

STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1124

By: Russ

AS INTRODUCED

An Act relating to child care; amending 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), which relates to background checks; providing exception for employee who has completed school criminal history record check; 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 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,
- 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

1 outside the United States within the last three (3)
2 years shall be submitted to the Department, and
3 e. a search of the Department of Corrections' files
4 maintained pursuant to the Sex Offenders Registration
5 Act shall be conducted by the Department and received
6 by the facility;

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

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

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

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

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

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

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

1 8. A national criminal history records search pursuant to
2 paragraph 10 of this subsection shall not be required for volunteers
3 who transport children on an irregular basis when a release is
4 signed by the parent or legal guardian noting their understanding
5 that the volunteer does not have a completed national criminal
6 history records search. The provisions in paragraph 3 of this
7 subsection shall not be required for specialized service
8 professionals who are not employed by the program and have
9 unsupervised access to a child when a release is signed by the
10 parent or legal guardian noting his or her understanding of this
11 exception. The provisions in paragraph 3 of this subsection shall
12 not be required for any employee who has already completed a
13 national criminal history record check conducted by the Oklahoma
14 State Bureau of Investigation in accordance with Section 5-142 of
15 Title 70 of the Oklahoma Statutes. These exceptions shall not
16 preclude the Department from requesting a national fingerprint or an
17 Oklahoma State Bureau of Investigation name-based criminal history
18 records search or investigating criminal, abusive, or harmful
19 behavior of such individuals, if warranted;

20 9. A national criminal history records search pursuant to
21 paragraph 10 of this subsection shall be required on or before
22 November 1, 2016, for existing owners, responsible entities,
23 employees, individuals with unsupervised access to children, and
24

1 adults living in the facility, as of November 1, 2013 unless
2 paragraph 6 of this subsection applies;

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

- 5 a. be conducted by the Oklahoma State Bureau of
6 Investigation and the Federal Bureau of Investigation
7 pursuant to Section 150.9 of Title 74 of the Oklahoma
8 Statutes and the federal National Child Protection Act
9 and the federal Volunteers for Children Act with the
10 Department as the authorized agency,
- 11 b. be submitted and have results received between the
12 Department and the Oklahoma State Bureau of
13 Investigation through secure electronic transmissions,
- 14 c. include Oklahoma State Bureau of Investigation rap
15 back, requiring the Oklahoma State Bureau of
16 Investigation to immediately notify the Department
17 upon receipt of subsequent criminal history activity,
18 and
- 19 d. be paid by the individual or the facility;

20 11. The director of the Department, or designee, shall
21 promulgate rules that may authorize an exception to the
22 fingerprinting requirements for individuals who have a severe
23 physical condition which precludes such individuals from being
24 fingerprinted; and

1 12. The Office of Juvenile Affairs 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 three (3) years for which a search is
7 required.

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

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

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

18 (b) a national criminal history records search
19 based upon submission of fingerprints for
20 any adult residing in the foster family home
21 through the Department of Human Services
22 pursuant to the provisions of Section 1-7-
23 106 of Title 10A of the Oklahoma Statutes,
24

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

1 a juvenile justice information system review,
2 pursuant to the provisions of Sections 2-7-905
3 and 2-7-308 of Title 10A of the Oklahoma
4 Statutes, for any child over the age of thirteen
5 (13) years residing in the foster family home,
6 other than a foster child, or who subsequently
7 moves into the foster family home. As a
8 condition of contract, the child care facility
9 shall obtain the consent of the parent or legal
10 guardian of the child for such review.

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 Office of Juvenile Affairs prior to
15 September 1, 1998. Such existing foster care
16 providers shall comply with the provisions of this
17 section, until otherwise provided by rules of the
18 Department or by law.

19 2. a. (1) On and after September 1, 1998, except as
20 otherwise provided in divisions (2) and (4) of
21 this subparagraph, prior to contracting with a
22 foster family home for placement of any child who
23 is in the custody of the Department of Human
24 Services or the Office of Juvenile Affairs, each

1 Department shall complete a foster parent
2 eligibility assessment, pursuant to the
3 provisions of the Oklahoma Child Care Facilities
4 Licensing Act, for such foster family applicant.
5 In addition, except as otherwise provided by
6 divisions (2) and (4) of this subparagraph, the
7 Department shall complete a national criminal
8 history records search based upon submission of
9 fingerprints for any adult residing in such
10 foster family home.

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

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

23 (4) The Director of Human Services or the Director of
24 the Office of Juvenile Affairs or their designee

1 may authorize an exception to the fingerprinting
2 requirement for any person residing in the home
3 who has a severe physical condition which
4 precludes such person's being fingerprinted.

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

13 3. The Department of Human Services or the Office of Juvenile
14 Affairs shall provide for a juvenile justice information system
15 review pursuant to Section 2-7-308 of Title 10A of the Oklahoma
16 Statutes for any child over the age of thirteen (13) years residing
17 in a foster family home, other than the foster child, or who
18 subsequently moves into the foster family home.

19 C. The Department or the Board of Juvenile Affairs shall
20 promulgate rules to identify circumstances when a criminal history
21 records search or foster parent eligibility assessment for an
22 applicant or contractor, or any person over the age of thirteen (13)
23 years residing in a private residence in which a child care facility
24 is located, shall be expanded beyond the records search conducted by

1 the Oklahoma State Bureau of Investigation or as otherwise provided
2 pursuant to this section.

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

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

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

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

- 4 a. an emergency order,
- 5 b. license revocation or denial,
- 6 c. injunctive proceedings,
- 7 d. an administrative penalty not to exceed Ten Thousand
8 Dollars (\$10,000.00), and
- 9 e. referral for criminal proceedings.

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

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

13
14 55-1-5719 EK 01/11/15
15
16
17
18
19
20
21
22
23
24