantiated reports of child abuse received from the Department
19 when a child transfers from one school district to another and shall
20 notify the Department of the child's new school and address, if
21 known.

22 3. Nothing in this act shall be construed to prevent subsequent
23 disclosure by the subject of the report.

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1 E. 1. The Department may provide information, including
2 protected health information, to a person or agency that provides
3 services such as medical examination or an assessment interview
4 with, or diagnosis of, care for, treatment of or supervision of a
5 victim of abuse, a juvenile offender or a juvenile aggressor.

6 2. This information may include:

7 a. the investigative determination or the investigation
8 report, and

9 b. the services offered and provided.

10 F. If an alleged offender's name has been provisionally placed
11 in the Central Registry for Child Abuse, any disclosure by the
12 registry shall include the notation that the name has only been
13 provisionally placed in the registry.

14 G. A report made pursuant to Section 1-2-101 of Title 10A of
15 the Oklahoma Statutes that is determined to be substantiated, as
16 well as any other information obtained, including protected health
17 information, the administrative hearing decision, a written report
18 or photograph or radiological procedure taken concerning a
19 substantiated report in the possession of the Department shall be
20 confidential and shall be made available only to:

21 1. The administrator of the adoption, foster care, children's
22 and adult protective services programs, or child care licensing
23 programs of any state;

1 2. A federal, state or local government entity, or any agent of
2 the entity, needing the information in order to carry out its
3 responsibilities under law to protect children from abuse or
4 neglect;

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

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

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

13 6. a. A person, agency or organization engaged in a bona
14 fide research or evaluation project having value as
15 determined by the Department in future planning for
16 programs for maltreated children or in developing
17 policy directions.

18 b. Any confidential information provided for a research
19 or evaluation project under subparagraph a of this
20 paragraph shall not be re-disclosed.

21 c. If a research or evaluation project results in the
22 publication of related material, confidential
23 information provided for a research or evaluation
24 project under this paragraph shall not be disclosed;

1 7. 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 8. The Child Care Services licensing division of the Department
6 and the child care facility owner or operator who requested the
7 registry information through a signed notarized release from an
8 individual who is a volunteer, has applied for employment, is
9 currently employed by a child care facility, or is the owner or
10 operator of a child care facility. This disclosure shall be for the
11 limited purpose of providing registry background information and
12 shall indicate a substantiated finding only;

13 9. Child abuse citizen review panels described in the Child
14 Abuse Prevention and Treatment Act, Section 5106a of Title 42 of the
15 United States Code;

16 10. The Child Death Review Board of the Oklahoma Commission on
17 Children and Youth;

18 11. The following legal proceedings:

19 a. a grand jury when the information in the record is
20 relevant to the determination of an issue before the
21 grand jury,

22 b. a court in a criminal case when the information in the
23 record is relevant to the determination of an issue
24 before the court. The court may disclose the report

1 to parties under the terms of a protective order
2 issued by the court, and

3 c. a court in a child custody or similar civil case when
4 the information in the record is relevant for the
5 determination of a health or safety issue concerning a
6 child before the court. The court may disclose the
7 report to the parties under the terms of a protective
8 order issued by the court;

9 12. The current foster parents of a child who is a subject of a
10 report;

11 13. A Court Appointed Special Advocate or guardian ad litem
12 upon presentation of an order of appointment for a child who is a
13 subject of a report;

14 14. The attorney of a child who is the subject of a report;

15 15. a. An employer or volunteer agency for purposes of
16 screening an employee, applicant or volunteer who is
17 or will be engaged in employment or activity with
18 children, the elderly, individuals with disabilities
19 or individuals with mental illness upon submission of
20 a signed, notarized release from the employee,
21 applicant or volunteer.

22 b. The registry shall release only the following
23 information on substantiated reports to the employer
24 or agency:

- (1) that the employee, applicant or volunteer has a substantiated report,
- (2) the date the investigation was completed, and
- (3) the type of substantiated report;

16. The Developmental Disabilities Services and Aging Services divisions as to participants of the waiver program;

17. The Child Care Services licensing division of the Department for purposes of enforcement of licensing laws and regulations;

18. Any licensing or registering authority to the extent necessary to carry out its official responsibilities;

19. Any person or entity to whom notification was provided under Title 10A of the Oklahoma Statutes;

20. To the extent necessary to carry out a responsibility to ensure that children are protected while in the school environment or during off-campus school activities:

- a. a school district superintendent, a person in an equivalent position in a private school or charter school or other district-level administrator,
- b. a public school principal, a person in an equivalent position in a private school or charter school, or other building-level administrator,
- c. (1) another person or organization designated by a public school, charter school or private school,

1 or school district to organize volunteers for the
2 public school, private school or school district
3 upon the submission of a signed, notarized
4 release from the volunteer.

5 (2) The registry shall release only the following
6 information on substantiated reports to a person
7 or an organization:

8 (a) that the employee, applicant, or volunteer
9 has a substantiated report,

10 (b) the date the investigation was completed,
11 and

12 (c) the type of substantiated report, and

13 d. the Department of Education; and

14 21. The custodial and noncustodial parents, guardians and legal
15 custodians of the child who is identified as the offender.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 1-2-108f of Title 10A, unless
18 there is created a duplication in numbering, reads as follows:

19 A. Screened-out and unsubstantiated reports of child abuse are
20 confidential and may be disclosed only as provided in this section.

21 B. 1. The Department of Human Services may charge:

22 a. a reasonable fee not to exceed Ten Dollars (\$10.00)
23 for researching, copying or mailing records from a
24 child abuse investigative file, and

1 b. a reasonable fee for reproducing copies of electronic
2 media such as audio tapes, video tapes, compact discs,
3 DVDs and photographs.

4 2. A fee shall not be charged to:

5 a. a nonprofit or volunteer agency that requests searches
6 of the investigative files, or

7 b. a person who is indigent.

8 C. The Department shall not release data that would identify
9 the person who made the report unless a court of competent
10 jurisdiction orders release of the information after the court has
11 reviewed in camera the record related to the report and has found it
12 has reason to believe that the reporter knowingly made a false
13 report. However, upon request the information shall be disclosed to
14 the prosecuting attorney or law enforcement.

15 D. 1. Any person or agency to whom disclosure is made shall
16 not disclose to any other person a report or other information
17 obtained pursuant to this section. However, the person or agency is
18 permitted to consult with an attorney regarding information provided
19 by the Department.

20 2. Nothing in this section shall be construed to prevent
21 subsequent disclosure by the subject of the report.

22 E. Any record of a screened-out report of child abuse shall not
23 be disclosed except to the prosecuting attorney and law enforcement
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1 and may be used only within the Department for purposes of
2 administration of the program.

3 F. An unsubstantiated report, including protected health
4 information and the administrative hearing decision, shall be
5 confidential and shall be disclosed only to:

6 1. The prosecuting attorney;

7 2. A subject of the report;

8 3. a. a grand jury when information in the record is
9 relevant for the determination of an issue before a
10 grand jury,

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

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

22 4. Law enforcement;

23 5. Any licensing or registering authority to the extent
24 necessary to carry out its official responsibilities;

1 6. Adult protective services;

2 7. The Developmental Disabilities Services and Aging Services
3 divisions as to participants of the waiver program;

4 8. A Court Appointed Special Advocate or guardian ad litem upon
5 presentation of an order of appointment for a child who is a subject
6 of a report;

7 9. The attorney of a child who is the subject of a report;

8 10. Any person or entity to whom notification was provided
9 under this act; and

10 11. The custodial and noncustodial parents, guardians and legal
11 custodians of the child who is identified as the offender.

12 G. Hard copy records of unsubstantiated reports shall be
13 retained no longer than eighteen (18) months for purposes of audit.

14 H. Information on unsubstantiated reports included in the
15 automated data system shall be retained indefinitely to assist the
16 Department in assessing future risk and safety.

17 SECTION 8. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-2-108g of Title 10A, unless
19 there is created a duplication in numbering, reads as follows:

20 A. As used in this section:

21 1. "Custodian of records" means the administrator or designee
22 of the Central Registry for Child Abuse; and

23 2. "Records" means data, records or documents that are created,
24 collected or compiled by or on behalf of the Department of Human

1 Services or other entity authorized by law to perform investigations
2 or provide services to children, individuals or families.

3 B. 1. A subpoena duces tecum for records shall be served on
4 the custodian of records.

5 2. a. When a subpoena duces tecum described in paragraph 1
6 of this subsection does not request the personal
7 attendance of the custodian of records and the
8 Department is not a party to the action, the subpoena
9 duces tecum is complied with when the custodian of
10 records delivers to the court clerk or the officer,
11 court reporter, body or tribunal issuing the subpoena
12 duces tecum or conducting the hearing, a substantiated
13 and correct copy of all records described in the
14 subpoena duces tecum and the affidavit described in
15 subsection C of this section.

16 b. The records may be delivered by hand or registered
17 mail.

18 C. 1. The records shall be accompanied by an affidavit of the
19 custodian of records stating that:

20 a. the affiant is the duly authorized custodian of
21 records and has authority to certify the records,

22 b. the attached copies are a substantiated copy of all
23 the records described in the subpoena duces tecum, and
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1 c. the records were prepared by employees of the
2 Department acting in the ordinary course of business
3 at or near the time of the child abuse investigation
4 reported in the records.

5 2. If the Central Registry for Child Abuse does not have the
6 records described in the subpoena duces tecum, or has only part of
7 the records, the custodian of records shall state so in the
8 affidavit and file the affidavit and records as the records are
9 available.

10 3. The custodian of records may enclose a statement of costs
11 pursuant to Section 7 of this act for copying the records, and the
12 costs of copying the records shall be charged to the party
13 requesting the subpoena duces tecum for the records.

14 D. 1. The copy of the records produced by the custodian of
15 records shall be separately enclosed in an inner envelope or wrapper
16 and sealed with the title and number of the action, the name of the
17 custodian of records and the date of the subpoena duces tecum
18 clearly written on the inner envelope or wrapper.

19 2. The sealed outer envelope or wrapper shall be addressed as
20 follows:

- 21 a. if the subpoena duces tecum directs attendance in
22 court, to the clerk or the judge of the court,
23 b. if the subpoena duces tecum directs attendance at a
24 deposition, to the officer before whom the deposition

1 is to be taken, at the place designated in the
2 subpoena duces tecum for the taking of the deposition
3 or at his or her place of business, and

4 c. in other cases, to the officer, body or tribunal
5 conducting the hearing, at a like address.

6 E. The copy of the records produced by the custodian of records
7 shall remain sealed and be opened:

8 1. At the time of trial, deposition or hearing; or

9 2. Upon the direction of the judge, court, officer, body or
10 tribunal conducting the hearing.

11 F. The copy of the records shall be admissible in evidence to
12 the same extent as though the original records were offered and the
13 custodian of records had been present and testified to the matters
14 stated in the affidavit.

15 G. 1. a. When the personal attendance of the custodian of
16 records is requested, the subpoena duces tecum shall
17 contain a clause which reads: "The personal attendance
18 of the custodian of records is necessary."

19 b. When both the personal attendance of the custodian of
20 records and the production of a copy of the records
21 are requested, the subpoena duces tecum shall contain
22 a clause which reads: "A copy of the records and the
23 personal attendance of the custodian of records are
24 necessary".

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2. When the personal attendance of the custodian of records is requested, the reasonable cost of producing the records and expenses for personal attendance shall be charged to the party requesting the subpoena duces tecum.

SECTION 9. This act shall become effective November 1, 2016.

55-2-7987 EK 01/20/16