

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1046.01 Jane Ritter x4342

HOUSE BILL 18-1411

HOUSE SPONSORSHIP

Pabon,

SENATE SPONSORSHIP

Smallwood,

House Committees

Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ELIMINATING REDUNDANCY RELATED TO**
102 **FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS FOR**
103 **PERSONS WHO HAVE OR WILL HAVE DIRECT CONTACT WITH**
104 **VULNERABLE PERSONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law requires employees of the department of human services and independent contractors with the department of human services (employees) who have or will have direct contact with vulnerable

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

persons to undergo a fingerprint-based criminal history record check (background check) in order to work in a facility operated by or licensed by the department of human services. Current law also requires employees or operators of licensed child care facilities or child placement agencies to undergo a background check. Employees or operators of licensed child care facilities that are under contract with the department of human services must obtain 2 separate background checks, one pursuant to title 26, Colorado Revised Statutes, and one pursuant to title 27, Colorado Revised Statutes.

The bill adds language to statute that allows for a single background check for such employees who have or will have direct contact with vulnerable persons, reducing redundancy for such employees.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 26-6-104, **add**
3 (7)(a)(III) as follows:

4 **26-6-104. Licenses - out-of-state notices and consent -**
5 **demonstration pilot program.** (7) (a) (III) ANY APPLICANT, LICENSEE,
6 OR EMPLOYEE OF THE APPLICANT OR LICENSEE WHO WILL HAVE DIRECT
7 CONTACT WITH VULNERABLE PERSONS, AS DEFINED IN SECTION 27-90-111
8 (2)(e), IS REQUIRED TO SUBMIT TO A STATE AND NATIONAL
9 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK IN THE SAME
10 MANNER AS REQUIRED PURSUANT TO SECTION 27-90-111 (9); EXCEPT THAT
11 THE STATE DEPARTMENT SHALL NOT BEAR THE COST OF SUCH CRIMINAL
12 HISTORY RECORD CHECK REQUIRED BY THIS SUBSECTION (7)(a)(III). THE
13 CRIMINAL HISTORY RECORD CHECK REQUIRED BY THIS SUBSECTION
14 (7)(a)(III) MUST BE SUBMITTED TO THE STATE DEPARTMENT PRIOR TO THE
15 INDIVIDUAL HAVING DIRECT CONTACT WITH VULNERABLE PERSONS, AND
16 AN APPLICANT, LICENSEE, OR EMPLOYEE OF AN APPLICANT OR LICENSEE
17 MUST NOT BE ALLOWED TO HAVE DIRECT CONTACT WITH VULNERABLE
18 PERSONS IF HE OR SHE DOES NOT MEET THE REQUIREMENTS SET FORTH IN

1 THIS SUBSECTION (7) AND IN SECTION 27-90-111 (9).

2 **SECTION 2.** In Colorado Revised Statutes, 27-90-111, **amend**
3 (1), (2)(a), (2)(c), (3)(d), (4), (7), (9)(a), (9)(b) introductory portion, (9)(c)
4 introductory portion, (10), (11), (12), and (13)(a) introductory portion;
5 **repeal** (2)(d); and **add** (2)(b.5), (2)(d.5), and (11.5) as follows:

6 **27-90-111. Employment of personnel - screening of applicants**
7 **- disqualifications from employment - contracts - rules - definitions.**

8 (1) The general assembly hereby recognizes that many of the individuals
9 receiving services from ~~persons employed by the department~~ EMPLOYEES
10 pursuant to ~~this title or title 26 C.R.S., OR THIS TITLE 27~~ are unable to
11 defend themselves and are therefore vulnerable to abuse or assault. It is
12 the intent of the general assembly to minimize the potential for hiring and
13 employing persons with a propensity toward abuse, assault, or similar
14 offenses against others for positions that would provide them with
15 unsupervised access to vulnerable persons. The general assembly hereby
16 declares that, in accordance with section 13 of article XII of the state
17 constitution, for purposes of terminating employees in the state personnel
18 system who are finally convicted of criminal conduct, offenses involving
19 moral turpitude include, but are not limited to, the disqualifying offenses
20 specified in subsection (9) of this section.

21 (2) For purposes of this section, unless the context otherwise
22 requires:

23 (a) "Contracting ~~employee~~ AGENCY" means ~~a person who~~ AN
24 AGENCY, CORPORATION, NONPROFIT ENTITY, OR ANY OTHER OUTSIDE
25 ENTITY THAT contracts with the department ~~and who is designated by the~~
26 ~~executive director or the executive director's designee as serving in a~~
27 ~~contract position involving direct contact with vulnerable persons~~ TO

1 PROVIDE SERVICES PURSUANT TO TITLE 26 OR THIS TITLE 27 AND THAT
2 PROVIDES SERVICES THAT INVOLVE DIRECT CONTACT WITH VULNERABLE
3 PERSONS.

4 (b.5) "DEPARTMENT EMPLOYEE" MEANS AN EMPLOYEE OF THE
5 DEPARTMENT WHO IS EMPLOYED THROUGH THE STATE PERSONNEL SYSTEM
6 OF THE STATE OF COLORADO.

7 (c) "Direct contact" means providing face-to-face care, training,
8 supervision, counseling, consultation, or medication assistance to
9 vulnerable persons, regardless of the level of supervision of the
10 DEPARTMENT employee. "Direct contact" may include positions in which
11 persons have access to or unsupervised time with clients or patients,
12 including but not limited to maintenance personnel, housekeeping staff,
13 kitchen staff, and security personnel.

14 (d) ~~"Employee" means an employee of the department who is~~
15 ~~under the state personnel system of the state of Colorado.~~

16 (d.5) "INDEPENDENT CONTRACTOR" MEANS AN INDIVIDUAL WHO
17 CONTRACTS DIRECTLY WITH THE DEPARTMENT AND WHO IS DESIGNATED,
18 BY THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE,
19 AS SERVING IN A CONTRACT POSITION INVOLVING DIRECT CONTACT WITH
20 VULNERABLE PERSONS.

21 (3) The employment screening and disqualification requirements
22 in this section apply to the following facilities or programs operated by
23 the department:

24 (d) Any direct services identified and provided by the department
25 in which DEPARTMENT employees, INDEPENDENT CONTRACTORS, OR
26 CONTRACTING AGENCIES have direct contact with vulnerable persons in
27 a state-operated facility or in a vulnerable person's home or residence;

1 (4) Prior to the department's permanent employment of a person
2 in a position that would require that person to have direct contact with ~~any~~
3 A vulnerable person, the executive director or any division head of the
4 department shall make an inquiry to the director of the Colorado bureau
5 of investigation to ascertain whether the person has a criminal history.
6 The person's employment is conditional upon a satisfactory ~~criminal~~
7 ~~background check. Any criminal background~~ STATE AND NATIONAL
8 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. A CRIMINAL
9 HISTORY RECORD check conducted pursuant to this subsection (4) must
10 include but need not be limited to arrests, conviction records, and the
11 disposition of any criminal charges. The department shall require the
12 person to have his or her fingerprints taken by a local law enforcement
13 agency or any third party approved by the Colorado bureau of
14 investigation. If an approved third party takes the person's fingerprints,
15 the fingerprints may be electronically captured using Colorado bureau of
16 investigation-approved livescan equipment. Third-party vendors shall not
17 keep the applicant information for more than thirty days unless requested
18 to do so by the applicant. The department shall forward those fingerprints
19 to the Colorado bureau of investigation for the purpose of fingerprint
20 processing utilizing the files and records of the Colorado bureau of
21 investigation and the federal bureau of investigation. The department
22 shall pay for the costs of ~~criminal background~~ CRIMINAL HISTORY RECORD
23 checks conducted pursuant to this section out of existing appropriations.

24 (7) The executive director, any division head, or any local agency
25 or provider who relies on information obtained pursuant to this section in
26 making an employment decision or who concludes that the nature of any
27 information disqualifies the person from employment as either ~~an~~ A

1 DEPARTMENT employee or ~~a contracting employee shall be~~ AN
2 INDEPENDENT CONTRACTOR IS immune from civil liability for that
3 decision or conclusion unless the information relied upon is false and the
4 executive director, division head, or local agency or provider knows the
5 information is false or acts with reckless disregard concerning the
6 veracity of the information.

7 (9) (a) If the criminal ~~background~~ HISTORY RECORD check
8 conducted pursuant to subsection (4) or (11) of this section indicates that
9 a prospective DEPARTMENT employee or prospective ~~contracting~~
10 ~~employee~~ INDEPENDENT CONTRACTOR was convicted of any of the
11 disqualifying offenses set forth in ~~paragraph (b) or (c) of this subsection~~
12 ~~(9)~~ SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION, the person ~~shall be~~ IS
13 disqualified from employment either as ~~an~~ A DEPARTMENT employee or
14 as ~~a contracting employee~~ AN INDEPENDENT CONTRACTOR in a position
15 involving direct contact with vulnerable persons. THE DEPARTMENT
16 SHALL NOT HIRE OR RETAIN a person who is disqualified as a result of this
17 section ~~shall not be hired or retained by the department in~~ FOR a position
18 involving direct contact with vulnerable persons nor ~~be~~ IS THE PERSON
19 eligible to contract for or continue in a contract position designated by the
20 executive director or the executive director's designee as involving direct
21 contact with vulnerable persons.

22 (b) Except as otherwise provided in ~~paragraph (d) of this~~
23 ~~subsection (9)~~ SUBSECTION (9)(d) OF THIS SECTION, a person ~~shall be~~ IS
24 disqualified from employment either as ~~an~~ A DEPARTMENT employee or
25 as ~~a contracting employee~~ AN INDEPENDENT CONTRACTOR, regardless of
26 the length of time that may have passed since the discharge of the
27 sentence imposed for any of the following criminal offenses:

1 (c) Except as otherwise provided in ~~paragraph (d) of this~~
2 ~~subsection (9)~~ SUBSECTION (9)(d) OF THIS SECTION, a person ~~shall be~~ IS
3 disqualified from employment either as ~~an~~ A DEPARTMENT employee or
4 as a ~~contracting employee~~ AN INDEPENDENT CONTRACTOR if less than ten
5 years have passed since the person was discharged from a sentence
6 imposed for conviction of any of the following criminal offenses:

7 (10) (a) Any DEPARTMENT employee who is employed in a
8 position involving direct contact with vulnerable persons and who is
9 arrested, charged with, or issued a summons and complaint for any of the
10 disqualifying offenses set forth in ~~paragraph (b) or (c) of subsection (9)~~
11 SUBSECTION (9)(b) OR (9)(c) of this section shall inform his or her
12 supervisor of the arrest, charges, or issuance of a summons and complaint
13 before returning to work. Any DEPARTMENT employee who fails to make
14 such a report or disclosure may be terminated from employment. The
15 department or any facility operated by the department shall advise its
16 employees and ~~contracting employees~~ INDEPENDENT CONTRACTORS in
17 writing of the requirement for self-reporting of the disqualifying offenses
18 set forth in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR
19 (9)(c) of this section.

20 (b) ~~An employee who is charged with any of the disqualifying~~
21 ~~offenses set forth in paragraph (b) of subsection (9) of this section shall~~
22 ANY DEPARTMENT EMPLOYEE WHO IS CHARGED WITH ANY OF THE
23 DISQUALIFYING OFFENSES SET FORTH IN SUBSECTION (9)(b) OF THIS
24 SECTION MUST be suspended until resolution of the criminal charges or
25 completion of administrative action by the department. ~~An~~ A
26 DEPARTMENT employee who is charged with any of the disqualifying
27 offenses set forth in ~~paragraph (c) of subsection (9)~~ SUBSECTION (9)(c) of

1 this section may be suspended at the discretion of the department until
2 resolution of the criminal charges or completion of administrative action
3 by the department. The DEPARTMENT employee shall inform his or her
4 supervisor of the disposition of the criminal charges. Any DEPARTMENT
5 employee who fails to report such information may be terminated from
6 employment. Upon notification to the department that the DEPARTMENT
7 employee has received a conviction for any of the disqualifying offenses
8 described in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR
9 (9)(c) of this section, the DEPARTMENT employee ~~shall~~ MUST be
10 terminated from employment. Nothing in this ~~paragraph (b)~~ shall prohibit
11 SUBSECTION (10)(b) PROHIBITS the department from taking administrative
12 action if the DEPARTMENT employee's conduct would justify disciplinary
13 action under section 13 of article XII of the state constitution for failure
14 to comply with standards of efficient service or competence or for willful
15 misconduct, willful failure, or inability to perform his or her duties.

16 (11) The general assembly recognizes that the department
17 contracts with persons to serve in positions that involve direct contact
18 with vulnerable persons in state-operated facilities or to provide
19 state-funded services that involve direct contact with vulnerable persons
20 in the homes and residences of such vulnerable persons. In order to
21 protect vulnerable persons who come into contact with these ~~contracting~~
22 ~~employees~~ INDEPENDENT CONTRACTORS, the executive director or ~~the~~
23 ~~executive director's~~ HIS OR HER designee shall designate those contract
24 positions that involve direct contact with vulnerable persons that ~~shall be~~
25 ARE subject to the provisions of this subsection (11). In any contract
26 initially entered into or renewed on or after July 1, 1999, concerning a
27 contract position that has been designated as involving direct contact with

1 vulnerable persons, the department shall include the following terms and
2 conditions:

3 (a) That the ~~contracting employee~~ INDEPENDENT CONTRACTOR
4 shall submit to a ~~criminal background~~ STATE AND NATIONAL
5 FINGERPRINT-BASED CRIMINAL HISTORY RECORD check as described in
6 subsection (4) of this section for state employees, EXCEPT THAT THE
7 INDEPENDENT CONTRACTOR SHALL BEAR THE COST OF SUCH CRIMINAL
8 HISTORY RECORD CHECKS;

9 (b) That the ~~contracting employee~~ INDEPENDENT CONTRACTOR
10 shall report any arrests, charges, or summonses for any of the
11 disqualifying offenses specified in ~~paragraph (b) or (c) of subsection (9)~~
12 SUBSECTION (9)(b) OR (9)(c) of this section to the ~~contracting employee's~~
13 INDEPENDENT CONTRACTOR'S supervisor at the department before
14 returning to work;

15 (c) That the ~~contracting employee~~ INDEPENDENT CONTRACTOR
16 may be suspended or terminated, at the discretion of the department, prior
17 to the resolution of the criminal charges for any of the disqualifying
18 offenses specified in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION
19 (9)(b) OR (9)(c) of this section;

20 (d) That, upon notification to the department that the ~~contracting~~
21 ~~employee has received a conviction~~ INDEPENDENT CONTRACTOR HAS BEEN
22 CONVICTED for any of the disqualifying offenses described in ~~paragraph~~
23 ~~(b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR (9)(c) of this section,
24 the ~~contracting employee's~~ INDEPENDENT CONTRACTOR'S position with the
25 department ~~shall~~ MUST be terminated.

26 (11.5) (a) THE GENERAL ASSEMBLY ALSO RECOGNIZES THAT THE
27 DEPARTMENT CONTRACTS WITH OUTSIDE CONTRACTING AGENCIES FOR

1 SERVICES WHERE THE CONTRACTING AGENCY'S EMPLOYEES WILL HAVE
2 DIRECT CONTACT WITH VULNERABLE PERSONS WHO RECEIVE SERVICES
3 PURSUANT TO TITLE 26 AND THIS TITLE 27. TO PROTECT VULNERABLE
4 PERSONS WHO COME INTO CONTACT WITH EMPLOYEES OF A CONTRACTING
5 AGENCY, THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL
6 DESIGNATE THOSE CONTRACTS THAT WILL INVOLVE DIRECT CONTACT WITH
7 VULNERABLE PERSONS AND THAT ARE THEREFORE SUBJECT TO THE
8 PROVISIONS OF THIS SUBSECTION (11.5). ANY CONTRACT WITH A
9 CONTRACTING AGENCY THAT IS INITIALLY ENTERED INTO OR IS RENEWED
10 ON OR AFTER JULY 1, 2018, AND THAT HAS BEEN DESIGNATED AS A
11 CONTRACT THAT INVOLVES DIRECT CONTACT WITH VULNERABLE PERSONS,
12 MUST INCLUDE THE FOLLOWING TERMS AND CONDITIONS:

13 (I) THE CONTRACTING AGENCY SHALL SUBMIT ITS EMPLOYEES WHO
14 WILL HAVE DIRECT CONTACT WITH VULNERABLE PERSONS AS A RESULT OF
15 THE CONTRACT TO A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL
16 HISTORY RECORD CHECK. THE CONTRACTING AGENCY SHALL PROVIDE THE
17 INFORMATION REQUIRED BY SUBSECTION (4) OF THIS SECTION TO THE
18 EXECUTIVE DIRECTOR OR ANY DIVISION HEAD OF THE DEPARTMENT THAT
19 WORKS DIRECTLY WITH THE CONTRACTING AGENCY.

20 (II) THAT THE CONTRACTING AGENCY SHALL REQUIRE ITS
21 EMPLOYEES WHO WILL HAVE DIRECT CONTACT WITH VULNERABLE
22 PERSONS AS A RESULT OF THE CONTRACT TO REPORT ANY ARRESTS,
23 CHARGES, OR SUMMONSES FOR ANY OF THE DISQUALIFYING OFFENSES
24 SPECIFIED IN SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION TO THE
25 CONTRACTING AGENCY'S SUPERVISOR BEFORE RETURNING TO WORK. THE
26 CONTRACTING AGENCY'S SUPERVISOR SHALL IMMEDIATELY NOTIFY THE
27 EXECUTIVE DIRECTOR OR THE RESPECTIVE DIVISION HEAD OF THE

1 DEPARTMENT THAT WORKS DIRECTLY WITH THE CONTRACTING AGENCY
2 UPON NOTIFICATION OF ANY SUCH REPORT MADE BY AN EMPLOYEE.

3 (III) THAT THE CONTRACTING AGENCY MAY BE REQUIRED TO
4 REMOVE AN EMPLOYEE FROM HAVING DIRECT CONTACT WITH VULNERABLE
5 PERSONS, AT THE DISCRETION OF THE DEPARTMENT, PRIOR TO THE
6 RESOLUTION OF THE CRIMINAL CHARGES FOR ANY OF THE DISQUALIFYING
7 OFFENSES SPECIFIED IN SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION;

8 (IV) THAT, UPON NOTIFICATION TO THE DEPARTMENT THAT THE
9 CONTRACTING AGENCY'S EMPLOYEE WHO HAS DIRECT CONTACT WITH
10 VULNERABLE PERSONS AS A RESULT OF THE CONTRACT HAS BEEN
11 CONVICTED OF ANY OF THE DISQUALIFYING OFFENSES SPECIFIED IN
12 SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION, SUCH EMPLOYEE IS NO
13 LONGER PERMITTED TO WORK IN ANY CAPACITY WITH THE DEPARTMENT
14 WHERE HE OR SHE WOULD HAVE DIRECT CONTACT WITH VULNERABLE
15 PERSONS AS A RESULT OF THE CONTRACT; AND

16 (V) THAT, IF THE CONTRACTING AGENCY FAILS TO COMPLY WITH
17 SUBSECTIONS (11.5)(a)(I) TO (11.5)(a)(IV) OF THIS SECTION, THE
18 CONTRACT MAY BE IMMEDIATELY TERMINATED.

19 (b) IF THE CONTRACTING AGENCY IS ALSO LICENSED PURSUANT TO
20 SECTION 26-6-104 AND HAS CONDUCTED A CRIMINAL HISTORY RECORD
21 CHECK PURSUANT TO SECTION 26-6-104 (7)(a)(III) FOR ITS EMPLOYEES
22 WHO WILL HAVE DIRECT CONTACT WITH VULNERABLE PERSONS AS A
23 RESULT OF THE CONTRACT, THE DEPARTMENT MAY ACCEPT SUCH
24 CRIMINAL HISTORY RECORD CHECK TO SATISFY THE REQUIREMENTS OF
25 THIS SUBSECTION (11.5).

26 (12) ~~An employee or contracting employee~~ A DEPARTMENT
27 EMPLOYEE, INDEPENDENT CONTRACTOR, OR EMPLOYEE OF A CONTRACTING

1 AGENCY who is disqualified due to conviction of any of the disqualifying
2 offenses set forth in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION
3 (9)(b) OR (9)(c) of this section may submit a written request to the
4 executive director for reconsideration of the disqualification.
5 Reconsideration ~~under~~ PURSUANT TO this subsection (12) may only be
6 based on a mistake of fact such as an error in the identity of the person for
7 whom the criminal ~~background~~ HISTORY RECORD check was performed
8 PURSUANT TO SUBSECTION (11) OF THIS SECTION. If the executive director
9 determines that there was a mistake of fact involving the identity of the
10 person, the executive director shall issue a finding that the disqualifying
11 factor is not a bar to the person's employment either as ~~an~~ A DEPARTMENT
12 employee or as ~~a contracting employee~~ AN INDEPENDENT CONTRACTOR OR
13 EMPLOYEE OF A CONTRACTING AGENCY.

14 (13) (a) ~~An employee or contracting employee~~ A DEPARTMENT
15 EMPLOYEE, AN INDEPENDENT CONTRACTOR, OR AN EMPLOYEE OF A
16 CONTRACTING AGENCY who is disqualified for conviction of an offense
17 specified in ~~paragraph (c) of subsection (9)~~ SUBSECTION (9)(c) of this
18 section may submit a written request to the executive director for
19 reconsideration of the disqualification and a review of whether the person
20 poses a risk of harm to vulnerable persons. In reviewing a
21 disqualification, the executive director shall give predominant weight to
22 the safety of vulnerable persons over the interests of the disqualified
23 person. The final determination ~~shall~~ MUST be based upon a review of:

24 **SECTION 3. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.