

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3997

By: Wright

6 AS INTRODUCED

7 An Act relating to children; amending 10A O.S. 2011,
8 Section 1-2-105, as last amended by Section 2,
Chapter 342, O.S.L. 2017 (10A O.S. Supp. 2019,
9 Section 1-2-105), which relates to investigations of
10 child abuse or neglect; allowing for interview during
investigation of child abuse or neglect; empowering
11 the court to order child be transported for
interview; and providing an effective date.

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

14 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-2-105, as
15 last amended by Section 2, Chapter 342, O.S.L. 2017 (10A O.S. Supp.
16 2019, Section 1-2-105), is amended to read as follows:

17 Section 1-2-105. A. 1. Any county office of the Department of
18 Human Services receiving a child abuse or neglect report shall
19 promptly respond to the report by initiating an investigation of the
20 report or an assessment of the family in accordance with priority
21 guidelines established by the Department. The Department may
22 prioritize reports of alleged child abuse or neglect based on the
23 severity and immediacy of the alleged harm to the child. The
24 Department shall adopt a priority system pursuant to rules

1 promulgated by the Department. The primary purpose of the
2 investigation or assessment shall be the protection of the child.
3 For investigations or assessments, the Department shall give special
4 consideration to the risks of any minor, including a child with a
5 disability, who is unable to communicate effectively about abuse,
6 neglect or other safety threat or who is in a vulnerable position
7 due to the inability to communicate effectively.

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

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

1 or any other person responsible for the health, safety, or welfare
2 of the child and an interview with and examination of any child in
3 the home.

4 2. The investigation or assessment may include a medical,
5 psychological, or psychiatric examination of any child in the home,
6 and may include an interview conducted by appropriate personnel
7 using the protocols and procedures specified in Section 1-9-102 of
8 this title. If admission to the home, school, or any place where
9 the child may be located cannot be obtained, then the district court
10 having jurisdiction, upon application by the district attorney and
11 upon cause shown, shall order the person responsible for the health,
12 safety, or welfare of the child, or the person in charge of any
13 place where the child may be located, to allow entrance for the
14 interview, the examination, and the investigation or assessment.
15 The court may order that the child be transported to a location
16 approved by the court for the interview or examination and designate
17 an appropriate person or persons to transport the child. Such
18 persons may include but are not limited to: a relative of the child,
19 a person responsible for the child's health, safety, or welfare; law
20 enforcement personnel; or employees of the Department of Human
21 Services or the Office of Juvenile Affairs. When making this
22 determination, the court shall consider safety protocols based on
23 the gender of the child. If the person responsible for the health,
24 safety, or welfare of the child does not consent to a medical,

1 psychological, or psychiatric examination of the child that is
2 requested by the Department, the district court having jurisdiction,
3 upon application by the district attorney and upon cause shown,
4 shall order the examination to be made at the times and places
5 designated by the court.

6 3. The investigation or assessment may include an inquiry into
7 the possibility that the child or a person responsible for the
8 health, safety, or welfare of the child has a history of mental
9 illness. If the person responsible for the child's health, safety,
10 or welfare does not allow the Department to have access to
11 behavioral health records or treatment plans requested by the
12 Department, which may be relevant to the alleged abuse or neglect,
13 the district court having jurisdiction, upon application by the
14 district attorney and upon good cause shown, shall by order allow
15 the Department to have access to the records pursuant to terms and
16 conditions prescribed by the court.

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

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

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

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

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

21 C. 1. Every physician, surgeon, or other health care provider
22 making a report of abuse or neglect as required by this section or
23 examining a child to determine the likelihood of abuse or neglect
24 and every hospital or related institution in which the child was

1 examined or treated shall provide copies of the results of the
2 examination or copies of the examination on which the report was
3 based and any other clinical notes, x-rays, photographs, and other
4 previous or current records relevant to the case to law enforcement
5 officers conducting a criminal investigation into the case and to
6 employees of the Department conducting an assessment or
7 investigation of alleged abuse or neglect in the case.

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

14 D. 1. The Department shall engage in a collaborative decision-
15 making process to address each child's needs related to safety and
16 whether the child's condition warrants a safety intervention
17 including but not limited to a change in placement, and:

- 18 a. those involved in the collaborative decision-making
19 process shall include at a minimum appropriate
20 Department staff, the parents of the child and, if the
21 parent requests, an advocate or representative,
- 22 b. to protect the safety of those involved and to promote
23 efficiency, the Department may limit participants as
24 determined to be in the best interests of the child,

1 c. the Department shall make reasonable efforts to
2 provide a trained facilitator to guide the decision-
3 making process, and

4 d. any determination that a collaborative decision-making
5 process is not possible or is unnecessary shall
6 require supervisor approval and documentation of the
7 reasons supporting the determination.

8 2. If, before the assessment or investigation is complete, the
9 Department determines that immediate removal of the child is
10 necessary to protect the child from further abuse or neglect, the
11 Department shall recommend that the child be taken into custody and,
12 if feasible, utilize the collaborative decision-making process
13 provided by paragraph 1 of this subsection prior to the emergency
14 custody hearing.

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

20 F. The Department, where appropriate and in its discretion,
21 shall identify prevention- and intervention-related services
22 available in the community and refer the family to or arrange for
23 such services when an investigation or assessment indicates the
24 family would benefit from such services, or the Department may

1 provide such services directly. The Department shall document in
2 the record its attempts to provide, refer or arrange for the
3 provision of voluntary services and shall determine within sixty
4 (60) days whether the family has accessed those services directly
5 related to safety of the child. If the family refuses voluntary
6 services or does not access those services directly related to
7 safety of the child, and it is determined by the Department that the
8 child's surroundings endanger the health, safety, or welfare of the
9 child, the Department may recommend that the child be placed in
10 protective or emergency custody or that a petition be filed.

11 G. If the Department has reason to believe that a person
12 responsible for the health, safety, and welfare of the child may
13 remove the child from the state before the investigation is
14 completed, the Department may request the district attorney to file
15 an application for a temporary restraining order in any district
16 court in the State of Oklahoma without regard to continuing
17 jurisdiction of the child. Upon cause shown, the court may enter a
18 temporary restraining order prohibiting the parent or other person
19 from removing the child from the state pending completion of the
20 assessment or investigation.

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

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

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

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