

1-1 By: Klick (Senate Sponsor - Uresti) H.B. No. 4094  
 1-2 (In the Senate - Received from the House May 10, 2017;  
 1-3 May 12, 2017, read first time and referred to Committee on Health &  
 1-4 Human Services; May 19, 2017, reported favorably by the following  
 1-5 vote: Yeas 8, Nays 0; May 19, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14			X	
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the access of criminal history record information by  
 1-20 the Department of Family and Protective Services.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 411.114(a)(1), Government Code, is  
 1-23 amended by amending Paragraph (A) and adding Paragraph (A-1) to  
 1-24 read as follows:

1-25 (A) "Child," "child-care facility,"  
 1-26 "child-placing agency," "facility," and "family home" have the  
 1-27 meanings assigned by Section 42.002, Human Resources Code.

1-28 (A-1) "Department of Family and Protective  
 1-29 Services" includes:

1-30 (i) the Department of Family and Protective  
 1-31 Services as authorized by Section 40.002, Human Resources Code;

1-32 (ii) the Health and Human Services  
 1-33 Commission with respect to a function transferred to the commission  
 1-34 under Subchapter A-1, Chapter 531; and

1-35 (iii) any person or entity acting as an  
 1-36 authorized agent of the Department of Family and Protective  
 1-37 Services.

1-38 SECTION 2. Sections 411.114(a)(2), (3), and (7), Government  
 1-39 Code, are amended to read as follows:

1-40 (2) The Department of Family and Protective Services  
 1-41 shall obtain from the department criminal history record  
 1-42 information maintained by the department that relates to a person  
 1-43 who is:

1-44 (A) an applicant for a license, registration,  
 1-45 certification, or listing under Chapter 42, Human Resources Code;

1-46 (B) an owner, operator, or employee of or an  
 1-47 applicant for employment by a child-care facility, child-placing  
 1-48 agency, or family home licensed, registered, certified, or listed  
 1-49 under Chapter 42, Human Resources Code;

1-50 (C) a person 14 years of age or older who will be  
 1-51 regularly or frequently working or staying in a [~~child-care~~]  
 1-52 facility or family home [~~while children are being provided care~~],  
 1-53 other than a child in the care of the home or facility;

1-54 (D) except as provided by Subsection (d), an  
 1-55 applicant selected for a position with the Department of Family and  
 1-56 Protective Services, the duties of which include direct delivery of  
 1-57 protective services to children, elderly persons, or persons with a  
 1-58 disability;

1-59 (E) an employee of, an applicant for employment  
 1-60 with, or a volunteer or an applicant volunteer with a business  
 1-61 entity or person that contracts with the Department of Family and

2-1 Protective Services to provide direct delivery of protective  
 2-2 services to children, elderly persons, or persons with a  
 2-3 disability, if the person's duties or responsibilities include  
 2-4 direct contact with children, elderly persons, or persons with a  
 2-5 disability;

2-6 (F) a registered volunteer with the Department of  
 2-7 Family and Protective Services;

2-8 (G) a person providing or applying to provide  
 2-9 in-home, adoptive, or foster care for children in the care of the  
 2-10 Department of Family and Protective Services and other persons  
 2-11 living in the residence in which the child will reside;

2-12 (H) a Department of Family and Protective  
 2-13 Services employee who is engaged in the direct delivery of  
 2-14 protective services to children, elderly persons, or persons with a  
 2-15 disability;

2-16 (I) an alleged perpetrator in a report the  
 2-17 Department of Family and Protective Services receives alleging that  
 2-18 the person has abused, neglected, or exploited a child, an elderly  
 2-19 person, or a person with a disability, provided that:

2-20 (i) the report alleges the person has  
 2-21 engaged in conduct that meets the applicable definition of abuse,  
 2-22 neglect, or exploitation under Chapter 261, Family Code, or Chapter  
 2-23 48, Human Resources Code; and

2-24 (ii) the person is not also the victim of  
 2-25 the alleged conduct;

2-26 (J) a person providing child care for a child who  
 2-27 is in the care of the Department of Family and Protective Services  
 2-28 and who is or will be receiving adoptive, foster, or in-home care;

2-29 (K) through a contract with a nonprofit  
 2-30 management center, an employee of, an applicant for employment  
 2-31 with, or a volunteer or an applicant volunteer with a nonprofit,  
 2-32 tax-exempt organization that provides any service that involves the  
 2-33 care of or access to a child, an elderly person, or a person with a  
 2-34 disability; or

2-35 (L) an applicant for a child-care administrator  
 2-36 or child-placing agency administrator license under Chapter 43,  
 2-37 Human Resources Code.

2-38 (3) In addition to the criminal history record  
 2-39 information the Department of Family and Protective Services is  
 2-40 required to obtain under Subdivision (2), the [The] Department of  
 2-41 Family and Protective Services is entitled to obtain from the  
 2-42 department criminal history record information maintained by the  
 2-43 department that relates to a person who is:

2-44 (A) an applicant for a position with the  
 2-45 Department of Family and Protective Services regardless of the  
 2-46 duties of the position, including a position described by  
 2-47 Subdivision (2)(D);

2-48 (B) a Department of Family and Protective  
 2-49 Services employee regardless of the duties of the employee's  
 2-50 position, including an employee described by Subdivision (2)(H);

2-51 (C) a volunteer or applicant volunteer with the  
 2-52 Department of Family and Protective Services regardless of the  
 2-53 duties to be performed, including a registered volunteer;

2-54 (D) an employee of, an applicant for employment  
 2-55 with, or a volunteer or an applicant volunteer with an entity or  
 2-56 person that contracts with the Department of Family and Protective  
 2-57 Services and has access to confidential information in the  
 2-58 department's records, if the employee, applicant, volunteer, or  
 2-59 applicant volunteer has or will have access to that confidential  
 2-60 information;

2-61 (E) a person living in the residence in which the  
 2-62 alleged victim of the report resides, including an alleged  
 2-63 perpetrator in a report described by Subdivision (2)(I);

2-64 (F) a person providing, at the request of the  
 2-65 child's parent, in-home care for a child who is the subject of a  
 2-66 report alleging the child has been abused or neglected;

2-67 (G) a person providing, at the request of the  
 2-68 child's parent, in-home care for a child only if the person gives  
 2-69 written consent to the release and disclosure of the information;

3-1 (H) a child who is related to the caretaker, as  
 3-2 determined under Section 42.002, Human Resources Code, or any other  
 3-3 person who resides in, is present in, or has unsupervised access to  
 3-4 a child in the care of a facility or family home;  
 3-5 (I) a relative of a child in the care of the  
 3-6 Department of Family and Protective Services, to the extent  
 3-7 necessary to comply with Section 162.007, Family Code;  
 3-8 (J) a person providing or applying to provide  
 3-9 in-home, adoptive, or foster care for children to the extent  
 3-10 necessary to comply with Subchapter B, Chapter 162, Family Code;  
 3-11 (K) a person who volunteers to supervise  
 3-12 visitation under Subchapter B, Chapter 263, Family Code;  
 3-13 (L) an employee of or volunteer at, or an  
 3-14 applicant for employment with or to be a volunteer at, an entity  
 3-15 that provides supervised independent living services to a young  
 3-16 adult receiving extended foster care services from the Department  
 3-17 of Family and Protective Services;  
 3-18 (M) a person 14 years of age or older who will be  
 3-19 regularly or frequently working or staying in a host home that is  
 3-20 providing supervised independent living services to a young adult  
 3-21 receiving extended foster care services from the Department of  
 3-22 Family and Protective Services;  
 3-23 (N) a volunteer or applicant volunteer with a  
 3-24 local affiliate in this state of Big Brothers Big Sisters of  
 3-25 America;  
 3-26 (O) a volunteer or applicant volunteer with an  
 3-27 organization that provides court-appointed volunteer advocates for  
 3-28 abused or neglected children; or  
 3-29 (P) an employee, volunteer, or applicant  
 3-30 volunteer of a children's advocacy center under Subchapter E,  
 3-31 Chapter 264, Family Code, including a member of the governing board  
 3-32 of a center [with respect to whom the Department of Family and  
 3-33 Protective Services determines obtaining a criminal history record  
 3-34 is necessary to ensure the safety or welfare of a child, elderly  
 3-35 person, or person with a disability].  
 3-36 (7) The Department of Family and Protective Services  
 3-37 is not prohibited from releasing criminal history record  
 3-38 information obtained under this subsection to:  
 3-39 (A) the person who is the subject of the criminal  
 3-40 history record information;  
 3-41 (B) a [~~child-care facility,~~] child-placing  
 3-42 agency[, ~~or family home~~] listed in Subdivision (2) that is seeking  
 3-43 to verify or approve a foster or adoptive home under procedures  
 3-44 authorized by Section 471(a)(20)(A), Social Security Act (42 U.S.C.  
 3-45 Section 671(a)(20)(A)) [employs or is considering employing the  
 3-46 person who is the subject of the criminal history record  
 3-47 information];  
 3-48 (C) [~~a person or business entity described by~~  
 3-49 ~~Subdivision (2)(E) who uses or intends to use the services of the~~  
 3-50 ~~volunteer or employs or is considering employing the person who is~~  
 3-51 ~~the subject of the criminal history record information;~~  
 3-52 [~~(D) a person or business entity who uses or~~  
 3-53 ~~intends to use the volunteer services of or who employs or is~~  
 3-54 ~~considering employing the person who is the subject of the criminal~~  
 3-55 ~~history record if the release of the record is related to the~~  
 3-56 ~~purpose for which the record was obtained under Subdivision (3);~~  
 3-57 [~~(E)] an adult who resides with an alleged victim~~  
 3-58 ~~of abuse, neglect, or exploitation of a child, elderly person, or~~  
 3-59 ~~person with a disability and who also resides with the alleged~~  
 3-60 ~~perpetrator of that abuse, neglect, or exploitation if:~~  
 3-61 (i) the alleged perpetrator is the subject  
 3-62 of the criminal history record information; and  
 3-63 (ii) the Department of Family and  
 3-64 Protective Services determines that the release of information to  
 3-65 the adult is necessary to ensure the safety or welfare of the  
 3-66 alleged victim or the adult; or  
 3-67 (D) [~~(F)] an elderly or disabled person who is an~~  
 3-68 ~~alleged victim of abuse, neglect, or exploitation and who resides~~  
 3-69 ~~with the alleged perpetrator of that abuse, neglect, or~~

4-1 exploitation if:

4-2 (i) the alleged perpetrator is the subject  
4-3 of the criminal history record information; and

4-4 (ii) the Department of Family and  
4-5 Protective Services determines that the release of information to  
4-6 the elderly or disabled person or adult is necessary to ensure the  
4-7 safety or welfare of the elderly or disabled person.

4-8 SECTION 3. Section 411.114, Government Code, is amended by  
4-9 adding Subsection (d) to read as follows:

4-10 (d) With respect to an applicant who is selected for  
4-11 employment for a function or in a division of the Department of  
4-12 Family and Protective Services that is transferred to the Health  
4-13 and Human Services Commission under Subchapter A-1, Chapter 531,  
4-14 the commission may obtain from the department criminal history  
4-15 record information maintained by the department that relates to the  
4-16 applicant.

4-17 SECTION 4. Effective January 1, 2018, Section 42.056, Human  
4-18 Resources Code, is amended by amending Subsections (a), (a-2),  
4-19 (a-5), (b), (b-1), and (g) and adding Subsections (a-3) and (b-2) to  
4-20 read as follows:

4-21 (a) ~~The [In accordance with rules adopted by the executive~~  
4-22 ~~commissioner, the] director, owner, or operator of a [child-care]~~  
4-23 ~~facility[, child-placing agency,] or family home shall[, when~~  
4-24 ~~applying to operate a child-care facility or child-placing agency~~  
4-25 ~~or when listing or registering a family home and at least once~~  
4-26 ~~during each 24 months after receiving a license, listing,~~  
4-27 ~~registration, or certification of approval,] submit to the~~  
4-28 ~~department the names of the following individuals, who must have~~  
4-29 ~~[for use in conducting] background [and criminal history] checks as~~  
4-30 ~~described by this section and in accordance with rules adopted by~~  
4-31 ~~the executive commissioner [the name of]:~~

4-32 (1) the director, owner, and operator of the facility,  
4-33 agency, or home;

4-34 (2) each person employed at the facility, agency, or  
4-35 home;

4-36 (3) each prospective employee of the facility, agency,  
4-37 or home;

4-38 (4) each person who provides care or supervision to  
4-39 children in the care of the facility, agency, or home under a  
4-40 contract with the facility, agency, or home;

4-41 (5) each current or prospective foster parent  
4-42 providing foster care through a child-placing agency;

4-43 (6) ~~(5)~~ each prospective adoptive parent seeking to  
4-44 adopt through a child-placing agency;

4-45 (7) ~~(6)~~ each person at least 14 years of age, other  
4-46 than a client in care, who:

4-47 (A) is counted in child-to-caregiver ratios in  
4-48 accordance with the minimum standards of the department;

4-49 (B) will reside in a prospective adoptive home if  
4-50 the adoption is through a child-placing agency;

4-51 (C) has unsupervised access to children in care  
4-52 at the facility or family home; or

4-53 (D) resides in the facility or family home; or

4-54 (8) ~~(7)~~ each person 14 years of age or older, other  
4-55 than a client in care, who will regularly or frequently be staying  
4-56 or working at a facility, family home, or prospective adoptive  
4-57 home, while children are being provided care.

4-58 (a-2) In accordance with rules adopted by the executive  
4-59 commissioner, a person [the director, owner, or operator of a  
4-60 residential child-care facility, listed or registered family home,  
4-61 group day-care home, day-care center, before-school or  
4-62 after-school program, or school-age program] shall submit a  
4-63 complete set of fingerprints if:

4-64 (1) the [of each] person [whose name] is required to  
4-65 have a background check under Subsections (a)(1)-(7);

4-66 (2) the person resided in another state during [be  
4-67 submitted by] the five years preceding the date [director, owner,  
4-68 or operator under Subsection (a), unless the person is only  
4-69 required to have] the person's name was required to be submitted



5-1 under [based on criteria specified by] Subsection (a); or  
 5-2 (3) the director, owner, or operator has reason to  
 5-3 suspect that the person has a criminal history in another state  
 5-4 [~~(a)(7)~~].

5-5 (a-3) Subsection (a-2)(1) [~~This subsection~~] does not apply  
 5-6 to a family home that is subject to regulation by the department  
 5-7 under Section 42.0523.

5-8 (a-5) The rules adopted by the executive commissioner under  
 5-9 Subsection [~~Subsections~~] (a-2) [~~and (a-4)~~]:

5-10 (1) must require that the fingerprints be submitted in  
 5-11 a form and of a quality acceptable to the Department of Public  
 5-12 Safety and the Federal Bureau of Investigation for conducting a  
 5-13 criminal history check;

5-14 (2) may require that the fingerprints be submitted  
 5-15 electronically through an applicant fingerprinting service center;  
 5-16 and

5-17 (3) may allow the department to waive the submission  
 5-18 of fingerprints required by this section if:

5-19 (A) the person for whom the submission is  
 5-20 required has:

5-21 (i) a fingerprint-based criminal history  
 5-22 record check on file with the department; or

5-23 (ii) a fingerprint-based criminal history  
 5-24 clearinghouse record, as provided by Section 411.0845, Government  
 5-25 Code, that is accessible to the department through the Department  
 5-26 of Public Safety; and

5-27 (B) the department has an active subscription to  
 5-28 the Federal Bureau of Investigation's national rap back service for  
 5-29 the person for whom the [~~date on which the current~~] submission [~~of~~  
 5-30 fingerprints] is required [~~occurs before the second anniversary of~~  
 5-31 a previous name-based criminal history check of the person].

5-32 (b) The department shall conduct background [~~and criminal~~  
 5-33 history] checks using:

5-34 (1) the information provided under Subsection (a);

5-35 (2) the information made available by the Department  
 5-36 of Public Safety under Section 411.114, Government Code, or by the  
 5-37 Federal Bureau of Investigation or other criminal justice agency  
 5-38 under Section 411.087, Government Code; [~~and~~]

5-39 (3) the department's records of reported abuse and  
 5-40 neglect; and

5-41 (4) any other registry, repository, or database  
 5-42 required by federal law.

5-43 (b-1) For [~~In addition to any other background or criminal~~  
 5-44 history check conducted under Subsection (b), for] each person  
 5-45 whose fingerprints are submitted under Subsection (a-2) [~~or (a-4)~~],  
 5-46 the department shall conduct a state and Federal Bureau of  
 5-47 Investigation criminal history check by:

5-48 (1) submitting the person's fingerprints, or causing  
 5-49 the fingerprints to be submitted electronically, to the Department  
 5-50 of Public Safety for the purpose of conducting a state and federal  
 5-51 criminal history check; and

5-52 (2) using the resulting information made available by  
 5-53 that department under Section 411.114, Government Code, and by the  
 5-54 Federal Bureau of Investigation and any other criminal justice  
 5-55 agency under Section 411.087, Government Code.

5-56 (b-2) For each person required to have a background check  
 5-57 under Subsection (a), but who is not required to submit  
 5-58 fingerprints for a Federal Bureau of Investigations criminal  
 5-59 history check under Subsection (a-2):

5-60 (1) the person shall have a name-based check instead  
 5-61 of a fingerprint check; and

5-62 (2) the director, owner, or operator of the child-care  
 5-63 facility, child-placing agency, or family home shall submit the  
 5-64 name of the person each 24 months after last submitting the person's  
 5-65 name to the department for use in conducting a background check.

5-66 (g) Except as otherwise provided by this subsection, a  
 5-67 person whose name is submitted under Subsection (a) may not provide  
 5-68 direct care or have direct access to a child in a facility or family  
 5-69 home before the person's background check is [~~and criminal history~~

6-1 ~~checks under Subsections (b) and (b-1) are]~~ completed. A person  
6-2 may be employed at a facility or family home and may provide direct  
6-3 care or have direct access to a child in the facility or family home  
6-4 before the person's criminal history check under Subsection (b-1)  
6-5 is completed if:

6-6 (1) the facility or family home is experiencing a  
6-7 staff shortage;

6-8 (2) the Federal Bureau of Investigations fingerprint  
6-9 ~~[state criminal history]~~ check and the background check using the  
6-10 department's records of reported abuse and neglect have been  
6-11 completed under Subsection (b), and the resulting information does  
6-12 not preclude the person from being present at the facility or family  
6-13 home; and

6-14 (3) the person does not have unsupervised access to  
6-15 any child in care ~~[person's fingerprints are submitted as soon as~~  
6-16 ~~possible, but not later than the 30th day after the earliest of the~~  
6-17 ~~date on which the person first:~~

6-18 ~~[(A) provides direct care to a child;~~

6-19 ~~[(B) has direct access to a child; or~~

6-20 ~~[(C) is hired].~~

6-21 SECTION 5. (a) Section 411.114(a)(1)(E), Government Code,  
6-22 is repealed.

6-23 (b) Effective January 1, 2018, Section 42.056(a-4), Human  
6-24 Resources Code, is repealed.

6-25 SECTION 6. Except as otherwise provided by this Act, this  
6-26 Act takes effect September 1, 2017.

6-27

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