

STATE OF OKLAHOMA

1st Session of the 58th Legislature (2021)

SENATE BILL 1036

By: Jett

AS INTRODUCED

An Act relating to child care; 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 records search; modifying eligibility for employment due to conviction; 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. 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;

2. Prior to the employment of an individual:

- a. an Oklahoma State Courts Network search, conducted by the Department, shall be requested and received by the facility; provided however, if twenty-four (24) hours

- 1 has passed from the time the request to the Department  
2 was made, the facility may initiate employment,  
3 notwithstanding the provisions of this paragraph,
- 4 b. a Restricted Registry search shall be conducted by the  
5 facility with notification of the search submitted to  
6 the Department,
- 7 c. a national criminal history records search pursuant to  
8 paragraph 10 of this subsection shall be submitted,
- 9 d. a criminal history records and sex offender registry  
10 search conducted by an authorized source, when the  
11 individual has lived outside this state within the  
12 last five (5) years, shall be submitted to the  
13 Department,
- 14 e. a search of the Department of Corrections' files  
15 maintained pursuant to the Sex Offenders Registration  
16 Act shall be conducted by the Department and received  
17 by the facility,
- 18 f. a search of any available child abuse and neglect  
19 registry within a state the individual has resided in  
20 within the last five (5) years,
- 21 g. search of the nontechnical services worker abuse  
22 registry maintained by the State Department of Health  
23 pursuant to Section 1-1950.7 of Title 63 of the  
24 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           3.   Prior to allowing unsupervised access to children by  
6 employees or individuals, including contract employees and  
7 volunteers and excluding the exceptions in paragraph 8 of this  
8 subsection:

9           a.    Oklahoma State Courts Network search results,  
10                   conducted by the Department, shall be received by the  
11                   facility,

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

15           c.   national criminal history records search results  
16                   pursuant to paragraph 10 of this subsection shall be  
17                   received by the facility,

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

23           e.   a search of the Department of Corrections' files  
24                   maintained pursuant to the Sex Offenders Registration  
25

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

18 a. an Oklahoma State Courts Network search conducted by  
19 the Department and the facility shall be in receipt of  
20 the search results,

21 b. a Restricted Registry search conducted by the facility  
22 with notification of the search submitted to the  
23 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;

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

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

8. A national criminal history records search pursuant to paragraph 10 of this subsection shall not be required for volunteers who transport children on an irregular basis when a release is signed by the parent or legal guardian noting their understanding that the volunteer does not have a completed national criminal

1 history records search. The provisions in paragraph 3 of this  
2 subsection shall not be required for specialized service  
3 professionals who are not employed by the program and have  
4 unsupervised access to a child when a release is signed by the  
5 parent or legal guardian noting his or her understanding of this  
6 exception. These exceptions shall not preclude the Department from  
7 requesting a national fingerprint or an Oklahoma State Bureau of  
8 Investigation name-based criminal history records search or  
9 investigating criminal, abusive, or harmful behavior of such  
10 individuals, if warranted;

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

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

- 19 a. be conducted by the Oklahoma State Bureau of  
20 Investigation and the Federal Bureau of Investigation  
21 pursuant to Section 150.9 of Title 74 of the Oklahoma  
22 Statutes and the federal National Child Protection Act  
23 and the federal Volunteers for Children Act with the  
24 Department as the authorized agency,



- 1           b.    be submitted and have results received between the  
2               Department and the Oklahoma State Bureau of  
3               Investigation through secure electronic transmissions,  
4           c.    include Oklahoma State Bureau of Investigation rap  
5               back, requiring the Oklahoma State Bureau of  
6               Investigation to immediately notify the Department  
7               upon receipt of subsequent criminal history activity,  
8               and  
9           d.    be paid by the individual or the facility;

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

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

19           13. Any individual who refuses to consent to the criminal  
20 background check or knowingly makes a materially-false statement in  
21 connection with such criminal background check shall be ineligible  
22 for ownership of, employment of or residence in a child care  
23 facility; and  
24  
25

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

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

23        B. 1. a. On and after September 1, 1998:  
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25

1 (1) any child-placing agency contracting with a  
2 person for foster family home services or in any  
3 manner for services for the care and supervision  
4 of children shall also, prior to executing a  
5 contract, complete:

6 (a) a foster parent eligibility assessment for  
7 the foster care provider except as otherwise  
8 provided by divisions (2) and (4) of this  
9 subparagraph, and

10 (b) a national criminal history records search  
11 based upon submission of fingerprints for  
12 any adult residing in the foster family home  
13 through the Department of Human Services  
14 pursuant to the provisions of Section 1-7-  
15 106 of Title 10A of the Oklahoma Statutes,  
16 except as otherwise provided by divisions  
17 (2) and (4) of this subparagraph,

18 (2) the child-placing agency may place a child  
19 pending completion of the national criminal  
20 history records search if the foster care  
21 provider and every adult residing in the foster  
22 family home has resided in this state for at  
23 least five (5) years immediately preceding such  
24 placement,

- 1 (3) a national criminal history records search based  
2 upon submission of fingerprints to the Oklahoma  
3 State Bureau of Investigation shall also be  
4 completed for any adult who subsequently moves  
5 into the foster family home,
- 6 (4) provided, however, the Director of Human Services  
7 or the Director of the Office of Juvenile  
8 Affairs, or a designee, may authorize an  
9 exception to the fingerprinting requirement for a  
10 person residing in the home who has a severe  
11 physical condition which precludes such person's  
12 being fingerprinted, and
- 13 (5) any child care facility contracting with any  
14 person for foster family home services shall  
15 request the Office of Juvenile Affairs to conduct  
16 a juvenile justice information system review,  
17 pursuant to the provisions of Sections 2-7-905  
18 and 2-7-308 of Title 10A of the Oklahoma  
19 Statutes, for any child over the age of thirteen  
20 (13) years residing in the foster family home,  
21 other than a foster child, or who subsequently  
22 moves into the foster family home. As a  
23 condition of contract, the child care facility  
24

1                   shall obtain the consent of the parent or legal  
2                   guardian of the child for such review.

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       2.    a.   (1) On and after September 1, 1998, except as  
12                otherwise provided in divisions (2) and (4) of  
13                this subparagraph, prior to contracting with a  
14                foster family home for placement of any child who  
15                is in the custody of the Department of Human  
16                Services or the Office of Juvenile Affairs, each  
17                Department shall complete a foster parent  
18                eligibility assessment, pursuant to the  
19                provisions of the Oklahoma Child Care Facilities  
20                Licensing Act, for such foster family applicant.  
21                In addition, except as otherwise provided by  
22                divisions (2) and (4) of this subparagraph, the  
23                Department shall complete a national criminal  
24                history records search based upon submission of

1 fingerprints for any adult residing in such  
2 foster family home.

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

10 (3) A national criminal history records search based  
11 upon submission of fingerprints conducted by the  
12 Oklahoma State Bureau of Investigation shall also  
13 be completed for any adult who subsequently moves  
14 into the foster family home.

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

21 b. The provisions of this paragraph shall not apply to  
22 foster care providers having a contract or contracting  
23 with a child-placing agency, the Department of Human  
24 Services or the Office of Juvenile Affairs prior to

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

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

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

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

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

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

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

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

21 F. 1. It shall be unlawful for individuals who are required to  
22 register pursuant to the Sex Offenders Registration Act to work with  
23 or provide services to children or to reside in a child care  
24 facility and for any employer who offers or provides services to



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

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

- 13 a. an emergency order,
- 14 b. license revocation or denial,
- 15 c. injunctive proceedings,
- 16 d. an administrative penalty not to exceed Ten Thousand  
17 Dollars (\$10,000.00), and
- 18 e. referral for criminal proceedings.

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

21 SECTION 2. This act shall become effective November 1, 2021.

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