

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 1729

By: Paulk and Bonny

AS INTRODUCED

An Act relating to sex offenders; amending 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 404.1), which relates to criminal history investigations for child care workers; adding criminal penalty for certain violations; amending 57 O.S. 1991, Sections 582, as last amended by Section 2, Chapter 142, O.S.L. 1995, 583, 584 and 587, as amended by Sections 3, 4 and 7, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Sections 582, 583, 584 and 587), which relate to the Sex Offender Registration Act; adding certain crimes to list for which conviction requires registration; eliminating shortened registration period for persons completing treatment; providing that copy of Department of Corrections information shall be available to law enforcement; modifying availability of local sex offender registry; defining term; providing for promulgation of rules; requiring certain notification be made by law enforcement; listing information to be included in notifications; modifying penalty for failure to comply with act; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 404.1, as last amended by Section 1, Chapter 200, O.S.L. 1996 (10 O.S. Supp. 1996, Section 404.1) is amended to read as follows:

Section 404.1 A. Every owner or administrator of a child care facility shall arrange, prior to employment, for a criminal history investigation conducted by the Oklahoma State Bureau of Investigation for an applicant for employment and for any adult residing in a child care facility that is licensed or approved by a child-placing agency and located in a private residence. If the applicant for employment or resident has resided in Oklahoma for less than one (1) year, the criminal history investigation shall be obtained from the previous state of residence.

B. 1. Adults not required to obtain a criminal history investigation are:

- a. parent volunteers who transport children on an irregular basis, and
- b. a child of a foster, adoptive, group or family child care home who became an adult during continuous residence at the licensed facility.

2. These exemptions shall not preclude the Department from requesting a criminal history investigation or investigating criminal, abusive or harmful behavior, if warranted.

3. Prior to the acceptance of a foster family home for placement of any child in the custody of the Department of Human Services, the Department shall arrange for a criminal history investigation, conducted by the Oklahoma State Bureau of Investigation, for a foster family applicant and for any adult residing in such foster family home. A criminal history

investigation conducted by the Oklahoma State Bureau of Investigation shall be done for any adult who moves into the residence at a later time.

4. The Department of Human Services shall promulgate rules to identify circumstances when a criminal history investigation of a foster family applicant and of any adult residing in such foster family home shall be expanded beyond the investigation conducted by the Oklahoma State Bureau of Investigation.

C. A conviction for a crime shall not be an absolute bar to employment, except as provided in subsection F of this section, but shall be considered in relation to specific employment duties and responsibilities.

D. 1. Information received pursuant to this section by an owner or administrator of a child care facility shall be maintained in a confidential manner in a file that is separate from employment records. The information may be transmitted to the Department for child care facility licensing purposes.

2. Whenever an applicant is subsequently employed by the owner or administrator of a child care facility, the information received pursuant to a criminal history investigation shall not be made a part of that individual's personnel records. Such information, along with any other information relevant to the individual's ability to perform tasks that require direct contact with children, may be released to another child care facility in response to a request from an owner or administrator of a child care facility who is considering employing the individual.

3. Requirements for confidentiality and record keeping with regard to the information shall be the same for the owner or administrator receiving the information in response to a request as those provided for in paragraph 1 of this subsection for the owner or administrator releasing such information.

E. 1. A criminal history investigation conducted by the Oklahoma State Bureau of Investigation shall include a search of Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act.

2. It shall be unlawful for any person who is required to register pursuant to the Sex Offenders Registration Act to work with or provide services to children or to reside in a child care facility and for any employer who offers or provides services to children to knowingly and willfully employ or allow continued employment of any person who is required to register pursuant to the Sex Offenders Registration Act. Any person required to register pursuant to the Sex Offender Registration Act who violates any provision of this act shall, upon conviction, be guilty of a felony punishable by incarceration in a correctional facility for a period of not more than five (5) years and a fine of not more than Five Thousand Dollars (\$5,000.00) or both such fine and imprisonment. Upon a determination of any violation of the provisions of this section, the violator shall be subject to an administrative fine not to exceed One Thousand Dollars (\$1,000.00). In addition, the violator may be liable for civil damages.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 582, as last amended by Section 2, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 582), is amended to read as follows:

Section 582. The provisions of the Sex Offenders Registration Act, Sections 581 et seq. of this title, shall apply to any person who, after November 1, 1989, has been convicted, whether upon a verdict or plea of guilty or upon a plea of nolo contendere, or received a suspended sentence for a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Sections 885, 888, 1021, except for a crime

provided for in paragraph 1 of subsection A of Section 1021, 1021.2, 1021.3, 1087, 1088, 1114 or 1123 of Title 21 of the Oklahoma Statutes or who enters this state after November 1, 1989, and who has been convicted or received a suspended sentence for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws. The provisions of the Sex Offenders Registration Act shall apply to any person who enters this state on or after September 1, 1993, and who has received a deferred judgment for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 885, 888, 1021, except for a crime provided for in paragraph 1 of subsection A of Section 1021, 1021.2, 1021.3, 1087, 1088, 1114 or 1123 of Title 21 of the Oklahoma Statutes. The provisions of the Sex Offenders Registration Act shall not apply to any such person while the person is incarcerated in a correctional institution of the Department of Corrections.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 583, as amended by Section 3, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 583), is amended to read as follows:

Section 583. A. Any person who becomes subject to the provisions of the Sex Offenders Registration Act, Section 581 et seq. of this title, on or after November 1, 1989, shall register as follows:

1. With the Department of Corrections within ten (10) business days of being convicted or receiving a suspended sentence if the person is not incarcerated, or within ten (10) business days of release of the person from a correctional institution, except as provided in subsection B of this section; and

2. With the local law enforcement authority having jurisdiction in the area where the person resides or intends to reside for more than seven (7) days. The registration is required within seven (7) days after entering the jurisdiction of the law enforcement authority.

For purposes of this section, "local law enforcement authority" means the municipal police department, if the person resides or intends to reside or stay within the jurisdiction of any municipality of this state; or, the county sheriff, if the person resides or intends to reside or stay at any place outside the jurisdiction of any municipality within this state.

B. Any person who has been convicted of an offense on or after November 1, 1989, in another jurisdiction, which offense if committed or attempted in this state, would have been punishable as one or more of the offenses listed in Section 582 of this title and who enters and remains in this state shall register as follows:

1. With the Department of Corrections when the person enters and intends to be in the state for thirty (30) days or longer. Such registration is required within thirty (30) days after entering the state; and

2. With the local law enforcement authority having jurisdiction in the area where the person intends to reside or to stay for more than seven (7) days. The registration is required with local law enforcement within seven (7) days after entering the jurisdiction of the law enforcement authority.

C. The registration with the Department of Corrections required by this section shall be maintained by the Department of Corrections for a period of ten (10) years from the date of registration; ~~however, persons who successfully complete the sex offender treatment program provided by the Department of Corrections, shall only be required to register with the Department for two (2) years~~

~~after date of discharge. Repeat offenders after discharge shall be required to register for the full ten-year period.~~

D. The registration with the local law enforcement authority required by this section shall be maintained by such authority for five (5) years.

SECTION 4. AMENDATORY 57 O.S. 1991, Section 584, as amended by Section 4, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 584), is amended to read as follows:

Section 584. A. The registration with the Department of Corrections required by the Sex Offenders Registration Act, Section 581 et seq. of this title, shall be in a form approved by the Department of Corrections and shall include the following information about the person registering:

1. The person's name and all aliases used or under which the person has been known;

2. A complete description of the person, including a photograph and fingerprints, and when requested by the Department of Corrections, such registrant shall submit to a blood test for purposes of a deoxyribonucleic acid (DNA) profile;

3. The offenses listed in Section 582 of this title of which the person has been convicted or for which the person received a suspended sentence, where the offense was committed, where the person was convicted or received the suspended sentence, and the name under which the person was convicted or received the suspended sentence;

4. The name and location of each hospital or penal institution to which the person was committed for each offense listed in Section 582 of this title; and

5. Where the person resides, how long the person has resided there, how long the person expects to reside there, and how long the person expects to remain in the county and in the State of Oklahoma.

B. The registration with the local law enforcement authority required by this act shall be in a form approved by the local law enforcement authority and shall include the following information about the person registering:

1. The person's full name, alias, date of birth, sex, race, height, weight, eye color, social security number, driver license number, and home address; and

2. A description of the offense for which the offender was convicted, the date of the conviction, and the sentence imposed, if applicable.

For purposes of this section, "local law enforcement authority" means the municipal police department, if the person resides or intends to reside or stay within the jurisdiction of any municipality of this state; or, the county sheriff, if the person resides or intends to reside or stay at any place outside the jurisdiction of any municipality within this state.

C. Any person subject to the provisions of the Sex Offenders Registration Act who changes an address shall give written notification of the new address to the Department of Corrections within ten (10) business days after the change of address and the local law enforcement authority within three (3) business days after the change of address.

D. The Department of Corrections shall maintain a file of all sex offender registrations. ~~The~~ A copy of the information contained in the registration shall be available to state, county and municipal law enforcement agencies. Said file shall not be made available for public inspection and no person other than a law enforcement officer employed by a state, county or municipal law enforcement agency shall have access to said file. The Department of Corrections shall provide all municipal police departments and all county sheriff departments a list of those sex offenders registered and living in their respective jurisdictions.

E. Each local law enforcement agency shall make its sex offender registry available as follows:

1. To all public and private elementary schools within the jurisdiction;
2. To all child care facilities licensed by the state within the jurisdiction;
3. To any parent using a child care provider;
- ~~4.~~ To any state agency that licenses individuals to work with children;
- ~~4.~~ 5. To the State Office of Personnel Management to screen persons who may work with children; and
- ~~5.~~ 6. To other entities that provide services to children and request the registry, including churches.

The sex offender registry available to entities in paragraphs 2 and ~~5~~ 6 of this subsection shall not contain the home address of any offender whose name appears on the registry. When a law enforcement agency sends a copy of or otherwise makes the sex offender registry available to any entity pursuant to this subsection, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense against a child. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer."

F. 1. For purposes of this section, a "predatory sex offender" is any person that exhibits characteristics showing a tendency to victimize or injure others and is subject to the Sex Offenders Registration Act. The Department of Corrections shall promulgate rules to determine whether a person is a predatory sex offender. Those rules shall be used by the Department of Corrections and local law enforcement authorities to designate a person as a predatory sex offender.

2. Upon designation of a person as a predatory sex offender, the local law enforcement authority shall notify, by any method of communication it deems appropriate, anyone that the local law enforcement authority determines appropriate, including, but not limited to:

- a. the family of the predatory sex offender,
- b. any prior victim of the predatory sex offender, and
- c. residential neighbors and churches, community parks, schools, convenience stores, businesses and other places that children or other potential victims may frequent.

3. The notification may include, but is not limited to, the following information:

- a. the name and address of the predatory sex offender,
- b. a physical description of the predatory sex offender, including, but not limited to, age, height, weight and eye and hair color,
- c. the type of vehicle that the predatory sex offender is known to drive,
- d. any conditions or restrictions upon the probation, parole or conditional release of the predatory sex offender,
- e. a description of the primary and secondary targets of the predatory sex offender,
- f. a description of the method of offense of the predatory sex offender,
- g. a current photograph of the predatory sex offender, and
- h. the name and telephone number of the probation or parole officer of the predatory sex offender.

4. The local law enforcement authority shall make any information it has regarding a predatory sex offender available to any person upon request.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 587, as amended by Section 7, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1996, Section 587), is amended to read as follows:

Section 587. Any person required to register pursuant to the provisions of the Sex Offenders Registration Act, Sections 581 et seq. of this title, who violates any provision of said act shall, upon conviction, be guilty of a ~~misdemeanor~~ felony punishable by incarceration in ~~the county jail~~ a correctional facility for not more than ~~one (1) year~~ five (5) years, a fine not to exceed ~~One Thousand Dollars (\$1,000.00)~~ Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 6. This act shall become effective November 1, 1997.

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