STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 1424 By: David

AS INTRODUCED

An Act relating to child care facilities; amending 10 O.S. 2011, Section 404.1, as last amended by Section 1, Chapter 115, O.S.L. 2015 (10 O.S. Supp. 2015, Section 404.1), which relates to licensing; requiring certain records search for certain persons and entities; directing Oklahoma State Bureau of Investigation to provide certain records search upon request of certain persons and entities; permitting release of certain information to certain facilities; requiring certain information be maintained in a confidential manner; amending 10A O.S. 2011, Section 2-7-602, which relates to administration; authorizing certain entities to request records searches from Oklahoma State Bureau of Investigation; deleting statutory reference; requiring records search for certain persons and entities; permitting fees by Oklahoma State Bureau of Investigation for certain purposes; providing for deposit of certain funds; authorizing certain agreement; permitting promulgation of certain rules; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2011, Section 404.1, as last amended by Section 1, Chapter 115, O.S.L. 2015 (10 O.S. Supp. 2015, Section 404.1), is amended to read as follows:

Section 404.1. A. On and after November 1, 2013:

1. Prior to the issuance of a permit or license, owners and responsible entities making a request to establish or operate a child care facility shall have:

a. an Oklahoma State Courts Network search conducted by the Department,

b. a Child Care Restricted Registry search conducted by the facility,

c. a national criminal history records search conducted pursuant to paragraph 10 of this subsection,

d. a criminal history records search conducted by an authorized source, when the individual has lived outside the United States within the last three (3) years, and

e. a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act and conducted by the Department of Human Services;

2. Prior to the employment of an individual:

a. an Oklahoma State Courts Network search, conducted by the Department, shall be requested and received by the facility; provided however, if twenty-four (24) hours has passed from the time the request to the Department was made, the facility may initiate employment, notwithstanding the provisions of this paragraph,

b. a Child Care Restricted Registry search shall be conducted by the facility with notification of the search submitted to the Department,

c. a national criminal history records search pursuant to paragraph 10 of this subsection shall be submitted,

d. a criminal history records search conducted by an authorized source, when the individual has lived outside the United States within the last three (3) years, shall be submitted to the Department, and

e. a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act shall be conducted by the Department and received by the facility;

3. Prior to allowing unsupervised access to children by employees or individuals, including contract employees and volunteers and excluding the exceptions in paragraph 8 of this subsection:

a. Oklahoma State Courts Network search results, conducted by the Department, shall be received by the facility,

b. a Child Care Restricted Registry search shall be conducted by the facility with notification of the search submitted to the Department,

c. national criminal history records search results pursuant to paragraph 10 of this subsection shall be received by the facility,

d. a criminal history records search conducted by an authorized source, when the individual has lived outside the United States within the last three (3) years shall be submitted to the Department, and

e. a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act shall be conducted by the Department and received by the facility;

4. Prior to the issuance of a permit or license and prior to the residence of adults who subsequently move into a facility, adults living in the facility excluding the exception in paragraph 7 of this subsection shall have:

a. an Oklahoma State Courts Network search conducted by the Department and the facility shall be in receipt of the search results,

b. a Child Care Restricted Registry search conducted by the facility with notification of the search submitted to the Department,

c. a national criminal history records search conducted pursuant to paragraph 10 of this subsection,

d. a criminal history records search conducted by an authorized source, when the individual has lived outside the United States within the last three (3) years, and

e. a search of the Department of Corrections' files maintained pursuant to the Sex Offenders Registration Act conducted by the Department and received by the facility;

5. Children who reside in the facility and turn eighteen (18) years of age excluding the exception in paragraph 7 of this subsection shall have:

a. an Oklahoma State Courts Network search conducted by the Department,

b. a Child Care Restricted Registry search conducted by the facility with notification of the search submitted to the Department,

c. a national criminal history records search conducted pursuant to paragraph 10 of this subsection, and

d. a search of the Department of Corrections' files pursuant to the Sex Offenders Registration Act conducted by the Department and received by the facility;

6. Prior to review of or access to fingerprint results, owners, responsible entities, directors, and other individuals who have

review of or access to fingerprint results shall have a national criminal history records search pursuant to paragraph 10 of this subsection;

7. Provisions specified in paragraphs 4 and 5 of this subsection shall not apply to residents who are receiving services from a residential child care facility;

8. A national criminal history records search pursuant to paragraph 10 of this subsection shall not be required for volunteers who transport children on an irregular basis when a release is signed by the parent or legal guardian noting their understanding that the volunteer does not have a completed national criminal history records search. The provisions in paragraph 3 of this subsection shall not be required for specialized service professionals who are not employed by the program and have unsupervised access to a child when a release is signed by the parent or legal guardian noting his or her understanding of this exception. These exceptions shall not preclude the Department from requesting a national fingerprint or an Oklahoma State Bureau of Investigation name-based criminal history records search or investigating criminal, abusive, or harmful behavior of such individuals, if warranted;

9. A national criminal history records search pursuant to paragraph 10 of this subsection shall be required on or before November 1, 2016, for existing owners, responsible entities,

employees, individuals with unsupervised access to children, and adults living in the facility, as of November 1, 2013, unless paragraph 6 of this subsection applies;

10. The Department shall require a national criminal history records search based upon submission of fingerprints that shall:

a. be conducted by the Oklahoma State Bureau of Investigation and the Federal Bureau of Investigation pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and the federal National Child Protection Act and the federal Volunteers for Children Act with the Department as the authorized agency,

b. be submitted and have results received between the Department and the Oklahoma State Bureau of Investigation through secure electronic transmissions,

c. include Oklahoma State Bureau of Investigation rap back, requiring the Oklahoma State Bureau of Investigation to immediately notify the Department upon receipt of subsequent criminal history activity, and

d. be paid by the individual or the facility;

11. The director of the Department, or designee, shall promulgate rules that may authorize an exception to the fingerprinting requirements for individuals who have a severe

physical condition which precludes such individuals from being fingerprinted; and

12. The Office of Juvenile Affairs ~~may directly request~~ shall require national criminal history records searches, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes ~~from the~~, which shall be provided by the Oklahoma State Bureau of Investigation for the purpose of obtaining the national criminal history records search, including rap back notification of and through direct request by any ~~employee or applicant who has resided in Oklahoma for less than three (3) years for which a search is required~~:

a. operator or responsible entity making a request to establish or operate a secure detention center, municipal juvenile facility, community intervention center or secure facility licensed or certified by the Office of Juvenile Affairs,

b. employee or applicant of a secure detention center, municipal juvenile facility, community intervention center or secure facility licensed or certified by the Office of Juvenile Affairs, or

c. persons allowed unsupervised access to children, including contract employees or volunteers, of a secure detention center, municipal juvenile facility, community intervention center or secure facility

licensed or certified by the Office of Juvenile Affairs.

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 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 Section 1-7-106 of Title 10A of the Oklahoma Statutes, except as otherwise provided by divisions (2) and (4) of this subparagraph,

(2) the child-placing agency may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster

family home has resided in this state for at least five (5) years immediately preceding such placement,

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

(4) provided, however, the Director of Human Services or the Director of the Office of Juvenile Affairs, 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 2-7-905 and 2-7-308 of Title 10A of the Oklahoma Statutes, 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 foster family home. 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 Office of Juvenile Affairs 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 Department or by law.

2. a. (1) On and after September 1, 1998, except as otherwise provided in divisions (2) and (4) of this 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 Office of Juvenile Affairs, 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 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 Office of Juvenile Affairs may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement.

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

(4) The Director of Human Services or the Director of the Office of Juvenile Affairs or their 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 Office of Juvenile Affairs 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 Department or by law.

3. The Department of Human Services or the Office of Juvenile Affairs shall provide for a juvenile justice information system review pursuant to Section 2-7-308 of Title 10A of the Oklahoma Statutes 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 foster family home.

C. The Department 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. Except as otherwise provided by the Oklahoma Children's Code and subsection F 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.

E. 1. Information received pursuant to this section by an owner, administrator, or responsible entity of a child care facility, shall be maintained in a confidential manner pursuant to applicable state and federal laws.

2. The information, along with any other information relevant to the ability of the individual 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 unless deemed confidential by state and federal laws.

3. Requirements for confidentiality and recordkeeping 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.

4. Information received by any facility certified by the Office of Juvenile Affairs may be released to another facility certified by the Office if an individual is being considered for employment or contract, along with any other relevant information, unless the information is deemed confidential by state or federal law. Any information received by the Office shall be maintained in a confidential manner pursuant to applicable state and federal law.

F. 1. It shall be unlawful for individuals who are 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 individuals who are required to register pursuant to the Sex Offenders Registration Act. Individuals required to register pursuant to the Sex Offenders Registration Act who violate any provision of Section 401 et seq. of this title 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.

2. 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:

a. an emergency order,

b. license revocation or denial,

c. injunctive proceedings,

d. an administrative penalty not to exceed Ten Thousand Dollars ($10,000.00), and

e. referral for criminal proceedings.

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

SECTION 2. AMENDATORY 10A O.S. 2011, Section 2-7-602, is amended to read as follows:

Section 2-7-602. 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 Office.

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 Office of Juvenile Affairs. 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~~ any employee or applicant of the Office of Juvenile Affairs. An entity licensed by 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. 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 Title 10 of the Oklahoma Statutes~~ records 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 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2-7-617 of Title 10A, unless there is created a duplication in numbering, reads as follows:

A. Prior to the issuing by the Office of Juvenile Affairs a certification to any person or entity for a secure detention center, municipal juvenile facility, community intervention center or secure facility, such persons or entities shall have a national criminal history records search conducted pursuant to paragraph 12 of subsection A of Section 404.1 of Title 10 of the Oklahoma Statutes. Such persons or entities shall include any:

1. Operators and responsible entities;

2. Individual employee or applicant; or

3. Employee or individual allowed unsupervised access to children, including contract employees and volunteers.

B. 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. The fee shall be paid for by the persons or entities identified in subsection A of this section.

C. The Office of Juvenile Affairs and the Oklahoma State Bureau of Investigation are authorized to enter into an agreement pursuant to the Interlocal Cooperation Act, Section 1001 et seq. of Title 74 of the Oklahoma Statutes, to implement the provisions of this section, including the transfer of funds to offset the cost associated with national criminal history records searches.

D. The Board of Juvenile Affairs may promulgate rules to implement the provisions of this act.

SECTION 4. This act shall become effective November 1, 2016.

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