

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

COMMITTEE SUBSTITUTE
FOR

HOUSE BILL NO. 1797

By: Miller

COMMITTEE SUBSTITUTE

An Act relating to child care facilities; amending 10 O.S. 2011, Section 404.1, as last amended by Section 1, Chapter 109, O.S.L. 2017 (10 O.S. Supp. 2020, Section 404.1), which relates to criminal history searches; prohibiting employment of individual under investigation for heinous and shocking abuse; amending 10 O.S. 2011, Section 406, as last amended by Section 1, Chapter 368, O.S.L. 2019 (10 O.S. Supp. 2020, Section 406), which relates to investigations of child care facilities; requiring notification when there is a substantiated finding of heinous and shocking abuse; prescribing method and timing for notification; 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 109, O.S.L. 2017 (10 O.S. Supp. 2020, 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 Restricted Registry search conducted by the
7 facility,
- 8 c. a national criminal history records search conducted
9 pursuant to paragraph 10 of this subsection,
- 10 d. a criminal history records and sex offender registry
11 search conducted by an authorized source, when the
12 individual has lived outside this state within the
13 last five (5) years,
- 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 any available child abuse and neglect
18 registry within a state the individual has resided in
19 within the last five (5) years,
- 20 g. search of the nontechnical services worker abuse
21 registry maintained by the State Department of Health
22 pursuant to Section 1-1950.7 of Title 63 of the
23 Oklahoma Statutes, and

1 h. a search of the community services worker registry
2 maintained by the Department of Human Services
3 pursuant to Section 1025.3 of Title 56 of the Oklahoma
4 Statutes;

5 2. Prior to the employment of an individual:

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

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

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

17 d. a criminal history records and sex offender registry
18 search conducted by an authorized source, when the
19 individual has lived outside this state within the
20 last five (5) years, shall be submitted to the
21 Department,

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 f. a search of any available child abuse and neglect
4 registry within a state the individual has resided in
5 within the last five (5) years,

6 g. search of the nontechnical services worker abuse
7 registry maintained by the State Department of Health
8 pursuant to Section 1-1950.7 of Title 63 of the
9 Oklahoma Statutes, and

10 h. a search of the community services worker registry
11 maintained by the Department of Human Services
12 pursuant to Section 1025.3 of Title 56 of the Oklahoma
13 Statutes;

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

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

21 b. a Child Care Restricted Registry search shall be
22 conducted by the facility with notification of the
23 search submitted to the Department,
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- 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 and sex offender registry search conducted by an authorized source, when the individual has lived outside this state within the last five (5) years shall be submitted to the Department,
- 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,
- f. a search of any available child abuse and neglect registry within a state the individual has resided in within the last five (5) years,
- g. search of the nontechnical services worker abuse registry maintained by the State Department of Health pursuant to Section 1-1950.7 of Title 63 of the Oklahoma Statutes, and
- h. a search of the community services worker registry maintained by the Department of Human Services pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;

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

- 5 a. an Oklahoma State Courts Network search conducted by
6 the Department and the facility shall be in receipt of
7 the search results,
- 8 b. a Restricted Registry search conducted by the facility
9 with notification of the search submitted to the
10 Department,
- 11 c. a national criminal history records search conducted
12 pursuant to paragraph 10 of this subsection,
- 13 d. a criminal history records and sex offender registry
14 search conducted by an authorized source, when the
15 individual has lived outside this state within the
16 last five (5) years,
- 17 e. a search of the Department of Corrections' files
18 maintained pursuant to the Sex Offenders Registration
19 Act conducted by the Department and received by the
20 facility,
- 21 f. a search of any available child abuse and neglect
22 registry within a state the individual has resided in
23 within the last five (5) years,

g. search of the nontechnical services worker abuse registry maintained by the State Department of Health pursuant to Section 1-1950.7 of Title 63 of the Oklahoma Statutes, and

h. a search of the community services worker registry maintained by the Department of Human Services pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;

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 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

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

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

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

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

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

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

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

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

3 12. The Director of the Department, or designee, shall
4 promulgate rules that ensure individuals obtain a criminal history
5 records search, not to include the re-submission of fingerprints,
6 not less than once during each five (5) year period;

7 13. Any individual who refuses to consent to the criminal
8 background check or knowingly makes a materially-false statement in
9 connection with such criminal background check shall be ineligible
10 for ownership of, employment of or residence in a child care
11 facility; and

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

- 19 a. operator or responsible entity making a request to
20 establish or operate a secure detention center,
21 municipal juvenile facility, community intervention
22 center or secure facility licensed or certified by the
23 Office of Juvenile Affairs,
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- 1 b. employee or applicant of a secure detention center,
2 municipal juvenile facility, community intervention
3 center or secure facility licensed or certified by the
4 Office of Juvenile Affairs, or
- 5 c. persons allowed unsupervised access to children,
6 including contract employees or volunteers, of a
7 secure detention center, municipal juvenile facility,
8 community intervention center or secure facility
9 licensed or certified by the Office of Juvenile
10 Affairs.

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

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

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

21 (b) a national criminal history records search
22 based upon submission of fingerprints for
23 any adult residing in the foster family home
24 through the Department of Human Services

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

5 (2) the child-placing agency may place a child
6 pending completion of the national criminal
7 history records search if the foster care
8 provider and every adult residing in the foster
9 family home has resided in this state for at
10 least five (5) years immediately preceding such
11 placement,

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

17 (4) provided, however, the Director of Human Services
18 or the Director of the Office of Juvenile
19 Affairs, or a designee, may authorize an
20 exception to the fingerprinting requirement for a
21 person residing in the home who has a severe
22 physical condition which precludes such person's
23 being fingerprinted, and
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1 (5) any child care facility contracting with any
2 person for foster family home services shall
3 request the Office of Juvenile Affairs to conduct
4 a juvenile justice information system review,
5 pursuant to the provisions of Sections 2-7-905
6 and 2-7-308 of Title 10A of the Oklahoma
7 Statutes, for any child over the age of thirteen
8 (13) years residing in the foster family home,
9 other than a foster child, or who subsequently
10 moves into the foster family home. As a
11 condition of contract, the child care facility
12 shall obtain the consent of the parent or legal
13 guardian of the child for such review.

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

22 2. a. (1) On and after September 1, 1998, except as
23 otherwise provided in divisions (2) and (4) of
24 this subparagraph, prior to contracting with a

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

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

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

3 (4) The Director of Human Services or the Director of
4 the Office of Juvenile Affairs or their designee
5 may authorize an exception to the fingerprinting
6 requirement for any person residing in the home
7 who has a severe physical condition which
8 precludes such person's being fingerprinted.

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

23 C. The Department or the Board of Juvenile Affairs shall
24 promulgate rules to identify circumstances when a criminal history

1 records search or foster parent eligibility assessment for an
2 applicant or contractor, or any person over the age of thirteen (13)
3 years residing in a private residence in which a child care facility
4 is located, shall be expanded beyond the records search conducted by
5 the Oklahoma State Bureau of Investigation or as otherwise provided
6 pursuant to this section.

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

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

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

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

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

10 F. 1. It shall be unlawful for individuals who are required to
11 register pursuant to the Sex Offenders Registration Act to work with
12 or provide services to children or to reside in a child care
13 facility and for any employer who offers or provides services to
14 children to knowingly and willfully employ or contract with, or
15 allow continued employment of or contracting with individuals who
16 are required to register pursuant to the Sex Offenders Registration
17 Act. Individuals required to register pursuant to the Sex Offenders
18 Registration Act who violate any provision of Section 401 et seq. of
19 this title shall, upon conviction, be guilty of a felony punishable
20 by incarceration in a correctional facility for a period of not more
21 than five (5) years and a fine of not more than Five Thousand
22 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 G. It shall be unlawful for an individual who is the subject of
13 an investigation of heinous and shocking abuse by a person
14 responsible for a child's health, safety, or welfare, as defined in
15 Section 1-1-105 of Title 10A of the Oklahoma Statutes, to work with
16 or provide services to children or to reside in a child care
17 facility and for any employer who offers or provides services to
18 children to knowingly and willfully employ or contract with, or
19 allow continued employment of or contracting with such individual
20 while the investigation is pending.

21 SECTION 2. AMENDATORY 10 O.S. 2011, Section 406, as last
22 amended by Section 1, Chapter 368, O.S.L. 2019 (10 O.S. Supp. 2020,
23 Section 406), is amended to read as follows:

1 Section 406. A. 1. Except as provided in paragraph 2 of this
2 subsection, the Department of Human Services shall have authority at
3 any reasonable time to investigate and examine the conditions of any
4 child care facility in which a licensee or applicant hereunder
5 receives and maintains children, and shall have authority at any
6 time to require the facility to provide information pertaining to
7 children in its care.

8 2. When the Department of Human Services is reviewing the star
9 rating of a child care program with a capacity of fifty or more, the
10 comprehensive visit to inspect and examine the program shall be
11 scheduled with the administration of the program at least one (1)
12 week in advance of the visit, if requested by the child care
13 facility.

14 B. 1. The State Department of Health may visit any licensee or
15 applicant at the request of the Department to advise on matters
16 affecting the health of children and to inspect the sanitation of
17 the buildings used for their care.

18 2. The State Fire Marshal may visit any licensee or applicant
19 at the request of the Department to advise on matters affecting the
20 safety of children and to inspect the condition of the buildings
21 used for their care.

22 C. 1. Upon receipt of a complaint against any child care
23 facility alleging a violation of the provisions of the Oklahoma
24 Child Care Facilities Licensing Act, or any licensing standard

1 promulgated by the Department, the Department shall conduct a full
2 investigation. If upon investigation, it is determined that there
3 are reasonable grounds to believe that a facility is in violation of
4 the Oklahoma Child Care Facilities Licensing Act or of any standard
5 or rule promulgated pursuant thereto, the Department shall:

- 6 a. document the complaint,
- 7 b. provide the complaint allegations in writing to the
8 facility involved and, upon written request by the
9 child care facility, provide a summary of the facts
10 used to evaluate the completed complaint, and
- 11 c. document the facility's plan for correcting any
12 substantiated violations.

13 2. If the Department determines there has been a violation and
14 the violation has a direct impact on the health, safety or well-
15 being of one or more of the children cared for by the facility, the
16 Department shall notify the facility and require correction of the
17 violation.

18 3. The Department shall notify the facility that failure to
19 correct the confirmed violation can result in the revocation of the
20 license, the denial of an application for a license, the issuance of
21 an emergency order or the filing of an injunction pursuant to the
22 provisions of Section 409 of this title.

23 4. If the facility refuses to correct a violation or fails to
24 complete the plan of correction, the Department may issue an

1 emergency order, revoke the license, or deny the application for a
2 license. Nothing in this section or Section 407 of this title shall
3 be construed as preventing the Department from denying an
4 application, revoking a license, or issuing an emergency order for a
5 single violation of this act, or the rules of the Department as
6 provided in Section 404 of this title.

7 5. If the Department determines there has been a substantiated
8 finding of heinous and shocking abuse by a person responsible for a
9 child's health, safety or welfare, as defined in Section 1-1-105 of
10 Title 10A of the Oklahoma Statutes, the Department shall notify the
11 child care facility owner or operator and the child care resource
12 and referral organization in writing immediately or not later than
13 one (1) business day after the substantiated finding. The facility
14 owner or operator shall notify parents or legal guardians of
15 children attending the facility by certified mail within one (1)
16 business day of notice of the substantiated finding.

17 D. Upon the completion of the investigation of a complaint
18 against any child care facility alleging a violation of the
19 provisions of the Oklahoma Child Care Facilities Licensing Act or
20 any licensing standard promulgated thereto by the Department, the
21 Department shall clearly designate its findings on the first page of
22 the report of the investigation. The findings shall state whether
23 the complaint was substantiated or unsubstantiated.

1 E. Information obtained by the Department or Oklahoma Child
2 Care Services concerning a report of a violation of a licensing
3 requirement, or from any licensee regarding children or their
4 parents or other relatives shall be deemed confidential and
5 privileged communications, shall be properly safeguarded, and shall
6 not be accessible to anyone except as herein provided, unless upon
7 order of a court of competent jurisdiction. Provided, however, this
8 provision shall not prohibit the Department from providing a summary
9 of allegations and findings of an investigation involving a child
10 care facility that does not disclose identities but that permits
11 parents to evaluate the facility.

12 F. The Department shall promulgate rules to establish and
13 maintain a grievance process that shall include an anonymous
14 complaint system for reporting and investigating complaints or
15 grievances about employees of the Department who retaliate against a
16 child care facility or facility employee.

17 SECTION 3. This act shall become effective November 1, 2021.

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