

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 CONFERENCE COMMITTEE  
4 SUBSTITUTE  
5 FOR ENGROSSED  
6 HOUSE BILL NO. 1797

By: Miller and Lawson of the  
House

and

Garvin of the Senate

7  
8  
9  
10 CONFERENCE COMMITTEE SUBSTITUTE

11 An Act relating to child care facilities; amending 10  
12 O.S. 2011, Section 404.1, as last amended by Section  
13 1, Chapter 109, O.S.L. 2017 (10 O.S. Supp. 2020,  
14 Section 404.1), which relates to criminal history  
15 searches; prohibiting employment of perpetrator with  
16 substantiated finding of heinous and shocking abuse;  
17 amending 10 O.S. 2011, Section 406, as last amended  
18 by Section 1, Chapter 368, O.S.L. 2019 (10 O.S. Supp.  
19 2020, Section 406), which relates to investigations  
20 of child care facilities; requiring notification when  
21 there is a substantiated finding of heinous and  
22 shocking abuse; prescribing method and timing for  
23 notification; and providing an effective date.

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

- 4 a. an Oklahoma State Courts Network search conducted by  
5 the Department,
- 6 b. a Restricted Registry search conducted by the  
7 facility,
- 8 c. a national criminal history records search conducted  
9 pursuant to paragraph 10 of this subsection,
- 10 d. a criminal history records and sex offender registry  
11 search conducted by an authorized source, when the  
12 individual has lived outside this state within the  
13 last five (5) years,
- 14 e. a search of the Department of Corrections' files  
15 maintained pursuant to the Sex Offenders Registration  
16 Act and conducted by the Department of Human Services,
- 17 f. a search of any available child abuse and neglect  
18 registry within a state the individual has resided in  
19 within the last five (5) years,
- 20 g. search of the nontechnical services worker abuse  
21 registry maintained by the State Department of Health  
22 pursuant to Section 1-1950.7 of Title 63 of the  
23 Oklahoma Statutes, and  
24

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       2. Prior to the employment of an individual:

6           a. an Oklahoma State Courts Network search, conducted by  
7           the Department, shall be requested and received by the  
8           facility; provided however, if twenty-four (24) hours  
9           has passed from the time the request to the Department  
10          was made, the facility may initiate employment,  
11          notwithstanding the provisions of this paragraph,

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

15          c. a national criminal history records search pursuant to  
16          paragraph 10 of this subsection shall be submitted,

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

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

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

18 a. Oklahoma State Courts Network search results,  
19 conducted by the Department, shall be received by the  
20 facility,

21 b. a Child Care Restricted Registry search shall be  
22 conducted by the facility with notification of the  
23 search submitted to the Department,  
24

- 1 c. national criminal history records search results  
2 pursuant to paragraph 10 of this subsection shall be  
3 received by the facility,
- 4 d. a criminal history records and sex offender registry  
5 search conducted by an authorized source, when the  
6 individual has lived outside this state within the  
7 last five (5) years shall be submitted to the  
8 Department,
- 9 e. a search of the Department of Corrections' files  
10 maintained pursuant to the Sex Offenders Registration  
11 Act shall be conducted by the Department and received  
12 by the facility,
- 13 f. a search of any available child abuse and neglect  
14 registry within a state the individual has resided in  
15 within the last five (5) years,
- 16 g. search of the nontechnical services worker abuse  
17 registry maintained by the State Department of Health  
18 pursuant to Section 1-1950.7 of Title 63 of the  
19 Oklahoma Statutes, and
- 20 h. a search of the community services worker registry  
21 maintained by the Department of Human Services  
22 pursuant to Section 1025.3 of Title 56 of the Oklahoma  
23 Statutes;  
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1 4. Prior to the issuance of a permit or license and prior to  
2 the residence of adults who subsequently move into a facility,  
3 adults living in the facility excluding the exception in paragraph 7  
4 of this subsection shall have:

- 5 a. an Oklahoma State Courts Network search conducted by  
6 the Department and the facility shall be in receipt of  
7 the search results,
- 8 b. a Restricted Registry search conducted by the facility  
9 with notification of the search submitted to the  
10 Department,
- 11 c. a national criminal history records search conducted  
12 pursuant to paragraph 10 of this subsection,
- 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,
- 17 e. a search of the Department of Corrections' files  
18 maintained pursuant to the Sex Offenders Registration  
19 Act conducted by the Department and received by the  
20 facility,
- 21 f. a search of any available child abuse and neglect  
22 registry within a state the individual has resided in  
23 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 5. Children who reside in the facility and turn eighteen (18)  
10 years of age excluding the exception in paragraph 7 of this  
11 subsection shall have:

12 a. an Oklahoma State Courts Network search conducted by  
13 the Department,

14 b. a Restricted Registry search conducted by the facility  
15 with notification of the search submitted to the  
16 Department,

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

19 d. a search of the Department of Corrections' files  
20 pursuant to the Sex Offenders Registration Act  
21 conducted by the Department and received by the  
22 facility;

23 6. Prior to review of or access to fingerprint results, owners,  
24 responsible entities, directors, and other individuals who have

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

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

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

22 9. A national criminal history records search pursuant to  
23 paragraph 10 of this subsection shall be required on or before  
24 November 1, 2016, for existing owners, responsible entities,



1 employees, individuals with unsupervised access to children, and  
2 adults living in the facility, as of November 1, 2013, unless  
3 paragraph 6 of this subsection applies;

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

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

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

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

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

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

19 a. operator or responsible entity making a request to  
20 establish or operate a secure detention center,  
21 municipal juvenile facility, community intervention  
22 center or secure facility licensed or certified by the  
23 Office of Juvenile Affairs,

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- 1           b.   employee or applicant of a secure detention center,  
2                   municipal juvenile facility, community intervention  
3                   center or secure facility licensed or certified by the  
4                   Office of Juvenile Affairs, or
- 5           c.   persons allowed unsupervised access to children,  
6                   including contract employees or volunteers, of a  
7                   secure detention center, municipal juvenile facility,  
8                   community intervention center or secure facility  
9                   licensed or certified by the Office of Juvenile  
10                  Affairs.

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

12                   (1)   any child-placing agency contracting with a  
13                   person for foster family home services or in any  
14                   manner for services for the care and supervision  
15                   of children shall also, prior to executing a  
16                   contract, complete:

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

21                           (b)   a national criminal history records search  
22                           based upon submission of fingerprints for  
23                           any adult residing in the foster family home  
24                           through the Department of Human Services

1                   pursuant to the provisions of Section 1-7-  
2                   106 of Title 10A of the Oklahoma Statutes,  
3                   except as otherwise provided by divisions  
4                   (2) and (4) of this subparagraph,

5           (2) the child-placing agency may place a child  
6           pending completion of the national criminal  
7           history records search if the foster care  
8           provider and every adult residing in the foster  
9           family home has resided in this state for at  
10          least five (5) years immediately preceding such  
11          placement,

12          (3) a national criminal history records search based  
13          upon submission of fingerprints to the Oklahoma  
14          State Bureau of Investigation shall also be  
15          completed for any adult who subsequently moves  
16          into the foster family home,

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

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

22 2. a. (1) On and after September 1, 1998, except as  
23 otherwise provided in divisions (2) and (4) of  
24 this subparagraph, prior to contracting with a

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

14 (2) The Department of Human Services and Office of  
15 Juvenile Affairs may place a child pending  
16 completion of the national criminal history  
17 records search if the foster care provider and  
18 every adult residing in the foster family home  
19 has resided in this state for at least five (5)  
20 years immediately preceding such placement.

21 (3) A national criminal history records search based  
22 upon submission of fingerprints conducted by the  
23 Oklahoma State Bureau of Investigation shall also  
24

1 be completed for any adult who subsequently moves  
2 into the foster family home.

3 (4) The Director of Human Services or the Director of  
4 the Office of Juvenile Affairs or their designee  
5 may authorize an exception to the fingerprinting  
6 requirement for any person residing in the home  
7 who has a severe physical condition which  
8 precludes such person's being fingerprinted.

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

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

23 c. The Department or the Board of Juvenile Affairs shall  
24 promulgate rules to identify circumstances when a criminal history

1 records search or foster parent eligibility assessment for an  
2 applicant or contractor, or any person over the age of thirteen (13)  
3 years residing in a private residence in which a child care facility  
4 is located, shall be expanded beyond the records search conducted by  
5 the Oklahoma State Bureau of Investigation or as otherwise provided  
6 pursuant to this section.

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

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

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

21 3. Requirements for confidentiality and recordkeeping with  
22 regard to the information shall be the same for the child care  
23 facility receiving the information in response to a request as those  
24



1 provided for in paragraph 1 of this subsection for the child care  
2 facility releasing such information.

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

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

23 2. It shall be unlawful for an individual who is the  
24 perpetrator of a substantiated finding by the Department of heinous

1 and shocking abuse by a person responsible for a child's health,  
2 safety, or welfare, as those terms are defined in Section 1-1-105 of  
3 Title 10A of the Oklahoma Statutes, to work with or provide services  
4 to children or to reside in a child care facility and for any  
5 employer who offers or provides services to children to knowingly  
6 and willfully employ or contract with, or allow continued employment  
7 of or contracting with such individual.

8 3. 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.~~ 4. In addition to the penalties specified by this section,  
18 the violator may be liable for civil damages.

19 SECTION 2. AMENDATORY 10 O.S. 2011, Section 406, as last  
20 amended by Section 1, Chapter 368, O.S.L. 2019 (10 O.S. Supp. 2020,  
21 Section 406), is amended to read as follows:

22 Section 406. A. 1. Except as provided in paragraph 2 of this  
23 subsection, the Department of Human Services shall have authority at  
24 any reasonable time to investigate and examine the conditions of any

1 child care facility in which a licensee or applicant hereunder  
2 receives and maintains children, and shall have authority at any  
3 time to require the facility to provide information pertaining to  
4 children in its care.

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

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

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

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

1 the Oklahoma Child Care Facilities Licensing Act or of any standard  
2 or rule promulgated pursuant thereto, the Department shall:

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

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

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

20 4. If the facility refuses to correct a violation or fails to  
21 complete the plan of correction, the Department may issue an  
22 emergency order, revoke the license, or deny the application for a  
23 license. Nothing in this section or Section 407 of this title shall  
24 be construed as preventing the Department from denying an

1 application, revoking a license, or issuing an emergency order for a  
2 single violation of this act, or the rules of the Department as  
3 provided in Section 404 of this title.

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

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

23 E. Information obtained by the Department or Oklahoma Child  
24 Care Services concerning a report of a violation of a licensing

1 requirement, or from any licensee regarding children or their  
2 parents or other relatives shall be deemed confidential and  
3 privileged communications, shall be properly safeguarded, and shall  
4 not be accessible to anyone except as herein provided, unless upon  
5 order of a court of competent jurisdiction. Provided, however, this  
6 provision shall not prohibit the Department from providing a summary  
7 of allegations and findings of an investigation involving a child  
8 care facility that does not disclose identities but that permits  
9 parents to evaluate the facility.

10 F. The Department shall promulgate rules to establish and  
11 maintain a grievance process that shall include an anonymous  
12 complaint system for reporting and investigating complaints or  
13 grievances about employees of the Department who retaliate against a  
14 child care facility or facility employee.

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

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17 58-1-8229 EK 05/06/21

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