

**EHB 2722**

**THE STATE SENATE**  
**Tuesday, April 4, 2000**

**ENGROSSED**

**House Bill No. 2722**

**As Amended**

ENGROSSED HOUSE BILL NO. 2722 - By: GRAY of the House and MORGAN of the Senate.

( incapacitated persons - amending 12 O.S., Sections 2611.2 and 2803.1 - mode and order of interrogation and presentation - amending 43A O.S., Section 10-104 - amending 63 O.S., Sections 1-1950.1 and 1-1950.3 - nursing home employee candidates - nurse aides - codification - effective date )

SECTION 1. AMENDATORY Section 1, Chapter 202, O.S.L.

1996, as renumbered by Section 1, Chapter 108, O.S.L. 1999 (12 O.S. Supp. 1999, Section 2611.2), is amended to read as follows:

Section 2611.2 A. It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of children and incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "Minor witness" means any child witness in a criminal proceeding that is under sixteen (16) years of age; ~~and~~

1           2. "Support person" means a parent, other relative or a next  
2 friend chosen by the ~~minor~~ witness to accompany the ~~minor~~ witness to  
3 court proceedings;

4           3. "Incapacitated witness" means any witness in a criminal  
5 proceeding that is a person who is defined as an incapacitated  
6 person or vulnerable adult as such terms are defined by the  
7 provisions of Section 10-103 of Title 43A of the Oklahoma Statutes;  
8 and

9           4. "Witness" means minor witness and incapacitated witness.

10          C. 1. In any criminal proceeding, the court, upon motion of  
11 counsel, shall conduct a hearing to determine whether the testimony  
12 of a ~~minor~~ witness shall be closed to the public. In making the  
13 decision, the court shall consider:

- 14           a. the nature and seriousness of the offense,  
15           b. the age of the ~~minor~~ witness,  
16           c. the relationship, if any, of the ~~minor~~ witness to the  
17           defendant,  
18           d. the extent to which the size of the community would  
19           preclude the anonymity of the ~~minor~~ witness,  
20           e. the likelihood of public disgrace of the ~~minor~~  
21           witness,

- 1           f.    whether there is an overriding public interest in  
2                   having the testimony of the minor or incapacitated  
3                   person presented in open court,  
4           g.    whether the district attorney has demonstrated a  
5                   substantial risk that the identity of the ~~minor~~  
6                   witness would be disclosed to the public during the  
7                   proceeding,  
8           h.    whether the district attorney has demonstrated  
9                   substantial probability that the disclosure of the  
10                  identity of the ~~minor~~ witness would cause serious harm  
11                  to the ~~minor~~ witness,  
12           i.    whether the ~~minor~~ witness has disclosed information  
13                  concerning the case to the public in a manner which  
14                  would preclude anonymity of the ~~minor~~ witness, and  
15           j.    other factors the court may deem necessary to protect  
16                  the interests of justice.

17           2.    The court shall enter an order stating its findings.  If the  
18                  court determines that the testimony of the ~~minor~~ witness ~~shall~~ is to  
19                  be closed to the public, the court shall in its order establish who  
20                  can be present during the testimony of the ~~minor~~ witness, which  
21                  shall include:

- 22                  a.    the defendant and defense counsel,  
23                  b.    any officer having custody of the defendant,

- 1 c. the district attorney or designee and a representative  
2 for the state,  
3 d. court personnel as necessary to conduct the hearing,  
4 including but not limited to the judge, the court  
5 clerk, the bailiff, and the court reporter,  
6 e. jury members, if appropriate, and  
7 f. the ~~minor~~ witness and a support person for the ~~minor~~  
8 witness.

9 D. If the court determines it to be appropriate, the testimony  
10 of the ~~minor~~ witness may be taken in chambers or in some other  
11 comfortable place other than the courtroom. When the testimony of a  
12 ~~minor~~ witness is to be taken in a courtroom, the ~~minor~~ witness and  
13 support person shall be brought into the court chambers prior to the  
14 taking of the testimony to meet for a reasonable period of time with  
15 the judge, the prosecutor and the defense attorney. This meeting  
16 shall be for the purpose of explaining the court procedures to the  
17 ~~minor~~ witness and to allow the attorneys an opportunity to establish  
18 a rapport with the ~~minor~~ witness to facilitate later questioning.  
19 No one shall discuss the defendant or any facts of the case with the  
20 ~~minor~~ witness during this meeting.

21 E. A ~~minor~~ witness shall have the right to be accompanied by a  
22 support person while giving testimony at any criminal proceeding.  
23 The support person shall not discuss the testimony of the ~~minor~~

1 witness with any other witnesses and shall be admonished by the  
2 court to not sway, prompt or influence the testimony of the ~~minor~~  
3 witness in any way.

4 SECTION 2. AMENDATORY 12 O.S. 1991, Section 2803.1, as  
5 last amended by Section 1, Chapter 24, O.S.L. 1998 (12 O.S. Supp.  
6 1999, Section 2803.1), is amended to read as follows:

7 Section 2803.1 A. A statement made by a child who has not  
8 attained thirteen (13) years of age or a person who is an  
9 incapacitated person as such term is defined by the provisions of  
10 Section 10-103 of Title 43A of the Oklahoma Statutes, which  
11 describes any act of physical abuse against the child or  
12 incapacitated person or any act of sexual contact performed with or  
13 on the child or incapacitated person by another, is admissible in  
14 criminal and juvenile proceedings in the courts in this state if:

15 1. The court finds, in a hearing conducted outside the presence  
16 of the jury, that the time, content and totality of circumstances  
17 surrounding the taking of the statement provide sufficient indicia  
18 of reliability so as to render it inherently trustworthy. In  
19 determining such trustworthiness, the court may consider, among  
20 other things, the following factors: the spontaneity and consistent  
21 repetition of the statement, the mental state of the declarant,  
22 whether the terminology used is unexpected of a child of similar age

1 or of an incapacitated person, and whether a lack of motive to  
2 fabricate exists; and

3 2. The child or incapacitated person either:

- 4 a. testifies or is available to testify at the  
5 proceedings or pursuant to the provisions of Section  
6 753 et seq. of Title 22 of the Oklahoma Statutes, or  
7 b. is unavailable as defined in Section 2804 of this  
8 title as a witness. When the child or incapacitated  
9 person is unavailable, such statement may be admitted  
10 only if there is corroborative evidence of the act.

11 B. A statement may not be admitted under this section unless  
12 the proponent of the statement makes known to the adverse party ~~his~~  
13 an intention to offer the statement and the particulars of the  
14 statement at least ten (10) days in advance of the proceedings to  
15 provide the adverse party with an opportunity to prepare to answer  
16 the statement.

17 SECTION 3. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 1-1908.2 of Title 63, unless  
19 there is created a duplication in numbering, reads as follows:

20 The State Department of Health in conjunction with the Office of  
21 the State Long-term Care Ombudsman of the Department of Human  
22 Services shall develop minimum staffing and training standards for  
23 nursing facilities. These standards shall be promulgated by the

1 State Board of Health and submitted to the Legislature no later than  
2 January 1 of each year. These standards shall regulate:

3 1. Number of all personnel, including management and  
4 supervisory personnel, having responsibility for any part of the  
5 care given to residents. The Department shall establish staffing  
6 ratios for facilities based upon acuity levels of the patients in  
7 facilities; and

8 2. Continuing education requirements for direct care staff.

9 SECTION 4. AMENDATORY 43A O.S. 1991, Section 10-104, as  
10 last amended by Section 4, Chapter 298, O.S.L. 1998 (43A O.S. Supp.  
11 1999, Section 10-104), is amended to read as follows:

12 Section 10-104. A. Any person having reasonable cause to  
13 believe that a vulnerable adult is suffering from abuse, neglect, or  
14 exploitation shall make a report to either the Department of Human  
15 Services, the office of the district attorney in the county in which  
16 the suspected abuse, neglect, or exploitation occurred or the local  
17 municipal police department or sheriff's department as soon as ~~such~~  
18 the person is aware of the situation. If a report is made to the  
19 Department of Human Services, the county office, after investigating  
20 the report, shall forward its findings to the office of the district  
21 attorney in the county in which the suspected abuse, neglect, or  
22 exploitation occurred. Persons required to make reports pursuant to  
23 this section shall include, but not be limited to:

- 1        1. Physicians;
- 2        2. Operators of emergency response vehicles and other medical
- 3 professionals;
- 4        3. Social workers and other mental health professionals;
- 5        4. Law enforcement officials;
- 6        5. Staff of domestic violence programs; and
- 7        6. Long-term care facility personnel.

8        B. The report shall contain the name and address of the  
9 vulnerable adult, the name and address of the caretaker, if any, and  
10 a description of the situation of the vulnerable adult.

11       C. Any person who knowingly and willfully fails to promptly  
12 report any abuse, neglect, or exploitation as required by the  
13 provisions of subsection A of this section, upon conviction, shall  
14 be guilty of a misdemeanor.

15       D. Any person participating in good faith and exercising due  
16 care in the making of a report pursuant to the provisions of this  
17 section shall have immunity from any civil or criminal liability  
18 that might otherwise be incurred or imposed. Any such participant  
19 shall have the same immunity with respect to participation in any  
20 judicial proceeding resulting from such report. The same immunity  
21 from any civil or criminal liability shall also apply to previous  
22 employers of caretakers, who in good faith report to new employers  
23 or prospective employers any misconduct of an employee, whether



1 confirmed or not, that relates in any way to abuse, neglect or  
2 exploitation of a vulnerable adult in the care of the caretaker.

3 E. Any person who willfully or recklessly makes a false report  
4 or a report without a reasonable basis in fact for such a report  
5 pursuant to the provisions of this section shall be civilly liable  
6 for any actual damages suffered by the person ~~or persons~~ being  
7 reported and for any punitive damages set by the court or jury which  
8 may be allowed in the discretion of the court or jury.

9 F. Any state or county medical examiner or physician who has  
10 reasonable cause to suspect that the death of any vulnerable adult  
11 may be the result of abuse or neglect as defined by Section 10-103  
12 of this title shall make a report to the district attorney of the  
13 county in which the death occurred. The report shall include the  
14 name of the person making the report, the name of the deceased  
15 person, the facts or other evidence supporting such suspicion, and  
16 any other information that may be of assistance to the district  
17 attorney in conducting an investigation into the matter.

18 G. No employer shall terminate the employment, prevent or  
19 impair the practice or occupation of or impose any other sanction on  
20 any employee solely for the reason that the employee made or caused  
21 to be made a report or cooperated with an investigation pursuant to  
22 the Protective Services for Vulnerable Adults Act. A court, in  
23 addition to other damages and remedies, may assess reasonable

1 attorney fees against an employer who has been found to have  
2 violated the provisions of this subsection.

3 SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-1950.1, as  
4 last amended by Section 5, Chapter 249, O.S.L. 1992 (63 O.S. Supp.  
5 1999, Section 1-1950.1), is amended to read as follows:

6 Section 1-1950.1 A. The provisions of this section shall be  
7 effective through December 31, 2000.

8 B. For purposes of this section:

9 1. "Nurses aide" ~~means~~ includes any person who is not a  
10 licensed health professional and who provides, for compensation,  
11 nursing care ~~or~~, health-related services or supportive assistance to  
12 residents in:

- 13 a. a nursing facility, ~~or~~ or a specialized facility as such  
14 terms are defined by the Nursing Home Care Act,
- 15 b. a residential care home as such term is defined by the  
16 Residential Care Act,
- 17 c. an assisted living center as such term is defined by  
18 the Continuum of Care and Assisted Living Act,
- 19 d. a continuum of care facility as such term is defined  
20 by the Continuum of Care and Assisted Living Act,
- 21 e. a freestanding hospice or program providing hospice  
22 services as such terms are defined by the Hospice  
23 Licensing Act, or

1            f.    an adult day care center ~~and who is not a licensed~~  
2                            ~~health professional~~ as such term is defined by the  
3                            Adult Day Care Act.

4    ~~Such~~ The term "nurses aide" also ~~means~~ includes any person who  
5 provides ~~such~~ nursing care or health-related services or supportive  
6 assistance services to individuals in their own homes as an employee  
7 or contract provider of a ~~home health or~~ home care agency, or as a  
8 contract provider of the Nontechnical Medical Care Program of the  
9 Oklahoma Department of Human Services;

10            2. "Employer" means any of the following facilities, homes,  
11 agencies or programs which are subject to the provision of this  
12 section:

- 13            a.    a nursing facility, or specialized facility, ~~or~~  
14                            ~~residential care home~~ as such terms are defined ~~in~~  
15                            ~~Section 1-1902 of this title~~ by the Nursing Home Care  
16                            Act,
- 17            b.    a residential care home as such term is defined by the  
18                            Residential Care Act,
- 19            c.    an adult day care center as such term is defined in  
20                            ~~Section 1-872 of this title~~ the Adult Day Care Act,
- 21            ~~e.~~ d.    an assisted living center as such term is defined by  
22                            the Continuum of Care and Assisted Living Act,

1            e.    a continuum of care facility as such term is defined  
2                            by the Continuum of Care and Assisted Living Act,  
3            f.    a freestanding hospice or program providing hospice  
4                            services as such terms are defined by the Hospice  
5                            Licensing Act,  
6            g.    a ~~home health or~~ home care agency as such term is  
7                            defined by the Home Care Act, and  
8            ~~d.~~ h.    the Department of Human Services, in its capacity as  
9                            an operator of any hospital or health care  
10                          institution, or as a contractor with providers of the  
11                          Nontechnical Medical Care Program; and

12            3.    ~~"Home health or home care agency" means any person,~~  
13            ~~partnership, association, corporation or other organization which~~  
14            ~~administers, offers or provides health care services or supportive~~  
15            ~~assistance for compensation to three or more ill, disabled, or~~  
16            ~~infirm persons in the temporary or permanent residence of such~~  
17            ~~persons, and includes any subunits or branch offices of a parent~~  
18            ~~home health or home care agency; and~~

19            4.    "Bureau" means the Oklahoma State Bureau of Investigation.

20            ~~B.~~ C. 1. a. Except as otherwise provided by subsection ~~C~~ D of  
21                            this section, before any employer makes an offer to  
22                            employ or to contract with a nurses aide or other  
23                            person to provide nursing care, health-related

1 services or supportive assistance to any resident or  
2 other individual except as provided by paragraph 4  
3 of this subsection, the employer shall provide for a  
4 criminal arrest check to be made on the nurses aide  
5 or other person pursuant to the provisions of this  
6 section.

7 b. If the employer is a facility, home or institution  
8 which is part of a larger complex of buildings, the  
9 requirement of a criminal arrest check shall apply  
10 only to an offer of employment or contract made to a  
11 person who will work primarily in the immediate  
12 boundaries of the facility, home or institution.

13 2. Except as otherwise specified by subsection ~~D~~ E of this  
14 section, an employer is authorized to obtain any criminal arrest  
15 records maintained by the Oklahoma State Bureau of Investigation  
16 which the employer is required or authorized to request by the  
17 provisions of this section.

18 3. The employer shall request the Bureau to conduct a criminal  
19 arrest check on the nurses aide or other person and shall provide to  
20 the Bureau any relevant information required by the Bureau to  
21 conduct the check. The employer shall pay a fee of ~~Ten Dollars~~  
22 ~~(\$10.00)~~ Fifteen Dollars (\$15.00) to the Bureau for each criminal  
23 arrest check that is conducted pursuant to such a request.

1           4. The requirement of a criminal arrest check shall not apply  
2 to an offer of employment made to:

- 3           a. a nursing home administrator licensed pursuant to the  
4 provisions of Section 330.53 of this title~~†~~L
- 5           b. any person who is the holder of a current license or  
6 certificate issued pursuant to the laws of this state  
7 authorizing such person to practice the healing arts~~†~~L
- 8           c. a registered nurse or practical nurse licensed  
9 pursuant to the Oklahoma Nursing Practice Act~~†~~L
- 10          d. a physical therapist registered pursuant to the  
11 Physical Therapy Practice Act~~†~~L
- 12          e. a physical therapist assistant licensed pursuant to  
13 the Physical Therapy Practice Act~~†~~L
- 14          f. a social worker licensed pursuant to the provisions of  
15 the Social Workers' Licensing Act~~†~~L
- 16          g. a speech pathologist or audiologist licensed pursuant  
17 to the Speech Pathology and Audiology Licensing Act~~†~~L
- 18          h. a dietitian licensed pursuant to the provisions of the  
19 Licensed Dietitian Act~~†~~L
- 20          i. an occupational therapist licensed pursuant to the  
21 Occupational Therapy Practice Act~~†~~L or
- 22          j. an individual who is to be employed by a nursing  
23 service conducted by and for the adherents of any

1 religious denomination, the tenets of which include  
2 reliance on spiritual means through prayer alone for  
3 healing.

4 5. At the request of an employer, the Bureau shall conduct a  
5 criminal arrest check on any person employed by the employer,  
6 including the persons specified in paragraph 4 of this subsection at  
7 any time during the period of employment of such person.

8 ~~C. D.~~ 1. An employer may make an offer of temporary employment  
9 to a nurses aide or other person pending the results of the criminal  
10 arrest check on the nurses aide or other person. The employer in  
11 such instance shall provide to the Bureau the name and relevant  
12 information relating to the nurses aide or other person within  
13 seventy-two (72) hours after the date the nurses aide or other  
14 person accepts temporary employment. The employer shall not hire or  
15 contract with a nurses aide or other person on a permanent basis  
16 until the results of the criminal arrest check are received.

17 2. An employer may accept a criminal arrest report less than  
18 one (1) year old of a nurses aide or other person to whom such  
19 employer makes an offer of employment or employment contract. The  
20 report shall be obtained from the previous employer or contractor of  
21 such nurses aide or other person and shall only be obtained upon the  
22 written consent of ~~such~~ the nurses aide or other person.

1       ~~D.~~ E. 1. The Bureau shall not provide to the employer the  
2 criminal arrest records of a nurses aide or other person being  
3 investigated pursuant to this section unless the criminal records  
4 relate to:

- 5           a. any felony or misdemeanor classified as a crime  
6                against the nurses aide or other person~~†~~1
- 7           b. any felony or misdemeanor classified as a crime  
8                against public decency or morality~~†~~1
- 9           c. any felony or misdemeanor classified as domestic abuse  
10               pursuant to the provisions of the Protection from  
11                Domestic Abuse Act~~†~~1
- 12           d. a felony violation of any state statute intended to  
13                control the possession or distribution of a Schedule I  
14                through V drug pursuant to the Uniform Controlled  
15                Dangerous Substances Act~~†~~1 and
- 16           e. any felony or misdemeanor classified as a crime  
17                against property.

18       2. Within five (5) days of receiving a request to conduct a  
19 criminal arrest check, the Bureau shall complete the criminal arrest  
20 check and report the results of the check to the requesting  
21 employer.

22       ~~E.~~ F. Every employer who is subject to the provisions of this  
23 section shall inform each applicant for employment, or each



1 prospective contract provider, as applicable, that the employer is  
2 required to obtain a criminal arrest record before making an offer  
3 of permanent employment or contract to a nurses aide or other person  
4 described in subsection ~~B~~ C of this section.

5 ~~F.~~ G. 1. If the results of a criminal arrest check reveal that  
6 the ~~subject~~ nurses aide or other person has been convicted of any of  
7 the following offenses, the employer shall not hire or contract with  
8 the nurses aide or other person:

- 9 a. assault, battery, or assault and battery with a  
10 dangerous weapon~~†~~†
- 11 b. aggravated assault and battery~~†~~†
- 12 c. murder or attempted murder~~†~~†
- 13 d. manslaughter, except involuntary manslaughter~~†~~†
- 14 e. rape, incest or sodomy~~†~~†
- 15 f. indecent exposure and indecent exhibition~~†~~†
- 16 g. pandering~~†~~†
- 17 h. child abuse~~†~~†
- 18 i. abuse, neglect or financial exploitation of any person  
19 entrusted to his care or possession~~†~~†
- 20 j. burglary in the first or second degree~~†~~†
- 21 k. robbery in the first or second degree~~†~~†
- 22 l. robbery or attempted robbery with a dangerous weapon,  
23 or imitation firearm~~†~~†

- 1 m. arson in the first or second degree~~†~~L
- 2 n. unlawful possession or distribution, or intent to
- 3 distribute unlawfully, Schedule I through V drugs as
- 4 defined by the Uniform Controlled Dangerous Substances
- 5 Act~~†~~L
- 6 o. grand larceny~~†~~L or
- 7 p. petit larceny or shoplifting within the past seven (7)
- 8 years.

9 2. If the results of a criminal arrest check reveal that an

10 employee or a nurses aide or other person hired on a temporary basis

11 pursuant to subsection ~~€~~ D of this section ~~or any other person who~~

12 ~~is an employee or contract provider~~ has been convicted of any of the

13 offenses listed in paragraph 1 of this subsection, the employer

14 shall immediately terminate the nurses aide's or other person's

15 employment or contract. The provisions of this paragraph shall not

16 apply to an employee or contract provider of an employer who has

17 completed the requirements for certification and placement on the

18 nurse aide registry and who has been continuously employed by the

19 employer prior to January 1, 1992.

20 ~~€~~ H. An employer shall not employ or continue employing a any

21 person addicted to ~~any~~ a Schedule I through V drug as specified by

22 the Uniform Controlled Dangerous Substances Act unless the person

1 produces evidence that the person has successfully completed a drug  
2 rehabilitation program.

3 ~~H.~~ I. All criminal records received by the employer are  
4 confidential and are for the exclusive use of the State Department  
5 of Health and the employer which requested the information. Except  
6 on court order or with the written consent of the nurses aide or  
7 other person being investigated, the records shall not be released  
8 or otherwise disclosed to any other person or agency. These records  
9 shall be destroyed after one (1) year from the end of employment of  
10 the nurses aide or other person to whom such records relate.

11 ~~F.~~ J. Any person releasing or disclosing any information  
12 received pursuant to this section without the authorization  
13 prescribed by this section shall be guilty of a misdemeanor.

14 ~~J.~~ K. As part of the inspections required by the Nursing Home  
15 Care Act, the Residential Care Act, the Continuum of Care and  
16 Assisted Living Act, the Hospice Licensing Act and the Adult Day  
17 Care Act, the State Department of Health shall review the employment  
18 files of any facility or home required to obtain criminal records to  
19 ensure such facilities or homes are in compliance with the  
20 provisions of this section.

21 SECTION 6. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 1-1950.1a of Title 63, unless  
23 there is created a duplication in numbering, reads as follows:

1 A. This section shall be effective January 1, 2001.

2 B. For purposes of this section:

3 1. "Nurses aide" means any person who is not a licensed health  
4 professional and who provides, for compensation, nursing care or  
5 health-related services or supportive assistance to residents in:

6 a. a nursing facility or a specialized facility as such  
7 terms are defined by the Nursing Home Care Act,

8 b. a residential care home, as such term is defined by  
9 the Residential Care Act,

10 c. an assisted living center as such term is defined by  
11 the Continuum of Care and Assisted Living Act,

12 d. a continuum of care facility as such term is defined  
13 by the Continuum of Care and Assisted Living Act,

14 e. a freestanding hospice or program providing hospice  
15 services as such terms are defined by the Hospice  
16 Licensing Act, or

17 f. an adult day care center as such term is defined by  
18 the Adult Day Care Act.

19 The term "nurses aide" also includes any person who provides nursing  
20 care or health-related services or supportive assistance services to  
21 individuals in their own homes as an employee or contract provider  
22 of a home care agency, or as a contract provider of the Nontechnical  
23 Medical Care Program of the Oklahoma Department of Human Services;

1        2. "Employer" means any of the following facilities, homes,  
2 agencies or programs which are subject to the provision of this  
3 section:

- 4            a. a nursing facility or specialized facility as such
- 5                    terms are defined by the Nursing Home Care Act,
- 6            b. a residential care home as such term is defined by the
- 7                    Residential Care Act,
- 8            c. an adult day care center as such term is defined by
- 9                    the Adult Day Care Act,
- 10           d. an assisted living center as such term is defined by
- 11                    the Continuum of Care and Assisted Living Act,
- 12           e. a continuum of care facility as such term is defined
- 13                    by the Continuum of Care and Assisted Living Act,
- 14           f. a freestanding hospice or program providing hospice
- 15                    services as such terms are defined by the Hospice
- 16                    Licensing Act,
- 17           g. a home care agency as such term is defined by the Home
- 18                    Care Act, and
- 19           h. the Department of Human Services, in its capacity as
- 20                    an operator of any hospital or health care
- 21                    institution, or as a contractor with providers of the
- 22                    Nontechnical Medical Care Program; and

23        3. "Bureau" means the Oklahoma State Bureau of Investigation.

1 C. 1. a. (1) Except as otherwise provided by subsection G of  
2 this section, before any employer makes an offer  
3 to employ or to contract with a nurses aide or  
4 other person to provide nursing care, health-  
5 related services or supportive assistance to any  
6 resident or individual, except as provided by  
7 subsection E of this section, the employer shall  
8 provide for a criminal arrest check to be made on  
9 the nurses aide or other person pursuant to the  
10 provisions of this section.

11 (2) If the employer is a facility, home or  
12 institution which is part of a larger complex of  
13 buildings, the requirement of a criminal arrest  
14 check shall apply only to an offer of employment  
15 or contract made to a person who will work  
16 primarily in the immediate boundaries of the  
17 facility, home or institution.

18 b. If the applicant has lived in Oklahoma for less than  
19 one (1) year, a criminal history records search shall  
20 also be obtained from the previous state of residence.

21 2. Except as otherwise specified by subsection H of this  
22 section, an employer is authorized to obtain any criminal arrest  
23 records maintained by the Oklahoma State Bureau of Investigation

1 which the employer is required or authorized to request by the  
2 provisions of this section.

3 3. The employer shall request the Bureau to conduct a criminal  
4 arrest check on the nurses aide or other person and shall provide to  
5 the Bureau any relevant information required by the Bureau to  
6 conduct the check. The employer shall pay a fee of Fifteen Dollars  
7 (\$15.00) to the Bureau for each criminal arrest check that is  
8 conducted pursuant to such a request.

9 4. Within five (5) days of receiving a request to conduct a  
10 criminal arrest check, the Bureau shall complete the criminal arrest  
11 check and report the results of the check to the requesting  
12 employer.

13 D. 1. a. In addition to a criminal arrest check pursuant to  
14 subsection C of this section, except as otherwise  
15 provided by subsection G of this section, before any  
16 employer makes an offer to employ or to contract with  
17 a nurses aide or other person to provide nursing  
18 care, health-related services or supportive  
19 assistance to any resident or individual, except as  
20 provided by subsection E of this section, the  
21 employer shall provide for a national criminal  
22 history records search based upon submission of

1 fingerprints to be made on the nurses aide or other  
2 person pursuant to the provisions of this section.

3 b. If the employer is a facility, home or institution  
4 which is part of a larger complex of buildings, the  
5 requirement of a national criminal history records  
6 search based upon submission of fingerprints shall  
7 apply only to an offer of employment or contract made  
8 to a person who will work primarily in the immediate  
9 boundaries of the facility, home or institution.

10 2. The national criminal history records search based upon  
11 submission of fingerprints shall be obtained by the employer through  
12 the Department of Human Services.

13 3. a. The Department of Human Services shall be the lead  
14 agency for disseminating fingerprint cards for  
15 obtaining and requesting a national criminal history  
16 records search based upon submission of fingerprints  
17 from the Oklahoma State Bureau of Investigation as  
18 required by this section.

19 b. Any fees charged by the Oklahoma State Bureau of  
20 Investigation or the Federal Bureau of Investigation  
21 for such searches shall be paid by the requesting  
22 entity.



1           c.    The Department of Human Services shall contract with  
2                   the Oklahoma State Bureau of Investigation to obtain  
3                   national criminal history records searches based upon  
4                   submission of fingerprints required pursuant to this  
5                   section.

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

12          4.    The State Department of Health may authorize an exception to  
13                  the fingerprinting requirement for a person who has a physical  
14                  condition which precludes such person from being fingerprinted.

15          E.    The requirements of a criminal arrest check and a national  
16                  criminal history records search shall not apply to an offer of  
17                  employment made to:

18            1.   A nursing home administrator licensed pursuant to the  
19                  provisions of Section 330.53 of Title 63 of the Oklahoma Statutes;

20            2.   Any person who is the holder of a current license or  
21                  certificate issued pursuant to the laws of this state authorizing  
22                  such person to practice the healing arts;

1           3. A registered nurse or practical nurse licensed pursuant to  
2 the Oklahoma Nursing Practice Act;

3           4. A physical therapist registered pursuant to the Physical  
4 Therapy Practice Act;

5           5. A physical therapist assistant licensed pursuant to the  
6 Physical Therapy Practice Act;

7           6. A social worker licensed pursuant to the provisions of the  
8 Social Workers' Licensing Act;

9           7. A speech pathologist or audiologist licensed pursuant to the  
10 Speech Pathology and Audiology Licensing Act;

11          8. A dietitian licensed pursuant to the provisions of the  
12 Licensed Dietitian Act;

13          9. An occupational therapist licensed pursuant to the  
14 Occupational Therapy Practice Act; or

15          10. An individual who is to be employed by a nursing service  
16 conducted by and for the adherents of any religious denomination,  
17 the tenets of which include reliance on spiritual means through  
18 prayer alone for healing.

19          F. At the request of an employer, the Bureau shall conduct a  
20 criminal arrest check or request a national criminal history records  
21 search based upon submission of fingerprints on any person employed  
22 by the employer, including the persons specified in subsection E of

1 this section at any time during the period of employment of such  
2 person.

3 G. 1. An employer may make an offer of temporary employment to  
4 a nurses aide or other person pending the results of the criminal  
5 arrest check on the nurses aide or other person and a national  
6 criminal history records search based upon submission of  
7 fingerprints. The employer in such instance shall provide to the  
8 Bureau the name and relevant information relating to the nurses aide  
9 or other person within seventy-two (72) hours after the date the  
10 nurses aide or other person accepts temporary employment.

11 2. The employer shall not hire or contract with a nurses aide  
12 or other person on a permanent basis until the results of the  
13 criminal arrest check and a national criminal history records search  
14 based upon submission of fingerprints are received.

15 H. The Bureau shall not provide to the employer the criminal  
16 arrest records or a national criminal history record search of a  
17 nurses aide or other person being investigated pursuant to this  
18 section unless the records relate to:

19 1. Any felony or misdemeanor classified as a crime against the  
20 nurses aide or other person;

21 2. Any felony or misdemeanor classified as a crime against  
22 public decency or morality;

1           3. Any felony or misdemeanor classified as domestic abuse  
2 pursuant to the provisions of the Protection from Domestic Abuse  
3 Act;

4           4. A felony violation of any state statute intended to control  
5 the possession or distribution of a Schedule I through V drug  
6 pursuant to the Uniform Controlled Dangerous Substances Act; and

7           5. Any felony or misdemeanor classified as a crime against  
8 property.

9           If the applicant has lived in Oklahoma for less than one (1)  
10 year, a criminal history records search shall also be obtained from  
11 the previous state of residence.

12           I. Every employer who is subject to the provisions of this  
13 section shall inform each applicant for employment, or each  
14 prospective contract provider, as applicable, that the employer is  
15 required to obtain a criminal arrest record and a national criminal  
16 history records search based upon submission of fingerprints before  
17 making an offer of permanent employment or contract to a nurses aide  
18 or other person described in subsection C of this section.

19           J. 1. If the results of a criminal arrest check or a national  
20 criminal history records search based upon submission of  
21 fingerprints reveal that the nurses aide or other person has been  
22 convicted of any of the following offenses, the employer shall not  
23 hire or contract with the nurses aide or other person:

- 1 a. assault, battery, or assault and battery with a  
2 dangerous weapon,  
3 b. aggravated assault and battery,  
4 c. murder or attempted murder,  
5 d. manslaughter, except involuntary manslaughter,  
6 e. rape, incest or sodomy,  
7 f. indecent exposure and indecent exhibition,  
8 g. pandering,  
9 h. child abuse,  
10 i. abuse, neglect or financial exploitation of any person  
11 entrusted to his care or possession,  
12 j. burglary in the first or second degree,  
13 k. robbery in the first or second degree,  
14 l. robbery or attempted robbery with a dangerous weapon,  
15 or imitation firearm,  
16 m. arson in the first or second degree,  
17 n. unlawful possession or distribution, or intent to  
18 distribute unlawfully, Schedule I through V drugs as  
19 defined by the Uniform Controlled Dangerous Substances  
20 Act,  
21 o. grand larceny, or  
22 p. petit larceny or shoplifting within the past seven (7)  
23 years.

1           2. If the results of a criminal arrest check or a national  
2 criminal history records search based upon submission of  
3 fingerprints reveal that an employee, a nurses aide or other person  
4 hired on a temporary basis pursuant to subsection G of this section  
5 has been convicted of any of the offenses listed in paragraph 1 of  
6 this subsection, the employer shall immediately terminate the nurses  
7 aide's or other person's employment or contract. The provisions of  
8 this paragraph shall not apply to an employee or contract provider  
9 of an employer who has completed the requirements for certification  
10 and placement on the nurse aide registry and who has been  
11 continuously employed by the employer prior to November 1, 2000.

12           K. An employer shall not employ or continue employing any  
13 person addicted to a Schedule I through V drug as specified by the  
14 Uniform Controlled Dangerous Substances Act unless the person  
15 produces evidence that the person has successfully completed a drug  
16 rehabilitation program.

17           L. All criminal records received by the employer are  
18 confidential and are for the exclusive use of the State Department  
19 of Health and the employer which requested the information. Except  
20 on court order or with the written consent of the nurses aide or  
21 other person being investigated, the records shall not be released  
22 or otherwise disclosed to any other person or agency. These records

1 shall be destroyed after one (1) year from the end of employment of  
2 the nurses aide or other person to whom such records relate.

3 M. Any person releasing or disclosing any information received  
4 pursuant to this section without the authorization prescribed by  
5 this section shall be guilty of a misdemeanor.

6 N. As part of the inspections required by the Nursing Home Care  
7 Act, the Residential Care Act, the Continuum of Care and Assisted  
8 Living Act, the Hospice Licensing Act and the Adult Day Care Act,  
9 the State Department of Health shall review the employment files of  
10 any facility or home required to obtain criminal records to ensure  
11 such facilities or homes are in compliance with the provisions of  
12 this section.

13 SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-1950.3, as  
14 amended by Section 1, Chapter 129, O.S.L. 1999 (63 O.S. Supp. 1999,  
15 Section 1-1950.3), is amended to read as follows:

16 Section 1-1950.3 A. 1. Until November 1, 2004, no employer or  
17 contractor who is subject to the provisions of Section 1-1950.1 or  
18 1-1950.2 of this title or Section 6 of this act shall use, on a  
19 full-time, temporary, per diem, or other basis, any individual who  
20 is not a licensed health professional as a nurse aide for more than  
21 one hundred twenty (120) days, unless such individual has satisfied  
22 all requirements for certification and placement on the nurse aide  
23 registry maintained by the State Department of Health.

1           2.    a.    Effective November 1, 2004, no nursing facility,  
2                                    assisted living or other long-term care facility shall  
3                                    employ as a nurse aide, on a full-time, temporary, per  
4                                    diem, or any other basis, any individual who is not  
5                                    certified as a nurse aide in good standing on the  
6                                    nurse aide registry maintained by the State Department  
7                                    of Health.

8            b.    The Department may grant a temporary emergency waiver  
9                                    to the provisions of this paragraph to any nursing  
10                                  facility, assisted living or other long-term care  
11                                  facility which can demonstrate that such facility has  
12                                  been unable to successfully meet its staffing  
13                                  requirements. The Department shall promulgate rules  
14                                  related to eligibility for receipt of such waiver, and  
15                                  the process and the conditions for obtaining the  
16                                  waiver.

17           B.    1.    Until November 1, 2004, no person shall employ an  
18                                  individual as a nurse aide who has not completed the requirements  
19                                  for certification and placement on the nurse aide registry without  
20                                  written documentation of the individual's current registration in an  
21                                  approved course of study and training for nurse aides.

22            2.    An individual employed as a nurse aide who is enrolled in an  
23                                  approved course of study and training for nurse aides shall



1 successfully complete such course of study and training, obtain  
2 certification, and be placed on the nurse aide registry within one  
3 hundred twenty (120) cumulative days of such completion in order to  
4 continue employment as a nurse aide.

5 3. Any nursing facility, assisted living or other long-term  
6 care facility that employs an individual who is in nurse aide  
7 training, as provided in this section, shall ensure that such  
8 individual is supervised at all times by no less than a licensed  
9 practical nurse.

10 4. No employer may utilize an individual who is in nurse aide  
11 training for more than one hundred twenty (120) cumulative days as a  
12 nurse aide.

13 5. For purposes of this subsection, "cumulative days" means the  
14 number of days an individual is utilized as a nurse aide by any  
15 employer in any nursing facility, assisted living or other long-term  
16 care facility.

17 C. Any person convicted of violating any of the provisions of  
18 this section ~~or~~, Section 1-1950.1 of this title or Section 6 of this  
19 act shall be guilty of a misdemeanor, punishable by a fine of not  
20 less than One Hundred Dollars (\$100.00) nor more than Three Hundred  
21 Dollars (\$300.00), imprisonment in the county jail for not more than  
22 thirty (30) days, or by both such fine and imprisonment.

23 SECTION 8. This act shall become effective November 1, 2000.

1 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-29-00 - DO  
2 PASS, As Amended.