An Act

ENROLLED HOUSE
BILL NO. 2491

By: Coody (Ann) of the House

and

Fields and Pittman of the Senate

An Act relating to children; amending 10A O.S. 2011, Sections 1-2-102, as last amended by Section 1, Chapter 363, O.S.L. 2014, 1-2-105, as amended by Section 2, Chapter 355, O.S.L. 2014, and 1-6-103, as last amended by Section 4, Chapter 355, O.S.L. 2014 (10A O.S. Supp. 2015, Sections 1-2-102, 1-2-105 and 1-6-103), which relate to the Oklahoma Children's Code; directing Department of Human Services to notify military authorities of certain child abuse and neglect reports; requiring investigation include inquiry about active duty military status; providing for collection and reporting of information to military authorities; authorizing disclosure of records to military authorities without a court order; and providing an effective date.

SUBJECT: Oklahoma Children's Code

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

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

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

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

a. provide investigation support and to assist caseworkers with assessment decisions and intervention activities,

b. serve as consultants to caseworkers in all aspects of their duties, and

c. designate persons who shall act as liaisons within the Department whose primary functions are to develop relationships with local law enforcement agencies and courts.

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

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

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

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

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

b. the alleged abuse or neglect of the child does not appear to be attributable to failure on the part of a

person responsible for the child's health, safety, or welfare to provide protection for the child,

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

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

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

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

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

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

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

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

the Department shall immediately make a referral, either verbally or in writing, to the appropriate law enforcement agency for the

purpose of conducting a possible criminal investigation. After making the referral to the law enforcement agency, the Department shall not be responsible for further investigation.

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

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

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

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

Section 1-2-105. A. 1. Any county office of the Department of Human Services receiving a child abuse or neglect report shall promptly respond to the report by initiating an investigation of the report or an assessment of the family in accordance with priority guidelines established by the Department. The Department may prioritize reports of alleged child abuse or neglect based on the severity and immediacy of the alleged harm to the child. The Department shall adopt a priority system pursuant to rules promulgated by the Department. The primary purpose of the investigation or assessment shall be the protection of the child. For investigations or assessments, the Department shall give special consideration to the risks of any minor, including a child with a disability, who is unable to communicate effectively about abuse,

neglect or other safety threat or who is in a vulnerable position due to the inability to communicate effectively.

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

B. 1. The investigation or assessment shall include a visit to the home of the child, unless there is reason to believe that there is an extreme safety risk to the child or worker or it appears that the referral has been made in bad faith. The visit shall include an interview with and examination of the subject child and may be conducted at any reasonable time and at any place including, but not limited to, the child's school. The Department shall notify the person responsible for the health, safety, and welfare of the child that the child has been interviewed at a school. The investigation or assessment may include an interview with the parents of the child or any other person responsible for the health, safety, or welfare of the child and an interview with and examination of any child in the home.

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

3. The investigation or assessment may include an inquiry into the possibility that the child or a person responsible for the health, safety, or welfare of the child has a history of mental illness. If the person responsible for the child's health, safety,

or welfare does not allow the Department to have access to behavioral health records or treatment plans requested by the Department, which may be relevant to the alleged abuse or neglect, the district court having jurisdiction, upon application by the district attorney and upon good cause shown, shall by order allow the Department to have access to the records pursuant to terms and conditions prescribed by the court.

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

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

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

5. The investigation of a report of sexual abuse or serious physical abuse or both sexual abuse and serious physical abuse shall be conducted, when appropriate and possible, using a multidisciplinary team approach as provided by Section 1-9-102 of this title. Law enforcement and the Department shall exchange investigation information.

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

C. 1. Every physician, surgeon, or other health care provider making a report of abuse or neglect as required by this section or examining a child to determine the likelihood of abuse or neglect and every hospital or related institution in which the child was examined or treated shall provide copies of the results of the

examination or copies of the examination on which the report was based and any other clinical notes, x-rays, photographs, and other previous or current records relevant to the case to law enforcement officers conducting a criminal investigation into the case and to employees of the Department conducting an assessment or investigation of alleged abuse or neglect in the case.

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

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

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

F. The Department, where appropriate and in its discretion, shall identify prevention- and intervention-related services available in the community and refer the family to or arrange for such services when an investigation or assessment indicates the family would benefit from such services, or the Department may provide such services directly. The Department shall document in the record its attempts to provide, refer or arrange for the provision of, voluntary services and shall determine within sixty (60) days whether the family has accessed those services directly related to safety of the child. If the family refuses voluntary services or does not access those services directly related to safety of the child, and it is determined by the Department that the child's surroundings endanger the health, safety, or welfare of the child, the Department may recommend that the child be placed in protective or emergency custody or that a petition be filed.

G. If the Department has reason to believe that a person responsible for the health, safety, and welfare of the child may remove the child from the state before the investigation is completed, the Department may request the district attorney to file

an application for a temporary restraining order in any district court in the State of Oklahoma without regard to continuing jurisdiction of the child. Upon cause shown, the court may enter a temporary restraining order prohibiting the parent or other person from removing the child from the state pending completion of the assessment or investigation.

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

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

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

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

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

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

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

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

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

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

7. The Office of Juvenile Affairs;

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

a. investigating a report of known or suspected child abuse or neglect or crimes against children or for the purpose of determining whether to place a child in protective custody,

b. providing services to or for the benefit of a child including, but not limited to, protective, emergency, social and medical services, or

c. the tribe, the tribal court or the tribal child welfare program has asserted jurisdiction or intervened in any case in which the child is the subject of the proceedings or is a party to the proceedings pursuant to the authority provided in the Oklahoma Indian Child Welfare Act.

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

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

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

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

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

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

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

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

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

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

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

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

a. psychological and medical records,

b. placement history and information, including the names and addresses of foster parents,

c. family assessments,

d. treatment or service plans, and

e. school records;

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

a. psychological and medical records, and

b. nondirectory education records;

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

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

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

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

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

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

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

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

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

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

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

7. The Oklahoma Health Care Authority; and

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

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

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

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

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

Passed the House of Representatives the 2nd day of March, 2016.

Presiding Officer of the House
of Representatives

Passed the Senate the 14th day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 18th

day of April, 20 16, at 3:12 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 21st

day of April, 20 16, at 9:43 o'clock A M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 21st

day of April, 20 16, at 11:13 o'clock A. M.

By: Chris Benge