

1 ENGROSSED HOUSE
2 BILL NO. 1797

By: Miller and Lawson of the
House

3 and

4 Garvin of the Senate
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8 An Act relating to child care facilities; amending 10
9 O.S. 2011, Section 404.1, as last amended by Section
10 1, Chapter 109, O.S.L. 2017 (10 O.S. Supp. 2020,
11 Section 404.1), which relates to criminal history
12 searches; prohibiting employment of individual under
13 investigation for heinous and shocking abuse;
14 amending 10 O.S. 2011, Section 406, as last amended
15 by Section 1, Chapter 368, O.S.L. 2019 (10 O.S. Supp.
16 2020, Section 406), which relates to investigations
17 of child care facilities; requiring notification when
18 there is a substantiated finding of heinous and
19 shocking abuse; prescribing method and timing for
20 notification; 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 109, O.S.L. 2017 (10 O.S. Supp.
24 2020, 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 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 and sex offender registry search conducted by an authorized source, when the individual has lived outside this state within the last five (5) years,
- 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,
- 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 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 Restricted Registry search shall be conducted by the
9 facility with notification of the search submitted to
10 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 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, shall be submitted to the
17 Department,
18 e. a search of the Department of Corrections' files
19 maintained pursuant to the Sex Offenders Registration
20 Act shall be conducted by the Department and received
21 by the facility,
22 f. a search of any available child abuse and neglect
23 registry within a state the individual has resided in
24 within the last five (5) years,

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

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

9 3. Prior to allowing unsupervised access to children by
10 employees or individuals, including contract employees and
11 volunteers and excluding the exceptions in paragraph 8 of this
12 subsection:

13 a. Oklahoma State Courts Network search results,
14 conducted by the Department, shall be received by the
15 facility,

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

19 c. national criminal history records search results
20 pursuant to paragraph 10 of this subsection shall be
21 received by the facility,

22 d. a criminal history records and sex offender registry
23 search conducted by an authorized source, when the
24 individual has lived outside this state within the

1 last five (5) years shall be submitted to the
2 Department,

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

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

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

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

22 a. an Oklahoma State Courts Network search conducted by
23 the Department and the facility shall be in receipt of
24 the search results,

- 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,
- 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,
- 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,
- 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 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 Restricted Registry search conducted by the facility
7 with notification of the search submitted to the
8 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;

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

22 13. Any individual who refuses to consent to the criminal
23 background check or knowingly makes a materially-false statement in
24 connection with such criminal background check shall be ineligible

1 for ownership of, employment of or residence in a child care
2 facility; and

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

- 10 a. operator or responsible entity making a request to
11 establish or operate a secure detention center,
12 municipal juvenile facility, community intervention
13 center or secure facility licensed or certified by the
14 Office of Juvenile Affairs,
- 15 b. employee or applicant of a secure detention center,
16 municipal juvenile facility, community intervention
17 center or secure facility licensed or certified by the
18 Office of Juvenile Affairs, or
- 19 c. persons allowed unsupervised access to children,
20 including contract employees or volunteers, of a
21 secure detention center, municipal juvenile facility,
22 community intervention center or secure facility
23 licensed or certified by the Office of Juvenile
24 Affairs.

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 five (5)
10 years 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

1 Services or the Office of Juvenile Affairs prior to
2 September 1, 1998. Such existing foster care
3 providers shall comply with the provisions of this
4 section, until otherwise provided by rules of the
5 Department or by law.

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

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

20 D. Except as otherwise provided by the Oklahoma Children's Code
21 and subsection F of this section, a conviction for a crime shall not
22 be an absolute bar to employment, but shall be considered in
23 relation to specific employment duties and responsibilities.
24

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

5 2. The information, along with any other information relevant
6 to the ability of the individual to perform tasks that require
7 direct contact with children, may be released to another child care
8 facility in response to a request from the child care facility that
9 is considering employing or contracting with the individual unless
10 deemed confidential by state and federal laws.

11 3. Requirements for confidentiality and recordkeeping with
12 regard to the information shall be the same for the child care
13 facility receiving the information in response to a request as those
14 provided for in paragraph 1 of this subsection for the child care
15 facility releasing such information.

16 4. Information received by any facility certified by the Office
17 of Juvenile Affairs may be released to another facility certified by
18 the Office if an individual is being considered for employment or
19 contract, along with any other relevant information, unless the
20 information is deemed confidential by state or federal law. Any
21 information received by the Office shall be maintained in a
22 confidential manner pursuant to applicable state and federal law.

23 F. 1. It shall be unlawful for individuals who are required to
24 register pursuant to the Sex Offenders Registration Act to work with

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

12 2. It shall be unlawful for an individual who is the
13 perpetrator of a finding of heinous and shocking abuse by a person
14 responsible for a child's health, safety, or welfare, as those terms
15 are defined in Section 1-1-105 of Title 10A of the Oklahoma
16 Statutes, to work with or provide services to children or to reside
17 in a child care facility and for any employer who offers or provides
18 services to children to knowingly and willfully employ or contract
19 with, or allow continued employment of or contracting with such
20 individual.

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

24 a. an emergency order,

- b. license revocation or denial,
- c. injunctive proceedings,
- d. an administrative penalty not to exceed Ten Thousand Dollars (\$10,000.00), and
- e. referral for criminal proceedings.

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

SECTION 2. AMENDATORY 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), is amended to read as follows:

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

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

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

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

9 C. 1. Upon receipt of a complaint against any child care
10 facility alleging a violation of the provisions of the Oklahoma
11 Child Care Facilities Licensing Act, or any licensing standard
12 promulgated by the Department, the Department shall conduct a full
13 investigation. If upon investigation, it is determined that there
14 are reasonable grounds to believe that a facility is in violation of
15 the Oklahoma Child Care Facilities Licensing Act or of any standard
16 or rule promulgated pursuant thereto, the Department shall:

- 17 a. document the complaint,
- 18 b. provide the complaint allegations in writing to the
19 facility involved and, upon written request by the
20 child care facility, provide a summary of the facts
21 used to evaluate the completed complaint, and
- 22 c. document the facility's plan for correcting any
23 substantiated violations.

1 2. If the Department determines there has been a violation and
2 the violation has a direct impact on the health, safety or well-
3 being of one or more of the children cared for by the facility, the
4 Department shall notify the facility and require correction of the
5 violation.

6 3. The Department shall notify the facility that failure to
7 correct the confirmed violation can result in the revocation of the
8 license, the denial of an application for a license, the issuance of
9 an emergency order or the filing of an injunction pursuant to the
10 provisions of Section 409 of this title.

11 4. If the facility refuses to correct a violation or fails to
12 complete the plan of correction, the Department may issue an
13 emergency order, revoke the license, or deny the application for a
14 license. Nothing in this section or Section 407 of this title shall
15 be construed as preventing the Department from denying an
16 application, revoking a license, or issuing an emergency order for a
17 single violation of this act, or the rules of the Department as
18 provided in Section 404 of this title.

19 5. If the Department determines there has been a substantiated
20 finding of heinous and shocking abuse by a person responsible for a
21 child's health, safety or welfare, as those terms are defined in
22 Section 1-1-105 of Title 10A of the Oklahoma Statutes, the
23 Department shall notify the child care facility owner or operator
24 and the child care resource and referral organization in writing

1 immediately or not later than one (1) business day after the
2 substantiated finding. The facility owner or operator shall notify
3 parents or legal guardians of children attending the facility by
4 certified mail within one (1) business day of notice of the
5 substantiated finding.

6 D. Upon the completion of the investigation of a complaint
7 against any child care facility alleging a violation of the
8 provisions of the Oklahoma Child Care Facilities Licensing Act or
9 any licensing standard promulgated thereto by the Department, the
10 Department shall clearly designate its findings on the first page of
11 the report of the investigation. The findings shall state whether
12 the complaint was substantiated or unsubstantiated.

13 E. Information obtained by the Department or Oklahoma Child
14 Care Services concerning a report of a violation of a licensing
15 requirement, or from any licensee regarding children or their
16 parents or other relatives shall be deemed confidential and
17 privileged communications, shall be properly safeguarded, and shall
18 not be accessible to anyone except as herein provided, unless upon
19 order of a court of competent jurisdiction. Provided, however, this
20 provision shall not prohibit the Department from providing a summary
21 of allegations and findings of an investigation involving a child
22 care facility that does not disclose identities but that permits
23 parents to evaluate the facility.

1 F. The Department shall promulgate rules to establish and
2 maintain a grievance process that shall include an anonymous
3 complaint system for reporting and investigating complaints or
4 grievances about employees of the Department who retaliate against a
5 child care facility or facility employee.

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

7 Passed the House of Representatives the 3rd day of March, 2021.

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10 Presiding Officer of the House
of Representatives

11 Passed the Senate the ____ day of _____, 2021.

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14 Presiding Officer of the Senate