

CHAPTER 238

HUMAN SERVICES - SOCIAL SERVICES

HOUSE BILL 18-1411

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also SENATOR(S) Smallwood, Hill, Holbert, Jahn, Kefalas, Lambert, Marble, Martinez Humenik, Moreno, Neville T., Priola,
Scott, Tate, Grantham.

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

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

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

26-6-104. Licenses - out-of-state notices and consent - demonstration pilot program. (7) (a) (III) ANY APPLICANT, LICENSEE, OR EMPLOYEE OF THE APPLICANT OR LICENSEE WHO MEETS THE DEFINITION OF A DEPARTMENT EMPLOYEE OR AN INDEPENDENT CONTRACTOR, AS THOSE TERMS ARE DEFINED IN SECTION 27-90-111 OR WHO WORKS FOR A CONTRACTING AGENCY, AS DEFINED IN SECTION 27-90-111, AND WHO WILL HAVE DIRECT CONTACT WITH VULNERABLE PERSONS, AS DEFINED IN SECTION 27-90-111 (2)(e), IS REQUIRED TO SUBMIT TO A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK IN THE SAME MANNER AS REQUIRED PURSUANT TO SECTION 27-90-111 (9); EXCEPT THAT THE STATE DEPARTMENT SHALL NOT BEAR THE COST OF SUCH CRIMINAL HISTORY RECORD CHECK REQUIRED BY THIS SUBSECTION (7)(a)(III). THE STATE DEPARTMENT MAY ALSO CONDUCT A COMPARISON SEARCH ON THE COLORADO STATE COURTS PUBLIC ACCESS SYSTEM TO DETERMINE THE CRIME OR CRIMES FOR WHICH THE INDIVIDUAL HAVING DIRECT CONTACT WITH VULNERABLE PERSONS WAS ARRESTED OR CONVICTED AND THE DISPOSITION OF SUCH CRIME OR CRIMES. THE CRIMINAL HISTORY RECORD CHECK REQUIRED BY THIS SUBSECTION (7)(a)(III) MUST BE SUBMITTED TO THE STATE DEPARTMENT PRIOR TO THE INDIVIDUAL HAVING DIRECT CONTACT WITH VULNERABLE PERSONS, AND AN APPLICANT, LICENSEE, OR EMPLOYEE OF AN APPLICANT OR LICENSEE MUST NOT BE ALLOWED TO HAVE DIRECT CONTACT WITH VULNERABLE PERSONS IF HE OR SHE DOES NOT MEET THE REQUIREMENTS SET

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

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

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

27-90-111. Employment of personnel - screening of applicants - disqualifications from employment - contracts - rules - definitions. (1) The general assembly hereby recognizes that many of the individuals receiving services from ~~persons employed by the department~~ EMPLOYEES pursuant to ~~this title or title 26 C.R.S., or this title 27~~ are unable to defend themselves and are therefore vulnerable to abuse or assault. It is the intent of the general assembly to minimize the potential for hiring and employing persons with a propensity toward abuse, assault, or similar offenses against others for positions that would provide them with unsupervised access to vulnerable persons. The general assembly hereby declares that, in accordance with section 13 of article XII of the state constitution, for purposes of terminating employees in the state personnel system who are finally convicted of criminal conduct, offenses involving moral turpitude include, but are not limited to, the disqualifying offenses specified in subsection (9) of this section.

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

(a) "Contracting ~~employee~~ AGENCY" means ~~a person who~~ AN AGENCY, CORPORATION, NONPROFIT ENTITY, OR ANY OTHER OUTSIDE ENTITY THAT contracts with the department and who is designated by the executive director or the executive director's designee as serving in a contract position involving direct contact with ~~vulnerable persons~~ TO PROVIDE SERVICES PURSUANT TO TITLE 26 OR THIS TITLE 27 AND THAT PROVIDES SERVICES THAT INVOLVE DIRECT CONTACT WITH VULNERABLE PERSONS.

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

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

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

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

(3) The employment screening and disqualification requirements in this section

apply to the following facilities or programs operated by the department:

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

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

(7) The executive director, any division head, or any local agency or provider who relies on information obtained pursuant to this section in making an employment decision or who concludes that the nature of any information disqualifies the person from employment as either ~~an~~ A DEPARTMENT employee or ~~a contracting employee shall be~~ AN INDEPENDENT CONTRACTOR IS immune from civil liability for that decision or conclusion unless the information relied upon is false and the executive director, division head, or local agency or provider knows the information is false or acts with reckless disregard concerning the veracity of the information.

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

direct contact with vulnerable persons.

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

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

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

(b) ~~An employee who is charged with any of the disqualifying offenses set forth in paragraph (b) of subsection (9) of this section shall~~ ANY DEPARTMENT EMPLOYEE WHO IS CHARGED WITH ANY OF THE DISQUALIFYING OFFENSES SET FORTH IN SUBSECTION (9)(b) OF THIS SECTION MUST be suspended until resolution of the criminal charges or completion of administrative action by the department. ~~An A~~ A DEPARTMENT employee who is charged with any of the disqualifying offenses set forth in ~~paragraph (c) of subsection (9)~~ SUBSECTION (9)(c) of this section may be suspended at the discretion of the department until resolution of the criminal charges or completion of administrative action by the department. The DEPARTMENT employee shall inform his or her supervisor of the disposition of the criminal charges. Any DEPARTMENT employee who fails to report such information may be terminated from employment. Upon notification to the department that the DEPARTMENT employee has received a conviction for any of the disqualifying offenses described in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR (9)(c) of this section, the DEPARTMENT employee ~~shall~~ MUST be terminated from employment. Nothing in this ~~paragraph (b) shall prohibit~~ SUBSECTION (10)(b) PROHIBITS the department from taking administrative action if the DEPARTMENT employee's conduct would justify disciplinary action under section 13 of article XII of the state constitution for failure to comply with standards of efficient service or competence or for willful misconduct, willful failure, or inability to perform his or her duties.

(11) The general assembly recognizes that the department contracts with persons

to serve in positions that involve direct contact with vulnerable persons in state-operated facilities or to provide state-funded services that involve direct contact with vulnerable persons in the homes and residences of such vulnerable persons. In order to protect vulnerable persons who come into contact with these ~~contracting employees~~ INDEPENDENT CONTRACTORS, the executive director or ~~the executive director's~~ HIS OR HER designee shall designate those contract positions that involve direct contact with vulnerable persons that ~~shall be~~ ARE subject to the provisions of this subsection (11). In any contract initially entered into or renewed on or after July 1, 1999, concerning a contract position that has been designated as involving direct contact with vulnerable persons, the department shall include the following terms and conditions:

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

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

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

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

(11.5) (a) THE GENERAL ASSEMBLY ALSO RECOGNIZES THAT THE DEPARTMENT CONTRACTS WITH OUTSIDE CONTRACTING AGENCIES FOR SERVICES WHERE THE CONTRACTING AGENCY'S EMPLOYEES WILL HAVE DIRECT CONTACT WITH VULNERABLE PERSONS WHO RECEIVE SERVICES PURSUANT TO TITLE 26 AND THIS TITLE 27. TO PROTECT VULNERABLE PERSONS WHO COME INTO CONTACT WITH EMPLOYEES OF A CONTRACTING AGENCY, THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL DESIGNATE THOSE CONTRACTS THAT WILL INVOLVE DIRECT CONTACT WITH VULNERABLE PERSONS AND THAT ARE THEREFORE SUBJECT TO THE PROVISIONS OF THIS SUBSECTION (11.5). ANY CONTRACT WITH A CONTRACTING AGENCY THAT IS INITIALLY ENTERED INTO OR IS RENEWED ON OR AFTER JULY 1, 2018, AND THAT HAS BEEN DESIGNATED AS A CONTRACT THAT INVOLVES DIRECT CONTACT WITH VULNERABLE PERSONS, MUST INCLUDE THE FOLLOWING TERMS AND CONDITIONS:

(I) THE CONTRACTING AGENCY SHALL SUBMIT ITS EMPLOYEES WHO WILL HAVE

DIRECT CONTACT WITH VULNERABLE PERSONS AS A RESULT OF THE CONTRACT TO A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. THE CONTRACTING AGENCY SHALL PROVIDE THE INFORMATION REQUIRED BY SUBSECTION (4) OF THIS SECTION TO THE EXECUTIVE DIRECTOR OR ANY DIVISION HEAD OF THE DEPARTMENT THAT WORKS DIRECTLY WITH THE CONTRACTING AGENCY.

(II) THAT THE CONTRACTING AGENCY SHALL REQUIRE ITS EMPLOYEES WHO WILL HAVE DIRECT CONTACT WITH VULNERABLE PERSONS AS A RESULT OF THE CONTRACT TO REPORT ANY ARRESTS, CHARGES, OR SUMMONSES FOR ANY OF THE DISQUALIFYING OFFENSES SPECIFIED IN SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION TO THE CONTRACTING AGENCY'S SUPERVISOR BEFORE RETURNING TO WORK. THE CONTRACTING AGENCY'S SUPERVISOR SHALL IMMEDIATELY NOTIFY THE EXECUTIVE DIRECTOR OR THE RESPECTIVE DIVISION HEAD OF THE DEPARTMENT THAT WORKS DIRECTLY WITH THE CONTRACTING AGENCY UPON NOTIFICATION OF ANY SUCH REPORT MADE BY AN EMPLOYEE.

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

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

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

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

(12) ~~An employee or contracting employee~~ A DEPARTMENT EMPLOYEE, INDEPENDENT CONTRACTOR, OR EMPLOYEE OF A CONTRACTING AGENCY who is disqualified due to conviction of any of the disqualifying offenses set forth in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR (9)(c) of this section may submit a written request to the executive director for reconsideration of the disqualification. Reconsideration ~~under~~ PURSUANT TO this subsection (12) may only be based on a mistake of fact such as an error in the identity of the person for whom the criminal ~~background~~ HISTORY RECORD check was performed PURSUANT TO SUBSECTION (11) OF THIS SECTION. If the executive director determines that there

was a mistake of fact involving the identity of the person, the executive director shall issue a finding that the disqualifying factor is not a bar to the person's employment either as ~~an~~ A DEPARTMENT employee or as ~~a contracting employee~~ AN INDEPENDENT CONTRACTOR OR EMPLOYEE OF A CONTRACTING AGENCY.

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

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

Approved: May 24, 2018