

1 **SENATE FLOOR VERSION**

2 February 27, 2017

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 717

By: Griffin of the Senate

and

6 Osborn (Leslie) of the
7 House

8
9 An Act relating to registries maintained by the
10 Department of Human Services; amending 10 O.S. 2011,
11 Section 404.1, as last amended by Section 1, Chapter
12 307, O.S.L. 2016 (10 O.S. Supp. 2016, Section 404.1),
13 which relates to criminal history records searches;
14 requiring search of certain registries prior to
15 issuance of certain licenses; amending 10 O.S. 2011,
16 Section 405.3, as last amended by Section 1, Chapter
17 158, O.S.L. 2015 (10 O.S. Supp. 2016, Section 405.3),
18 which relates to the Online Child Care Restricted
19 Registry; broadening scope of certain registry to
20 include certain facilities; amending name of certain
21 registry; clarifying language; and providing an
22 effective date.

23
24 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 307, O.S.L. 2016 (10 O.S. Supp.
2016, Section 404.1), is amended to read as follows:

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

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

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

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

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

17 f. a search of the nontechnical services worker abuse
18 registry maintained by the State Department of Health
19 pursuant to Section 1-1950.7 of Title 63 of the
20 Oklahoma Statutes, and

21 g. a search of the community services worker registry
22 maintained by the Department of Human Services
23 pursuant to Section 1025.3 of Title 56 of the Oklahoma
24 Statutes;

1 2. Prior to the employment of an individual:

- 2 a. an Oklahoma State Courts Network search, conducted by
3 the Department, shall be requested and received by the
4 facility; provided however, if twenty-four (24) hours
5 has passed from the time the request to the Department
6 was made, the facility may initiate employment,
7 notwithstanding the provisions of this paragraph,
8 b. a ~~Child-Care~~ Restricted Registry search shall be
9 conducted by the facility with notification of the
10 search submitted to the Department,
11 c. a national criminal history records search pursuant to
12 paragraph 10 of this subsection shall be submitted,
13 d. a criminal history records search conducted by an
14 authorized source, when the individual has lived
15 outside the United States within the last three (3)
16 years, shall be submitted to the Department, and
17 e. a search of the Department of Corrections' files
18 maintained pursuant to the Sex Offenders Registration
19 Act shall be conducted by the Department and received
20 by the facility;

21 3. Prior to allowing unsupervised access to children by
22 employees or individuals, including contract employees and
23 volunteers and excluding the exceptions in paragraph 8 of this
24 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

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

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

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

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

1 Investigation name-based criminal history records search or
2 investigating criminal, abusive, or harmful behavior of such
3 individuals, if warranted;

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

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

- 12 a. be conducted by the Oklahoma State Bureau of
13 Investigation and the Federal Bureau of Investigation
14 pursuant to Section 150.9 of Title 74 of the Oklahoma
15 Statutes and the federal National Child Protection Act
16 and the federal Volunteers for Children Act with the
17 Department as the authorized agency,
- 18 b. be submitted and have results received between the
19 Department and the Oklahoma State Bureau of
20 Investigation through secure electronic transmissions,
- 21 c. include Oklahoma State Bureau of Investigation rap
22 back, requiring the Oklahoma State Bureau of
23 Investigation to immediately notify the Department

1 upon receipt of subsequent criminal history activity,
2 and

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

4 11. The Director of the Department, or designee, shall
5 promulgate rules that may authorize an exception to the
6 fingerprinting requirements for individuals who have a severe
7 physical condition which precludes such individuals from being
8 fingerprinted; and

9 12. The Office of Juvenile Affairs shall require national
10 criminal history records searches, as defined by Section 150.9 of
11 Title 74 of the Oklahoma Statutes, which shall be provided by the
12 Oklahoma State Bureau of Investigation for the purpose of obtaining
13 the national criminal history records search, including Rap Back
14 notification of and through direct request by the Office of Juvenile
15 Affairs on behalf of any:

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

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

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

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

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

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

17 (b) a national criminal history records search
18 based upon submission of fingerprints for
19 any adult residing in the foster family home
20 through the Department of Human Services
21 pursuant to the provisions of Section 1-7-
22 106 of Title 10A of the Oklahoma Statutes,
23 except as otherwise provided by divisions
24 (2) and (4) of this subparagraph,

- 1 (2) the child-placing agency may place a child
2 pending completion of the national criminal
3 history records search if the foster care
4 provider and every adult residing in the foster
5 family home has resided in this state for at
6 least five (5) years immediately preceding such
7 placement,
- 8 (3) a national criminal history records search based
9 upon submission of fingerprints to the Oklahoma
10 State Bureau of Investigation shall also be
11 completed for any adult who subsequently moves
12 into the foster family home,
- 13 (4) provided, however, the Director of Human Services
14 or the Director of the Office of Juvenile
15 Affairs, or a designee, may authorize an
16 exception to the fingerprinting requirement for a
17 person residing in the home who has a severe
18 physical condition which precludes such person's
19 being fingerprinted, and
- 20 (5) any child care facility contracting with any
21 person for foster family home services shall
22 request the Office of Juvenile Affairs to conduct
23 a juvenile justice information system review,
24 pursuant to the provisions of Sections 2-7-905

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

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

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

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

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

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

21 (4) The Director of Human Services or the Director of
22 the Office of Juvenile Affairs or their designee
23 may authorize an exception to the fingerprinting
24 requirement for any person residing in the home

1 who has a severe physical condition which
2 precludes such person's being fingerprinted.

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

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

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

1 D. Except as otherwise provided by the Oklahoma Children's Code
2 and subsection F 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 E. 1. Information received pursuant to this section by an
6 owner, administrator, or responsible entity of a child care
7 facility, shall be maintained in a confidential manner pursuant to
8 applicable state and federal laws.

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 and federal laws.

15 3. Requirements for confidentiality and recordkeeping 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 4. Information received by any facility certified by the Office
21 of Juvenile Affairs may be released to another facility certified by
22 the Office if an individual is being considered for employment or
23 contract, along with any other relevant information, unless the
24 information is deemed confidential by state or federal law. Any

1 information received by the Office shall be maintained in a
2 confidential manner pursuant to applicable state and federal law.

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

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

- 19 a. an emergency order,
- 20 b. license revocation or denial,
- 21 c. injunctive proceedings,
- 22 d. an administrative penalty not to exceed Ten Thousand
23 Dollars (\$10,000.00), and
- 24 e. referral for criminal proceedings.

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

3 SECTION 2. AMENDATORY 10 O.S. 2011, Section 405.3, as
4 last amended by Section 1, Chapter 158, O.S.L. 2015 (10 O.S. Supp.
5 2016, Section 405.3), is amended to read as follows:

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

10 1. A procedure for recording individuals on the restricted
11 registry resulting from:

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

22 (1) the Central Oklahoma Juvenile Center, the
23 Oklahoma Juvenile Center for Girls and the
24

1 Southwest Oklahoma Juvenile Center upon the
2 effective date of this act, and
3 (2) facilities licensed by, certified by or
4 contracting with the Office of Juvenile Affairs
5 on March 1, 2018,

6 b. a revocation or denial of a child care facility
7 license, and

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

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

12 3. Disclosure requirements for information on the restricted
13 registry; and

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

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

21 1. The full name of the individual;

22 2. Information necessary to identify the individual; and

23 3. The date the individual was recorded on the restricted
24 registry.

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

4 1. Is the subject of a substantiated finding of child abuse or
5 neglect;

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

8 3. Has a specified criminal history, as defined by rules
9 promulgated by the Department.

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

11 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
12 February 27, 2017 - DO PASS AS AMENDED
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