

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 26-1298

BY REPRESENTATIVE(S) Rydin and Keltie, Boesenecker, Camacho, Clifford, Duran, Flanell, Gilchrist, Gonzalez R., Jackson, Joseph, Lieder, Lindsay, Nguyen, Richardson, Ricks, Rutinel;
also SENATOR(S) Cutter, Danielson, Exum, Gonzales J., Jodeh, Kipp, Kolker, Lindstedt, Marchman, Rodriguez, Snyder, Wallace, Coleman.

CONCERNING THE AUTHORITY FOR CRIMINAL BACKGROUND CHECKS FOR CHILD WELFARE OUT-OF-HOME PLACEMENT PROVIDERS, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 26-6-903, **amend** (6); and **add** (6.5) as follows:

26-6-903. Definitions.

As used in this part 9, unless the context otherwise requires:

(6) "Child placement agency" or "agency" means a corporation, partnership, association, firm, agency, institution, or person unrelated to the child being placed, who places, facilitates placement for a fee, or arranges

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

for placement for care of a child under eighteen years of age OLD with a family, person, or institution. A child placement agency may place, facilitate placement, or arrange for the placement of a child for the purpose of adoption, foster care, treatment foster care, or therapeutic foster care. AS A PRIVATE ENTITY, A CHILD PLACEMENT AGENCY IS NOT AUTHORIZED TO RECEIVE CRIMINAL HISTORY RECORD INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION. The natural parents or guardian of a child who place the child for care with a facility licensed as a family child care home or child care center, as defined in section 26.5-5-303, are not a child placement agency.

(6.5) "COUNTY DEPARTMENT" MEANS THE COUNTY OR DISTRICT DEPARTMENT OF HUMAN OR SOCIAL SERVICES.

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

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

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

(2) A person operating a foster care home or kinship foster care home shall obtain a certificate to operate the home from a county department or a child placement agency licensed pursuant to this part 9. A

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

(5) Prior to issuing a certificate ~~or a recertification~~ to an applicant to operate a foster care home or A kinship foster care home, a county department or a child placement agency licensed pursuant to the provisions of this part 9 shall conduct the following background checks AND FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS for the applicant for a certificate, a person employed by the applicant, or a person who resides at the facility or the home:

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

(b) A check of the ICON system at the state judicial department to determine the status or disposition of any criminal charges brought against the applicant, the employee, or a person who resides at the facility or the home that were identified by the fingerprint-based criminal history record check through the Colorado bureau of investigation. ~~and the federal bureau of investigation;~~

(e) When the results of a fingerprint-based criminal history record check or any other record check performed pursuant to this subsection (5) reveal a record of arrest without a disposition, the county department, STATE DEPARTMENT, or licensed child placement agency shall require the person to submit to a name-based judicial record check, as defined in section 22-2-119.3 (6)(d). RESULTS RECEIVED BY THE STATE DEPARTMENT FROM

THE FEDERAL BUREAU OF INVESTIGATION THAT REQUIRE ADDITIONAL INVESTIGATION DUE TO A RECORD OF ARREST WITHOUT A DISPOSITION MUST ONLY BE DISCLOSED TO AND DISCUSSED WITH THE SUBJECT OF THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. ALL JUDICIAL RECORD INFORMATION RECEIVED AS A RESULT OF THE FURTHER INVESTIGATION MUST BE KEPT CONFIDENTIAL AND NOT SHARED WITH A LICENSED CHILD PLACEMENT AGENCY OR WITH A PERSON NOT AUTHORIZED TO RECEIVE CRIMINAL JUSTICE INFORMATION. THE CHILD PLACEMENT AGENCY OR NON-AUTHORIZED PERSON MUST ONLY RECEIVE INFORMATION PROVIDED IN THE GENERAL INFORMATION LETTER CONTAINING ELIGIBILITY STATUS.

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

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

(b) AS A PRIVATE ENTITY, A CHILD PLACEMENT AGENCY IS NOT

AUTHORIZED TO RECEIVE CRIMINAL HISTORY RECORD INFORMATION FROM THE FEDERAL BUREAU OF INVESTIGATION.

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

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

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

(8) (a) The convictions identified in subsections (5)(a) and (6)(a) of this section, AND IN SECTION 19-3-406 FOR A KINSHIP FOSTER CARE HOME, must be determined according to the records of the Colorado bureau of investigation or the federal bureau of investigation and the ICON system at the state judicial department. The screening request in Colorado must be made pursuant to section 19-1-307 (2)(k.5), rules promulgated by the state board pursuant to section 19-3-313.5, and 42 U.S.C. sec. 671 (a)(20). A certified copy of the judgment of a court of competent jurisdiction of the conviction, deferred judgment and sentence agreement, deferred prosecution agreement, or deferred adjudication agreement is prima facie evidence of a conviction or agreement.

(b) The county department or licensed child placement agency shall

not issue a certificate to operate a foster care home ~~or a kinship foster care home~~ if the state department or the county department has a certified court order from another state indicating that the person applying for the certificate:

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

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

(II) HAS ENTERED INTO A DEFERRED JUDGMENT OR DEFERRED PROSECUTION AGREEMENT IN ANOTHER STATE AS TO FELONY CHILD ABUSE OR ANY SEXUAL OFFENSE AGAINST A CHILD, THE ELEMENTS OF WHICH ARE SUBSTANTIALLY SIMILAR TO THE ELEMENTS OF ANY OF THE OFFENSES DESCRIBED IN SECTION 19-3-406 (5).

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

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

(1) (a) (I) (A) The state department shall investigate and pass on each application for issuance of a license, each application for a permanent or time-limited license following the issuance of a probationary or provisional license, and each application for renewal of a license to operate a facility or an agency prior to granting the license or renewal. As part of the investigation, the state department shall require each individual, including ~~but not limited to~~ the applicant, ~~an owner~~, an employee, a newly hired employee, a licensee, and an adult who is eighteen years ~~of age~~ OLD or older and resides in the licensed facility, to obtain a fingerprint-based criminal history record check by reviewing any record that is used to assist

the state department in ascertaining whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-905 (8), SECTION 19-3-406 (5) REGARDING KINSHIP FOSTER CARE HOMES CERTIFIED PURSUANT TO SECTION 26-6-910, or any other felony. THE COLORADO BUREAU OF INVESTIGATION SHALL SEND RECORDS OBTAINED AS A RESULT OF A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK ONLY TO THE STATE DEPARTMENT, AND THE USE AND HANDLING OF THE INFORMATION MUST COMPLY WITH THE FEDERAL CRIMINAL JUSTICE INFORMATION SERVICES SECURITY POLICY. INFORMATION REGARDING THE RESULT OF THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK RECEIVED FROM THE FEDERAL BUREAU OF INVESTIGATION AND RELEASED TO A FACILITY OR AN AGENCY MUST DISCLOSE ONLY WHETHER THE APPLICANT IS ELIGIBLE OR INELIGIBLE OR THAT THE INVESTIGATION IS INCONCLUSIVE, WITH A FURTHER REQUEST FOR THE APPLICANT TO CONTACT THE STATE DEPARTMENT TO PROVIDE FURTHER INFORMATION TO DETERMINE FINAL ELIGIBILITY STATUS. The state board shall ~~promulgate~~ ADOPT rules that define and identify what the criminal history record check entails.

(B) Rules ~~promulgated~~ ADOPTED by the state board pursuant to this subsection (1)(a)(I) must require the fingerprint-based criminal history record check in all circumstances, other than those identified in subsection (1)(a)(I)(C) of this section, to include a fingerprint-based criminal history record check using the records of the Colorado bureau of investigation and the federal bureau of investigation and to apply to any ~~new owner~~, new applicant, newly hired employee, new licensee, or individual who begins residing in the licensed facility. As part of the investigation, the records and reports of child abuse or neglect maintained by the state department must be accessed to determine whether the ~~owner~~, applicant, employee, newly hired employee, licensee, or individual who resides in the licensed facility being investigated has been found to be responsible in a confirmed report of child abuse or neglect. Information is made available pursuant to section 19-1-307 (2)(j) and rules ~~promulgated~~ ADOPTED by the state board pursuant to section 19-3-313.5 (4). Except as provided in subsection (1)(a)(I)(C) of this section, any change in ownership of a licensed facility or agency or addition of a new resident adult or newly hired employee to the licensed facility requires a new investigation as provided in this section.

(c) (I) For all applicants applying to be a foster care home or kinship foster care home, regardless of reimbursement, the county department or child placement agency shall require each adult who is eighteen years of age

OLD or older and who resides in the home to obtain a fingerprint-based criminal history record check through the Colorado bureau of investigation and the federal bureau of investigation. The applicant must provide the county department or child placement agency with the addresses where the applicant and any adult residing in the home have lived in the preceding five years, including addresses from other states. The county department or the child placement agency shall conduct the following background checks of the applicant or an adult residing in the home:

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

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

SECTION 4. In Colorado Revised Statutes, 26-6-905, **amend** (1)(b), (8)(a)(I) introductory portion, (8)(b), and (10) as follows:

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

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

(8) (a) (I) The state department shall not issue a license to operate a residential or day treatment child care facility or a child placement agency, and any license or certificate issued prior to August 7, 2006, is revoked or suspended if the applicant for the license or certificate, an affiliate of the

applicant, a person employed by the applicant, or a person who resides with the applicant at the facility has been convicted of ANY OFFENSE DESCRIBED IN SECTION 19-3-406 (5) OR:

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

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

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

(10) The state department shall not issue a license to operate a residential or day treatment child care facility, foster care home, KINSHIP FOSTER CARE HOME, or child placement agency if the person applying for

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

SECTION 5. Appropriation. (1) For the 2026-27 state fiscal year, the general assembly anticipates that the department of human services will receive \$350,000 in federal funds to implement this act. This figure is subject to the "(I)" notation as defined in the annual general appropriation act for the same fiscal year.

(2) For the 2026-27 state fiscal year, \$350,000 is appropriated to the office of the governor for use by the office of information technology. This appropriation is from reappropriated funds received from the department of human services under section (1) of this section. To implement this act, the office may use this appropriation to provide information technology services for the department of human services.

SECTION 6. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO