

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 SENATE BILL 469

By: Easley

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5
6 AS INTRODUCED

7 An Act relating to children; amending 10 O.S. 2001,
8 Sections 404.1, as last amended by Section 1, Chapter
9 213, O.S.L. 2003, and 21.1, as last amended by
10 Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp.
11 2006, Sections 404.1 and 21.1), which relate to
12 foster parent eligibility; modifying deadline for
13 certain requirements; expanding requirements for
14 foster parent eligibility; prohibiting certain
15 placement until certain requirements are complete;
16 modifying requirement of the Commission for Human
17 Services to promulgate certain rules; prohibiting
18 certain persons from residing in a foster family
19 home; modifying certain order of preference;
20 declaring intent of Legislature; and providing an
21 effective date.

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

23 SECTION 1. AMENDATORY 10 O.S. 2001, Section 404.1, as
24 last amended by Section 1, Chapter 213, O.S.L. 2003 (10 O.S. Supp.
2006, Section 404.1), is amended to read as follows:

25 Section 404.1 A. 1. Except as otherwise provided by
26 subsection B of this section, the Department of Human Services shall
27 require a criminal history records search, conducted by the Oklahoma
28 State Bureau of Investigation, for any person making application to

1 establish or operate a child care facility prior to the issuance of
2 a license to operate such facility.

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

8 b. In addition, any child care facility, licensed or
9 approved pursuant to the Oklahoma Child Care
10 Facilities Licensing Act, and located in a private
11 residence, shall arrange for a criminal history
12 records search for any adult residing in the child
13 care facility. A criminal history records search
14 conducted by the Oklahoma State Bureau of
15 Investigation shall also be completed for any adult
16 who subsequently moves into the private residence.

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

1 4. The Department of Juvenile Justice may directly request
2 national criminal history records searches as defined by Section
3 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State
4 Bureau of Investigation for the purpose of obtaining the national
5 criminal history of any employee or applicant who has resided in
6 Oklahoma for less than one (1) year for which a search is required.

7 B. 1. a. On and after September 1, ~~1998~~ 2007:

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

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

17 (b) a national criminal history records search
18 based upon submission of fingerprints for
19 any adult residing in the foster family home
20 through the Department of Human Services
21 pursuant to the provisions of the Oklahoma
22 Foster Care and Out-of-Home Placement Act,
23 except as otherwise provided by ~~divisions 2~~
24 ~~and 4~~ division (4) of this subparagraph, and

1 a search of the child abuse and neglect
2 files maintained for review by authorized
3 entities by the Department of Human
4 Services,

5 (2) the child-placing agency ~~may~~ shall not place a
6 child pending completion of ~~the national criminal~~
7 ~~history records search if the foster care~~
8 ~~provider and every adult residing in the foster~~
9 ~~family home has resided in this state for at~~
10 ~~least five (5) years immediately preceding such~~
11 ~~placement~~ any of the requirements listed in
12 subdivision (b) of division (1) of this
13 subparagraph,

14 (3) ~~a national criminal history records search based~~
15 ~~upon submission of fingerprints to the Oklahoma~~
16 ~~State Bureau of Investigation~~ the requirements
17 listed in subdivision (b) of division (1) of this
18 subparagraph shall also be completed for any
19 adult who subsequently moves into the residence,

20 (4) provided, however, the Director of Human Services
21 or the Director of the Department of Juvenile
22 Justice, or a designee, may authorize an
23 exception to the fingerprinting requirement for a
24 person residing in the home who has a severe

1 physical condition which precludes such person's
2 being fingerprinted, and

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

16 b. The provisions of this paragraph shall not apply to
17 foster care providers having a contract or contracting
18 with a child-placing agency, the Department of Human
19 Services or the Department of Juvenile Justice prior
20 to September 1, ~~1998~~ 2007. Such existing foster care
21 providers shall comply with the provisions of this
22 section, until otherwise provided by rules of the
23 Commission for Human Services or by law.

1 ~~family home has resided in this state for at~~
2 ~~least (5) years immediately preceding such~~
3 ~~placement~~ any of the requirements listed in
4 division (1) of this subparagraph.

5 (3) ~~A national criminal history records search based~~
6 ~~upon submission of fingerprints conducted by the~~
7 ~~Oklahoma State Bureau of Investigation~~ The
8 requirements listed in division (1) of this
9 subparagraph shall also be completed for any
10 adult who subsequently moves into the residence.

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

17 b. The provisions of this paragraph shall not apply to
18 foster care providers having a contract or contracting
19 with a child-placing agency, the Department of Human
20 Services or the Department of Juvenile Justice prior
21 to September 1, ~~1998~~ 2007. Such existing foster care
22 providers shall comply with the provisions of this
23 section, until otherwise provided by rules of the
24 Commission for Human Services or by law.

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

7 C. The Commission for Human Services or the Board of Juvenile
8 Affairs shall promulgate rules to identify circumstances when a
9 criminal history records search ~~or~~, foster parent eligibility
10 assessment, or search of the child abuse and neglect files
11 maintained for review by authorized entities by the Department of
12 Human Services for an applicant or contractor, or any person over
13 the age of thirteen (13) years residing in a private residence in
14 which a child care facility is located, shall be expanded beyond the
15 records search conducted by the Oklahoma State Bureau of
16 Investigation, the search of the child abuse and neglect files, or
17 other search as ~~otherwise~~ provided pursuant to this section.

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

- 22 a. a parent volunteer who transports children on an
23 irregular basis, and
24

1 b. a child of a child care center or family child care
2 home operator who became an adult during continuous
3 residence at the licensed or approved facility.

4 2. These exemptions shall not preclude the Department from
5 requesting a criminal history records search or requesting a
6 national criminal history records search based upon submission of
7 fingerprints or investigating criminal, abusive or harmful behavior
8 of such persons, if warranted.

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

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

18 2. Whenever an applicant is subsequently employed by or
19 contracts with a child care facility, the information received
20 pursuant to a criminal history records search, foster parent
21 eligibility assessment, or a national criminal history records
22 search based upon submission of fingerprints shall not be made a
23 part of that individual's personnel or contract records but shall be
24 maintained pursuant to this subsection. The information, along with

1 any other information relevant to the individual's ability to
2 perform tasks that require direct contact with children, may be
3 released to another child care facility in response to a request
4 from the child care facility that is considering employing or
5 contracting with the individual.

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

11 G. 1. A criminal history investigation or national criminal
12 history records search based upon submission of fingerprints
13 conducted by the Oklahoma State Bureau of Investigation shall
14 include a search of Department of Corrections' files maintained
15 pursuant to the Sex Offenders Registration Act.

16 2. a. It shall be unlawful for any person who is required to
17 register pursuant to the Sex Offenders Registration
18 Act or the Juvenile Sex Offender Registration Act to:
19 (1) work with or provide services to children ~~or to,~~
20 (2) reside in a child care facility ~~and,~~
21 (3) for any employer who offers or provides services
22 to children, to knowingly and willfully employ or
23 contract with, or allow continued employment of
24 or contracting with any person who is required to

1 register pursuant to the Sex Offenders
2 Registration Act, or

3 (4) reside in a foster family home as anyone other
4 than a foster child.

5 Any person required to register pursuant to the
6 Sex Offenders Registration Act who violates any
7 provision of this act shall, upon conviction, be
8 guilty of a felony punishable by incarceration in
9 a correctional facility for a period of not more
10 than five (5) years and a fine of not more than
11 Five Thousand Dollars (\$5,000.00) or both such
12 fine and imprisonment.

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

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

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

1 SECTION 2. AMENDATORY 10 O.S. 2001, Section 21.1, as
2 last amended by Section 2, Chapter 415, O.S.L. 2004 (10 O.S. Supp.
3 2006, Section 21.1), is amended to read as follows:

4 Section 21.1 A. Except as otherwise provided by this section,
5 custody should be awarded or a guardian appointed in the following
6 order of preference according to the best interests of the child to:

7 1. A parent or to both parents jointly;

8 2. A grandparent;

9 3. A person who was indicated by the wishes of a deceased
10 parent;

11 4. A relative of either parent, whether by blood or marriage;

12 5. The person in whose home the child has been living in a
13 wholesome and stable environment including but not limited to a
14 foster parent; or

15 6. Any other person deemed by the court to be suitable and able
16 to provide adequate and proper care and guidance for the child.

17 B. It is the intent of the Legislature that every attempt be
18 made to place a child with a member of the child's family.

19 ~~B.~~ C. In addition to subsection ~~D~~ E of this section, when a
20 parent having custody of a child becomes deceased or when custody of
21 a child is judicially removed from the parent having custody of the
22 child, the court may only deny the noncustodial parent custody of
23 the child or guardianship of the child if:

24

1 successfully completed a service or treatment plan if required by
2 the court; or

3 6. The court finds it would be detrimental to the health or
4 safety of the child for the noncustodial parent to have custody or
5 be appointed guardian.

6 ~~C.~~ D. The court shall consider the preference of the child in
7 awarding custody of the child pursuant to Section 113 of Title 43 of
8 the Oklahoma Statutes.

9 ~~D.~~ E. 1. In every case involving the custody of, guardianship
10 of or visitation with a child, the court shall determine whether any
11 individual seeking custody or who has custody of, guardianship of or
12 visitation with a child:

13 a. is or has been subject to the registration
14 requirements of the Oklahoma Sex Offenders
15 Registration Act or any similar act in any other
16 state,

17 b. has been convicted of a crime listed in the Oklahoma
18 Child Abuse Reporting and Prevention Act or in Section
19 582 of Title 57 of the Oklahoma Statutes,

20 c. is an alcohol-dependent person or a drug-dependent
21 person as established by clear and convincing evidence
22 and who can be expected in the near future to inflict
23 or attempt to inflict serious bodily harm to himself
24

1 or herself or another person as a result of such
2 dependency,

3 d. has been convicted of domestic abuse within the past
4 five (5) years,

5 e. is residing with a person who is or has been subject
6 to the registration requirements of the Oklahoma Sex
7 Offenders Registration Act or any similar act in any
8 other state,

9 f. is residing with a person who has been convicted of a
10 crime listed in the Oklahoma Child Abuse Reporting and
11 Prevention Act or in Section 582 of Title 57 of the
12 Oklahoma Statutes, or

13 g. is residing with a person who has been convicted of
14 domestic abuse within the past five (5) years.

15 2. There shall be a rebuttable presumption that it is not in
16 the best interests of the child to have custody, or guardianship
17 granted to:

18 a. a person who is or has been subject to the
19 registration requirements of the Oklahoma Sex
20 Offenders Registration Act or any similar act in any
21 other state,

22 b. a person who has been convicted of a crime listed in
23 the Oklahoma Child Abuse Reporting and Prevention Act
24

1 or in Section 582 of Title 57 of the Oklahoma
2 Statutes,

3 c. an alcohol-dependent person or a drug-dependent person
4 as established by clear and convincing evidence and
5 who can be expected in the near future to inflict or
6 attempt to inflict serious bodily harm to himself or
7 herself or another person as a result of such
8 dependency,

9 d. a person who has been convicted of domestic abuse
10 within the past five (5) years,

11 e. a person who is residing with an individual who is or
12 has been subject to the registration requirements of
13 the Oklahoma Sex Offenders Registration Act or any
14 similar act in any other state,

15 f. a person who is residing with a person who has been
16 previously convicted of a crime listed in the Oklahoma
17 Child Abuse Reporting and Prevention Act or in Section
18 582 of Title 57 of the Oklahoma Statutes, or

19 g. a person who is residing with a person who has been
20 convicted of domestic abuse within the past five (5)
21 years.

22 3. Custody of, guardianship of, or any visitation with a child
23 shall not be granted to any person if it is established that the
24

1 custody, guardianship or visitation will likely expose the child to
2 a foreseeable risk of material harm.

3 ~~E.~~ F. Except as otherwise provided by the Oklahoma Child
4 Supervised Visitation Program, court-ordered supervised visitation
5 shall be governed by the Oklahoma Child Supervised Visitation
6 Program.

7 ~~F.~~ G. For purposes of this section:

8 1. "Alcohol-dependent person" has the same meaning as such term
9 is defined in Section 3-403 of Title 43A of the Oklahoma Statutes;

10 2. "Domestic abuse" has the same meaning as such term is
11 defined in Section 60.1 of Title 22 of the Oklahoma Statutes;

12 3. "Drug-dependent person" has the same meaning as such term is
13 defined in Section 3-403 of Title 43A of the Oklahoma Statutes; and

14 4. "Supervised visitation" means a program established pursuant
15 to Section ~~5~~ 110.1a of ~~this act~~ Title 43 of the Oklahoma Statutes.

16 SECTION 3. This act shall become effective November 1, 2007.

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