

## **BILL ANALYSIS**

C.S.H.B. 4094  
By: Klick  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested stakeholders contend that revisions regarding the access to criminal history record information by the Department of Family and Protective Services and regarding required background and criminal history checks for purposes of regulating certain facilities, homes, and agencies that provide child-care services are necessary for continued access to FBI criminal history record information and for compliance with federal law. C.S.H.B. 4094 provides those necessary revisions.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 4094 amends the Government Code to remove, for purposes of the requirement that the Department of Family and Protective Services (DFPS) obtain from the Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person who is 14 years of age or older who will be regularly or frequently working or staying in a facility or family home while children are being provided care, other than a child in the care of the home or facility, the specification that such a person is working or staying in such a facility or home while children are being provided care and the specification that the facilities to which that requirement applies are child-care facilities. The bill removes the entitlement of DFPS to obtain from DPS criminal history record information maintained by DPS that relates to a person with respect to whom DFPS determines obtaining a criminal history record is necessary to ensure the safety or welfare of a child, elderly person, or person with a disability and instead specifies certain persons, employees and applicants for employment, volunteers and applicant volunteers, children, and relatives about whom DFPS is entitled to obtain from DPS criminal history record information maintained by DPS.

C.S.H.B. 4094 specifies that a child-placing agency to which DFPS may release criminal history record information is a child-placing agency that is seeking to verify or approve a foster or adoptive home under procedures authorized by specified provisions of the federal Social Security Act. The bill removes the specifications that DFPS is not prohibited from releasing criminal history record information to certain facilities, family homes, persons, or business entities. The bill authorizes the Health and Human Services Commission (HHSC), with respect to an applicant who is selected for employment for a function or in a division of DFPS that is transferred to HHSC under the health and human services system consolidation, to obtain from

DPS criminal history record information maintained by DPS that relates to the applicant.

C.S.H.B. 4094 amends the Human Resources Code to include each person who provides care or supervision to children in the care of a facility, agency, or home under a contract with the facility, agency, or home among the individuals whose names the director, owner, or operator of a facility or family home is required to submit to DFPS. The bill removes the specifications that the names the director, owner, or operator is required to submit to DFPS are submitted for use in conducting background and criminal history checks and are submitted when applying to operate a child-care facility or child-placing agency or when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval. The bill instead requires such named persons to have background checks. The bill removes the requirement for, and, effective January 1, 2018, repeals a statutory provision that requires, the director, owner, or operator of specified facilities, homes, and programs that provide child-care services to submit a complete set of fingerprints of certain named persons, subject to certain exceptions and in accordance with rules adopted by the executive commissioner of HHSC. The bill instead requires a person, in accordance with rules adopted by the executive commissioner, to submit a complete set of fingerprints if the person is required to have a background check, the person resided in another state during the five years preceding the date the person's name was required to be submitted to DFPS, or the director, owner, or operator has reason to suspect that the person has a criminal history in another state.

C.S.H.B. 4094 removes the authorization for the rules adopted by the executive commissioner regarding such a submission of fingerprints to allow DFPS to waive that required submission if the date on which the current submission of fingerprints is required occurs before the second anniversary of a previous name-based criminal history check of the person. The bill authorizes such rules to allow DFPS to waive that required submission if DFPS has an active subscription to the FBI's national rap back service for the person for whom submission is required. The bill includes any other registry, repository, or database required by federal law among the resources DFPS is required to use to conduct background checks. The bill requires a person who is required to have a background check but who is not required to submit fingerprints for a FBI criminal history check to have a name-based check instead of a fingerprint check and requires the director, owner, or operator of the child-care facility, child-placing agency, or family home to submit the name of that person each 24 months after last submitting the person's name to DFPS for use in conducting a background check. The bill removes as a condition on the authorizations for a person to be employed at a facility or family home and to provide direct care or have direct access to a child in the facility or family home before the person's criminal history check is completed the condition that the person's fingerprints be submitted as soon as possible, but not later than the 30th day after the earliest of specified events, and instead adds as a condition on those authorizations that the person does not have unsupervised access to any child in care. The bill's provisions amending the Human Resources Code take effect January 1, 2018.

C.S.H.B. 4094 repeals the following provisions:

- Section 411.114(a)(1)(E), Government Code
- effective January 1, 2018, Section 42.056(a-4), Human Resources Code

### **EFFECTIVE DATE**

Except as otherwise provided, September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4094 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 411.114(a)(1), Government Code, is amended by adding Paragraph (A-1) to read as follows:

(A-1) "Department of Family and Protective Services" includes,

as authorized by Section 40.002, Human Resources Code,  
the Health and Human Services Commission with respect to a function transferred to the commission under Subchapter A-1, Chapter 531,  
and any person or entity acting as an authorized agent of the department.

SECTION 2. Sections 411.114(a)(2), (3), and (7), Government Code, are amended to read as follows:

(2) The Department of Family and Protective Services shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code;

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, or family home licensed, registered, certified, or listed under Chapter 42, Human Resources Code;

(C) a person 14 years of age or older who will be regularly or frequently working or staying in a child-care facility or family home ~~[while children are being provided care]~~, other than a child in the care of the home or facility;

(D) except as provided by Subsection (d), an applicant selected for a position with the Department of Family and Protective Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 411.114(a)(1), Government Code, is amended by amending Paragraph (A) and adding Paragraph (A-1) to read as follows:

(A) "Child," "child-care facility," "child-placing agency," "facility," and "family home" have the meanings assigned by Section 42.002, Human Resources Code.

(A-1) "Department of Family and Protective Services" includes:

(i) the Department of Family and Protective Services as authorized by Section 40.002, Human Resources Code;

(ii) the Health and Human Services Commission with respect to a function transferred to the commission under Subchapter A-1, Chapter 531; and

(iii) any person or entity acting as an authorized agent of the Department of Family and Protective Services.

SECTION 2. Sections 411.114(a)(2), (3), and (7), Government Code, are amended to read as follows:

(2) The Department of Family and Protective Services shall obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a license, registration, certification, or listing under Chapter 42, Human Resources Code;

(B) an owner, operator, or employee of or an applicant for employment by a child-care facility, child-placing agency, or family home licensed, registered, certified, or listed under Chapter 42, Human Resources Code;

(C) a person 14 years of age or older who will be regularly or frequently working or staying in a ~~[child-care]~~ facility or family home ~~[while children are being provided care]~~, other than a child in the care of the home or facility;

(D) except as provided by Subsection (d), an applicant selected for a position with the Department of Family and Protective Services, the duties of which include direct delivery of protective services to children, elderly persons, or persons with a disability;

(E) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a business entity or person that contracts with the Department of

Family and Protective Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) a registered volunteer with the Department of Family and Protective Services;

(G) a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Family and Protective Services and other persons living in the residence in which the child will reside;

(H) a Department of Family and Protective Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) an alleged perpetrator in a report the Department of Family and Protective Services receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct;

(J) a person providing child care for a child who is in the care of the Department of Family and Protective Services and who is or will be receiving adoptive, foster, or in-home care;

(K) through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to a child, an elderly person, or a person with a disability; or

(L) an applicant for a child-care administrator or child-placing agency administrator license under Chapter 43, Human Resources Code.

(3) In addition to the criminal history record information the Department of Family and Protective Services is required to obtain under Subdivision (2), the [The]

Family and Protective Services to provide direct delivery of protective services to children, elderly persons, or persons with a disability, if the person's duties or responsibilities include direct contact with children, elderly persons, or persons with a disability;

(F) a registered volunteer with the Department of Family and Protective Services;

(G) a person providing or applying to provide in-home, adoptive, or foster care for children in the care of the Department of Family and Protective Services and other persons living in the residence in which the child will reside;

(H) a Department of Family and Protective Services employee who is engaged in the direct delivery of protective services to children, elderly persons, or persons with a disability;

(I) an alleged perpetrator in a report the Department of Family and Protective Services receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or a person with a disability, provided that:

(i) the report alleges the person has engaged in conduct that meets the applicable definition of abuse, neglect, or exploitation under Chapter 261, Family Code, or Chapter 48, Human Resources Code; and

(ii) the person is not also the victim of the alleged conduct;

(J) a person providing child care for a child who is in the care of the Department of Family and Protective Services and who is or will be receiving adoptive, foster, or in-home care;

(K) through a contract with a nonprofit management center, an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with a nonprofit, tax-exempt organization that provides any service that involves the care of or access to a child, an elderly person, or a person with a disability; or

(L) an applicant for a child-care administrator or child-placing agency administrator license under Chapter 43, Human Resources Code.

(3) In addition to the criminal history record information the Department of Family and Protective Services is required to obtain under Subdivision (2), the [The]

Department of Family and Protective Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a position with the Department of Family and Protective Services regardless of the duties of the position, including a position described by Subdivision (2)(D);

(B) a Department of Family and Protective Services employee regardless of the duties of the employee's position, including an employee described by Subdivision (2)(H);

(C) a volunteer or applicant volunteer with the Department of Family and Protective Services regardless of the duties to be performed, including a registered volunteer;

(D) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with the Department of Family and Protective Services and has access to confidential information in the department's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information;

(E) a person living in the residence in which the alleged victim of the report resides, including an alleged perpetrator in a report described by Subdivision (2)(I);

(F) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(G) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(H) a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, or any other person who resides in, is present in, or has unsupervised access to a child in the care of a child-care facility or family home;

(I) a relative of a child in the care of the Department of Family and Protective Services, to the extent necessary to comply with Section 162.007, Family Code;

(J) a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

Department of Family and Protective Services is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(A) an applicant for a position with the Department of Family and Protective Services regardless of the duties of the position, including a position described by Subdivision (2)(D);

(B) a Department of Family and Protective Services employee regardless of the duties of the employee's position, including an employee described by Subdivision (2)(H);

(C) a volunteer or applicant volunteer with the Department of Family and Protective Services regardless of the duties to be performed, including a registered volunteer;

(D) an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with the Department of Family and Protective Services and has access to confidential information in the department's records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information;

(E) a person living in the residence in which the alleged victim of the report resides, including an alleged perpetrator in a report described by Subdivision (2)(I);

(F) a person providing, at the request of the child's parent, in-home care for a child who is the subject of a report alleging the child has been abused or neglected;

(G) a person providing, at the request of the child's parent, in-home care for a child only if the person gives written consent to the release and disclosure of the information;

(H) a child who is related to the caretaker, as determined under Section 42.002, Human Resources Code, or any other person who resides in, is present in, or has unsupervised access to a child in the care of a facility or family home;

(I) a relative of a child in the care of the Department of Family and Protective Services, to the extent necessary to comply with Section 162.007, Family Code;

(J) a person providing or applying to provide in-home, adoptive, or foster care for children to the extent necessary to comply with Subchapter B, Chapter 162, Family Code;

(K) a person who volunteers to supervise visitation under Subchapter B, Chapter 263, Family Code;

(L) an employee of or volunteer at, or an applicant for employment with or to be a volunteer at, an entity that provides supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services;

(M) a person 14 years of age or older who will be regularly or frequently working or staying in a host home that is providing supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services;

(N) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers Big Sisters of America;

(O) a volunteer or applicant volunteer with an organization that provides court-appointed volunteer advocates for abused or neglected children;

(P) an employee, volunteer, or applicant volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center; or

(Q) any other person with respect to whom the Department of Family and Protective Services determines obtaining a criminal history record is necessary to ensure the safety or welfare of a child, elderly person, or person with a disability, subject to approval by the department and, as applicable, the Federal Bureau of Investigation.

(7) The Department of Family and Protective Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a ~~[child care facility,]~~ child-placing agency~~[-, or family home]~~ listed in Subdivision (2) that is seeking to verify or approve a foster or adoptive home under procedures authorized by Section 471(a)(20)(A), Social Security Act (42 U.S.C. 671(a)(20)(A)) ~~[employs or is considering employing the person who is the subject of the criminal history record information];~~

(K) a person who volunteers to supervise visitation under Subchapter B, Chapter 263, Family Code;

(L) an employee of or volunteer at, or an applicant for employment with or to be a volunteer at, an entity that provides supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services;

(M) a person 14 years of age or older who will be regularly or frequently working or staying in a host home that is providing supervised independent living services to a young adult receiving extended foster care services from the Department of Family and Protective Services;

(N) a volunteer or applicant volunteer with a local affiliate in this state of Big Brothers Big Sisters of America;

(O) a volunteer or applicant volunteer with an organization that provides court-appointed volunteer advocates for abused or neglected children; or

(P) an employee, volunteer, or applicant volunteer of a children's advocacy center under Subchapter E, Chapter 264, Family Code, including a member of the governing board of a center ~~[with respect to whom the Department of Family and Protective Services determines obtaining a criminal history record is necessary to ensure the safety or welfare of a child, elderly person, or person with a disability].~~

(7) The Department of Family and Protective Services is not prohibited from releasing criminal history record information obtained under this subsection to:

(A) the person who is the subject of the criminal history record information;

(B) a ~~[child care facility,]~~ child-placing agency~~[-, or family home]~~ listed in Subdivision (2) that is seeking to verify or approve a foster or adoptive home under procedures authorized by Section 471(a)(20)(A), Social Security Act (42 U.S.C. Section 671(a)(20)(A)) ~~[employs or is considering employing the person who is the subject of the criminal history record information];~~

~~(C) [a person or business entity described by Subdivision (2)(E) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information;~~

~~[(D) a person or business entity who uses or intends to use the volunteer services of or who employs or is considering employing the person who is the subject of the criminal history record if the release of the record is related to the purpose for which the record was obtained under Subdivision (3);~~

~~[(E)] an adult who resides with an alleged victim of abuse, neglect, or exploitation of a child, elderly person, or person with a disability and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation if:~~

~~(i) the alleged perpetrator is the subject of the criminal history record information; and  
(ii) the Department of Family and Protective Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the alleged victim or the adult; or~~

~~(D) [(F)] an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation and who resides with the alleged perpetrator of that abuse, neglect, or exploitation if:~~

~~(i) the alleged perpetrator is the subject of the criminal history record information; and  
(ii) the Department of Family and Protective Services determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person.~~

SECTION 3. Section 411.114, Government Code, is amended.

SECTION 4. Section 42.056, Human Resources Code, is amended by amending Subsections (a), (a-2), (a-5), (b), (b-1), and (g) and adding Subsections (a-3) and (b-2) to read as follows:

(a) The ~~[In accordance with rules adopted by the executive commissioner, the]~~ director, owner, or operator of a ~~[child-care] facility[, child-placing agency,]~~ or family home shall~~[, when applying to operate a child-care facility or child-placing agency or~~

~~(C) [a person or business entity described by Subdivision (2)(E) who uses or intends to use the services of the volunteer or employs or is considering employing the person who is the subject of the criminal history record information;~~

~~[(D) a person or business entity who uses or intends to use the volunteer services of or who employs or is considering employing the person who is the subject of the criminal history record if the release of the record is related to the purpose for which the record was obtained under Subdivision (3);~~

~~[(E)] an adult who resides with an alleged victim of abuse, neglect, or exploitation of a child, elderly person, or person with a disability and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation if:~~

~~(i) the alleged perpetrator is the subject of the criminal history record information; and  
(ii) the Department of Family and Protective Services determines that the release of information to the adult is necessary to ensure the safety or welfare of the alleged victim or the adult; or~~

~~(D) [(F)] an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation and who resides with the alleged perpetrator of that abuse, neglect, or exploitation if:~~

~~(i) the alleged perpetrator is the subject of the criminal history record information; and  
(ii) the Department of Family and Protective Services determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person.~~

SECTION 3. Same as introduced version.

SECTION 4. **Effective January 1, 2018,** Section 42.056, Human Resources Code, is amended by amending Subsections (a), (a-2), (a-5), (b), (b-1), and (g) and adding Subsections (a-3) and (b-2) to read as follows:

(a) The ~~[In accordance with rules adopted by the executive commissioner, the]~~ director, owner, or operator of a ~~[child-care] facility[, child-placing agency,]~~ or family home shall~~[, when applying to operate a child-care facility or child-placing agency or~~

~~when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval,]~~ submit to the department the names of the following individuals, who must have ~~[for use in conducting]~~ background ~~[and criminal history]~~ checks as described by this section and in accordance with rules adopted by the executive commissioner ~~[the name of]:~~

(1) the director, owner, and operator of the facility, agency, or home;

(2) each person employed at the facility, agency, or home;

(3) each prospective employee of the facility, agency, or home;

(4) each person who provides care or supervision to children in the care of the facility, agency, or home under a contract with the facility, agency, or home;

(5) each current or prospective foster parent providing foster care through a child-placing agency;

~~(6) [(5)]~~ each prospective adoptive parent seeking to adopt through a child-placing agency;

~~(7) [(6)]~~ each person at least 14 years of age, other than a client in care, who:

(A) is counted in child-to-caregiver ratios in accordance with the minimum standards of the department;

(B) will reside in a prospective adoptive home if the adoption is through a child-placing agency;

(C) has unsupervised access to children in care at the facility or family home; or

(D) resides in the facility or family home; or

~~(8) [(7)]~~ each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care.

(a-2) In accordance with rules adopted by the executive commissioner, a person ~~[the director, owner, or operator of a residential child care facility, listed or registered family home, group day care home, day care center, before school or after school program, or school age program]~~ shall submit a complete set of fingerprints if:

(1) the ~~[of each]~~ person ~~[whose name]~~ is required to have a background check under Subsections (a)(1)-(7);

~~when listing or registering a family home and at least once during each 24 months after receiving a license, listing, registration, or certification of approval,]~~ submit to the department the names of the following individuals, who must have ~~[for use in conducting]~~ background ~~[and criminal history]~~ checks as described by this section and in accordance with rules adopted by the executive commissioner ~~[the name of]:~~

(1) the director, owner, and operator of the facility, agency, or home;

(2) each person employed at the facility, agency, or home;

(3) each prospective employee of the facility, agency, or home;

(4) each person who provides care or supervision to children in the care of the facility, agency, or home under a contract with the facility, agency, or home;

(5) each current or prospective foster parent providing foster care through a child-placing agency;

~~(6) [(5)]~~ each prospective adoptive parent seeking to adopt through a child-placing agency;

~~(7) [(6)]~~ each person at least 14 years of age, other than a client in care, who:

(A) is counted in child-to-caregiver ratios in accordance with the minimum standards of the department;

(B) will reside in a prospective adoptive home if the adoption is through a child-placing agency;

(C) has unsupervised access to children in care at the facility or family home; or

(D) resides in the facility or family home; or

~~(8) [(7)]~~ each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at a facility, family home, or prospective adoptive home, while children are being provided care.

(a-2) In accordance with rules adopted by the executive commissioner, a person ~~[the director, owner, or operator of a residential child care facility, listed or registered family home, group day care home, day care center, before school or after school program, or school age program]~~ shall submit a complete set of fingerprints if:

(1) the ~~[of each]~~ person ~~[whose name]~~ is required to have a background check under Subsections (a)(1)-(7);



(2) the person resided in another state during [be submitted by] the five years preceding the date [director, owner, or operator under Subsection (a), unless the person is only required to have] the person's name was required to be submitted under [based on criteria specified by] Subsection (a); or

(3) the director, owner, or operator has reason to suspect that the person has a criminal history in another state [(a)(7)].

(a-3) Subsection (a-2)(1) [This subsection] does not apply to a family home that is subject to regulation by the department under Section 42.0523.

(a-5) The rules adopted by the executive commissioner under Subsection [Subsections] (a-2) [and (a-4)]:

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow the department to waive the submission of fingerprints required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history record check on file with the department; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the department through the Department of Public Safety; and

(B) the department has an active subscription to the Federal Bureau of Investigation's national rap back service for the person for whom the [date on which the current] submission [of fingerprints] is required [occurs before the second anniversary of a previous name-based criminal history check of the person].

(b) The department shall conduct background [and criminal history] checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the

(2) the person resided in another state during [be submitted by] the five years preceding the date [director, owner, or operator under Subsection (a), unless the person is only required to have] the person's name was required to be submitted under [based on criteria specified by] Subsection (a); or

(3) the director, owner, or operator has reason to suspect that the person has a criminal history in another state [(a)(7)].

(a-3) Subsection (a-2)(1) [This subsection] does not apply to a family home that is subject to regulation by the department under Section 42.0523.

(a-5) The rules adopted by the executive commissioner under Subsection [Subsections] (a-2) [and (a-4)]:

(1) must require that the fingerprints be submitted in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for conducting a criminal history check;

(2) may require that the fingerprints be submitted electronically through an applicant fingerprinting service center; and

(3) may allow the department to waive the submission of fingerprints required by this section if:

(A) the person for whom the submission is required has:

(i) a fingerprint-based criminal history record check on file with the department; or

(ii) a fingerprint-based criminal history clearinghouse record, as provided by Section 411.0845, Government Code, that is accessible to the department through the Department of Public Safety; and

(B) the department has an active subscription to the Federal Bureau of Investigation's national rap back service for the person for whom the [date on which the current] submission [of fingerprints] is required [occurs before the second anniversary of a previous name-based criminal history check of the person].

(b) The department shall conduct background [and criminal history] checks using:

(1) the information provided under Subsection (a);

(2) the information made available by the Department of Public Safety under Section 411.114, Government Code, or by the

Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; ~~and~~

(3) the department's records of reported abuse and neglect; and

(4) any other registry, repository, or database required by federal law.

~~(b-1) For [In addition to any other background or criminal history check conducted under Subsection (b), for]~~ each person whose fingerprints are submitted under Subsection (a-2) ~~[or (a-4)]~~, the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under Section 411.087, Government Code.

(b-2) For each person required to have a background check under Subsection (a), but who is not required to submit fingerprints for a Federal Bureau of Investigations criminal history check under Subsection (a-2):

(1) the person shall have a name-based check instead of a fingerprint check; and

(2) the director, owner, or operator of the child-care facility, child-placing agency, or family home shall submit the name of the person each 24 months after last submitting the person's name to the department for use in conducting a background check.

(g) Except as otherwise provided by this subsection, a person whose name is submitted under Subsection (a) may not provide direct care or have direct access to a child in a facility or family home before the person's background check is ~~[and criminal history checks under Subsections (b) and (b-1) are]~~ completed. A person may be employed at a facility or family home and may provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if:

(1) the facility or family home is

Federal Bureau of Investigation or other criminal justice agency under Section 411.087, Government Code; ~~and~~

(3) the department's records of reported abuse and neglect; and

(4) any other registry, repository, or database required by federal law.

~~(b-1) For [In addition to any other background or criminal history check conducted under Subsection (b), for]~~ each person whose fingerprints are submitted under Subsection (a-2) ~~[or (a-4)]~~, the department shall conduct a state and Federal Bureau of Investigation criminal history check by:

(1) submitting the person's fingerprints, or causing the fingerprints to be submitted electronically, to the Department of Public Safety for the purpose of conducting a state and federal criminal history check; and

(2) using the resulting information made available by that department under Section 411.114, Government Code, and by the Federal Bureau of Investigation and any other criminal justice agency under Section 411.087, Government Code.

(b-2) For each person required to have a background check under Subsection (a), but who is not required to submit fingerprints for a Federal Bureau of Investigations criminal history check under Subsection (a-2):

(1) the person shall have a name-based check instead of a fingerprint check; and

(2) the director, owner, or operator of the child-care facility, child-placing agency, or family home shall submit the name of the person each 24 months after last submitting the person's name to the department for use in conducting a background check.

(g) Except as otherwise provided by this subsection, a person whose name is submitted under Subsection (a) may not provide direct care or have direct access to a child in a facility or family home before the person's background check is ~~[and criminal history checks under Subsections (b) and (b-1) are]~~ completed. A person may be employed at a facility or family home and may provide direct care or have direct access to a child in the facility or family home before the person's criminal history check under Subsection (b-1) is completed if:

(1) the facility or family home is

experiencing a staff shortage;  
(2) the Federal Bureau of Investigations fingerprint [state criminal history] check and the background check using the department's records of reported abuse and neglect have been completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and

(3) the person does not have unsupervised access to any child in care [person's fingerprints are submitted as soon as possible, but not later than the 30th day after the earliest of the date on which the person first:

~~[(A) provides direct care to a child;~~  
~~[(B) has direct access to a child; or~~  
~~[(C) is hired].~~

SECTION 5. The following laws are repealed:

- (1) Section 411.114(a)(1)(E), Government Code; and
- (2) Section 42.056(a-4), Human Resources Code.

SECTION 6. This Act takes effect September 1, 2017.

experiencing a staff shortage;  
(2) the Federal Bureau of Investigations fingerprint [state criminal history] check and the background check using the department's records of reported abuse and neglect have been completed under Subsection (b), and the resulting information does not preclude the person from being present at the facility or family home; and

(3) the person does not have unsupervised access to any child in care [person's fingerprints are submitted as soon as possible, but not later than the 30th day after the earliest of the date on which the person first:

~~[(A) provides direct care to a child;~~  
~~[(B) has direct access to a child; or~~  
~~[(C) is hired].~~

SECTION 5. (a) Section 411.114(a)(1)(E), Government Code, is repealed.

(b) Effective January 1, 2018, Section 42.056(a-4), Human Resources Code, is repealed.

SECTION 6. Except as otherwise provided by this Act, this Act takes effect September 1, 2017.