

By: Klick

H.B. No. 4094

A BILL TO BE ENTITLED

AN ACT

relating to the access of criminal history record information by the Department of Family and Protective Services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

1 information maintained by the department that relates to a person  
2 who is:

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

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

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

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

18 (E) an employee of, an applicant for employment  
19 with, or a volunteer or an applicant volunteer with a business  
20 entity or person that contracts with the Department of Family and  
21 Protective Services to provide direct delivery of protective  
22 services to children, elderly persons, or persons with a  
23 disability, if the person's duties or responsibilities include  
24 direct contact with children, elderly persons, or persons with a  
25 disability;

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

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

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

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

13 (i) the report alleges the person has  
14 engaged in conduct that meets the applicable definition of abuse,  
15 neglect, or exploitation under Chapter 261, Family Code, or Chapter  
16 48, Human Resources Code; and

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

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

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

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

4 (3) In addition to the criminal history record  
5 information the Department of Family and Protective Services is  
6 required to obtain under Subdivision (2), the [The] Department of  
7 Family and Protective Services is entitled to obtain from the  
8 department criminal history record information maintained by the  
9 department that relates to a person who is:

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

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

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

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

27 (E) a person living in the residence in which the

1 alleged victim of the report resides, including an alleged  
2 perpetrator in a report described by Subdivision (2)(I);

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

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

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

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

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

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

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

26 (M) a person 14 years of age or older who will be  
27 regularly or frequently working or staying in a host home that is

1 providing supervised independent living services to a young adult  
2 receiving extended foster care services from the Department of  
3 Family and Protective Services;

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

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

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

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

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

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

1 information];

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

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

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

15 (i) the alleged perpetrator is the subject  
16 of the criminal history record information; and

17 (ii) the Department of Family and  
18 Protective Services determines that the release of information to  
19 the adult is necessary to ensure the safety or welfare of the  
20 alleged victim or the adult; or

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

25 (i) the alleged perpetrator is the subject  
26 of the criminal history record information; and

27 (ii) the Department of Family and

1 Protective Services determines that the release of information to  
2 the elderly or disabled person or adult is necessary to ensure the  
3 safety or welfare of the elderly or disabled person.

4 SECTION 3. Section 411.114, Government Code, is amended by  
5 adding Subsection (d) to read as follows:

6 (d) With respect to an applicant who is selected for  
7 employment for a function or in a division of the Department of  
8 Family and Protective Services that is transferred to the Health  
9 and Human Services Commission under Subchapter A-1, Chapter 531,  
10 the commission may obtain from the department criminal history  
11 record information maintained by the department that relates to the  
12 applicant.

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

17 (a) The [~~In accordance with rules adopted by the executive~~  
18 ~~commissioner, the~~] director, owner, or operator of a [~~child-care~~  
19 ~~facility[, child-placing agency,]~~ or family home shall[~~, when~~  
20 ~~applying to operate a child-care facility or child-placing agency~~  
21 ~~or when listing or registering a family home and at least once~~  
22 ~~during each 24 months after receiving a license, listing,~~  
23 ~~registration, or certification of approval,]~~ submit to the  
24 department the names of the following individuals, who must have  
25 [for use in conducting] background [and criminal history] checks as  
26 described by this section and in accordance with rules adopted by  
27 the executive commissioner [the name of]:



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

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

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

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

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

12           (6) [~~(5)~~] each prospective adoptive parent seeking to  
13 adopt through a child-placing agency;

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

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

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

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

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

23           (8) [~~(7)~~] each person 14 years of age or older, other  
24 than a client in care, who will regularly or frequently be staying  
25 or working at a facility, family home, or prospective adoptive  
26 home, while children are being provided care.

27           (a-2) In accordance with rules adopted by the executive

1 commissioner, a person [~~the director, owner, or operator of a~~  
2 ~~residential child-care facility, listed or registered family home,~~  
3 ~~group day-care home, day-care center, before-school or~~  
4 ~~after-school program, or school-age program~~] shall submit a  
5 complete set of fingerprints if:

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

8 (2) the person resided in another state during [be  
9 ~~submitted by] the five years preceding the date [director, owner,~~  
10 ~~or operator under Subsection (a), unless the person is only~~  
11 ~~required to have] the person's name was required to be submitted~~

12 under [based on criteria specified by] Subsection (a); or  
13 (3) the director, owner, or operator has reason to  
14 suspect that the person has a criminal history in another state  
15 [~~(a)(7)~~].

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

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

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

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

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

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

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

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

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

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

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

19 (2) the information made available by the Department  
20 of Public Safety under Section 411.114, Government Code, or by the  
21 Federal Bureau of Investigation or other criminal justice agency  
22 under Section 411.087, Government Code; [~~and~~]

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

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

27 (b-1) For [~~In addition to any other background or criminal~~

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

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

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

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

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

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

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

1 may be employed at a facility or family home and may provide direct  
2 care or have direct access to a child in the facility or family home  
3 before the person's criminal history check under Subsection (b-1)  
4 is completed if:

5 (1) the facility or family home is experiencing a  
6 staff shortage;

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

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

17 ~~[(A) provides direct care to a child,~~

18 ~~[(B) has direct access to a child, or~~

19 ~~[(C) is hired].~~

20 SECTION 5. (a) Section [411.114\(a\)\(1\)\(E\)](#), Government Code,  
21 is repealed.

22 (b) Effective January 1, 2018, Section [42.056\(a-4\)](#), Human  
23 Resources Code, is repealed.

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