

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 717

By: Griffin and Scott of the
Senate

and

Osborn (Leslie) of the
House

11 COMMITTEE SUBSTITUTE

12 An Act relating to registries maintained by the
13 Department of Human Services; amending 10 O.S. 2011,
14 Section 404.1, as last amended by Section 1, Chapter
15 307, O.S.L. 2016 (10 O.S. Supp. 2016, Section 404.1),
16 which relates to criminal history records searches;
17 requiring search of certain registries prior to
18 issuance of certain licenses; amending 10 O.S. 2011,
19 Section 405.3, as last amended by Section 1, Chapter
20 158, O.S.L. 2015 (10 O.S. Supp. 2016, Section 405.3),
21 which relates to the Online Child Care Restricted
22 Registry; broadening scope of certain registry to
23 include certain facilities; amending name of certain
24 registry; clarifying language; and providing an
 effective date.

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

22 SECTION 1. AMENDATORY 10 O.S. 2011, Section 404.1, as
23 last amended by Section 1, Chapter 307, O.S.L. 2016 (10 O.S. Supp.
24 2016, Section 404.1), is amended to read as follows:

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

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

- 5 a. an Oklahoma State Courts Network search conducted by
6 the Department,
- 7 b. a ~~Child-Care~~ Restricted Registry search conducted by
8 the facility,
- 9 c. a national criminal history records search conducted
10 pursuant to paragraph 10 of this subsection,
- 11 d. a criminal history records search conducted by an
12 authorized source, when the individual has lived
13 outside the United States within the last three (3)
14 years, ~~and~~
- 15 e. a search of the Department of Corrections' files
16 maintained pursuant to the Sex Offenders Registration
17 Act and conducted by the Department of Human Services,
- 18 f. a search of the nontechnical services worker abuse
19 registry maintained by the State Department of Health
20 pursuant to Section 1-1950.7 of Title 63 of the
21 Oklahoma Statutes, and
- 22 g. a search of the community services worker registry
23 maintained by the Department of Human Services

1 pursuant to Section 1025.3 of Title 56 of the Oklahoma
2 Statutes;

3 2. Prior to the employment of an individual:

- 4 a. an Oklahoma State Courts Network search, conducted by
5 the Department, shall be requested and received by the
6 facility; provided however, if twenty-four (24) hours
7 has passed from the time the request to the Department
8 was made, the facility may initiate employment,
9 notwithstanding the provisions of this paragraph,
- 10 b. a ~~Child Care~~ Restricted Registry search shall be
11 conducted by the facility with notification of the
12 search submitted to the Department,
- 13 c. a national criminal history records search pursuant to
14 paragraph 10 of this subsection shall be submitted,
- 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, shall be submitted to the Department, and
- 19 e. a search of the Department of Corrections' files
20 maintained pursuant to the Sex Offenders Registration
21 Act shall be conducted by the Department and received
22 by the facility;

23 3. Prior to allowing unsupervised access to children by
24 employees or individuals, including contract employees and

1 volunteers and excluding the exceptions in paragraph 8 of this
2 subsection:

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

20 4. Prior to the issuance of a permit or license and prior to
21 the residence of adults who subsequently move into a facility,
22 adults living in the facility excluding the exception in paragraph 7
23 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,

- 1 c. a national criminal history records search conducted
2 pursuant to paragraph 10 of this subsection, and
3 d. a search of the Department of Corrections' files
4 pursuant to the Sex Offenders Registration Act
5 conducted by the Department and received by the
6 facility;

7 6. Prior to review of or access to fingerprint results, owners,
8 responsible entities, directors, and other individuals who have
9 review of or access to fingerprint results shall have a national
10 criminal history records search pursuant to paragraph 10 of this
11 subsection;

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

15 8. A national criminal history records search pursuant to
16 paragraph 10 of this subsection shall not be required for volunteers
17 who transport children on an irregular basis when a release is
18 signed by the parent or legal guardian noting their understanding
19 that the volunteer does not have a completed national criminal
20 history records search. The provisions in paragraph 3 of this
21 subsection shall not be required for specialized service
22 professionals who are not employed by the program and have
23 unsupervised access to a child when a release is signed by the
24 parent or legal guardian noting his or her understanding of this

1 exception. These exceptions shall not preclude the Department from
2 requesting a national fingerprint or an Oklahoma State Bureau of
3 Investigation name-based criminal history records search or
4 investigating criminal, abusive, or harmful behavior of such
5 individuals, if warranted;

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

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

- 14 a. be conducted by the Oklahoma State Bureau of
15 Investigation and the Federal Bureau of Investigation
16 pursuant to Section 150.9 of Title 74 of the Oklahoma
17 Statutes and the federal National Child Protection Act
18 and the federal Volunteers for Children Act with the
19 Department as the authorized agency,
- 20 b. be submitted and have results received between the
21 Department and the Oklahoma State Bureau of
22 Investigation through secure electronic transmissions,
- 23 c. include Oklahoma State Bureau of Investigation rap
24 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 shall require national criminal history records searches, as defined by Section 150.9 of Title 74 of the Oklahoma Statutes, 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 the Office of Juvenile Affairs on behalf of any:

- 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

1 center or secure facility licensed or certified by the
2 Office of Juvenile Affairs, or

- 3 c. persons allowed unsupervised access to children,
4 including contract employees or volunteers, of a
5 secure detention center, municipal juvenile facility,
6 community intervention center or secure facility
7 licensed or certified by the Office of Juvenile
8 Affairs.

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 Section 1-7-
24 106 of Title 10A of the Oklahoma Statutes,

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 shall also be
13 completed for any adult who subsequently moves
14 into the foster family home,

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

22 (5) any child care facility contracting with any
23 person for foster family home services shall
24 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 five (5)
17 years 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. 1. Information received pursuant to this section by an
8 owner, administrator, or responsible entity of a child care
9 facility, shall be maintained in a confidential manner pursuant to
10 applicable state and federal laws.

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

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

22 4. Information received by any facility certified by the Office
23 of Juvenile Affairs may be released to another facility certified by
24 the Office if an individual is being considered for employment or

1 contract, along with any other relevant information, unless the
2 information is deemed confidential by state or federal law. Any
3 information received by the Office shall be maintained in a
4 confidential manner pursuant to applicable state and federal law.

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,

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 SECTION 2. AMENDATORY 10 O.S. 2011, Section 405.3, as
7 last amended by Section 1, Chapter 158, O.S.L. 2015 (10 O.S. Supp.
8 2016, Section 405.3), is amended to read as follows:

9 Section 405.3 A. ~~On or before July 1, 2010, the~~ The Department
10 of Human Services shall promulgate rules to establish and maintain
11 the ~~Child Care~~ Restricted Registry, accessible to the public through
12 an online database, to address:

13 1. A procedure for recording individuals on the restricted
14 registry resulting from:

15 a. a substantiated finding of abuse or neglect, as
16 defined in Section 1-1-105 of Title 10A of the
17 Oklahoma Statutes, by an individual when the abuse or
18 neglect occurred to ~~children~~ a child while in the care
19 of a ~~child care~~ facility licensed ~~by,~~ certified,
20 operated or contracted by or with the Department or ~~by~~
21 ~~an adult in a family child care home when the adult's~~
22 ~~presence is incidental to the operation of the family~~
23 ~~child care home~~ the Office of Juvenile Affairs. The
24 provisions of this subparagraph shall apply to:

1 (1) the Central Oklahoma Juvenile Center, the
2 Oklahoma Juvenile Center for Girls and the
3 Southwest Oklahoma Juvenile Center upon the
4 effective date of this act, and
5 (2) facilities licensed by, certified by or
6 contracting with the Office of Juvenile Affairs
7 after November 1, 2018,

8 b. a revocation or denial of a child care facility
9 license, and

10 c. a specified criminal history of an individual, as
11 defined by rules promulgated by the Department;

12 2. A procedure to provide notice and an opportunity for review
13 prior to recording an individual on the restricted registry;

14 3. Disclosure requirements for information on the restricted
15 registry; and

16 4. A procedure to prohibit licensure, ownership, employment,
17 unsupervised access to children or residence in a ~~child care~~
18 ~~facility licensed by the Department of individuals recorded on the~~
19 ~~restricted registry~~ or program licensed, certified, operated or
20 contracted with by the Department or the Office of Juvenile Affairs.

21 B. The ~~Child Care~~ Restricted Registry shall include, but not be
22 limited to:

23 1. The full name of the individual;

24 2. Information necessary to identify the individual; and

1 3. The date the individual was recorded on the restricted
2 registry.

3 C. Nothing in this section shall be construed as to permit the
4 placement of an operator of a child care facility on the Child Care
5 Restricted Registry unless the operator:

6 1. Is the subject of a substantiated finding of child abuse or
7 neglect;

8 2. Has been subject to a revocation or denial of a child care
9 facility license; or

10 3. Has a specified criminal history, as defined by rules
11 promulgated by the Department.

12 SECTION 3. This act shall become effective November 1, 2017.

13
14 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04/04/2017 -
15 DO PASS, As Amended and Coauthored.