

ENROLLED SENATE
BILL NO. 428

By: Stipe of the Senate

and

Mass of the House

An Act relating to children; amending 10 O.S. 1991, Section 404.1, as last amended by Section 16, Chapter 414, O.S.L. 1998, Section 25, Chapter 353, O.S.L. 1996, as amended by Section 29, Chapter 421, O.S.L. 1998, Section 9, Chapter 353, O.S.L. 1996, as last amended by Section 10, Chapter 414, O.S.L. 1998, and Section 12, Chapter 353, O.S.L. 1996, as last amended by Section 12, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1998, Sections 404.1, 7004-1.5, 7209 and 7212), which relate to the Oklahoma Child Care Facilities Licensing Act and the Oklahoma Foster Care and Out-of-Home Placement Act; modifying terms; requiring the Department of Human Services and other entities to complete certain search prior to contracting action; providing for exceptions; clarifying language and grammar; deleting obsolete language relating to certain study; requiring completion of fingerprint records search for certain persons; requiring primary foster parent to undergo certain training; modifying terms relating to contents of training; requiring foster parents and kinship foster parents to participate in certain training; and declaring an emergency.

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 16, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1998, Section 404.1), is amended to read as follows:

Section 404.1 A. 1. Except as otherwise provided by subsection B of this section, the Department of Human Services shall require a criminal history ~~investigation~~ records search, conducted by the Oklahoma State Bureau of Investigation, for any person making application to establish or operate a child care facility prior to the issuance of a license to operate such facility.

2. a. Every child care facility shall arrange, prior to employment, for a criminal history ~~investigation~~ records search to be conducted by the Oklahoma State Bureau of Investigation for any person to be employed by the child care facility.

- b. In addition, any child care facility, licensed or approved pursuant to the Oklahoma Child Care Facilities Licensing Act, and located in a private residence, shall arrange for a criminal ~~background investigation~~ history records search for any adult residing in the child care facility. A criminal history ~~investigation~~ records search conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the private residence.

3. If the adult has lived in Oklahoma for less than one (1) year, a criminal history ~~investigation~~ records search shall also be obtained from the previous state of residence. If the applicant planning to establish or operate a child care facility, or an employee or contract employee of the child care facility, or the contractor of the child care facility has resided in Oklahoma for less than one (1) year, the criminal history ~~investigation~~ records search shall also be obtained from such person's previous state of residence.

B. 1. a. On and after September 1, 1998:

- (1) any child-placing agency contracting with a person for foster family home services or in any manner for services for the care and supervision of children shall also, prior to executing a contract, ~~arrange for~~ complete:

(a) a foster parent eligibility assessment for the foster care provider except as otherwise provided by divisions 2 and 4 of this paragraph, and

~~(2) any child-placing agency contracting with a person for foster family home services shall arrange for~~

(b) a national criminal history records search based upon submission of fingerprints for any adult residing in the foster family home through the Department of Human Services pursuant to the provisions of the Oklahoma Foster Care and Out-of-Home Placement Act, except as otherwise provided by divisions 2 and 4 of this paragraph.

(2) The child-placing agency may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement,

(3) A national criminal history records search based upon submission of fingerprints to the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the residence,

(4) Provided, however, the Director of Human Services or the Department of Juvenile Justice or designee may authorize an exception to the fingerprinting requirement for a person residing in the home who has a severe physical condition which precludes such person's being fingerprinted, and

~~(3)~~ (5) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Justice to conduct a juvenile justice information system review, pursuant to the provisions of Sections 7302-9.6 and 7302-3.8 of this title, for any child over the age of thirteen (13) years residing in the foster family home, other than a foster child, or who subsequently moves into the private residence. As a condition of contract, the child care facility shall obtain the consent of the parent or legal guardian of the child for such review.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Department of Juvenile Justice prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of 10 O.S. Supp. 1997, Section 404.1, until otherwise provided by rules of the Commission for Human Services or by law.

2. a. (1) On and after September 1, 1998, except as otherwise provided in divisions 2 and 4 of this paragraph, prior to contracting with a foster family home for placement of any child who is in the custody of the Department of Human Services or the Department of Juvenile Justice, ~~the~~ each Department shall ~~arrange for~~ complete a foster parent eligibility assessment, pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant ~~and.~~ In addition, except as otherwise provided by divisions 2 and 4 of this paragraph, the Department shall complete a national criminal history records search based upon submission of fingerprints for any adult residing in such foster family home.

(2) The Department of Human Services and Department of Juvenile Justice may place a child pending completion of the national criminal history records search if the foster care provider and

every adult residing in the foster family home has resided in this state for at least (5) years immediately preceding such placement.

(3) A national criminal history records search based upon submission of fingerprints conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the residence.

(4) The Director of Human Services or the Director of the Department of Juvenile Justice or designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe physical condition which precludes such person's being fingerprinted.

b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Department of Juvenile Justice prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of 10 O.S. Supp. 1997, Section 404.1, until otherwise provided by rules of the Commission for Human Services or by law.

3. ~~The~~ Each Department shall provide for a juvenile justice information system review pursuant to Section 7302-3.8 of this title for any child over the age of thirteen (13) years residing in a foster family home, other than the foster child, or who subsequently moves into the private residence.

C. The Commission for Human Services or the Board of Juvenile Affairs shall promulgate rules to identify circumstances when a criminal history ~~investigation~~ records search or foster parent eligibility assessment for an applicant or contractor, or any person over the age of thirteen (13) years residing in a private residence in which a child care facility is located, shall be expanded beyond the ~~investigation~~ records search conducted by the Oklahoma State Bureau of Investigation or as otherwise provided pursuant to this section.

D. 1. The following persons shall not be required to obtain a criminal history ~~investigation~~ records search or a national criminal history records search based upon submission of fingerprints to the Federal Bureau of Investigation pursuant to this section:

- a. a parent volunteer who transports children on an irregular basis, and
- b. a child of a child care center or family child care home operator who became an adult during continuous residence at the licensed or approved facility.

2. These exemptions shall not preclude the Department from requesting a criminal history ~~investigation~~ records search or requesting a national criminal history records search based upon

submission of fingerprints or investigating criminal, abusive or harmful behavior of such persons, if warranted.

E. Except as otherwise provided by the Oklahoma Children's Code and subsection G of this section, a conviction for a crime shall not be an absolute bar to employment, but shall be considered in relation to specific employment duties and responsibilities.

F. 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 or contracts with a child care facility, the information received pursuant to a criminal history ~~investigation~~ records search, foster parent eligibility assessment, or a national criminal history records search based upon submission of fingerprints shall not be made a part of that individual's personnel or contract records but shall be maintained pursuant to this subsection. The 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 the child care facility that is considering employing or contracting with the individual.

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

G. 1. A criminal history investigation or national criminal history records search based upon submission of fingerprints 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. a. 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 contract with, or allow continued employment of or contracting with any person who is required to register pursuant to the Sex Offenders Registration Act. Any person required to register pursuant to the Sex Offenders 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.

b. Upon a determination by the Department of any violation of the provisions of this section, the violator shall be subject to and the Department may pursue:

- (1) an emergency order,
- (2) license revocation, denial or nonrenewal,
- (3) injunctive proceedings,
- (4) an administrative penalty not to exceed Ten Thousand Dollars (\$10,000.00), and
- (5) referral for criminal proceedings.

c. In addition to the penalties specified by this section, the violator may be liable for civil damages.

~~H. 1. In order to protect the health and safety of a child in out-of-home placement, the Department of Human Services shall study the feasibility of implementing a statewide program for a national criminal history records search based upon fingerprints submitted to the Oklahoma State Bureau of Investigation for a foster parent who is currently caring for a child in the custody of the Department of Human Services and the Department of Juvenile Justice on the effective date of this act.~~

~~2. The study shall include, but not be limited to, assessing the costs associated with requiring national fingerprint checks on such foster parent, recommending time frames for implementation for such program, and any other consideration for the efficient and effective implementation of such a program.~~

~~3. The Department shall issue a report on its findings and any other recommendations to the Governor and the Legislature not later than January 15, 1999.~~

SECTION 2. AMENDATORY Section 25, Chapter 353, O.S.L. 1996, as amended by Section 29, Chapter 421, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7004-1.5), is amended to read as follows:

Section 7004-1.5 A. There is hereby established a Kinship Foster Care Program in the Department of Human Services.

B. 1. When a child has been removed from the child's home and is in the care and custody of the Department, the Department shall attempt to place the child with a person determined by the Department to have a kinship relationship with the child if such placement is in the best interests of the child. A child's health, safety and welfare shall be of paramount concern in any placement.

2. The Department shall establish, in accordance with the provisions of this section, eligibility standards for becoming a kinship foster care family.

C. 1. A person shall be eligible to become a kinship foster parent only upon the completion of an investigation the records search to ascertain if there is ~~a state or federal~~ an Oklahoma record of criminal history for the prospective kinship foster parent or any other adult residing in the prospective kinship foster parent's home.

2. ~~The Following~~ placement, the Oklahoma State Bureau of Investigation shall ~~conduct the investigation~~ complete a national criminal history records search based upon submission of fingerprints for any kinship foster parent and any adult residing in the home of such parent, and shall make the results of the ~~investigation~~ records search available to the Department pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act. The Director of Human Services or designee may authorize an exception to the fingerprinting requirement for an adult residing in the kinship foster care home who has a severe physical condition which precludes such person's being fingerprinted.

3. The Department shall maintain the confidentiality of the ~~investigation~~ records search results and shall use the results only for purposes of determining a person's eligibility to become a kinship foster parent.

4. It shall be unlawful, except for the purpose of determining a person's eligibility for kinship foster care, for any person to disclose information obtained under this subsection.

5. Any person violating the provisions of this subsection shall be guilty of a misdemeanor.

D. A person related by blood, marriage, adoption and by emotional tie or bond to a child may be eligible for approval as a kinship foster care parent.

E. The Department shall determine whether the person is able to effectively care for the foster child by:

1. Reviewing personal and professional references;

2. ~~Observation~~ Observing during a ~~home~~ visit ~~of~~ to the home of the kinship foster care family; and

3. Interviewing the kinship foster care parent.

F. If the person is approved by the Department to provide kinship foster care services, in accordance with rules promulgated by the Commission for Human Services regarding foster care services, and a placement with the kinship foster care family is made, the kinship foster care family shall be eligible to receive payment for the full foster care rate for the care of the child and any other benefits that might be available to foster parents, whether monetary or in services.

G. 1. The Department and the kinship foster care parent shall develop a plan for the care of the child, which shall be periodically reviewed and updated.

2. The kinship foster parent shall cooperate with any activities specified in the case plan for the child including, but not limited to, counseling, therapy, court sessions, visits with the child's parents or other family members, and training.

H. The Commission for Human Services shall promulgate rules necessary to carry out the provisions of this section pursuant to the Administrative Procedures Act.

SECTION 3. AMENDATORY Section 9, Chapter 353, O.S.L. 1996, as last amended by Section 10, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7209), is amended to read as follows:

Section 7209. A. 1. Except as otherwise provided by law, the Department of Human Services or the Department of Juvenile Justice shall not place a child in out-of-home placement ~~unless prior to completion of a foster parent eligibility assessment has been conducted on the foster parent prior to the first placement of a foster child in foster care,~~ applicant and completion of a national criminal history records search based upon submission of fingerprints for such other persons any adult residing in the home has been completed, as required by the Oklahoma Child Care Facilities Licensing Act and the Oklahoma Foster Care and Out-of-Home Placement Act; provided, however, the state agencies may place a child in the home of a foster parent, pending completion of the national criminal history records search, if the foster parent and every adult residing in the home of the foster parent have resided in this state for at least five (5) years immediately preceding placement. The director of such state agency or designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe physical condition which precludes such person's being fingerprinted.

2. a. The Department of Human Services shall be the lead agency for disseminating fingerprint cards for obtaining and requesting a national criminal history records search based upon submission of fingerprints from the Oklahoma State Bureau of Investigation.
- b. The Department of Juvenile Justice, courts and child-placing agencies may request the Department of Human Services to obtain from the Oklahoma State Bureau of Investigation a national criminal history records search based upon submission of fingerprints for foster parents and other persons requiring such search pursuant to the Oklahoma Child Care Facilities Licensing Act and the Oklahoma Foster Care and Out-of-Home Placement Act. Any fees charged by the Oklahoma State Bureau of Investigation or the Federal Bureau of Investigation for such searches shall be paid by the requesting entity.
- c. The Department of Human Services shall contract with the Oklahoma State Bureau of Investigation to obtain national criminal history records searches based upon submission of fingerprints.

- d. Upon request for a national criminal history records search based upon submission of fingerprints, the Oklahoma State Bureau of Investigation shall forward one set of fingerprints to the Federal Bureau of Investigation for the purpose of conducting such a national criminal history records search.

3. The Department of Human Services, pursuant to Section 7003-5.3 of this title, and the Department of Juvenile Justice, pursuant to Section 7303-5.2 of this title, shall conduct an assessment of each child in its custody which shall be designed to establish an appropriate treatment and service plan for the child.

B. 1. A child-placing agency may place a child who is in the custody of the agency in out-of-home placement; ~~provided, if~~ a foster parent eligibility assessment or a national criminal history records search based upon submission of fingerprints has been completed for each individual residing in the home in which the child will be placed, as required pursuant to the Oklahoma Child Care Facilities Licensing Act or the Oklahoma Foster Care and Out-of-Home Placement Act; provided, however, the child-placing agency may place a child in a foster family home pending completion of the national criminal history records search if the foster parent and every adult residing in the home have resided in this state for at least five (5) years immediately preceding the placement. Upon the request of a child-placing agency, the directors of the state agencies or designees may authorize an exception to the fingerprinting requirement for any person residing in the foster home who has a severe physical condition which precludes such person's being fingerprinted.

2. In addition, a satisfactory assessment of the out-of-home placement shall be conducted by the child-placing agency prior to foster placement.

C. 1. Whenever a court awards custody of a child to an individual or a child-placing agency other than the Department of Human Services or the Department of Juvenile Justice, for placement of the child, the court shall:

- a. require that when custody is placed with an individual, a foster family eligibility assessment be conducted ~~of~~ for the foster parents prior to placement of the child, and
- b. require that if custody is awarded to a child-placing agency, a foster family eligibility assessment be conducted as required by the Oklahoma Child Care Facilities Licensing Act.

2. A child-placing agency other than the Department of Human Services or the Office of Juvenile Affairs shall, within thirty (30) days of placement, provide for an assessment of the child for the purpose of establishing an appropriate treatment and service plan for the child. The court shall require the treatment and service plan to be completed in substantially the same form and with the

same content as required by the Oklahoma Children's Code for a deprived child or as required by the Juvenile Justice Code for a delinquent child or a child in need of supervision.

3. The child shall receive a complete medical examination within thirty (30) days of initial placement unless a medical examination was conducted on the child upon the removal of the child and the court finds no need for an additional examination.

4. The child may receive such further diagnosis and evaluation as necessary as determined by the court to preserve the physical and mental well-being of the child.

D. 1. When the court awards custody of a child to an individual or a child-placing agency as provided by this subsection, the individual or child-placing agency shall be responsible for the completion of and costs of the national criminal history records search based upon submission of fingerprints, the foster parent eligibility assessment, the preparation of a treatment and service plan, and the medical examination required by this subsection.

2. The Department of Human Services and the Department of Juvenile Justice shall be responsible for the completion of and costs of the foster parent eligibility assessment and any national criminal history records search based upon submission of fingerprints, preparation of a treatment and service plan, and the medical examination required by this subsection only for the children placed in the custody of the state agency. The state agency may provide for reimbursement of such expenses, costs and charges so incurred pursuant to the Oklahoma Children's Code and the Juvenile Justice Code, as applicable.

E. 1. Upon any voluntary out-of-home placement of a child by a parent into foster care with a child-placing agency, the child-placing agency shall conduct an assessment of the child in its custody which shall be designed to establish an appropriate plan for placement of the child. Following the assessment, the child-placing agency shall establish an individual treatment and service plan for the child. A copy of each plan shall be provided to the child if the child is twelve (12) years of age or older and to the child's parent or guardian. The plan shall at a minimum:

- a. be specific,
- b. be in writing,
- c. be prepared by the agency in conference with the child's parents,
- d. state appropriate deadlines,
- e. state specific goals for the treatment of the child,
- f. describe the conditions or circumstances causing the child to be placed in foster care,

- g. describe the services that are necessary to remedy and that have a reasonable expectation of remedying the conditions or circumstances causing the child to be placed in foster care,
- h. state to whom the services will be delivered and who will deliver the services, and
- i. prescribe the time the services are expected to begin and the time within which expected results can reasonably be accomplished.

2. The child shall receive a complete medical examination within thirty (30) days of placement in foster care.

F. The child may receive such further diagnosis and evaluation as is necessary to preserve the physical and mental well-being of the child.

G. Subsequent to initial placement, the child placed in foster placement shall have a medical examination, at periodic intervals, but not less than once each year.

H. Prior to any proposed counseling, testing or other treatment services, the court or child-placing agency shall first determine that the proposed services are necessary and appropriate.

I. 1. If the assessment and medical examination disclose no physical, mental or emotional reasons for therapeutic foster care, a child voluntarily placed with a child-placing agency shall be placed in a regular foster family home. If therapeutic foster care is required, the child may be placed only in foster homes that are certified as therapeutic foster ~~care~~ homes pursuant to the Oklahoma Child Care Facilities Licensing Act.

2. No child shall be eligible for any reimbursement through the state Medicaid program for placement in therapeutic foster care unless such placement has been reviewed and approved pursuant to rules regarding medical necessity for therapeutic foster care placement promulgated by the Oklahoma Health Care Authority Board.

SECTION 4. AMENDATORY Section 12, Chapter 353, O.S.L. 1996, as last amended by Section 12, Chapter 414, O.S.L. 1998 (10 O.S. Supp. 1998, Section 7212), is amended to read as follows:

Section 7212. A. 1. The Department of Human Services, the Department of Juvenile Justice and each child-placing agency shall develop:

- a. a foster care education program to provide training for persons intending to furnish foster care services, and
- b. continuing educational programs for foster parents.

2. The Department of Human Services shall develop:

- a. a kinship foster care training program, and
- b. continuing educational programs for foster parents providing kinship foster care.

B. 1. In addition to any other conditions and requirements specified by the state agency or child-placing agency, as applicable, prior to placement of a child in foster placement other than kinship care, each foster parent shall have completed the training approved by the Department of Human Services, the Department of Juvenile Justice or the child-placing agency, as appropriate.

2. Approved training shall require a minimum of twelve (12) hours of study related, but not limited, to physical care, education, learning disabilities, procedures for referral to and receipt of necessary professional services, behavioral assessment and modification, independent-living skills, and procedures for biological parent contact. Such training shall relate to the area of parental substitute authority, behavioral management techniques including, but not limited to, ~~restraining and holding techniques,~~ parent-child conflict resolution techniques, stress management, and any other appropriate technique to teach the foster parent how to ~~control potentially violent~~ manage the child's behavior in a manner appropriate to the age and development of the foster child.

3. The foster parent or person intending to provide foster care services may complete the training as part of an approved training program offered by a public or private agency with expertise in the provision of child foster care or in related subject areas.

4. Within three (3) months of certification, foster parents and kinship foster parents must participate in training for behavioral management techniques which shall include, but not be limited to information regarding restraining and holding techniques, and other techniques appropriate for controlling potentially violent behavior in a manner appropriate to the age and development of the foster child.

C. 1. A foster parent providing kinship foster care shall, if possible, complete the training developed by the Department of Human Services for kinship foster care prior to placement or at such other times as required by the Department; provided, however, in no event shall such training take place later than three (3) months after placement of the child with such foster parent. Such training shall relate to the area of parental substitute authority, behavioral management techniques including, but not limited to, ~~restraining and holding techniques,~~ parent-child conflict resolution techniques, stress management, and any other appropriate technique to ~~teach the foster parent how to control potentially violent~~ manage behavior in a manner appropriate to the age and development of the foster child.

2. The Department shall complete a home study or other evaluation required by the Department of Human Services for the purpose of placing a child into kinship foster care as soon as is feasible after the initial placement of a child.

3. In order to provide for the payment or reimbursement for the providing of kinship foster care services until the certification and training requirements have been completed, the Department shall enter into a ~~ninety-day~~ one hundred twenty-day contract with the foster parent during which time the Department and the foster parents shall satisfy the certification and training requirements.

D. Foster parent training programs may include, but need not be limited to, in-service training, workshops and seminars developed by the state agency; seminars and courses offered through public or private education agencies; and workshops, seminars and courses pertaining to behavioral and developmental disabilities and to the development of mutual support services for foster parents.

E. The Department of Human Services, the Department of Juvenile Justice and each child-placing agency shall provide statewide training, education, and continuing education programs for foster parents.

F. The Department of Human Services, the Department of Juvenile Justice or each child-placing agency shall notify a foster parent at least ten (10) business days in advance of the statewide scheduling of education, continuing education or foster parent training occurring near the vicinity of the home of a foster parent.

G. The Department of Human Services may also provide additional foster care training to a foster parent. A foster parent may request in writing to the Department of Human Services that additional foster parent training ~~is needed~~ be provided.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the Senate the 17th day of February, 1999.

President of the Senate

Passed the House of Representatives the 1st day of March, 1999.

Speaker of the House of Representatives

