

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4

April 6, 2015

ENGROSSED HOUSE
BILL NO. 1124

By: Russ of the House

and

Anderson of the Senate

```
[ child care - providing exception for employee who
has completed school criminal history record check -
effective date ]
```

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

SECTION 1. AMENDATORY 10 O.S. 2011, Section 404.1, as amended by Section 4, Chapter 308, O.S.L. 2013 (10 O.S. Supp. 2014, 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,

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

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

8 2. Prior to the employment of an individual:

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

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

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

20 d. a criminal history records search conducted by an
21 authorized source, when the individual has lived
22 outside the United States within the last three (3)
23 years, shall be submitted to the Department, and
24

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

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

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

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

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

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

22 e. a search of the Department of Corrections' files
23 maintained pursuant to the Sex Offenders Registration
24

1 Act shall be conducted by the Department and received
2 by the facility;

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

- 7 a. an Oklahoma State Courts Network search conducted by
8 the Department and the facility shall be in receipt of
9 the search results,
- 10 b. a Child Care Restricted Registry search conducted by
11 the facility with notification of the search submitted
12 to the Department,
- 13 c. a national criminal history records search conducted
14 pursuant to paragraph 10 of this subsection,
- 15 d. a criminal history records search conducted by an
16 authorized source, when the individual has lived
17 outside the United States within the last three (3)
18 years, and
- 19 e. a search of the Department of Corrections' files
20 maintained pursuant to the Sex Offenders Registration
21 Act conducted by the Department and received by the
22 facility;

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

- 4 a. an Oklahoma State Courts Network search conducted by
5 the Department,
- 6 b. a Child Care Restricted Registry search conducted by
7 the facility with notification of the search submitted
8 to the Department,
- 9 c. a national criminal history records search conducted
10 pursuant to paragraph 10 of this subsection, and
- 11 d. a search of the Department of Corrections' files
12 pursuant to the Sex Offenders Registration Act
13 conducted by the Department and received by the
14 facility;

15 6. Prior to review of or access to fingerprint results, owners,
16 responsible entities, directors, and other individuals who have
17 review of or access to fingerprint results shall have a national
18 criminal history records search pursuant to paragraph 10 of this
19 subsection;

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

23 8. A national criminal history records search pursuant to
24 paragraph 10 of this subsection shall not be required for volunteers

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

14 9. A national criminal history records search pursuant to
15 paragraph 10 of this subsection shall be required on or before
16 November 1, 2016, for existing owners, responsible entities,
17 employees, individuals with unsupervised access to children, and
18 adults living in the facility, as of November 1, 2013, unless
19 paragraph 6 of this subsection applies;

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

- 22 a. be conducted by the Oklahoma State Bureau of
23 Investigation and the Federal Bureau of Investigation
24 pursuant to Section 150.9 of Title 74 of the Oklahoma

1 Statutes and the federal National Child Protection Act
2 and the federal Volunteers for Children Act with the
3 Department as the authorized agency,

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

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

12 d. be paid by the individual or the facility;

13 11. The director of the Department, or designee, shall
14 promulgate rules that may authorize an exception to the
15 fingerprinting requirements for individuals who have a severe
16 physical condition which precludes such individuals from being
17 fingerprinted; and

18 12. The Office of Juvenile Affairs may directly request
19 national criminal history records searches as defined by Section
20 150.9 of Title 74 of the Oklahoma Statutes from the Oklahoma State
21 Bureau of Investigation for the purpose of obtaining the national
22 criminal history of any employee or applicant who has resided in
23 Oklahoma for less than three (3) years for which a search is
24 required.

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

2 (1) any child-placing agency contracting with a
3 person for foster family home services or in any
4 manner for services for the care and supervision
5 of children shall also, prior to executing a
6 contract, complete:

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

11 (b) a national criminal history records search
12 based upon submission of fingerprints for
13 any adult residing in the foster family home
14 through the Department of Human Services
15 pursuant to the provisions of Section 1-7-
16 106 of Title 10A of the Oklahoma Statutes,
17 except as otherwise provided by divisions
18 (2) and (4) of this subparagraph,

19 (2) the child-placing agency may place a child
20 pending completion of the national criminal
21 history records search if the foster care
22 provider and every adult residing in the foster
23 family home has resided in this state for at
24

1 least five (5) years immediately preceding such
2 placement,

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

8 (4) provided, however, the Director of Human Services
9 or the Director of the Office of Juvenile
10 Affairs, or a designee, may authorize an
11 exception to the fingerprinting requirement for a
12 person residing in the home who has a severe
13 physical condition which precludes such person's
14 being fingerprinted, and

15 (5) any child care facility contracting with any
16 person for foster family home services shall
17 request the Office of Juvenile Affairs to conduct
18 a juvenile justice information system review,
19 pursuant to the provisions of Sections 2-7-905
20 and 2-7-308 of Title 10A of the Oklahoma
21 Statutes, for any child over the age of thirteen
22 (13) years residing in the foster family home,
23 other than a foster child, or who subsequently
24 moves into the foster family home. As a

1 condition of contract, the child care facility
2 shall obtain the consent of the parent or legal
3 guardian of the child for such review.

4 b. The provisions of this paragraph shall not apply to
5 foster care providers having a contract or contracting
6 with a child-placing agency, the Department of Human
7 Services or the Office of Juvenile Affairs prior to
8 September 1, 1998. Such existing foster care
9 providers shall comply with the provisions of this
10 section, until otherwise provided by rules of the
11 Department or by law.

12 2. a. (1) On and after September 1, 1998, except as
13 otherwise provided in divisions (2) and (4) of
14 this subparagraph, prior to contracting with a
15 foster family home for placement of any child who
16 is in the custody of the Department of Human
17 Services or the Office of Juvenile Affairs, each
18 Department shall complete a foster parent
19 eligibility assessment, pursuant to the
20 provisions of the Oklahoma Child Care Facilities
21 Licensing Act, for such foster family applicant.
22 In addition, except as otherwise provided by
23 divisions (2) and (4) of this subparagraph, the
24 Department shall complete a national criminal

1 history records search based upon submission of
2 fingerprints for any adult residing in such
3 foster family home.

4 (2) The Department of Human Services and Office of
5 Juvenile Affairs may place a child pending
6 completion of the national criminal history
7 records search if the foster care provider and
8 every adult residing in the foster family home
9 has resided in this state for at least (5) years
10 immediately preceding such placement.

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

16 (4) The Director of Human Services or the Director of
17 the Office of Juvenile Affairs or their designee
18 may authorize an exception to the fingerprinting
19 requirement for any person residing in the home
20 who has a severe physical condition which
21 precludes such person's being fingerprinted.

22 b. The provisions of this paragraph shall not apply to
23 foster care providers having a contract or contracting
24 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.

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

5 F. 1. It shall be unlawful for individuals who are required to
6 register pursuant to the Sex Offenders Registration Act to work with
7 or provide services to children or to reside in a child care
8 facility and for any employer who offers or provides services to
9 children to knowingly and willfully employ or contract with, or
10 allow continued employment of or contracting with individuals who
11 are required to register pursuant to the Sex Offenders Registration
12 Act. Individuals required to register pursuant to the Sex Offenders
13 Registration Act who violate any provision of Section 401 et seq. of
14 this title shall, upon conviction, be guilty of a felony punishable
15 by incarceration in a correctional facility for a period of not more
16 than five (5) years and a fine of not more than Five Thousand
17 Dollars (\$5,000.00) or both such fine and imprisonment.

18 2. Upon a determination by the Department of any violation of
19 the provisions of this section, the violator shall be subject to and
20 the Department may pursue:

- 21 a. an emergency order,
- 22 b. license revocation or denial,
- 23 c. injunctive proceedings,
- 24

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

3 e. referral for criminal proceedings.

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

6 G. The Department shall work with the Office of Management and
7 Enterprise Services to contract with a statewide vendor that can
8 provide electronic fingerprint services to support the national
9 criminal history records searches required by this section.

10 SECTION 2. This act shall become effective November 1, 2015.

11 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
12 April 6, 2015 - DO PASS