

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1777

4 By: Lowe

5  
6  
7 AS INTRODUCED

8 An Act relating to children; amending 10 O.S. 2011,  
9 Section 404.1, as last amended by Section 1, Chapter  
10 307, O.S.L 2016 (10 O.S. Supp. 2016, Section 404.1),  
11 which relates to child care facilities; requiring the  
12 promulgation of rules allowing the employment of  
13 individuals convicted of certain offenses; and  
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 10 O.S. 2011, Section 404.1, as  
17 last amended by Section 1, Chapter 307, O.S.L. 2016 (10 O.S. Supp.  
18 2016, Section 404.1), is amended to read as follows:

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

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

23 a. an Oklahoma State Courts Network search conducted by  
24 the Department,

- b. a Child Care 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 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 and conducted by the Department of Human Services;

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 has passed from the time the request to the Department was made, the facility may initiate employment, notwithstanding the provisions of this paragraph,
- b. a Child Care Restricted Registry search shall be conducted by the facility with notification of the search submitted to the Department,
- c. a national criminal history records search pursuant to paragraph 10 of this subsection shall be submitted,

- 1           d. a criminal history records search conducted by an  
2 authorized source, when the individual has lived  
3 outside the United States within the last three (3)  
4 years, shall be submitted to the Department, and  
5           e. a search of the Department of Corrections' files  
6 maintained pursuant to the Sex Offenders Registration  
7 Act shall be conducted by the Department and received  
8 by the facility;

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 search conducted by an  
23 authorized source, when the individual has lived  
24

1 outside the United States within the last three (3)  
2 years shall be submitted to the Department, and

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

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

1 Act conducted by the Department and received by the  
2 facility;

3 5. Children who reside in the facility and turn eighteen (18)  
4 years of age excluding the exception in paragraph 7 of this  
5 subsection shall have:

6 a. an Oklahoma State Courts Network search conducted by  
7 the Department,

8 b. a Child Care Restricted Registry search conducted by  
9 the facility with notification of the search submitted  
10 to the Department,

11 c. a national criminal history records search conducted  
12 pursuant to paragraph 10 of this subsection, and

13 d. a search of the Department of Corrections' files  
14 pursuant to the Sex Offenders Registration Act  
15 conducted by the Department and received by the  
16 facility;

17 6. Prior to review of or access to fingerprint results, owners,  
18 responsible entities, directors, and other individuals who have  
19 review of or access to fingerprint results shall have a national  
20 criminal history records search pursuant to paragraph 10 of this  
21 subsection;

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

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

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

22           10. The Department shall require a national criminal history  
23 records search based upon submission of fingerprints that shall:  
24

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

16 11. The Director of the Department, or designee, shall  
17 promulgate rules that may authorize an exception to the  
18 fingerprinting requirements for individuals who have a severe  
19 physical condition which precludes such individuals from being  
20 fingerprinted; and

21 12. The Office of Juvenile Affairs shall require national  
22 criminal history records searches, as defined by Section 150.9 of  
23 Title 74 of the Oklahoma Statutes, which shall be provided by the  
24 Oklahoma State Bureau of Investigation for the purpose of obtaining

1 the national criminal history records search, including Rap Back  
2 notification of and through direct request by the Office of Juvenile  
3 Affairs on behalf of any:

4 a. operator or responsible entity making a request to  
5 establish or operate a secure detention center,  
6 municipal juvenile facility, community intervention  
7 center or secure facility licensed or certified by the  
8 Office of Juvenile Affairs,

9 b. employee or applicant of 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, or

13 c. persons allowed unsupervised access to children,  
14 including contract employees or volunteers, of a  
15 secure detention center, municipal juvenile facility,  
16 community intervention center or secure facility  
17 licensed or certified by the Office of Juvenile  
18 Affairs.

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

20 (1) any child-placing agency contracting with a  
21 person for foster family home services or in any  
22 manner for services for the care and supervision  
23 of children shall also, prior to executing a  
24 contract, complete:



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

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

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

20 (3) a national criminal history records search based  
21 upon submission of fingerprints to the Oklahoma  
22 State Bureau of Investigation shall also be  
23 completed for any adult who subsequently moves  
24 into the foster family home,

1 (4) provided, however, the Director of Human Services  
2 or the Director of the Office of Juvenile  
3 Affairs, or a designee, may authorize an  
4 exception to the fingerprinting requirement for a  
5 person residing in the home who has a severe  
6 physical condition which precludes such person's  
7 being fingerprinted, and

8 (5) any child care facility contracting with any  
9 person for foster family home services shall  
10 request the Office of Juvenile Affairs to conduct  
11 a juvenile justice information system review,  
12 pursuant to the provisions of Sections 2-7-905  
13 and 2-7-308 of Title 10A of the Oklahoma  
14 Statutes, for any child over the age of thirteen  
15 (13) years residing in the foster family home,  
16 other than a foster child, or who subsequently  
17 moves into the foster family home. As a  
18 condition of contract, the child care facility  
19 shall obtain the consent of the parent or legal  
20 guardian of the child for such review.

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

21          (2) The Department of Human Services and Office of  
22          Juvenile Affairs may place a child pending  
23          completion of the national criminal history  
24          records search if the foster care provider and

1 every adult residing in the foster family home  
2 has resided in this state for at least five (5)  
3 years immediately preceding such placement.

4 (3) A national criminal history records search based  
5 upon submission of fingerprints conducted by the  
6 Oklahoma State Bureau of Investigation shall also  
7 be completed for any adult who subsequently moves  
8 into the foster family home.

9 (4) The Director of Human Services or the Director of  
10 the Office of Juvenile Affairs or their designee  
11 may authorize an exception to the fingerprinting  
12 requirement for any person residing in the home  
13 who has a severe physical condition which  
14 precludes such person's being fingerprinted.

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

23 3. The Department of Human Services or the Office of Juvenile  
24 Affairs shall provide for a juvenile justice information system

1 review pursuant to Section 2-7-308 of Title 10A of the Oklahoma  
2 Statutes for any child over the age of thirteen (13) years residing  
3 in a foster family home, other than the foster child, or who  
4 subsequently moves into the foster family home.

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

13 ~~D. Except as otherwise provided by the Oklahoma Children's Code~~  
14 ~~and subsection F of this section, a conviction for a crime shall not~~  
15 ~~be an absolute bar to employment, but shall be considered in~~  
16 ~~relation to specific employment duties and responsibilities~~ The  
17 Department shall promulgate rules allowing for the employment of an  
18 individual convicted of a nonviolent offense as defined in Section  
19 571 of Title 57 of the Oklahoma Statutes; provided, the individual  
20 has completed the terms and conditions of any probationary term.

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

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

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

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

19           F. 1. It shall be unlawful for individuals who are required to  
20 register pursuant to the Sex Offenders Registration Act to work with  
21 or provide services to children or to reside in a child care  
22 facility and for any employer who offers or provides services to  
23 children to knowingly and willfully employ or contract with, or  
24 allow continued employment of or contracting with individuals who

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

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

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

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

19 SECTION 2. This act shall become effective November 1, 2017.

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