

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 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;

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

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

10 (E) an employee of, an applicant for employment
11 with, or a volunteer or an applicant volunteer with a business
12 entity or person that contracts with the Department of Family and
13 Protective Services to provide direct delivery of protective
14 services to children, elderly persons, or persons with a
15 disability, if the person's duties or responsibilities include
16 direct contact with children, elderly persons, or persons with a
17 disability;

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

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

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

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

5 (i) the report alleges the person has
6 engaged in conduct that meets the applicable definition of abuse,
7 neglect, or exploitation under Chapter 261, Family Code, or Chapter
8 48, Human Resources Code; and

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

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

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

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

23 (3) In addition to the criminal history record
24 information the Department of Family and Protective Services is
25 required to obtain under Subdivision (2), the ~~The~~ Department of
26 Family and Protective Services is entitled to obtain from the
27 department criminal history record information maintained by the

1 department that relates to a person who is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (O) a volunteer or applicant volunteer with an
27 organization that provides court-appointed volunteer advocates for

1 abused or neglected children;

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

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

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

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

17 (B) a [~~child-care facility,~~] child-placing
18 agency[~~, or family home~~] listed in Subdivision (2) that is seeking
19 to verify or approve a foster or adoptive home under procedures
20 authorized by Section 471(a)(20)(A), Social Security Act (42 U.S.C.
21 671(a)(20)(A)) [~~employs or is considering employing the person who~~
22 ~~is the subject of the criminal history record information~~];

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

27 [~~(D) a person or business entity who uses or~~

1 ~~intends to use the volunteer services of or who employs or is~~
2 ~~considering employing the person who is the subject of the criminal~~
3 ~~history record if the release of the record is related to the~~
4 ~~purpose for which the record was obtained under Subdivision (3),~~

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

9 (i) the alleged perpetrator is the subject
10 of the criminal history record information; and

11 (ii) the Department of Family and
12 Protective Services determines that the release of information to
13 the adult is necessary to ensure the safety or welfare of the
14 alleged victim or the adult; or

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

19 (i) the alleged perpetrator is the subject
20 of the criminal history record information; and

21 (ii) the Department of Family and
22 Protective Services determines that the release of information to
23 the elderly or disabled person or adult is necessary to ensure the
24 safety or welfare of the elderly or disabled person.

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

27 (d) With respect to an applicant who is selected for

1 employment for a function or in a division of the Department of
2 Family and Protective Services that is transferred to the Health
3 and Human Services Commission under Subchapter A-1, Chapter 531,
4 the commission may obtain from the department criminal history
5 record information maintained by the department that relates to the
6 applicant.

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

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

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

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

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

27 (4) each person who provides care or supervision to

1 children in the care of the facility, agency, or home under a
2 contract with the facility, agency, or home;

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

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

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

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

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

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

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

16 (8) [~~(7)~~] each person 14 years of age or older, other
17 than a client in care, who will regularly or frequently be staying
18 or working at a facility, family home, or prospective adoptive
19 home, while children are being provided care.

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

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

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

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

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

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

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

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

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

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

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

27 (ii) a fingerprint-based criminal history

1 clearinghouse record, as provided by Section 411.0845, Government
2 Code, that is accessible to the department through the Department
3 of Public Safety; and

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

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

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

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

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

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

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

25 (1) submitting the person's fingerprints, or causing
26 the fingerprints to be submitted electronically, to the Department
27 of Public Safety for the purpose of conducting a state and federal

1 criminal history check; and

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

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

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

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

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

25 (1) the facility or family home is experiencing a
26 staff shortage;

27 (2) the Federal Bureau of Investigations fingerprint

1 ~~[state criminal history]~~ check and the background check using the
2 department's records of reported abuse and neglect have been
3 completed under Subsection (b), and the resulting information does
4 not preclude the person from being present at the facility or family
5 home; and

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

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

13 SECTION 5. The following laws are repealed:

- 14 (1) Section [411.114](#)(a)(1)(E), Government Code; and
15 (2) Section [42.056](#)(a-4), Human Resources Code.

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