ENROLLED SENATE
BILL NO. 705

By: Leftwich of the Senate

and

Gilbert and Askins of the House

An Act relating to the Office of Juvenile Affairs; amending 10 O.S. 2001, Sections 404.1, 7209, as amended by Section 4, Chapter 237, O.S.L. 2002 and 7302-6.2 (10 O.S. Supp. 2002, Section 7209), which relate to criminal history records searches on foster parents, foster parent assessments, and employment of personnel; amending 43A O.S. 2001, Section 5-101, as amended by Section 31, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-101), which relates to procedures for admission to state psychiatric hospitals; providing for national criminal records search for certain persons; authorizing the Office of Juvenile Affairs to request background history checks and fingerprint information; directing the Oklahoma State Bureau of Investigation to furnish certain national criminal records; directing the Board of Juvenile Affairs to promulgate certain rules; authorizing persons of certain age to be admitted to certain facilities and institutions; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 10 O.S. 2001, 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 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 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 history records search for any adult residing in the child care facility. A criminal history 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 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 records search shall also be obtained from such person's previous state of residence.

4. The Department of Juvenile Justice may directly request national criminal history records searches as defined by Section 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State Bureau of Investigation for the purpose of obtaining the national criminal history of any employee or applicant who has resided in Oklahoma for less than one (1) year for which a search is required.

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, complete:

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

(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.~~ subparagraph,

(2) ~~The~~ 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~~ 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~~ provided, however, the Director of Human Services or the Director of the Department of Juvenile Justice, or a 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

(5) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Affairs 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 this section, 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~~ subparagraph, 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, each Department shall complete a foster parent eligibility assessment, pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant. In addition, except as otherwise provided by divisions 2 and 4 of this ~~paragraph~~ subparagraph, 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 this section, until otherwise provided by rules of the Commission for Human Services or by law.

3. 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 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 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 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 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 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 or denial,

(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.

SECTION 2. AMENDATORY 10 O.S. 2001, Section 7209, as amended by Section 4, Chapter 237, O.S.L. 2002 (10 O.S. Supp. 2002, 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 prior to completion of a foster parent eligibility assessment on the foster parent applicant and completion of a national criminal history records search based upon submission of fingerprints for any adult residing in the home, 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 <u>to courts and child-placing agencies</u> for obtaining and requesting a national criminal history records search based upon submission of fingerprints from the Oklahoma State Bureau of Investigation. <u>The Department of Juvenile Justice may directly request national criminal history records searches as defined by Section 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State Bureau of Investigation for the purpose of obtaining the national criminal history of any individual for which such a search is required pursuant to this section.</u>

b. ~~The Department of Juvenile Justice, courts~~ <u>Courts</u> 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~~ Either the Department of Human Services or the Office of Juvenile Affairs, whichever is applicable, shall contract with the Oklahoma State Bureau of Investigation to obtain national criminal history records searches based upon submission of fingerprints.

d. (1) If the Department of Human Services or the Office of Juvenile Affairs is considering placement of a child with an individual in an emergency situation and after normal business hours, the Department may request local law enforcement to conduct a criminal history records search based upon submission of the individual's name, race, sex, date of birth and social security number.

(2) Within five (5) business days of the name-based search, the Department shall submit fingerprints on the individual to the Oklahoma State Bureau of Investigation. In the event the individual refuses to submit to a name-based or fingerprint search, the Department shall either not place or shall remove the child from the individual's home.

e. 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 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 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 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 3. AMENDATORY 10 O.S. 2001, Section 7302-6.2, is amended to read as follows:

Section 7302-6.2 A. The Office of Juvenile Affairs shall establish and maintain such methods of administration, including those necessary to establish and maintain a merit system of personnel administration, and shall promulgate such rules as it deems necessary for the efficient and effective operation of the juvenile institutions and facilities operated by the Department.

B. The Executive Director of the Office of Juvenile Affairs shall employ and fix the duties and compensation of a superintendent, and such other personnel as the Executive Director deems necessary, for each of the juvenile institutions and facilities operated by the Department of Juvenile Justice. The Office shall promulgate, and in its hiring and employment practices, the Office shall adhere to, written minimum qualifications by position for personnel working with or around juveniles in said institutions and facilities. Such minimum qualifications shall be designed to assure that such personnel possess sufficient education, training, experience and background to provide adequate and safe professional care and services to said juveniles; and that the juveniles will not be exposed to abuse, deprivation, criminal conduct, or other unwholesome conditions attributable to employee incompetence or misconduct.

C. 1. The Office of Juvenile Affairs may directly request national criminal history records searches as defined by Section 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State Bureau of Investigation for the purpose of investigating the criminal history of an employee or applicant. The Oklahoma State Bureau of Investigation may charge a search fee as provided in Section 150.9 of Title 74 of the Oklahoma Statutes. The fee shall be deposited in the OSBI Revolving Fund.

2. The Board of Juvenile Affairs shall promulgate rules for the Office of Juvenile Affairs to obtain national criminal history record searches in accordance with the requirements of Section 404.1 of this title for personnel described in subsection B of this

section, except that such rules may permit employment of applicants pending receipt of the results of national criminal history record searches.

D. The superintendent of a juvenile institution or facility shall be the guardian of the person of each juvenile in the institution or facility for the limited purpose of providing care and protection for any life-threatening situation that may arise.

SECTION 4. AMENDATORY 43A O.S. 2001, Section 5-101, as amended by Section 31, Chapter 488, O.S.L. 2002 (43A O.S. Supp. 2002, Section 5-101), is amended to read as follows:

Section 5-101. A. ~~Any~~ 1. Except as otherwise provided by paragraph 2 of this subsection, any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care, and who is not in confinement in a jail or adult ~~lock-up~~ lockup facility on a criminal charge and who has no criminal charges pending against him or her, may be admitted to and confined in a facility within the Department of Mental Health and Substance Abuse Services, a state psychiatric hospital, or a licensed private institution by compliance with any one of the following procedures:

~~1. Emergency~~

a. emergency admission~~;~~,

~~2. On~~

b. on voluntary application~~; and~~

~~3. On~~, or

c. on involuntary court commitment.

2. Any person, whether or not such person is confined in an adult jail or lockup facility on a criminal charge or who has a criminal charge pending may be admitted and confined to a facility within the Department, a state psychiatric hospital or a licensed private institution as authorized by paragraph 1 of this subsection if:

a. the person is over eighteen (18) years of age,

b. is subject to proceedings under the Oklahoma Juvenile Code, and

c. has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care.

B. Any person who has a mental illness or is alcohol- or drug-dependent to a degree which warrants inpatient treatment or care and who has criminal charges pending against him or her but is not confined in a jail or adult ~~lock-up~~ lockup facility may be admitted to a facility within the Department or a licensed private

institution pursuant to the provisions of subsection A of this section; provided, the facility or hospital shall be authorized to take such reasonable steps as necessary to assure the protection of the public, the residents of the facility or hospital and the person, including but not limited to segregation and private facilities. Provided further, treatment received pursuant to this subsection shall not constitute a defense in any criminal proceeding except as otherwise provided by Title 22 of the Oklahoma Statutes.

C. 1. Any person confined pursuant to a criminal charge shall only be admitted to and confined pursuant to a court order issued in compliance with the provisions of Section 1175.6 of Title 22 of the Oklahoma Statutes.

2. No person shall be deprived of his or her liberty on the grounds that such person is, or is supposed to have, a mental illness or is in need of mental health treatment, except in accordance with the provisions of the Mental Health Law.

SECTION 5. This act shall become effective July 1, 2003.

SECTION 6. 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 6th day of May, 2003.

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Presiding Officer of the Senate

Passed the House of Representatives the 16th day of April, 2003.

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Presiding Officer of the House
of Representatives