

An Act

ENROLLED HOUSE
BILL NO. 1797

By: Miller and Lawson of the
House

and

Garvin of the Senate

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 perpetrator with substantiated finding of 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.

SUBJECT: Child care facilities

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 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 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,
- 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;

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

- a. Oklahoma State Courts Network search results, conducted by the Department, shall be received by the facility,
- b. a Child Care Restricted Registry search shall be conducted by the facility with notification of the search submitted to the Department,
- c. national criminal history records search results pursuant to paragraph 10 of this subsection shall be received by the facility,

- d. a criminal history records 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;

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

- a. an Oklahoma State Courts Network search conducted by the Department and the facility shall be in receipt of the search results,
- b. a 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;

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

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

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

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

upon receipt of subsequent criminal history activity,
and

d. be paid by the individual or the facility;

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

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

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

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

- a. operator or responsible entity making a request to establish or operate a secure detention center, municipal juvenile facility, community intervention center or secure facility licensed or certified by the Office of Juvenile Affairs,
- b. employee or applicant of a secure detention center, municipal juvenile facility, community intervention center or secure facility licensed or certified by the Office of Juvenile Affairs, or
- c. persons allowed unsupervised access to children, including contract employees or volunteers, of a secure detention center, municipal juvenile facility, community intervention center or secure facility

licensed or certified by the Office of Juvenile Affairs.

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

- (1) any child-placing agency contracting with a person for foster family home services or in any manner for services for the care and supervision of children shall also, prior to executing a contract, complete:
 - (a) a foster parent eligibility assessment for the foster care provider except as otherwise provided by divisions (2) and (4) of this subparagraph, and
 - (b) a national criminal history records search based upon submission of fingerprints for any adult residing in the foster family home through the Department of Human Services pursuant to the provisions of Section 1-7-106 of Title 10A of the Oklahoma Statutes, except as otherwise provided by divisions (2) and (4) of this subparagraph,
- (2) the child-placing agency may place a child pending completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement,
- (3) a national criminal history records search based upon submission of fingerprints to the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the foster family home,
- (4) provided, however, the Director of Human Services or the Director of the Office of Juvenile Affairs, or a designee, may authorize an exception to the fingerprinting requirement for a person residing in the home who has a severe

physical condition which precludes such person's being fingerprinted, and

- (5) any child care facility contracting with any person for foster family home services shall request the Office of Juvenile Affairs to conduct a juvenile justice information system review, pursuant to the provisions of Sections 2-7-905 and 2-7-308 of Title 10A of the Oklahoma Statutes, for any child over the age of thirteen (13) years residing in the foster family home, other than a foster child, or who subsequently moves into the foster family home. As a condition of contract, the child care facility shall obtain the consent of the parent or legal guardian of the child for such review.
- b. The provisions of this paragraph shall not apply to foster care providers having a contract or contracting with a child-placing agency, the Department of Human Services or the Office of Juvenile Affairs prior to September 1, 1998. Such existing foster care providers shall comply with the provisions of this section, until otherwise provided by rules of the Department or by law.
2. a. (1) On and after September 1, 1998, except as otherwise provided in divisions (2) and (4) of this subparagraph, prior to contracting with a foster family home for placement of any child who is in the custody of the Department of Human Services or the Office of Juvenile Affairs, each Department shall complete a foster parent eligibility assessment, pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, for such foster family applicant. In addition, except as otherwise provided by divisions (2) and (4) of this subparagraph, the Department shall complete a national criminal history records search based upon submission of fingerprints for any adult residing in such foster family home.
 - (2) The Department of Human Services and Office of Juvenile Affairs may place a child pending

completion of the national criminal history records search if the foster care provider and every adult residing in the foster family home has resided in this state for at least five (5) years immediately preceding such placement.

- (3) A national criminal history records search based upon submission of fingerprints conducted by the Oklahoma State Bureau of Investigation shall also be completed for any adult who subsequently moves into the foster family home.
- (4) The Director of Human Services or the Director of the Office of Juvenile Affairs or their designee may authorize an exception to the fingerprinting requirement for any person residing in the home who has a severe physical condition which precludes such person's being fingerprinted.

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

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

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

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

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

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

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

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

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

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

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

- 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.

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

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

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

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

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

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

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

5. If the Department determines there has been a substantiated finding of heinous and shocking abuse by a person responsible for a child's health, safety or welfare, as those terms are defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, the Department shall notify the child care facility owner or operator and the child care resource and referral organization in writing immediately or not later than one (1) business day after the substantiated finding. Upon receiving notice of a substantiated finding, the facility owner or operator shall attempt to immediately notify, but not later than seventy-two (72) hours after receiving notice of the substantiated finding, parents or legal guardians of children attending the facility by certified mail.

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

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

F. The Department shall promulgate rules to establish and maintain a grievance process that shall include an anonymous complaint system for reporting and investigating complaints or

grievances about employees of the Department who retaliate against a child care facility or facility employee.

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

Passed the House of Representatives the 14th day of May, 2021.

Presiding Officer of the House
of Representatives

Passed the Senate the 24th day of May, 2021.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____