

1 STATE OF OKLAHOMA

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

3 SENATE BILL 723

By: Griffin

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5  
6 AS INTRODUCED

7 An Act relating to the Oklahoma Child Care Facilities  
8 Licensing Act; amending 10 O.S. 2011, Section 404.1,  
9 as last amended by Section 1, Chapter 307, O.S.L.  
10 2016 (10 O.S. Supp. 2016, Section 404.1), which  
11 relates to licensure; requiring records searches of  
12 certain persons prior to licensure, employment or  
13 certain access; requiring promulgation of certain  
14 rules relating to records searches; prohibiting  
15 ownership of, employment with or residence in a child  
16 care facility for certain actions; and providing an  
17 effective date.

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

19 SECTION 1. AMENDATORY 10 O.S. 2011, Section 404.1, as  
20 last amended by Section 1, Chapter 307, O.S.L. 2016 (10 O.S. Supp.  
21 2016, Section 404.1), is amended to read as follows:

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

23 1. Prior to the issuance of a permit or license, owners and  
24 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,

- 1           b. a Child Care Restricted Registry search conducted by  
2           the facility,
- 3           c. a national criminal history records search conducted  
4           pursuant to paragraph 10 of this subsection,
- 5           d. a criminal history records, sex offender registry and  
6           child abuse and neglect registry search conducted by  
7           an authorized source, when the individual has lived  
8           outside ~~the United States~~ this state within the last  
9           ~~three (3)~~ five (5) years, and
- 10          e. a search of the Department of Corrections' files  
11          maintained pursuant to the Sex Offenders Registration  
12          Act and conducted by the Department of Human Services,  
13          and
- 14          f. a search of any available child abuse and neglect  
15          registry within a state the individual has resided in  
16          within the last five (5) years;

17          2. Prior to the employment of an individual:

- 18           a. an Oklahoma State Courts Network search, conducted by  
19           the Department, shall be requested and received by the  
20           facility; provided however, if twenty-four (24) hours  
21           has passed from the time the request to the Department  
22           was made, the facility may initiate employment,  
23           notwithstanding the provisions of this paragraph,
- 24

- 1           b. a Child Care Restricted Registry search shall be  
2           conducted by the facility with notification of the  
3           search submitted to the Department,  
4           c. a national criminal history records search pursuant to  
5           paragraph 10 of this subsection shall be submitted,  
6           d. a criminal history records, sex offender registry and  
7           child abuse and neglect registry search conducted by  
8           an authorized source, when the individual has lived  
9           outside ~~the United States~~ this state within the last  
10          ~~three (3)~~ five (5) years, shall be submitted to the  
11          Department, and  
12          e. a search of the Department of Corrections' files  
13          maintained pursuant to the Sex Offenders Registration  
14          Act shall be conducted by the Department and received  
15          by the facility, and  
16          f. a search of any available child abuse and neglect  
17          registry within a state the individual has resided in  
18          within the last five (5) years;

19          3. Prior to allowing unsupervised access to children by  
20 employees or individuals, including contract employees and  
21 volunteers and excluding the exceptions in paragraph 8 of this  
22 subsection:  
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- 1 a. Oklahoma State Courts Network search results,  
2 conducted by the Department, shall be received by the  
3 facility,
- 4 b. a Child Care Restricted Registry search shall be  
5 conducted by the facility with notification of the  
6 search submitted to the Department,
- 7 c. national criminal history records search results  
8 pursuant to paragraph 10 of this subsection shall be  
9 received by the facility,
- 10 d. a criminal history records, sex offender registry and  
11 child abuse and neglect registry search conducted by  
12 an authorized source, when the individual has lived  
13 outside ~~the United States~~ this state within the last  
14 ~~three (3)~~ five (5) years shall be submitted to the  
15 Department, ~~and~~
- 16 e. a search of the Department of Corrections' files  
17 maintained pursuant to the Sex Offenders Registration  
18 Act shall be conducted by the Department and received  
19 by the facility, and
- 20 f. a search of any available child abuse and neglect  
21 registry within a state the individual has resided in  
22 within the last five (5) years;

23 4. Prior to the issuance of a permit or license and prior to  
24 the residence of adults who subsequently move into a facility,

1 adults living in the facility excluding the exception in paragraph 7  
2 of this subsection shall have:

3 a. an Oklahoma State Courts Network search conducted by  
4 the Department and the facility shall be in receipt of  
5 the search results,

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

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

11 d. a criminal history records, sex offender registry and  
12 child abuse and neglect registry search conducted by  
13 an authorized source, when the individual has lived  
14 outside ~~the United States~~ this state within the last  
15 ~~three (3)~~ five (5) years, and

16 e. a search of the Department of Corrections' files  
17 maintained pursuant to the Sex Offenders Registration  
18 Act conducted by the Department and received by the  
19 facility, and

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

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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 Child Care Restricted Registry search conducted by  
7           the facility with notification of the search submitted  
8           to the 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; ~~and~~

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

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

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

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

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