

# Background Check Laws: Oklahoma

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A Q&A guide to background check and employment reference law for private employers in Oklahoma. This Q&A addresses employers' obligations when conducting criminal and non-criminal background checks and penalties for violating these laws. Federal, local, or municipal law may impose additional or different requirements. Answers to questions can be compared across a number of jurisdictions (see [Background Check Laws: State Q&A Tool](#)).

## OVERVIEW OF STATE BACKGROUND CHECK LAW

**1. Please list each state statute or regulation governing background checks (for example, state equivalents of the federal Fair Credit Reporting Act and state law governing criminal background checks or driving records). Include law governing both criminal background checks and non-criminal background checks. For each, please:**

- Provide a brief description of the statute or regulation.
- Identify which employers are covered.
- Identify which employees are covered (for example, all employees or only those in specific job functions, such as commercial driving).
- Describe whether it provides for a private right of action.
- Identify the state agency or entity that administers the statute.

### COMMUNITY SERVICE PROVIDERS AND MEDICAID PERSONAL CARE PROVIDERS: OKLA. STAT. TIT. 56, § 1025.2

#### Description

A community services provider or Medicaid personal care services provider must request a criminal history check from the Oklahoma

State Bureau of Investigation (OSBI) and check whether an applicant is on the community services worker registry with the Oklahoma Department of Human Services (ODHS) before the provider offers the applicant a job as a:

- Community services worker.
- Medicaid personal care assistant or contractor providing either:
  - health-related services, training, or supportive assistance to a developmentally disabled person; or
  - personal care services to people who receive state Medicaid personal program services.

(Okla. Stat. tit. 56, § 1025.2(A)(1).)

#### Covered Employers

This law covers all Oklahoma community services providers and Medicaid personal care services providers (Okla. Stat. tit. 56, § 1025.2(A)(1)).

For definitions of “community services provider” and “Medicaid personal care services provider,” see Question 6.

#### Covered Employees

This law covers all applicants for a position or contract with a community services provider or a Medicaid personal care services provider, except applicants with a current Oklahoma-issued license to practice:

- Healing arts.
- Nursing.
- Physical therapy.
- Social work.
- Speech pathology or audiology.
- Dietetics.
- Occupational therapy.
- Respiratory care.

(Okla. Stat. tit. 56, § 1025.2(A)(7).)

#### Private Right of Action

This law does not provide for a private cause of action.

### State Agency

There is no agency responsible for administering this law in Oklahoma. However, background checks may be obtained from the OSBI.

### EMPLOYMENT WITH A SCHOOL: OKLA. STAT. TIT. 70, § 5-142

#### Description

A board of education:

- Must obtain national criminal history records check for all applicants by submitting a written request to the Oklahoma State Board of Education (OSBE).
- May conduct a national criminal history check for current school employees. This request must also be made in writing to the OSBE.
- Is not required to obtain a new criminal history records check for an individual who obtained certification from the Oklahoma Department of Education within the previous 12 months.

(Okla. Stat. tit. 70, § 5-142(A).)

#### Covered Employers

This law applies to any board of education in Oklahoma.

#### Covered Employees

This law covers public and private school employees and applicants, except:

- Part-time or temporary technology center employees hired only to instruct adult students (Okla. Stat. tit. 70, § 5-142(G)).
- Law enforcement officers who are employed by an employing agency when they apply for employment at a public school district (Okla. Stat. tit. 70, § 5-142(H)).

#### Private Right of Action

This law does not provide for a private cause of action.

### State Agency

There is no agency responsible for administering this law in Oklahoma. However, background checks may be obtained from the OSBI.

### HEALTH CARE WORKERS: OKLA. STAT. TIT. 63, §§ 1-865.8, 1-1944 TO 1-1948, 1-1950.1 TO 1-1950.9, AND 1-1962

#### Description

Oklahoma law requires criminal history background checks for persons applying for or employed in certain health care positions, including:

- **Long-term care providers.** Employers must conduct criminal history background checks for persons working inside long-term care facilities, including persons contracting with the state and those providing services to the disabled or elderly (Okla. Stat. tit. 63, § 1-1947(A)(2)).
- **Nurse aides or individuals providing nursing care, health-related services, or supportive assistance.** Employers must conduct a background check before offering to hire or contract with a nurse aide under the Long-Term Care Security Act. If the employer is part of a facility, home, or institution which is part of a larger complex of buildings, a background check need only be conducted on potential employees or applicants who

work in the employer's immediate boundaries. (Okla. Stat. tit. 63, § 1-1950.1(B).)

- **Community service workers.** Employers must search criminal history records and the Oklahoma Department of Human Services Community Services Worker Registry before hiring a community services worker as a permanent employee. Employers may also conduct criminal background checks on current employees. (Okla. Stat. tit. 63, § 1-865.8(A), (B).)
- **Supportive home assistants.** Employers must check criminal history records for convictions of certain types of crimes and the Nurse Aide Registry maintained by the Oklahoma Department of Health for notations of abuse before assistants may provide services to clients (Okla. Stat. tit. 63, § 1-1962(B)(4)).

#### Covered Employers

These laws cover all licensed healthcare facilities or Medicaid service providers, including:

- Nursing facilities.
- Residential care homes.
- Adult day care centers.
- Assisted living centers.
- Continuum of care facilities.
- Home health or home care agencies.
- Hospice agencies.
- Medicaid home- and community-based services waived providers.
- Staffing agencies.
- Independent contractors that provide staff or services with direct patient access.

(Okla. Stat. tit. 63, § 1-1945(4).)

#### Covered Employees

These laws cover prospective employees and contract workers at licensed healthcare facilities or Medicaid services providers.

#### Private Right of Action

These laws do not provide for a private cause of action.

### State Agency

There is no agency responsible for administering these laws in Oklahoma. However, background checks may be obtained from the OSBI.

### CHILD CARE PROVIDERS: OKLA. STAT. TIT. 10, § 404.1 AND OKLA. STAT. TIT. 10A, §§ 1-8-102 AND 2-7-602

#### Description

Oklahoma law requires criminal history background checks for persons applying for or employed in positions that involve working with or caring for children, including:

- **Court-appointed special advocate (CASA) positions.** All CASA programs must conduct a criminal history background check and child welfare records search on applicants seeking:
  - a CASA volunteer position; or
  - employment by the local CASA program.
- (Okla. Stat. tit. 10A, § 1-8-102(C).)

- **Oklahoma Office of Juvenile Affairs (OOJA) positions.** The OOJA may request a national criminal history records search of any applicant or employee (Okla. Stat. tit. 10A § 2-7-602(C)).
- **Child care facility positions.** Child care facilities must submit to the ODHS's child care licensing division:
  - a request to search the Oklahoma State Courts Network's records;
  - documentation of a search of the Restricted Registry;
  - a national criminal history search;
  - a criminal history records and sex offender registry search, conducted by an authorized law enforcement agency;
  - a search of the Department of Corrections' files maintained under the Sex Offenders Registration Act;
  - a search of any available child abuse and neglect registry within a state the individual has resided in within the last five years;
  - a search of the nontechnical services worker abuse registry maintained by the State Department of Health; and
  - a search of the community services worker registry maintained by the Department of Human Services.
- (Okla. Stat. tit. 10, § 404.1(A)(2).)

If a person has lived in Oklahoma for less than five years, the child care facility must obtain a criminal history records and sex offender registry search from the person's former state, including for persons who are either:

- Child care facility employees.
- Persons aged 18 or older who are living in a:
  - child care center;
  - family child care home;
  - part-day program;
  - school-age program; or
  - day camp program.

(Okla. Stat. tit. 10, §§ 402(4), 404.1(A), (2)(d).)

#### Covered Employers

These laws cover all entities that contract with the state to provide direct services to children or youth.

#### Covered Employees

These laws cover all employees that provide direct services to children or youth.

#### Private Right of Action

These laws do not provide for a private cause of action.

#### State Agency

There is no agency responsible for administering these laws in Oklahoma. However, background checks may be obtained from the OSBI and the Federal Bureau of Investigation (FBI).

### CONSUMER REPORTS: OKLA. STAT. TIT. 24, § 148

#### Description

Employers may obtain consumer reports (see Question 2) for any employment purpose, including employment screening. Before

obtaining the report, employers must provide applicants or employees with a written notice informing them that:

- A consumer report will be used.
  - The applicant or employee may obtain a free copy of the report by checking the box in the notice.
- (Okla. Stat. tit. 24, § 148(A).)

#### Covered Employers

This law covers all employers in Oklahoma.

#### Covered Employees

This law covers all employment applicants or employees in Oklahoma.

#### Private Right of Action

No employer may be held liable for a violation where the employer demonstrates that reasonable procedures were in place to assure compliance at the time of the alleged violation (Okla. Stat. tit. 24, § 148(B)). Employees may have a private right of action under the federal Fair Credit Reporting Act.

#### State Agency

There is no agency responsible for administering this law in Oklahoma. However, background checks may be obtained from any consumer reporting agency.

### PRIVATE PRISON CONTRACTORS: OKLA. STAT. TIT. 57, § 563.3(B)(5)

#### Description

All applicants and employees of a private prison contractor must undergo a criminal history background check (Okla. Stat. tit. 57, § 563.3(B)(5)).

#### Covered Employers

This law covers all private prison contractors in Oklahoma that:

- House federal inmates or inmates of another state.
- Do not have a contract with the Oklahoma Department of Corrections.
- Do not have a direct contract with the Federal Bureau of Prisons for a facility that houses federal inmates and is monitored on-site by federal agency staff.

(Okla. Stat. tit. 57, § 563.3(B), (I).)

#### Covered Employees

This law covers all applicants for and employees of a private prison contractor in Oklahoma.

#### Private Right of Action

This law does not provide for a private cause of action.

#### State Agency

There is no agency responsible for administering this law in Oklahoma. Background checks may be obtained from the OSBI or the FBI.

**NON-CRIMINAL BACKGROUND CHECK LAW**

**2. For any law identified in Question 1 addressing non-criminal background checks, list the key terms of art used and their definitions of each.**

**CONSUMER REPORTS: OKLA. STAT. TIT. 24, § 148****Consumer Report**

Under Oklahoma law, any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- Credit or insurance to be used primarily for personal, family, or household purposes.
- Employment purposes.
- Any other purpose authorized by United States Code Section 1681b.

(15 U.S.C. § 1681a(d)(1) (2000); Okla. Stat. tit. 24, § 148(A); see *Pearce v. Oral and Maxillofacial Assoc. LLC*, 2011 WL 1325597, at \*4-5 (W.D. Okla. Apr. 6, 2011).)

**3. For any law identified in Question 1 addressing non-criminal background checks, please describe potential penalties for violations of the law.**

**CONSUMER REPORTS: OKLA. STAT. TIT. 24, § 148**

This law does not address potential penalties for violations. However, employers may be liable under the federal Fair Credit Reporting Act (Okla. Stat. tit. 24, § 148; *Pearce*, 2011 WL 1325597, at \*4-5).

**4. For any law identified in Question 1 addressing non-criminal background checks, please describe the employers' legal obligations, including obligations to provide notice to applicants or employees.**

**CONSUMER REPORTS: OKLA. STAT. TIT. 24, § 148**

Under Oklahoma law, before an employer requests a consumer report, the employer must give written notice to the applicant or employee. The notice must state that:

- The consumer report will be used.
- The applicant or employee may obtain a free copy of the report by checking a box in the notice.

(Okla. Stat. tit. 24, § 148(A).)

If the applicant or employee requests the report, the employer must ask the consumer reporting agency to send a copy to the applicant or employee (Okla. Stat. tit. 24, § 148(A)).

**5. For any law identified in Question 1 that functions as the state equivalent of the federal Fair Credit Reporting Act, please describe any significant differences between the state and federal law.**

**CONSUMER REPORTS: OKLA. STAT. TIT. 24, § 148**

Under Oklahoma law, if an employee is required to receive a summary of his rights, the employer must notify the employee that a summary of rights is required under the federal Fair Credit Reporting Act (FCRA). Statutory notice of rights is as follows:

Oklahoma Consumers Have the Right to Obtain a Security Freeze.

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, government services or payments, rental housing, employment, investment, license, cellular phone, utilities, digital signature, Internet credit card transaction, or other services, including an extension of credit at point of sale. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization you must contact the consumer reporting agency by one of the methods that it requires, and provide all of the following:

- The personal identification number or password.
- Proper identification to verify your identity.
- The proper information regarding the period of time for which the report shall be available.
- Payment of the appropriate fee.

A consumer reporting agency must authorize the release of your credit report no later than three (3) business days after receiving all of the above items by any method that the consumer reporting agency allows.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

You have a right to bring civil action against anyone, including a consumer reporting agency who willfully or negligently fails to comply with any requirement of the Oklahoma Consumer Report Security Freeze Act.

A consumer reporting agency has the right to charge you up to Ten Dollars (\$10.00) to place a freeze on your credit

report, up to Ten Dollars (\$10.00) to temporarily lift a freeze on your credit report, and up to Ten Dollars (\$10.00) to remove a freeze from your credit report. However, you will not be charged any fee if you are a victim of identity theft who has submitted, at the time the security freeze is requested, a copy of a valid investigative or incident report or complaint with a law enforcement agency about the unlawful use of your identifying information by another person, or if you are sixty-five (65) years of age or older for the initial placement and removal of a security freeze.

(Okla. Stat. tit. 24, § 158.)

## CRIMINAL BACKGROUND CHECK LAW

### 6. For any law identified in Question 1 addressing criminal background checks, please identify the law and describe:

- The key terms of art.
- The potential penalties for violations.

### COMMUNITY SERVICE PROVIDERS AND MEDICAID PERSONAL CARE PROVIDERS: OKLA. STAT. TIT. 56, § 1025.2

#### Terms of Art

Key terms of art include:

- **Community services provider.** A community-based program, corporation, or person who contracts with or is licensed or funded by the Oklahoma Department of Human Services (ODHS) that either:
  - provides residential or vocational services to persons who are elderly or persons with intellectual or developmental disabilities; or
  - contracts with the Oklahoma Health Care Authority (OHCA) to provide services to persons with intellectual disabilities using a Home and Community-Based Services Waiver, except for a private, immediate care facility.
- (Okla. Stat. tit. 56, § 1025.1(2).)
- **Community services worker.** Any person employed by or under contract with a community services provider who:
  - provides health-related services, training, or supportive assistance to persons who are elderly or persons with developmental disabilities; and
  - is not a licensed health professional or under contract with the OHCA to provide services to persons with developmental disabilities.
- (Okla. Stat. tit. 56, § 1025.1(3).)
- **Health-related services.** Services provided by community services providers or community services workers to persons who are elderly or persons with developmental disabilities, including, but not limited to:
  - personal hygiene;
  - supervision or assistance in activities of daily living; and
  - basic nursing care, with or without training.
- (Okla. Stat. tit. 56, § 1025.1(6).)
- **Medicaid personal care services provider.** A program, corporation, or person providing services under the state Medicaid program

personal care program or ADvantage Waiver to elderly or physically disabled persons (Okla. Stat. tit. 56, § 1025.1(10)).

- **Maltreatment.** Includes:
  - physical abuse;
  - verbal abuse;
  - sexual abuse;
  - neglect;
  - financial neglect;
  - exploitation or sexual exploitation of vulnerable adults; or
  - abuse, neglect, sexual abuse, or sexual exploitation of children.
- (Okla. Stat. tit. 56, § 1025.1(8).)

#### Penalties

Employers that release or disclose information in violation of this law may face criminal misdemeanor charges (Okla. Stat. tit. 56, § 1025.2(H)).

### EMPLOYMENT WITH A SCHOOL: OKLA. STAT. TIT. 70, § 5-142

#### Terms of Art

Key terms of art include:

- **Board of education.** Public and private boards of education in or outside Oklahoma.
- **Employing agency.** Political subdivision or law enforcement agency in Oklahoma.
- **Law enforcement officer.** A peace or police officer certified by the Council on Law Enforcement Education and Training.
- **Prospective employee.** A person who has received an offer of temporary employment by a school district pending the results of the national criminal history record check.
- **National criminal history record check.** A check of criminal history records where an entity obtains a person's national criminal record from the Federal Bureau of Investigation (FBI) by:
  - fingerprinting the person; and
  - sending the fingerprints to the FBI.

(Okla. Stat. tit. 70, § 5-142(D); Okla. Stat. tit. 74, § 150.9(B)(4).)

#### Penalties

The law does not address penalties for violations.

### HEALTH CARE WORKERS: OKLA. STAT. TIT. 63, §§ 1-865.8, 1-1944 TO 1-1948, 1-1950.1 TO 1-1950.9, AND 1-1962

#### Terms of Art

Key terms of art under these statutes include:

- **Long-term care facility,** which means:
  - a nursing facility, specialized facility, or residential care home;
  - an adult day care center;
  - skilled nursing care provided in a distinct part of a hospital;
  - an assisted living center;
  - the nursing care component of a life care community or a continuum of care facility; or
  - a residential care home.
- (Okla. Stat. tit. 63, § 1-1945(1).)

- **Nurse aide.** A person who provides nursing care or health-related services for compensation either for:
  - residents in a nursing facility, specialized facility, residential care home, continuum of care facility, assisted living center, or adult day care center, when the person is not a licensed health professional; or
  - persons in their own homes, where the person is either an employee or contract provider of a home health or home care agency or a contract provider of the Medicaid State Plan Personal Care Program.
- (Okla. Stat. tit. 63, §§ 1-1945(3) and 1-1950.1(A)(1).)
- **Employer.** Either:
  - a nursing facility or specialized facility;
  - a residential care home;
  - an adult day care center;
  - an assisted living center;
  - a continuum of care facility;
  - a home health or home care agency;
  - the ODHS, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Medicaid State Plan Personal Care Program;
  - a facility operated by the Oklahoma Department of Veteran Affairs; or
  - a facility approved and annually reviewed by the US Department of Veterans Affairs as a medical foster home, where care is provided exclusively to three or fewer veterans.
- (Okla. Stat. tit. 63, § 1-1950.1(A)(2).)
- **Community services worker.** A person who:
  - contracts with the OHCA to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities;
  - is not a licensed health professional; and
  - is employed by or under contract with a community services provider to provide for compensation or as a volunteer either health-related services, training, or supportive assistance.
- (Okla. Stat. tit. 63, § 1-865.2(1).)
- **Supportive home assistant.** A person employed by a home care agency to provide standby assistance to ambulatory clients, in conjunction with other companionship or homemaker services, in the client's residence (Okla. Stat. tit. 63, § 1-1961(11)).

### Penalties

Employers must conduct criminal history background checks for persons working inside long-term care facilities, including persons contracting with the state and those providing services to the disabled or elderly (Okla. Stat. tit. 63, § 1-1947(A)(2)(e)). Employers that knowingly and willfully violate Oklahoma's background check law covering long-term care facilities may face misdemeanor charges punishable by either or both:

- A fine between \$1,000 and \$3,000.
- Imprisonment for up to 30 days.

(Okla. Stat. tit. 63, § 1-1947(R).)

Employers must conduct a background check on nurse aides before hire or contract. If the employer is a facility, home, or institution

which is part of a larger complex of buildings, a background check need only be conducted on potential employees or applicants who work in the employer's immediate boundaries. (Okla. Stat. tit. 63, § 1-1950.1(B).) Employers that violate Oklahoma's background check law covering nurse aides or persons providing nursing care, health-related services, or supportive assistance may face misdemeanor charges punishable by either or both:

- A fine between \$100 and \$300.
- Imprisonment for up to 30 days.

(Okla. Stat. tit. 63, § 1-1950.3(F).)

Oklahoma's background check laws covering community service workers and supportive home assistants do not address penalties for violations.

### CHILD CARE PROVIDERS: OKLA. STAT. TIT. 10, § 404.1 AND OKLA. STAT. TIT. 10A, §§ 1-8-102 AND 2-7-602

#### Terms of Art

As defined, a **child care facility** includes, whether public or private:

- Child care residential facilities.
- Child-placing agencies.
- Foster family homes.
- Child care centers.
- Part-day child care programs.
- School-age programs.
- Day camps.
- Drop-in programs.
- Programs for sick children.
- Family child care homes.
- Large family child care homes providing either full-time or part-time care for children away from their own homes.

(Okla. Stat. tit. 10, § 402(4).)

#### Penalties

Employers that violate Oklahoma's law covering child care facilities may be subject to:

- Emergency orders.
- License revocation or denial.
- Injunctive proceedings.
- Administrative penalties of at most \$10,000.
- Possible criminal charges.
- Civil damages.

(Okla. Stat. tit. 10, § 404.1(F)(2), (3).)

### OKLAHOMA OPEN RECORDS ACT: OKLA. STAT. TIT. 51, §§ 24A.5 AND 24A.8

#### Terms of Art

There are no key terms of art relating to criminal background checks.

#### Penalties

The law does not address penalties for violations.

### PRIVATE PRISON CONTRACTORS: OKLA. STAT. TIT. 57, § 563.3

#### Terms of Art

There are no key terms of art relating to criminal background checks.

## Penalties

Private prison contractors that violate this law may face:

- An assessment between 50% to 100% of the per diem rate (amount paid to the contractor) paid by the jurisdictions to the contractor for the time that a violation continues.
- An order from the Oklahoma Department of Corrections to cease operations.

(Okla. Stat. tit. 57, § 563.3(E).)

### 7. Please describe:

- The kind of criminal background information into which an employer may inquire, including obligations to provide notice to applicants or employees.
- The kind of criminal background information into which an employer may not inquire (for example, expunged or juvenile records).
- Any other circumstances under which a criminal background inquiry may be limited (for example, where there is no business necessity).
- Any additional requirements under the laws identified in Question 1.

## AUTHORIZED INQUIRY

Community services providers and Medicaid personal care service providers may obtain from the Oklahoma State Bureau of Investigation (OSBI) records of a person's:

- Criminal conviction.
- Guilty plea.
- Plea of nolo contendere.

(Okla. Stat. tit. 56, § 1025.2(A)(4).)

## UNAUTHORIZED INQUIRY

Employers may not ask about sealed or expunged records, including juvenile records (Okla. Stat. tit. 10A, § 2-6-109(F); Okla. Stat. tit. 22, §§ 18(D) and 19(F)).

For information on state and local legislation limiting access to the criminal history information of job applicants, see Ban-the-Box State and Local Laws Chart ([W-015-4316](#)).

## OTHER LIMITATIONS

### Community Service Providers and Medicaid Personal Care Providers

Although the law does not limit the scope of the background check, an employer must inform applicants and prospective contract workers that it must perform a criminal history records search and a registry review before hiring or contracting with the person (Okla. Stat. tit. 56, § 1025.2(E)).

Before a community services worker or Medicaid personal care assistant's name is entered into the community services worker registry for having committed maltreatment, he must be given notice and an opportunity for due process. If an applicant for a community services provider or Medicaid personal care assistant position is listed on the registry and the applicant has received notice and an opportunity for due process, the employer must not hire the applicant. (Okla. Stat. tit. 56, § 1025.2(A)(1)(b).)

Information in an applicant's criminal history records that is received by a community services provider or Medicaid personal care services provider may not be released or disclosed to third parties, unless authorized by:

- This chapter.
- Court order.
- Written consent of the person being investigated.

(Okla. Stat. tit. 56, § 1025.2(G).)

## Long-Term Care Providers

Information in the database established under this law:

- Is confidential.
- Is not subject to disclosure under the Oklahoma Open Records Act.
- Must not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(Okla. Stat. tit. 63, § 1-1947(S).)

## Nurse Aides or Individuals Providing Nursing Care, Health-Related Services, or Supportive Assistance

Employers may not release or disclose a person's criminal history records unless there is:

- A court order.
- Written consent from the investigated person.

Criminal history records must be destroyed one year after the person terminates employment with the employer. (Okla. Stat. tit. 63, § 1-1950.1(E).)

## Community Service Workers

Employers may not release or disclose a person's criminal history records unless there is:

- A court order.
- Written consent from the investigated person.

Criminal history records must be destroyed one year after the person terminates employment with the employer. (Okla. Stat. tit. 63, § 1-865.8(C).)

## ADDITIONAL REQUIREMENTS

There are no additional requirements under the laws identified in Question 1.

### 8. Please describe how an employer can collect criminal background information and what an employer can do with criminal background information, including:

- Whether and under what circumstances an application for employment in your state can include a question about convictions or arrests.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment generally.
- Whether and under what circumstances criminal convictions or arrests can be used as a bar to employment in specific jobs (such as child care), including under any or all laws identified in Question 1.

## QUESTIONS IN EMPLOYMENT APPLICATIONS

Oklahoma employers may request criminal records, including arrests, for prospective employees. However, certain “non-serious offenses” as enumerated by statute will be excluded (Okla. Admin. Code §§ 375:9-1-1.1 and 375:9-1-2).

Employers are prohibited, whether in an application, interview, or otherwise, from requiring an applicant to disclose any information contained in sealed arrest and criminal records (see Question 7: Unauthorized Inquiry).

Although beyond the scope of this Q&A, Oklahoma’s governor signed a “Ban the Box” Executive Order in February 2016, which requires state agencies to eliminate questions about felony convictions and criminal history from employment applications unless a felony conviction automatically renders an applicant unqualified for the position. However, agencies may conduct background checks and ask about applicants’ felony convictions and criminal history during the interview process. (Okla. Admin. Code § 1:2016-3.)

## BAR TO EMPLOYMENT

There is no general bar to employment.

### BAR TO EMPLOYMENT IN SPECIFIC JOBS

#### Health and Safety-Related Occupations

Community service providers and Medicaid personal care providers may not hire or continue employing or contracting with persons who have been convicted or pled guilty or *nolo contendere* to either a:

- Felony.
- Misdemeanor assault and battery.

(Okla. Stat. tit. 56, § 1025.2(F)(1).)

The community services provider, however, may make a written request to the Oklahoma Department of Human Services (ODHS) to waive the employment bar requirement for a person found guilty of assault and battery. The ODHS does not grant waivers if the person was convicted of or pled guilty or *nolo contendere* to either:

- A felony, if the person was found guilty less than five years before the waiver request.
- A felony count of:
  - aggravated assault and battery;
  - homicide;
  - murder;
  - attempted murder;
  - rape;
  - incest;
  - sodomy; or
  - abuse, neglect, or financial exploitation of any person entrusted to the worker’s care.

(Okla. Stat. tit. 56, § 1025.2(F)(2).)

Employers must not employ, independently contract with, or grant clinical privileges to any person who has direct patient access to service recipients of the employer, if either:

- The results of a state and national criminal history records check reveal that the person has failed to conform with federal, state, and municipal laws as applicable to professional license, certification, permit, or employment class, as established by the authority having jurisdiction for the subject person’s professional license, certification, permit, or employment class.
- The person is currently subject to an exclusion as described under Title 42 of the United States Code, Section 1320a-7.
- The person is currently the subject of a substantiated finding of neglect, abuse, verbal abuse, misappropriation of property, maltreatment, or exploitation by any state or federal agency under an investigation conducted according to either Sections 1395i-3(g)(1)(c) or 1396r(g)(1)(c) of Title 42 of the US Code or Sections 1-1950.7 or 1-1951 of Title 63 of the Oklahoma Statutes.
- The person is entered on the community services worker registry.
- The person is recorded on the Child Care Restricted Registry.
- The person is registered under the Sex Offenders Registration Act, the Mary Rippy Violent Crime Offenders Registration Act, or on another state’s sex offender registry.
- The person has direct patient access in an employment class not otherwise described in this law and is subject to a disqualifying condition identified in subsection B of Section 1-1950.1 of Title 56 of the Oklahoma Statutes.

(Okla. Stat. tit. 63, § 1-1947(D).)

However, these restrictions do not apply to a person who is:

- Employed by, under independent contract to, or granted clinical privileges with, an employer on or before November 1, 2012. An exempted person under this subsection may transfer to another employer that is under the same ownership with which he was employed, under contract, or granted privileges. If that person wishes to transfer to another employer that is not under the same ownership, he may do so provided that a registry screening and criminal history record check are conducted by the new employer in accordance with Oklahoma law. If a person who is exempted according to this law is later found ineligible for employment, independent contract, or clinical privileges:
  - while seeking transfer to another employer, then this person is no longer exempted and must be terminated from employment or denied employment; or
  - based on disqualifying events occurring after November 1, 2012, then this person is no longer exempted and must be terminated from employment.
- A person who is an independent contractor to an employer, if the services for which he is contracted are not directly related to the provision of services to a service recipient or if the services for which he is contracted allow for direct patient access to service recipients but are not performed on an ongoing basis. This exception includes, but is not limited to, a person who independently contracts with the employer to provide utility, maintenance, construction, or communications services.

(Okla. Stat. tit. 63, § 1-1947(F).)

Employers may not hire or continue employing or contracting persons in a capacity where the person provides nursing care,

health-related services, or supportive assistance if the person was convicted of, pled guilty or no contest to, or received a deferred sentence for any of the following:

- Abuse, neglect, or financial exploitation of any person while under the person's care or possession.
- Rape, incest, or sodomy.
- Child abuse.
- Murder or attempted murder.
- Manslaughter.
- Kidnapping.
- Aggravated assault and battery.
- Assault and battery with a dangerous weapon.
- First degree arson.

(Okla. Stat. tit. 63, § 1-1950.1(C)(1).)

If fewer than seven years have elapsed since the completion of the sentence, an employer may not hire or continue employing or contracting a person in a capacity where the person provides nursing care, health-related services, or supportive assistance if the person was convicted of, pled guilty or no contest to, or received a deferred sentence for any of the following:

- Assault.
- Battery.
- Indecent exposure and indecent exhibition.
- Pandering.
- First or second degree burglary.
- First or second degree robbery.
- Robbery or attempted robbery with a dangerous weapon or imitation firearm.
- Second degree arson.
- Unlawful manufacture, distribution, prescription, or dispensing of Schedule I-V drugs (as set out in the Uniform Controlled Dangerous Substances Act).
- Grand larceny.
- Petit larceny or shoplifting.

(Okla. Stat. tit. 63, § 1-1950.1(C)(2).)

Employers may not hire, contract with, or use as a volunteer, a community services worker who has been convicted, pled guilty, or *nolo contendere* to:

- Misdemeanor assault and battery.
- Any felony.

(Okla. Stat. tit. 56, § 1025.2(F).)

### Education and Youth-Serving Organizations

Employers may bar an applicant, volunteer, or employee from working in a special advocate program in the Oklahoma Office of Juvenile Affairs (Okla. Stat. tit. 10A, § 1-8-102(B)(2)).

An applicant who is required to register under the Sex Offenders Registration Act cannot be employed by a child care facility or any employer that offers or provides services to children (Okla. Stat. tit. 10, § 404.1(F)).

**9. If your state has a statute or regulation protecting the employment rights of persons with criminal records, please identify the statute or regulation and briefly describe the rights it confers.**

Oklahoma employers are prohibited from inquiring about sealed or expunged records, including juvenile records (see Question 7: Unauthorized Inquiry).

### EMPLOYER LIABILITY

**10. Have courts in your jurisdiction recognized privacy claims brought by applicants or employees as a result of an employer's conducting a background check? If so, please name any relevant cases and briefly describe their holdings.**

There is no Oklahoma case law recognizing an actionable privacy right in these circumstances.

**11. Have courts in your jurisdiction recognized negligent hiring, negligent supervising, or negligent retention claims brought by employees, customers, or others associated with the employer as a result of allegedly flawed background checks? If so, please name any relevant cases and briefly describe their holdings.**

There is no Oklahoma case law recognizing a cause of action for conducting allegedly flawed background checks. However, a claim for negligent hiring, supervision, or retention may be available if, when the employee's act occurred, the employer had reason to believe that the employee would create an undue risk of harm to others. Under Oklahoma law, employers can only be found liable if the person bringing the claim cannot establish vicarious liability. (*N.H. v. Presbyterian Church (U.S.A.)*, 998 P.2d 592, 600 (Okla. 1999).)

However, Oklahoma employers are typically not liable for negligent hiring, supervision, or retention because most claimants can establish vicarious liability.

### STATE LAW REGARDING REFERENCES

**12. If your state has any law governing employment references, please identify that law and:**

- Describe any requirements for obtaining references for employees or applicants.
- Describe any requirements for giving references for employees or former employees (including any provision insulating employers from or exposing employers to liability because of references given).

### OBTAINING REFERENCES

There are no applicable Oklahoma laws governing obtaining employment references.

### GIVING REFERENCES

An employer or employer's representative may provide information to prospective employers about a current or former employee's job performance if requested by:

- The employee.
- The prospective employer, if the employee consents.

(Okla. Stat. tit. 40, § 61(A).)

An employer providing a reference is presumed to be acting in good faith and is immune from civil liability. However, an employer is liable if the employee can show that the employer either:

- Knew the information was false.
- Gave the job reference with malice or reckless disregard for the truth.

(Okla. Stat. tit. 40, § 61(A).)

This law only applies to claims occurring on and after July 1, 1995 (Okla. Stat. tit. 40, § 61(C)).

### SOCIAL NETWORKING FOR BACKGROUND CHECKS

**13. Are there statutes, regulations, cases, or any other guidance in your state on an employer's use of social networking or other online searches of applicants or employees for employment background check purposes? If so, please briefly characterize them.**

Employers in Oklahoma may not:

- Require an employee or applicant to disclose a username and password, or other means of authentication, to access a personal online social media account.
- Require an employee or applicant to access their personal online social media account in the presence of the employer in a way that allows the employer to see content that is not available to the general public.
- Take retaliatory personnel action that materially and negatively affects the terms and conditions of the employee's employment solely for his refusal to give the employer his username or password to his personal online social media account.
- Refuse to hire a prospective employee solely as a result of his refusal to give the employer his username and password to his personal online social media account.

(Okla. Stat. tit. 40, § 173.2(A).)

Employers may:

- Request or require an employee to disclose a username and password to access:

- any computer system, information technology network, or electronic communications device provided or subsidized by the employer; or
- any accounts or services provided by the employer or by virtue of the employee's relationship with the employer or that the employee uses for business purposes.

#### ■ Conducting investigations:

- for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct based on the receipt of specific information about activity on a personal online social media account or service by an employee or other source; or
- of an employee's actions based on the receipt of specific information about the unauthorized transfer of an employer's proprietary or confidential information or financial data to a personal online social media account or service by an employee or other source.

(Okla. Stat. tit. 40, § 173.2(B), (D).)

For more information on employer access to social media accounts, see Practice Note, Employer Access to Social Media Accounts State Laws Chart: Overview ([2-521-6621](#)).

### ADDITIONAL RESOURCES

**14. If the state agency charged with oversight of background check or references laws in your state has useful online guidance or forms, please provide the link for those resources and a brief description of them.**

The Oklahoma State Bureau of Investigation's (OSBI) Obtaining Criminal History Information webpage provides the forms needed to request a background check from the OSBI and answers frequently asked questions.

**15. Please describe any other significant background check or references laws, cases, or requirements specific to your state not otherwise addressed in this survey.**

There are no other significant background check or references laws, cases, or requirements in Oklahoma.

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