

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 57th Legislature (2020)

4 HOUSE BILL 3997

By: Wright of the House

5 and

6 **Weaver** of the Senate

7
8
9 AS INTRODUCED

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

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

19 SECTION 1. AMENDATORY 10A O.S. 2011, Section 1-2-105, as
20 last amended by Section 2, Chapter 342, O.S.L. 2017 (10A O.S. Supp.
21 2019, Section 1-2-105), is amended to read as follows:

22 Section 1-2-105. A. 1. Any county office of the Department of
23 Human Services receiving a child abuse or neglect report shall
24 promptly respond to the report by initiating an investigation of the
 report or an assessment of the family in accordance with priority

1 guidelines established by the Department. The Department may
2 prioritize reports of alleged child abuse or neglect based on the
3 severity and immediacy of the alleged harm to the child. The
4 Department shall adopt a priority system pursuant to rules
5 promulgated by the Department. The primary purpose of the
6 investigation or assessment shall be the protection of the child.
7 For investigations or assessments, the Department shall give special
8 consideration to the risks of any minor, including a child with a
9 disability, who is unable to communicate effectively about abuse,
10 neglect or other safety threat or who is in a vulnerable position
11 due to the inability to communicate effectively.

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

19 B. 1. The investigation or assessment shall include a visit to
20 the home of the child, unless there is reason to believe that there
21 is an extreme safety risk to the child or worker or it appears that
22 the referral has been made in bad faith. The visit shall include an
23 interview with and examination of the subject child and may be
24 conducted at any reasonable time and at any place including, but not

1 limited to, the child's school. The Department shall notify the
2 person responsible for the health, safety, and welfare of the child
3 that the child has been interviewed at a school. The investigation
4 or assessment may include an interview with the parents of the child
5 or any other person responsible for the health, safety, or welfare
6 of the child and an interview with and examination of any child in
7 the home.

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

1 Services or the Office of Juvenile Affairs. When making this
2 determination, the court shall consider safety protocols based on
3 the gender of the child. If the person responsible for the health,
4 safety, or welfare of the child does not consent to a medical,
5 psychological, or psychiatric examination of the child that is
6 requested by the Department, the district court having jurisdiction,
7 upon application by the district attorney and upon cause shown,
8 shall order the examination to be made at the times and places
9 designated by the court.

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

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

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

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

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

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

1 C. 1. Every physician, surgeon, or other health care provider
2 making a report of abuse or neglect as required by this section or
3 examining a child to determine the likelihood of abuse or neglect
4 and every hospital or related institution in which the child was
5 examined or treated shall provide copies of the results of the
6 examination or copies of the examination on which the report was
7 based and any other clinical notes, x-rays, photographs, and other
8 previous or current records relevant to the case to law enforcement
9 officers conducting a criminal investigation into the case and to
10 employees of the Department conducting an assessment or
11 investigation of alleged abuse or neglect in the case.

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

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

- 22 a. those involved in the collaborative decision-making
23 process shall include at a minimum appropriate
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- 1 Department staff, the parents of the child and, if the
2 parent requests, an advocate or representative,
- 3 b. to protect the safety of those involved and to promote
4 efficiency, the Department may limit participants as
5 determined to be in the best interests of the child,
- 6 c. the Department shall make reasonable efforts to
7 provide a trained facilitator to guide the decision-
8 making process, and
- 9 d. any determination that a collaborative decision-making
10 process is not possible or is unnecessary shall
11 require supervisor approval and documentation of the
12 reasons supporting the determination.

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

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

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

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

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

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

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

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16 COMMITTEE REPORT BY: COMMITTEE ON CHILDREN, YOUTH AND FAMILY
17 SERVICES, dated 02/12/2020 - DO PASS, As Coauthored.
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