

Second Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 26-0821.01 Lindy Schaible x4215

HOUSE BILL 26-1298

HOUSE SPONSORSHIP

Rydin and Keltie,

SENATE SPONSORSHIP

(None),

House Committees
Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 CONCERNING THE AUTHORITY FOR CRIMINAL BACKGROUND CHECKS
102 FOR CHILD WELFARE OUT-OF-HOME PLACEMENT PROVIDERS.

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>.)

Under current law, background checks are required for all individuals who provide out-of-home care for child-welfare-involved youth. Current law does not comply with the federal bureau of investigation's (FBI) standards for background checks, and the FBI granted Colorado a temporary grace period to allow Colorado to perform these background checks through the FBI. The temporary grace period

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

ends May 2026.

The bill revises statutory provisions to give counties and the Colorado department of human services the statutory authority needed to conduct the required background checks in accordance with the FBI's standards.

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

2 **SECTION 1.** In Colorado Revised Statutes, 26-6-910, **amend** (1),
3 (2), (5) introductory portion, (5)(a) introductory portion, (5)(b), (5)(e),
4 (5.5), (6)(a), (8)(a), and (8)(b) introductory portion; and **add** (5)(f), (5.3),
5 and (8)(c) as follows:

6 **26-6-910. Certification and annual recertification of foster**
7 **care homes and kinship foster care homes by county departments**
8 **and licensed child placement agencies - background and reference**
9 **check requirements - rules - definition.**

10 (1) This section applies to ~~foster care homes~~ A FOSTER CARE
11 HOME, including ~~kinship foster care homes~~ A KINSHIP FOSTER CARE HOME,
12 certified by ~~county departments or licensed child placement agencies~~ A
13 COUNTY DEPARTMENT OR A LICENSED CHILD PLACEMENT AGENCY. Except
14 as otherwise provided in subsection (4) of this section, this section does
15 not apply to ~~foster care homes~~ A FOSTER CARE HOME that ~~are~~ IS licensed
16 by the state department pursuant to the requirements of section 26-6-905
17 and that ~~do~~ DOES not receive money from ~~the counties or children placed~~
18 ~~by the counties~~ A COUNTY OR A CHILD OR YOUTH PLACED BY A COUNTY.
19 A foster care home licensed by the state department must undergo all of
20 the background checks and requirements set forth in section 26-6-905 or
21 as otherwise stated in this part 9.

22 (2) A person operating a foster care home or kinship foster care
23 home shall obtain a certificate to operate the home from a county

1 department or a child placement agency licensed pursuant to this part 9.
2 A certificate is considered a license for the purpose of this part 9,
3 including, but not limited to, the investigation and criminal history
4 background checks required pursuant to this section, ~~and~~ section
5 26-6-912, OR SECTION 19-3-406 (5) SPECIFIC TO A KINSHIP FOSTER CARE
6 HOME. Each certificate must be in the form prescribed and provided by
7 the state department, certify that the person operating the foster care home
8 is a suitable person to operate a foster care home or kinship foster care
9 home or provide care for a child OR YOUTH, and contain any other
10 information that the state department requires. A child placement agency
11 issuing or renewing ~~any such~~ THE certificate shall notify the state
12 department about the certification in a method and time frame as set by
13 rule adopted by the state board.

14 (5) Prior to issuing a certificate ~~or a recertification~~ to an applicant
15 to operate a foster care home or A kinship foster care home, a county
16 department or a child placement agency licensed pursuant to the
17 provisions of this part 9 shall conduct the following background checks
18 AND FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS for the
19 applicant for a certificate, a person employed by the applicant, or a person
20 who resides at the facility or the home, AND ALL APPLICANTS WHO ARE TO
21 BE SUBJECTED TO A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK:

22 (a) AN INITIAL SUBMISSION OF a fingerprint-based criminal history
23 record check through the Colorado bureau of investigation FOR A CHECK
24 OF STATE RECORDS, and THEREAFTER A SUBMISSION TO the federal bureau
25 of investigation FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK to
26 determine if the applicant, employee, or a person who resides at the
27 facility or the FOSTER CARE home has been convicted of:

1 (b) A check of the ICON system at the state judicial department
2 to determine the status or disposition of any criminal charges brought
3 against the applicant, the employee, or a person who resides at the facility
4 or the home that were identified by the fingerprint-based criminal history
5 record check through the Colorado bureau of investigation. ~~and the~~
6 ~~federal bureau of investigation;~~ INFORMATION REGARDING THE RESULT OF
7 THE FINGERPRINT-BASED CRIMINAL HISTORY RECEIVED FROM THE
8 COLORADO BUREAU OF INVESTIGATION MAY BE RELEASED TO A FACILITY
9 OR AN AGENCY AS ALLOWED BY THE "COLORADO OPEN RECORDS ACT",
10 PART 2 OF ARTICLE 72 OF TITLE 24.

11 (e) When the results of a fingerprint-based criminal history record
12 check or any other record check performed pursuant to this subsection (5)
13 reveal a record of arrest without a disposition, the county department,
14 STATE DEPARTMENT, or licensed child placement agency shall require the
15 person to submit to a name-based judicial record check, as defined in
16 section 22-2-119.3 (6)(d), AND IN COMPLIANCE WITH PUB.L. 92-544.
17 RESULTS RECEIVED BY THE STATE DEPARTMENT FROM THE FEDERAL
18 BUREAU OF INVESTIGATION THAT REQUIRE ADDITIONAL INVESTIGATION
19 DUE TO A RECORD OF ARREST WITHOUT A DISPOSITION MUST ONLY BE
20 DISCLOSED TO AND DISCUSSED WITH THE SUBJECT OF THE
21 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. ALL JUDICIAL
22 RECORD INFORMATION RECEIVED AS A RESULT OF THE FURTHER
23 INVESTIGATION MUST BE KEPT CONFIDENTIAL AND NOT SHARED WITH A
24 LICENSED CHILD PLACEMENT AGENCY OR WITH A PERSON NOT AUTHORIZED
25 TO RECEIVE CRIMINAL JUSTICE INFORMATION. THE CHILD PLACEMENT
26 AGENCY OR NON-AUTHORIZED PERSON MUST ONLY RECEIVE INFORMATION
27 PROVIDED IN THE GENERAL INFORMATION LETTER CONTAINING ELIGIBILITY

1 STATUS.

2 (f) A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK
3 THROUGH THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL
4 BUREAU OF INVESTIGATION TO DETERMINE IF THE APPLICANT, EMPLOYEE,
5 OR A PERSON WHO RESIDES IN THE KINSHIP FOSTER CARE HOME HAS BEEN
6 CONVICTED OF ANY OFFENSE DESCRIBED IN SECTION 19-3-406 (5), AS
7 "CONVICTION" IS DEFINED IN SECTION 19-3-406 (12).

8 (5.3) (a) THE COLORADO BUREAU OF INVESTIGATION SHALL SEND
9 RECORDS OBTAINED AS A RESULT OF A FINGERPRINT-BASED CRIMINAL
10 HISTORY RECORD CHECK CONDUCTED PURSUANT TO THIS SECTION ONLY
11 TO THE COUNTY DEPARTMENT OR STATE DEPARTMENT, AND THE USE AND
12 HANDLING OF THE INFORMATION MUST COMPLY WITH THE FEDERAL
13 CRIMINAL JUSTICE INFORMATION SERVICES SECURITY POLICY AND
14 FEDERAL BUREAU OF INVESTIGATION'S REQUIREMENTS SURROUNDING THE
15 HANDLING OF CRIMINAL HISTORY RECORD CHECK INFORMATION. A
16 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK CONDUCTED
17 PURSUANT TO THIS SECTION IS FOR CHILD PLACEMENT ONLY. A PRIVATE
18 ENTITY IS NEVER AUTHORIZED TO RECEIVE CRIMINAL HISTORY RECORD
19 CHECK INFORMATION. INFORMATION REGARDING THE RESULT OF THE
20 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK RECEIVED FROM
21 THE FEDERAL BUREAU OF INVESTIGATION AND RELEASED TO FACILITY,
22 AGENCY, OR COUNTY DEPARTMENT STAFF NOT AUTHORIZED TO RECEIVE
23 CRIMINAL HISTORY RECORD CHECK INFORMATION MUST DISCLOSE ONLY
24 WHETHER THE APPLICANT IS ELIGIBLE OR INELIGIBLE, OR THAT THE
25 INVESTIGATION IS INCONCLUSIVE, WITH A FURTHER REQUEST FOR THE
26 APPLICANT TO CONTACT THE STATE DEPARTMENT TO PROVIDE FURTHER
27 INFORMATION TO DETERMINE FINAL ELIGIBILITY STATUS.

1 (b) AS A PRIVATE ENTITY, A CHILD PLACEMENT AGENCY IS NOT
2 AUTHORIZED TO RECEIVE CRIMINAL HISTORY RECORD INFORMATION FROM
3 THE FEDERAL BUREAU OF INVESTIGATION.

4 (5.5) Prior to issuing a certificate ~~or subsequent certificate~~ to an
5 applicant to operate a kinship foster care home pursuant to this part 9 and
6 rules ~~promulgated~~ ADOPTED by the state board, a county department,
7 STATE DEPARTMENT, or a child placement agency shall conduct a
8 fingerprint-based criminal history record check through the Colorado
9 bureau of investigation pursuant to section 19-3-406 or 26-6-910. The
10 applicant shall pay, unless otherwise paid by a county department OR A
11 CHILD PLACEMENT AGENCY, the costs associated with the
12 fingerprint-based criminal history record check to the Colorado bureau of
13 investigation.

14 (6) A county department or a child placement agency licensed
15 pursuant to this part 9 shall not issue a certificate to operate, or a
16 recertification to operate, a foster care home or kinship foster care home
17 and shall revoke or suspend a certificate if the applicant for the
18 certificate, a person employed by the applicant, or a person who resides
19 at the facility or home:

20 (a) Has been convicted of any of the crimes listed in subsection
21 (5)(a) of this section FOR A FOSTER CARE HOME, OR HAS BEEN CONVICTED
22 OF ANY CRIME LISTED IN SECTION 19-3-406 (5) FOR A KINSHIP FOSTER
23 CARE HOME, as verified through a fingerprint-based criminal history
24 record check, a name-based judicial record check, if necessary, and a
25 check of the ICON system at the state judicial department;

26 (8) (a) The convictions identified in subsections (5)(a) and (6)(a)
27 of this section, AND IN SECTION 19-3-406 FOR A KINSHIP FOSTER CARE

1 HOME, must be determined according to the records of the Colorado
2 bureau of investigation or the federal bureau of investigation and the
3 ICON system at the state judicial department. The screening request in
4 Colorado must be made pursuant to section 19-1-307 (2)(k.5), rules
5 promulgated by the state board pursuant to section 19-3-313.5, and 42
6 U.S.C. sec. 671 (a)(20). A certified copy of the judgment of a court of
7 competent jurisdiction of the conviction, deferred judgment and sentence
8 agreement, deferred prosecution agreement, or deferred adjudication
9 agreement is prima facie evidence of a conviction or agreement.

10 (b) The county department or licensed child placement agency
11 shall not issue a certificate to operate a foster care home ~~or a kinship~~
12 ~~foster care home~~ if the state department or the county department has a
13 certified court order from another state indicating that the person applying
14 for the certificate:

15 (c) THE COUNTY DEPARTMENT OR LICENSED CHILD PLACEMENT
16 AGENCY SHALL NOT ISSUE A CERTIFICATE TO OPERATE A KINSHIP FOSTER
17 CARE HOME IF THE STATE DEPARTMENT OR COUNTY DEPARTMENT HAS A
18 CERTIFIED COURT ORDER FROM ANOTHER STATE INDICATING THAT THE
19 PERSON APPLYING FOR THE CERTIFICATE:

20 (I) HAS BEEN CONVICTED OF FELONY CHILD ABUSE OR ANY
21 UNLAWFUL SEXUAL OFFENSE AGAINST A CHILD UNDER A LAW OF ANOTHER
22 STATE OR THE UNITED STATES, THE ELEMENTS OF WHICH ARE
23 SUBSTANTIALLY SIMILAR TO THE ELEMENTS OF ANY OF THE OFFENSES
24 DESCRIBED IN SECTION 19-3-406 (5); OR

25 (II) HAS ENTERED INTO A DEFERRED JUDGMENT OR DEFERRED
26 PROSECUTION AGREEMENT IN ANOTHER STATE AS TO FELONY CHILD ABUSE
27 OR ANY SEXUAL OFFENSE AGAINST A CHILD, THE ELEMENTS OF WHICH ARE

1 SUBSTANTIALLY SIMILAR TO THE ELEMENTS OF ANY OF THE OFFENSES
2 DESCRIBED IN SECTION 19-3-406 (5).

3 **SECTION 2.** In Colorado Revised Statutes, 26-6-912, **amend**
4 (1)(a)(I)(A), (1)(a)(I)(B), (1)(c)(I) introductory portion, and (1)(c)(I)(A);
5 and **repeal** (1)(e) as follows:

6 **26-6-912. Investigations and inspections - local authority -**
7 **reports - rules.**

8 (1) (a) (I) (A) The state department shall investigate and pass on
9 each application for issuance of a license, each application for a
10 permanent or time-limited license following the issuance of a
11 probationary or provisional license, and each application for renewal of
12 a license to operate a facility or an agency prior to granting the license or
13 renewal. As part of the investigation, the state department shall require
14 each individual, including ~~but not limited to~~ the applicant, ~~an owner~~, an
15 employee, a newly hired employee, a licensee, ANY INDIVIDUAL WHO HAS
16 DIRECT CONTACT WITH A CHILD OR A YOUTH OR IS ASSOCIATED WITH THE
17 LICENSE, and an adult who is eighteen years ~~of age~~ OLD or older and
18 resides in the licensed facility, to obtain a fingerprint-based criminal
19 history record check by reviewing any record that is used to assist the
20 state department in ascertaining whether the person being investigated has
21 been convicted of any of the criminal offenses specified in section
22 26-6-905 (8), SECTION 19-3-406 (5) REGARDING KINSHIP FOSTER CARE
23 HOMES CERTIFIED PURSUANT TO SECTION 26-6-910, or any other felony.
24 THE COLORADO BUREAU OF INVESTIGATION SHALL SEND RECORDS
25 OBTAINED AS A RESULT OF A FINGERPRINT-BASED CRIMINAL HISTORY
26 RECORD CHECK ONLY TO THE STATE DEPARTMENT, AND THE USE AND
27 HANDLING OF THE INFORMATION MUST COMPLY WITH THE FEDERAL

1 CRIMINAL JUSTICE INFORMATION SERVICES SECURITY POLICY.
2 INFORMATION REGARDING THE RESULT OF THE FINGERPRINT-BASED
3 CRIMINAL HISTORY RECORD CHECK RECEIVED FROM THE FEDERAL BUREAU
4 OF INVESTIGATION AND RELEASED TO A FACILITY OR AN AGENCY MUST
5 DISCLOSE ONLY WHETHER THE APPLICANT IS ELIGIBLE OR INELIGIBLE OR
6 THAT THE INVESTIGATION IS INCONCLUSIVE, WITH A FURTHER REQUEST
7 FOR THE APPLICANT TO CONTACT THE STATE DEPARTMENT TO PROVIDE
8 FURTHER INFORMATION TO DETERMINE FINAL ELIGIBILITY STATUS. The
9 state board shall ~~promulgate~~ ADOPT rules that define and identify what the
10 criminal history record check entails.

11 (B) Rules ~~promulgated~~ ADOPTED by the state board pursuant to
12 this subsection (1)(a)(I) must require the fingerprint-based criminal
13 history record check in all circumstances, other than those identified in
14 subsection (1)(a)(I)(C) of this section, to include a fingerprint-based
15 criminal history record check using the records of the Colorado bureau of
16 investigation and the federal bureau of investigation and to apply to any
17 ~~new owner~~, new applicant, newly hired employee, new licensee, or
18 individual who begins residing in the licensed facility, AND ANY
19 INDIVIDUAL WHO HAS DIRECT CONTACT WITH A CHILD OR A YOUTH OR IS
20 ASSOCIATED WITH THE LICENSE. As part of the investigation, the records
21 and reports of child abuse or neglect maintained by the state department
22 must be accessed to determine whether the ~~owner~~, applicant, employee,
23 newly hired employee, licensee, AND ANY INDIVIDUAL WHO HAS DIRECT
24 CONTACT WITH A CHILD OR A YOUTH OR IS ASSOCIATED WITH THE LICENSE,
25 or individual who resides in the licensed facility being investigated has
26 been found to be responsible in a confirmed report of child abuse or
27 neglect. Information is made available pursuant to section 19-1-307 (2)(j)

1 and rules promulgated ADOPTED by the state board pursuant to section
2 19-3-313.5 (4). Except as provided in subsection (1)(a)(I)(C) of this
3 section, any change in ownership of a licensed facility or agency or
4 addition of a new resident adult or newly hired employee to the licensed
5 facility requires a new investigation as provided in this section.

6 (c) (I) For all applicants applying to be a foster care home or
7 kinship foster care home, regardless of reimbursement, the county
8 department or child placement agency shall require each adult who is
9 eighteen years of age OLD or older and who resides in the home to obtain
10 a fingerprint-based criminal history record check through the Colorado
11 bureau of investigation and the federal bureau of investigation. The
12 applicant must provide the county department or child placement agency
13 with the addresses where the applicant and any adult residing in the home
14 have lived in the preceding five years, including addresses from other
15 states. The county department or the child placement agency shall
16 conduct the following background checks of the applicant or an adult
17 residing in the home:

18 (A) A fingerprint-based criminal history record check to
19 determine if the applicant or adult residing in the home has been
20 convicted of any of the crimes listed in section 26-6-910 (5)(a) FOR A
21 FOSTER CARE HOME OR SECTION 19-3-406 (5) FOR A KINSHIP FOSTER CARE
22 HOME;

23 ~~(e) Notwithstanding any provision of this part 9 to the contrary,~~
24 ~~the state department may enter into an interagency agreement or a~~
25 ~~memorandum of understanding, or both, as necessary to complete the~~
26 ~~criminal history record checks and other background checks required in~~
27 ~~this section.~~

1 **SECTION 3.** In Colorado Revised Statutes, 26-6-905, **amend**
2 (1)(b), (8)(a)(I) introductory portion, (8)(b), and (10) as follows:

3 **26-6-905. Licenses - out-of-state notices and consent -**
4 **demonstration pilot program - report - rules - definition.**

5 (1) (b) A person operating a foster care home or kinship foster
6 care home is not required to obtain a license from the state department to
7 operate the foster care home or kinship foster care home if the person
8 holds a certificate issued pursuant to section 26-6-910 to operate the
9 home from a county department or a child placement agency licensed
10 ~~under~~ PURSUANT TO the provisions of this part 9. A certificate is
11 considered a license for the purpose of this part 9, including, but not
12 limited, to the investigation and criminal history background checks
13 required ~~under~~ PURSUANT TO sections **19-3-406**, 26-6-910, and 26-6-912.

14 (8) (a) (I) The state department shall not issue a license to operate
15 a residential or day treatment child care facility or a child placement
16 agency, and any license or certificate issued prior to August 7, 2006, is
17 revoked or suspended if the applicant for the license or certificate, an
18 affiliate of the applicant, a person employed by the applicant, or a person
19 who resides with the applicant at the facility has been convicted of ANY
20 OFFENSE DESCRIBED IN SECTION 19-3-406 (5) OR:

21 (b) (I) The department shall determine the convictions identified
22 in subsection (8)(a) of this section OR SECTION 19-3-406 FOR A KINSHIP
23 FOSTER CARE HOME according to the records of the Colorado bureau of
24 investigation, the ICON system at the state judicial department, or any
25 other source, as set forth in section 26-6-912 (1)(a)(II). A certified copy
26 of the judgment of a court of competent jurisdiction of a conviction,
27 deferred judgment and sentence agreement, deferred prosecution

1 agreement, or deferred adjudication agreement is prima facie evidence of
2 the conviction or agreement.

3 (II) A license or certificate to operate a residential or day
4 treatment child care facility, foster care home, or child placement agency
5 shall not be issued if the state department has a certified court order from
6 another state indicating that the person applying for the license or
7 certificate has been convicted of child abuse or any unlawful sexual
8 offense against a child under a law of any other state or the United States
9 or the state department has a certified court order from another state that
10 the person applying for the license or certificate has entered into a
11 deferred judgment or deferred prosecution agreement in another state as
12 to child abuse or any sexual offense against a child.

13 (III) A LICENSE OR CERTIFICATE TO OPERATE A KINSHIP FOSTER
14 CARE HOME SHALL NOT BE ISSUED IF THE STATE DEPARTMENT HAS A
15 CERTIFIED COURT ORDER FROM ANOTHER STATE INDICATING THAT THE
16 PERSON APPLYING FOR THE LICENSE OR CERTIFICATE HAS BEEN CONVICTED
17 OF FELONY CHILD ABUSE OR ANY UNLAWFUL SEXUAL OFFENSE AGAINST A
18 CHILD UNDER A LAW OF ANY OTHER STATE OR THE UNITED STATES OR THE
19 STATE DEPARTMENT HAS A CERTIFIED COURT ORDER FROM ANOTHER
20 STATE THAT THE PERSON APPLYING FOR THE LICENSE OR CERTIFICATE HAS
21 ENTERED INTO A DEFERRED JUDGMENT OR A DEFERRED PROSECUTION
22 AGREEMENT IN ANOTHER STATE AS TO FELONY CHILD ABUSE OR ANY
23 OTHER SEXUAL OFFENSE AGAINST A CHILD.

24 (10) The state department shall not issue a license to operate a
25 residential or day treatment child care facility, foster care home, KINSHIP
26 FOSTER CARE HOME, or child placement agency if the person applying for
27 the license or an affiliate of the applicant, a person employed by the

1 applicant, or a person who resides with the applicant at the facility has
2 been determined to be insane or mentally incompetent by a court of
3 competent jurisdiction and, if the court enters, pursuant to part 3 or part
4 4 of article 14 of title 15, or section 27-65-110 (4) or 27-65-127, an order
5 specifically finding that the mental incompetency or insanity is of such a
6 degree that the applicant is incapable of operating a residential or day
7 treatment child care facility, foster care home, KINSHIP FOSTER CARE
8 HOME, or child placement agency, the record of such determination and
9 entry of such order being conclusive evidence thereof.

10 **SECTION 4. Safety clause.** The general assembly finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety or for appropriations for
13 the support and maintenance of the departments of the state and state
14 institutions.