

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 SENATE BILL 674

By: Jolley of the Senate

4 and

5 Peters of the House

6  
7  
8 AS INTRODUCED

9 An Act relating to criminal history records searches  
10 required by the Oklahoma Child Care Facilities  
11 Licensing Act; amending 10 O.S. 2001, Section 404.1,  
12 as last amended by Section 5, Chapter 230, O.S.L.  
13 2009 (10 O.S. Supp. 2010, Section 404.1), which  
14 relates to the Oklahoma Child Care Facilities  
15 Licensing Act; permitting criminal history records  
16 searches to be conducted by authorized law  
17 enforcement agencies in certain circumstances;  
18 updating statutory references; and providing an  
19 effective date.

20  
21  
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 5, Chapter 230, O.S.L. 2009 (10 O.S. Supp.  
2010, Section 404.1), is amended to read as follows:

21 Section 404.1.

22 A. 1. a. Except as otherwise provided by subsection B of this  
23 section, prior to the issuance of a license, the  
24 Department of Human Services shall require a criminal

1 history records search, conducted by the Oklahoma  
2 State Bureau of Investigation or other authorized law  
3 enforcement agency, and a records search of the  
4 Oklahoma child care worker registry established in  
5 Section 405.3 of this title for any person making  
6 application to establish or operate a child care  
7 facility.

8 b. Prior to the issuance of a permit or license, the  
9 Department shall conduct a records search of the  
10 Oklahoma State Courts Network for any person making  
11 application to establish or operate a child care  
12 facility.

13 c. Prior to the issuance of a permit or license, the  
14 Department shall conduct a records search of the  
15 Oklahoma State Courts Network for all employees and  
16 persons eighteen (18) years of age or older residing  
17 in a child care center, family child care home, large  
18 family child care home, part-day program, school-age  
19 program, or summer day camp.

20 2. a. Prior to the employment of any person in a child care  
21 facility, the facility shall submit to the Department  
22 of Human Services division responsible for child care  
23 licensing:  
24

- 1 (1) a criminal history records search conducted by
- 2 the Oklahoma State Bureau of Investigation or
- 3 other authorized law enforcement agency,
- 4 (2) documentation of a records search of the Oklahoma
- 5 child care worker registry, and
- 6 (3) a request for the Department to conduct a records
- 7 search of the records of the Oklahoma State
- 8 Courts Network.

9 b. Hospitals contracting with the Oklahoma Health Care  
10 Authority and complying with the records searches  
11 required by this section shall be exempt from the  
12 requirement to submit such documentation to the  
13 Department. Documentation of records searches shall  
14 be maintained at the hospital and shall be available  
15 for review by the division of the Department  
16 responsible for child care licensing.

17 c. Prior to allowing any person eighteen (18) years of  
18 age or older to reside in a child care center, family  
19 child care home, large family child care home, part-  
20 day program, school-age program, or summer day camp  
21 program, the facility shall submit to the Department  
22 of Human Services division responsible for child care  
23 licensing the following:

- 1 (1) a criminal history records search conducted by
- 2 the Oklahoma State Bureau of Investigation or
- 3 other authorized law enforcement agency,
- 4 (2) documentation of a records search of the Oklahoma
- 5 child care worker registry, and
- 6 (3) a request for the Department to conduct a records
- 7 search of the Oklahoma State Courts Network.

8 3. Once a facility has submitted an original document from the  
9 Oklahoma State Bureau of Investigation or other authorized law  
10 enforcement agency to the Department, a copy of that exact document  
11 shall be sufficient to satisfy any further request for that  
12 document. The Department may promulgate rules regarding the  
13 electronic submission of required documents.

14 4. If the following persons have lived in Oklahoma for less  
15 than three (3) years, a criminal history records search shall also  
16 be obtained from the authorized agency in the previous states of  
17 residence for:

- 18 a. applicants for a license to operate a child care
- 19 facility,
- 20 b. employees of a child care facility, and
- 21 c. persons age eighteen (18) years or older residing in a
- 22 child care center, family child care home, large
- 23 family child care home, part-day program, school-age
- 24 program, or summer day-camp program.

1           5. The ~~Department of Juvenile Justice~~ Office of Juvenile  
2 Affairs may directly request national criminal history records  
3 searches as defined by Section 150.9 of Title 74 of the Oklahoma  
4 Statutes from the Oklahoma State Bureau of Investigation or other  
5 authorized law enforcement agency for the purpose of obtaining the  
6 national criminal history of any employee or applicant who has  
7 resided in Oklahoma for less than three (3) years for which a search  
8 is required.

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

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

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

19                           (b) a national criminal history records search  
20                           based upon submission of fingerprints for  
21                           any adult residing in the foster family home  
22                           through the Department of Human Services  
23                           pursuant to the provisions of the Oklahoma  
24                           Foster Care and Out-of-Home Placement Act,

1                   except as otherwise provided by divisions 2  
2                   and 4 of this subparagraph,

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

10          (3) a national criminal history records search based  
11          upon submission of fingerprints to the Oklahoma  
12          State Bureau of Investigation or other authorized  
13          law enforcement agency shall also be completed  
14          for any adult who subsequently moves into the  
15          foster family home,

16          (4) provided, however, the Director of Human Services  
17          or the Executive Director of the ~~Department of~~  
18          ~~Juvenile Justice~~ Office of Juvenile Affairs, or a  
19          designee, may authorize an exception to the  
20          fingerprinting requirement for a person residing  
21          in the home who has a severe physical condition  
22          which precludes such person's being  
23          fingerprinted, and  
24

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

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

22 2. a. (1) On and after September 1, 1998, except as  
23 otherwise provided in divisions (2) and (4) of  
24 this subparagraph, prior to contracting with a

1 foster family home for placement of any child who  
2 is in the custody of the Department of Human  
3 Services or the ~~Department of Juvenile Justice~~  
4 Office of Juvenile Affairs, each ~~Department~~  
5 agency shall complete a foster parent eligibility  
6 assessment, pursuant to the provisions of the  
7 Oklahoma Child Care Facilities Licensing Act, for  
8 such foster family applicant. In addition,  
9 except as otherwise provided by divisions (2) and  
10 (4) of this subparagraph, the Department shall  
11 complete a national criminal history records  
12 search based upon submission of fingerprints for  
13 any adult residing in such foster family home.

14 (2) The Department of Human Services and ~~Department~~  
15 ~~of Juvenile Justice~~ the Office of Juvenile  
16 Affairs may place a child pending completion of  
17 the national criminal history records search if  
18 the foster care provider and every adult residing  
19 in the foster family home has resided in this  
20 state for at least (5) years immediately  
21 preceding such placement.

22 (3) A national criminal history records search based  
23 upon submission of fingerprints conducted by the  
24 Oklahoma State Bureau of Investigation or other

1                   authorized law enforcement agency shall also be  
2                   completed for any adult who subsequently moves  
3                   into the foster family home.

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

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

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

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

10 D. 1. The following persons shall not be required to obtain a  
11 criminal history records search or a national criminal history  
12 records search based upon submission of fingerprints pursuant to  
13 this section:

- 14 a. a parent volunteer who transports children on an  
15 irregular basis, and
- 16 b. a child residing in a child care center, family child  
17 care home, or large family child care home who became  
18 an adult during continuous residence at the licensed  
19 or approved facility.

20 2. These exemptions shall not preclude the Department from  
21 requesting a criminal history records search or requesting a  
22 national criminal history records search based upon submission of  
23 fingerprints or investigating criminal, abusive or harmful behavior  
24 of such persons, if warranted.

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

5 F. 1. Information received pursuant to this section by an  
6 owner or administrator of a child care facility shall be maintained  
7 in a confidential manner pursuant to applicable state or federal  
8 law.

9 2. The information, along with any other information relevant  
10 to the ability of the individual to perform tasks that require  
11 direct contact with children, may be released to another child care  
12 facility in response to a request from the child care facility that  
13 is considering employing or contracting with the individual unless  
14 deemed confidential by state or federal law.

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

20 G. 1. A criminal history records search conducted by the  
21 Oklahoma State Bureau of Investigation or other authorized law  
22 enforcement agency and a national criminal history records search  
23 based upon submission of fingerprints shall include a search of  
24

1 Department of Corrections' files maintained pursuant to the Sex  
2 Offenders Registration Act.

3       2.    a.    It shall be unlawful for any person who is required to  
4               register pursuant to the Sex Offenders Registration  
5               Act to work with or provide services to children or to  
6               reside in a child care facility and for any employer  
7               who offers or provides services to children to  
8               knowingly and willfully employ or contract with, or  
9               allow continued employment of or contracting with any  
10              person who is required to register pursuant to the Sex  
11              Offenders Registration Act. Any person required to  
12              register pursuant to the Sex Offenders Registration  
13              Act who violates any provision of ~~this act~~ the  
14              Oklahoma Child Care Facilities Licensing Act shall,  
15              upon conviction, be guilty of a felony punishable by  
16              incarceration in a correctional facility for a period  
17              of not more than five (5) years and a fine of not more  
18              than Five Thousand Dollars (\$5,000.00) or both such  
19              fine and imprisonment.

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

24               (1) an emergency order,

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

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

8 SECTION 2. This act shall become effective November 1, 2011.

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10 53-1-476 JM 1/19/2011 6:06:11 PM