



REPORT OF
THE
STATE AUDITOR

Criminal History Checks

Performance Audit
September 2001

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September 19, 2001

Members of the Legislative Audit Committee:

This report contains the results of the performance audit of criminal history checks. This audit was conducted pursuant to Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. This report presents our findings, conclusions, and recommendations, and the responses of the Department of Health Care Policy and Financing, Department of Human Services, Department of Public Health and Environment, and the Department of Public Safety.

TABLE OF CONTENTS

	PAGE
Report Summary	1
Recommendation Locator	5
Overview of Criminal History Checks in Colorado	7
Chapter 1: Criminal History Checks for Vulnerable Persons	13
Costs Must Be Balanced Against Risks	16
Not All Individuals Working With Vulnerable Persons Are Required to Undergo Criminal History Checks	22
The Level of Criminal History Check Required Should Be Assessed for Each Program	25
Statutes Lack Direction on Dealing With Criminal Histories	28
Ensuring Criminal History Checks Are Completed Is Important	31
Chapter 2: Criminal History Check Processes	35
The CBI Should Improve Its Fee-Setting Process	38
The CBI Does Not Have an Adequate Time Tracking System	43
The Department of Human Services Could Improve Its Criminal History Check Process	45
Annual Criminal History Checks for Personal Care Boarding Homes Are Expensive and Inefficient	48
Appendix	A-1



**STATE OF COLORADO
OFFICE OF THE STATE AUDITOR**

REPORT SUMMARY

**J. DAVID BARBA, CPA
State Auditor**

**Criminal History Checks
Performance Audit
September 2001**

This performance audit of criminal history checks was conducted under the authority of Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government. This audit was conducted according to generally accepted government auditing standards. The audit work, which included gathering information through interviews, reviewing documents, and analyzing data, was performed from June through August 2001.

This report contains findings and recommendations relating to criminal history checks for individuals working with vulnerable persons. The following summary provides highlights of the comments and recommendations contained in the report.

Overview

State agencies and other organizations conduct criminal history checks for a variety of purposes, including the protection of the general public from fraud and theft and the protection of specific vulnerable populations, such as children, the elderly, and individuals with disabilities, from abuse or mistreatment. In Colorado, statutes contain numerous requirements for conducting such checks on varying persons. Over time, awareness of the need to check the criminal histories of individuals providing services to children, the elderly, and those with disabilities has grown, as has the information available to complete such checks.

The Colorado Bureau of Investigation (CBI), within the Colorado Department of Public Safety, is responsible for processing requests for name and fingerprint checks of individuals. The Bureau receives fingerprint and arrest records from law enforcement agencies around the State and maintains the databases that store this information. In Fiscal Year 2001 the CBI processed almost 76,000 fingerprint checks and over 319,000 name checks.

Following is a summary of our comments and recommendations.

For more information on this report, contact the Office of the State Auditor at (303) 866-2051.

Criminal History Check Statutory Requirements

"Vulnerable persons" is defined by federal law as children, the elderly, and individuals with disabilities. Section 27-1-110, C.R.S., contains a similar definition but only for persons served by the Department of Human Services who are susceptible to abuse or mistreatment due to their age or disability. We identified numerous other programs that have employees, volunteers, or licensees serving individuals who could be considered vulnerable due to their age or disability. Although the populations served by the employees, volunteers, or licensees of these agencies are similar to those specified in Section 27-1-110, C.R.S., they are not defined in statute as vulnerable. In addition, we found the statutes do not require criminal history checks for some individuals who work with children, the elderly, and persons with disabilities. **We recommend that the Departments of Human Services, Health Care Policy and Financing, and Public Health and Environment propose statutory changes to establish a standard definition of "vulnerable person" and require criminal history checks for all individuals serving vulnerable persons.**

In addition, we found the level of criminal history check required should be assessed for each program. Criminal history check statutory requirements range from extensive to nonexistent. For example, all Department of Human Services employees working with vulnerable persons must complete both a CBI and an FBI fingerprint check prior to employment. On the other hand, providers of home and community based services and home health services do not have any statutory requirements related to criminal history checks.

We also found that some statutory provisions are not specific with respect to how criminal history information should be used when making employment and licensing decisions. For example, some programs we reviewed, such as child care licensing, educator licensing, and some volunteer programs, have statutes that specify crimes which may be grounds for denying contact with a vulnerable person. However, we found other programs for which there is no statutory direction, so the decisions regarding the effect of a criminal history are entirely discretionary.

Finally, although we found that most state agencies have some kind of monitoring process in place to ensure criminal history checks are completed, there are some programs where this does not occur. For example, the Department of Human Services does not monitor agency decisions to ensure that all positions having direct contact with vulnerable persons are designated as such. **We recommend that the Departments of Human Services, Health Care Policy and Financing, and Public Health and Environment propose statutory changes that (1) ensure criminal history check requirements adequately protect vulnerable persons, (2) provide regulations or guidelines related to criminal histories that state agencies can use when making licensing and hiring decisions, and (3) require state agencies have a monitoring process**

in place to ensure criminal history checks are completed for all individuals having direct contact with vulnerable persons.

Colorado Bureau of Investigation Fee-Setting Process

We reviewed the Colorado Bureau of Investigation's (CBI) fee-setting process for criminal history checks and found that it encompasses virtually all the cost elements that appear to relate to conducting these checks. However, there are several areas in which the CBI could enhance the process. Specifically:

- We found the CBI does not include temporary and overtime staff hours when calculating the total annual number of available work hours. Since the CBI did not include these hours in its cost calculation, we estimate the fees charged by the CBI for criminal history checks in Fiscal Year 2001 exceeded the costs by almost \$90,000.
- We found the CBI uses outdated information when estimating the amount of staff time required to process each type of criminal history check because it does not have a standard method to periodically estimate personal services processing time. Although we were unable to determine whether the staff time figures used by the CBI for setting fees were accurate, we estimate that if the time required to process each criminal history check is overestimated by one-half minute, this would represent nearly \$100,000 in fees.

In addition, we found the CBI does not accurately account for the computer processing time needed to complete fingerprint checks. **We recommend that the CBI include overtime and temporary work minutes when calculating the total number of available work minutes and develop a process for accurately determining the amount of personal services and computer processing time needed to complete each type of criminal history check.**

Criminal History Check Processes

We noted two particular areas in which state agencies could implement more cost-efficient procedures for conducting criminal history checks. First, the Department of Human Services conducts a CBI name check on the top three candidates for each direct contact position and both a CBI and FBI fingerprint check on the final candidate selected for a position. We question the benefit of conducting a CBI name check on the top three applicants for a position. The Department is the only state agency we found that follows this procedure; in all other cases criminal history checks are only performed for the final candidates for a position. In addition, conducting an FBI fingerprint check on all final candidates may not be necessary. Child Care Licensing relies on the CBI fingerprint check for longtime Colorado residents, having FBI

SUMMARY

checks done only on applicants who have resided in Colorado for less than two years. A similar approach would help reduce the costs of criminal history checks for the Department of Human Services. **We recommend that the Department of Human Services improve the efficiency of its criminal history check process.**

Second, individuals applying for an original or renewal license to operate a personal care boarding home are currently required to have an annual name check conducted through the CBI, which costs them \$10. We believe this approach is less cost-efficient than requiring licensees to pay a one-time \$14 fee for a CBI fingerprint check that can then be flagged to identify subsequent arrests. **We recommend that the Department of Public Health and Environment propose legislation to require individuals licensed to operate a personal care boarding home have a CBI fingerprint check with the flagging option completed at the time of the initial licensing application.**

A summary of the responses to the audit recommendations contained in the report can be found in the Recommendation Locator.

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
1	18	Identify harms to vulnerable persons that should be screened against; use Department of Justice guidelines to determine which screening devices are the most effective and cost-efficient; pursue low-cost options for obtaining criminal history information.	Human Services	Agree	July 2002
			Public Health and Environment	Agree	July 31, 2002
			Health Care Policy and Financing	Agree	January 31, 2002
2	23	Establish a standard definition of vulnerable person; require criminal history checks for all individuals serving vulnerable persons within programs under the oversight of the State.	Human Services	Agree	July 2002
			Public Health and Environment	Agree	January 1, 2003
			Health Care Policy and Financing	Partially Agree	January 31, 2002
3	27	Propose statutory changes that consider the value of all sources of criminal history information, and ensure criminal history check requirements adequately protect vulnerable persons.	Human Services	Agree	July 2002
			Public Health and Environment	Partially Agree	January 1, 2003
			Health Care Policy and Financing	Partially Agree	January 31, 2002

RECOMMENDATION LOCATOR

Rec. No.	Page No.	Recommendation Summary	Agency Addressed	Agency Response	Implementation Date
4	29	Propose statutory changes that provide guidance related to criminal histories that can be used when making licensing and hiring decisions.	Human Services	Agree	July 2002
			Public Health and Environment	Agree	January 1, 2003
			Health Care Policy and Financing	Partially Agree	January 31, 2002
5	32	Propose statutory changes that require agencies have a monitoring process in place to ensure criminal history checks are completed.	Human Services	Agree	July 2002
			Public Health and Environment	Agree	January 1, 2003
			Health Care Policy and Financing	Partially Agree	January 31, 2002
6	42	Include overtime and temporary work minutes in personal services cost formula; develop process for determining personal services and computer processing time required for criminal history checks; periodically review entire fee-setting approach.	Colorado Bureau of Investigation	Agree	May 2003
7	45	Improve how it monitors the timeliness of criminal history checks.	Colorado Bureau of Investigation	Agree	January 2002
8	47	Improve the efficiency of the criminal history check process for state employees providing services to vulnerable persons.	Department of Human Services	Agree	February 2002
9	49	Propose legislation to require personal care boarding home licensees have a CBI fingerprint check with flagging option completed at the time of initial licensing application.	Department of Public Health and Environment	Agree	July 31, 2002

Overview of Criminal History Checks in Colorado

State agencies and other organizations conduct criminal history checks for a variety of purposes, including the protection of the general public from fraud and theft and the protection of specific vulnerable populations such as children and the elderly from abuse. In 1998 the United States Department of Justice published *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support*. This document reported that the total number of Americans in need of care from others is estimated at more than 77.3 million. For example:

- Over 70 million children come into contact with nearly 35 million adults in educational institutions, day care facilities, foster care homes, youth development organizations, social services agencies' medical facilities, recreation centers, religious-based programs, juvenile detention and correctional facilities, and law enforcement facilities.
- More than 5 million Americans older than 65 years need some form of assisted care.
- About 2.3 million Americans with a disability require residential treatment.

These figures emphasize the importance of screening the individuals who provide care to these populations who are the most susceptible to abuse and mistreatment.

Statutory Requirements for Criminal History Checks

In Colorado, statutes contain numerous requirements for conducting such checks on varying persons. Over time, awareness of the need to check the criminal histories of individuals providing services to children, the elderly, and those with disabilities has grown, as has the information available to complete such checks. The table on pages 10 and 11 shows the variety of requirements currently in place for different programs and agencies. The table lists the statutory requirements for criminal history checks, the individuals who undergo the checks, the populations being protected, and the type of check required to be completed. Many of the statutes contained in the table relate to functions of state agencies,

but some are requirements established for private and non-profit entities with no specified state oversight.

The Colorado Bureau of Investigation

The Colorado Bureau of Investigation (CBI), within the Colorado Department of Public Safety, is responsible for processing requests for name and fingerprint checks of individuals. The Bureau receives fingerprint and arrest records from law enforcement agencies around the State and maintains databases - the Colorado Crime Information Center (CCIC) and the Automated Fingerprint Information System (AFIS) - that store this information. The following table shows the increases in the number of requests for name and fingerprint checks processed by the CBI's Civil Identification Section over the past five years.

Criminal History Checks Run by the CBI Fiscal Year 1997 Through Fiscal Year 2001						
Type of Check	Fiscal Year					Percent Increase
	1997	1998	1999	2000	2001	
Fingerprint	52,492	57,195	66,321	67,544	75,880	45%
Name	146,546	194,471	231,118	296,115	319,114	118%
Total	199,038	251,666	297,439	363,659	394,994	98%
Source: Office of the State Auditor's analysis of Colorado Bureau of Investigation data.						

By statute, the results of criminal history checks must be returned to the requestor within three working days. With the exception of criminal justice agencies, the CBI charges the following fees for criminal history checks:

- \$10 for each name check requested in a manual format. Name checks attempt to match records based on name and date of birth.
- \$5.50 for each name check submitted electronically in a batch format. Some organizations have modem access to submit requests directly to the CBI.
- \$13 for each fingerprint check. All fingerprint requests are first run as name checks, then processed through CCIC and AFIS for fingerprint matching.

- \$14 for each fingerprint check that is flagged. Flagging allows the CBI to be notified immediately if the person whose file is flagged is arrested in Colorado at any time subsequent to the initial check. The CBI can then provide notification of the arrest to the original requestor.

All of the state agencies that we reviewed use information from the CBI either as the basis for a comprehensive criminal history check or as the sole source of criminal history information. However, there are other sources of such information in the State, most notably the Integrated Colorado On-Line Network (ICON), which is the official electronic courts repository of the Colorado Judicial Branch. ICON contains county and district court records for criminal, civil, traffic, and domestic relations cases, excluding Denver County. Much of the same data is also available through CoCourts.com, which is the publicly accessible portion of ICON.

Audit Scope

The Office of the State Auditor has examined the requirements and processes of conducting criminal history checks in a number of recent audits. The following audits all contained recommendations for improving the effectiveness and consistency of criminal history checks conducted in the State:

- The Child Care Licensing Audit released in November 1998.
- The Developmental Disabilities Audit released in May 2000.
- The Home and Community Based Services audit released in June 2001.
- The Department of Education audit released in June 2001.

This audit concentrated on criminal history checking that is done for the purpose of protecting those who may be most at risk of abuse - namely children, the elderly, and individuals with disabilities. The audit evaluated the statutory requirements for conducting criminal history checks as well as the processes used by state agencies to conduct or oversee such checks. Because the CBI is either the starting point or the sole source of criminal history information for all the checking processes we reviewed, a main focus of our review was on the Bureau's procedures. Our recommendations relate to both statutory changes and procedural improvements at the CBI and at several other state agencies.

Statutory Requirements for Criminal History Checks				
Programs/ Facilities	Individual Being Checked	Population Being Protected	Type of Check Required	Statute
Department of Human Services				
Programs operated or contracted for by the State, including: <ul style="list-style-type: none"> • Mental Health Institutes • Developmental Disabilities Regional Centers • Vocational Rehabilitation Service Providers • State & Veterans Nursing Homes • Division of Youth Corrections Facilities 	Employees, volunteers, and contractors of the Department of Human Services having direct contact with vulnerable persons	Children, the elderly, persons of ill health, and individuals with disabilities including mental and developmental disabilities	CBI and FBI Fingerprint	27-1-110 <i>Note:</i> References to DYC facilities can also be found at 19-2-411.5.
Local Providers of Developmental Disabilities and Mental Health Services	Any adult in the home/facility having unsupervised contact with vulnerable persons	Individuals with disabilities	Statutes <i>allow</i> but do not require checks and do not specify the type of check allowed.	27-1-110
Child Care Licensing - applies to: <ul style="list-style-type: none"> • Family Child Care Homes • Foster Care Homes • Child Care Centers • Residential Child Care Facilities (including secure facilities) • Child Placement Agencies 	Licensee, owner, employee, or adult resident of the facility	Children	CBI Fingerprint FBI Fingerprint for those who have lived in the State for less than 2 yrs. ICON Central Registry of Child Protection	26-6-104, 107, & 108
Department of Human Services and Department of Public Safety				
Charitable and Volunteer Organizations such as Big Brothers/Big Sisters and the Boys' and Girls' Clubs	Employees/volunteers having unsupervised access to children	Children	Statutes <i>allow</i> CBI & FBI Fingerprint checks, but do not require them.	24-72-305.3
Judicial Department - State Court Administrator's Office				
Court Appointed Special Advocate (CASA) program	Employees and volunteers	Children	Central Registry of Child Protection	19-1-205

Statutory Requirements for Criminal History Checks				
Programs/ Facilities	Individual Being Checked	Population Being Protected	Type of Check Required	Statute
Department of Public Health and Environment				
Youth Mentoring Services	Employees/volunteers having direct contact with children	Children	Statutes do not specify the type of check to be conducted.	25-20.5-203
Nursing Care Facilities	Employees	The elderly and individuals with disabilities	Statutes do not specify the type of check to be conducted.	18-3-412.5
Personal Care Boarding Homes	Operators, staff, and administrators	The elderly and individuals with disabilities	Statutes do not specify the type of check to be conducted.	25-27-104, & 105
Department of Public Health and Environment and Department of Health Care Policy and Financing				
Home and Community Based Services including Adult Day or Foster Care, Hospice Care, and Occupational, Speech, & Physical Therapies	None	The elderly and individuals with disabilities	None required by statute.	None
Department of Education				
Educator Licensing	Educators applying for provisional licensure	Children	CBI & FBI Fingerprint	22-60.5-103, 105, & 107
School Districts	Any prospective employee	Children	Boards must inquire with the Dept. of Education.	22-32-109.7
School Districts	Prospective nonlicensed employees	Children	CBI & FBI Fingerprint	22-32-109.8
School Districts	Licensed employees	Children	Statutes <i>allow</i> fingerprint checks for good cause.	22-32-109.9
Private Schools	Licensed employees	Children	Statutes <i>allow</i> fingerprint checks.	22-1-121
Source: Office of the State Auditor's analysis of Colorado Revised Statutes.				

Criminal History Checks for Vulnerable Persons

Chapter 1

Background

One purpose of this audit was to conduct a statewide evaluation of the current statutory requirements related to criminal history checks for individuals working with vulnerable persons such as children, the elderly, and individuals with disabilities. We found inconsistencies in the statutory requirements for criminal history checks for various programs that do not appear to be justified. We believe the inconsistencies are due to the statutes having been developed piecemeal, without a comprehensive statewide assessment of the risks being addressed and the costs of various checking processes.

To determine what screening and checking approaches will provide adequate, cost-efficient protection for vulnerable persons, two factors must be considered. First, the risks associated with not conducting criminal history checks, or of only conducting minimal checks, on individuals working with vulnerable persons, must be assessed. If the risk of abuse by care providers is small due to circumstances such as when the contact occurs in a public location or in the presence of other adults, limited criminal history check processes may provide adequate protection. Such processes may include requirements for self-disclosure of criminal histories and checking of references for anyone providing services to a vulnerable person. On the other hand, if contact occurs in situations, such as in a private home setting, where others are not present, the risk of abuse is increased and more extensive criminal history investigation, such as checking fingerprints with state and federal law enforcement agencies, may be necessary.

Second, the costs associated with conducting criminal history checks must be considered. Costs for different levels of screening can vary significantly. While requiring self-disclosure of criminal histories is an essentially cost-free process, conducting thorough investigations using fingerprint matching and judicial record checks can result in relatively significant costs. For example, we estimate the average cost to conduct a criminal history check on an initial applicant for an educator license is about \$40. When setting screening policies, the State must balance these costs and risks to determine the most cost-effective methods of screening employees, volunteers, and licensees who have contact with vulnerable persons.

In this chapter we provide further discussion of the risks, costs, and inconsistencies currently existing in Colorado's criminal history screening approach. In addition, we make recommendations intended to ensure vulnerable persons are adequately protected while limiting both the costs and risks associated with criminal history checks.

The primary reason for screening prospective employees, volunteers, and licensees is to identify potentially abusive individuals and prevent direct contact with children, the elderly, or persons with disabilities. Such screening is based on the theory that someone with a history of abusive or related criminal behavior poses a greater risk to vulnerable persons than someone without such a history. In addition, notifying prospective employees and volunteers that a criminal history check or other screening device will be used may act as a deterrent for unsuitable applicants.

In recent years the use of criminal history checks to protect specific populations in Colorado has become more widespread. In 1999 the General Assembly adopted criminal history check statutory requirements related to vulnerable persons served by the Department of Human Services and child care providers. The statutory changes related to vulnerable persons served by the Department of Human Services resulted, in part, from the identification of 46 Colorado Mental Health Institute at Pueblo employees who had been arrested or convicted of crimes ranging from theft to kidnapping and rape. Prior to these changes, the State was authorized, but not required, to conduct criminal history checks on Institute employees. In addition, the Institute did not require current employees to self-report any arrests or convictions occurring after employment.

The changes in the Child Care statutes resulted from recommendations made in a 1998 audit of the Division of Child Care Licensing. At the time of the audit, the Division conducted CBI fingerprint checks on child care providers. However, we found that the CBI database did not contain information on all child care applicants or providers who had been convicted of serious crimes. As a result of the audit and subsequent legislation, the Division completed a pilot study that included conducting a CBI fingerprint check and a check of the Judicial Department's database, the Integrated Colorado On-line Network (ICON), on all prospective licensees, employees, and adults living in child care facilities in Adams, Routt, and Yuma counties during a nine-month period.

For the individuals reviewed, the Division found there were 32 serious offenses (e.g., child abuse or cruelty, domestic violence, assault, and drug-related offenses) and 12 non-serious offenses in ICON that were not included in CBI's database. Overall, the study found that 6 percent of the individuals reviewed had been convicted of serious offenses, but noted that without any system of criminal history checks the percentage with serious offenses would almost certainly be higher. This is because it is reasonable to assume that at least

some individuals with criminal histories choose not to seek work in licensed facilities because they are aware of the criminal history check requirement. The study confirmed that the CBI and ICON databases are not substitutes for each other and recommended that in addition to a CBI fingerprint check, an ICON check should be conducted on all prospective employees, licensees, and adults living in child care facilities. Senate Bill 01-32, which was passed in the 2001 Legislative Session, adopted this recommendation.

In its *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support*, the United States Department of Justice reported that 12.8 percent of the estimated 2 million incidents of elder abuse occurring in the home were perpetrated by service providers. The study also reported that instances of child sexual abuse in daycare centers, foster care homes, and schools range from 1 to 7 percent. Another study conducted by the U.S. Department of Health and Human Services estimated that 1.5 percent of the 826,000 children who were maltreated in 1999 were maltreated by substitute care providers, which includes foster parents, residential care providers, and child care providers.

To assist states in addressing these concerns, the Department of Justice developed the *Guidelines*, which provide a framework for determining which screening mechanisms should be used. These guidelines recognize the importance of balancing the costs associated with conducting criminal history checks against the risk of not conducting checks. Therefore, states are encouraged to implement basic screening practices that can help weed out potentially abusive workers and volunteers for very little cost. These practices include interviews, personal and employment reference checks, confirmation of education, and required disclosure of criminal history information on applications.

In addition to these basic screening practices, the *Guidelines* recommend that states use a decision-making model to determine when supplemental screening practices are necessary. Before using the model, however, states must first determine what harms are being screened against. For example, concerns about theft may be especially important for programs serving the elderly. Once the harms are identified, states should:

- Assess the presence and degree of screening "triggers." These triggers include factors such as the level of direct worker-consumer contact, the characteristics of the consumer served, and the amount of worker supervision present.
- Evaluate items that may limit or affect the screening decision. Items may include liability concerns, the financial or human resources needed to conduct the checks, unavailable or inaccessible information, and the presence of other risk-reduction measures.

- Analyze and select screening practices. As the extent and number of "triggers" increase, additional screening measures are appropriate.

The *Guidelines* also recommend that states adopt as a minimum standard the automatic disqualification of a potential worker or volunteer when the criminal history check "results indicate that the individual, as an adult, perpetrated any crime involving a child or a dependent adult, regardless of how long ago the incident occurred, or any violent crime within the past 10 years. It is also recommended that disqualification for all other crimes and/or questionable behavior be discretionary."

Costs Must Be Balanced Against Risks

We recognize the costs associated with conducting criminal history checks on all individuals working with vulnerable persons can be a substantial expense for either the State or the providers/employees to incur. In Fiscal Year 2001, based on limited information, we estimate the State and providers/employees spent at least \$1.9 million on criminal history checks. These costs, however, must be balanced against the risks associated with not conducting the appropriate level of criminal history check. We compared the total estimated cost of conducting criminal history checks in Fiscal Year 2001 with the estimated 1.2 million vulnerable persons protected by these checks. We calculated an average of about \$1.65 was spent on criminal history checks for every vulnerable person served.

Although the cost of criminal history checks per vulnerable person served is relatively low, the State could benefit from investigating alternatives to maintain or expand the current level of screening at a potentially lower cost. Alternatives that are currently available include the following:

- Including disclosure provisions in licensing and employment applications. With these provisions, prospective applicants and licensees must disclose on their application if they have ever been arrested or convicted of a crime and provide supporting documentation. Of the programs we reviewed, we found that at least five agencies already have disclosure provisions in their applications.
- Expanding the use of judicial records. Some agencies, such as the Division of Child Care Licensing, have direct access to ICON, the official electronic courts repository of the Colorado Judicial Branch; other agencies could investigate the possibility of using ICON records to ensure they collect all Colorado criminal history information. A related option is for agencies to use CoCourts.com, the

publicly available portion of ICON. State agencies, which have free access to the information contained in CoCourts.com, can enter an individual's name to determine if the person has been convicted of a crime in Colorado. The advantage of using these two systems is that disposition information is easier to obtain from these systems than having the applicant provide disposition information or trying to get information from the courts or law enforcement agencies.

- Working with the CBI to establish modem access to conduct electronic name checks. The CBI maintains a database of arrest records for Colorado and charges \$5.50 for name checks that are submitted and processed electronically. State agencies that conduct a large number of name checks can use a computer and modem to make these submissions electronically instead of paying the \$10 fee for every name check that is processed manually. In addition to being less expensive, with electronic processing, agencies receive name check results within 24 hours, as opposed to about a week for manual name check results.
- Investigating the availability of federal dollars that can be used to cover a portion of the costs associated with conducting criminal history checks. For example, if criminal history checks are required by Medicaid, federal matching funds may be available for state agencies to use for administrative costs. Federal funds may be used to offset the cost to the State of administering the criminal history check process and monitoring facilities and providers to ensure the requirements are enforced.

In addition, we found one state that has implemented an electronic Web-based program that has reduced staff costs for conducting fingerprint checks. The Ohio Bureau of Criminal Investigations has implemented a new WebCheck program that allows state agencies to submit fingerprints electronically over the Internet. The participating state agencies had to purchase equipment and software that allows them to take and submit fingerprints electronically. The Bureau's computer system notifies the agencies electronically if there is not a fingerprint match. If there is a match, a technician verifies the match, sends the agency electronic notification of the match, and sends the actual results by mail. According to the Bureau, the cost of conducting fingerprint checks has decreased because a majority of the checks (93 percent) do not result in a match and are processed electronically with no human involvement. Therefore, fewer staff are needed to process the fingerprint check requests. Further investigation into this, or other electronic submission systems for Colorado, could provide long-term cost-savings related to criminal history checks.

Later in this chapter we make recommendations for statutory changes in several areas. The General Assembly and affected state agencies should use the federal guidelines as a decision-making model for determining the specific changes in criminal history check policies that should be implemented. In addition, state agencies should consider less costly alternatives when determining the appropriate level of screening necessary to adequately protect vulnerable persons.

Recommendation No. 1:

The Department of Human Services, the Department of Public Health and Environment, and the Department of Health Care Policy and Financing should work together to ensure vulnerable persons are adequately protected. As a basis for making proposals for statutory change as recommended later in this chapter, these agencies should follow a decision-making process that includes:

- a. Identifying the harms to vulnerable persons that should be screened against.
- b. Using the Department of Justice guidelines to determine which screening devices are the most effective and cost-efficient.

In addition, all agencies should pursue low-cost options for obtaining criminal history information, such as including disclosure provisions on applications, accessing ICON, accessing CBI electronically, and using federal funds when possible.

Department of Human Services Response:

- a. Agree. We agree that standards delineated in Section 27-1-110, C.R.S., are important qualifiers in our experience, and we would be more than happy to work with Public Health & Environment and Health Care Policy and Financing to offer the Section 27-1-110, C.R.S., model as a benchmark.
- b. Agree. In an ongoing effort to improve quality and consistency along with cost minimization as an important factor, the Background Unit will be working on including more comprehensive questions on the self-disclosure forms for pre-employment and studying the Department of Justice guidelines for areas to incorporate greater efficiency.

Department of Public Health and Environment Response:

Agree. The Department of Public Health and Environment (“the Department”) agrees to participate in a collaborative process to identify the harms to vulnerable persons that should be screened against. The Department agrees to review the Department of Justice guidelines for the purposes of exploring low-cost options for obtaining criminal history information. Since many nursing home employees are licensed or certified by the Department of Regulatory Agencies (DORA), it may be appropriate for that agency to be incorporated in the collaborative work group.

Implementation Date: July 31, 2002

Department of Health Care Policy and Financing Response:

Agree. The Department of Health Care Policy and Financing has a different type of relationship with vulnerable persons than its sister agencies, the Department of Human Services and the Department of Public Health and Environment. While its two sister agencies have direct contact with vulnerable persons as direct caregivers or license providers that have direct contact with vulnerable persons, the Department of Health Care Policy and Financing is a payer of services to eligible vulnerable persons. The Department of Health Care Policy and Financing will work with the other two state departments to identify what harms should be screened against and to determine the most efficient and cost effective methods to obtain the necessary information. Discussion of these issues can begin as early as October 1, 2001 with recommendations completed by January 31, 2002.

Some Criminal History Check Requirements May Not Be Based on an Assessment of Risk and Cost

The General Assembly recognized the importance of protecting vulnerable populations such as children, the elderly, and individuals with disabilities from abuse and mistreatment by enacting legislation to protect against such abuse. For example, Section 27-1-110, C.R.S., enacted in 1999, states:

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.

This statute defines vulnerable persons, establishes requirements for criminal history checks, and specifies the crimes that will disqualify a person from employment in specific Department of Human Services programs. This statute acknowledges the need to provide an equal level of protection to a broad but defined population. However, this concept has not been extended to other programs and other areas of the statutes that address the provision of services to similar populations. We found these statutory provisions do not reflect an assessment of the risks and costs associated with adequately protecting vulnerable persons.

The Violent Crime and Law Enforcement Act of 1994 directed the United States Attorney General to develop guidelines for protecting vulnerable persons from abuse by care providers. "Vulnerable persons" is defined by federal law as children, the elderly, and individuals with disabilities. Colorado law contains a similar definition but only for persons served by certain state programs. Section 27-1-110, C.R.S., defines a "vulnerable person" as an individual who is susceptible to abuse or mistreatment due to his or her age or disability. However, this definition is limited to those receiving services from individuals employed by the State in programs and facilities operated by the Department of Human Services, including the following:

- Any facility for the care and treatment of the mentally ill. The Department operates two such facilities that provided services to 2,637 individuals in Fiscal Year 2001.
- Any facility for the care and treatment of the developmentally disabled. The Department operates three such facilities that provided services to 286 individuals in Fiscal Year 2001.
- Vocational rehabilitation services, which were provided to 18,225 individuals in Fiscal Year 2001.
- Any secure facility in which juveniles who are in the custody of the Department reside. The Department operates or contracts with 15 such facilities and provided services to approximately 9,465 individuals in Fiscal Year 2001.
- State and veterans nursing homes. The Department operates or oversees five such facilities that provided services to 852 individuals in Fiscal Year 2001.

We identified numerous other programs that have employees, volunteers, or licensees serving individuals who could be considered vulnerable due to their age or disability. The following state agencies provide, or have some oversight of others who provide, such services.

- **The Department of Public Health and Environment (Health Facilities Division)** is responsible for licensing, certifying, and monitoring various facilities and programs that provide health care services to the elderly and individuals with disabilities. Examples of such facilities and programs include personal care boarding homes, nursing care facilities, adult day programs, and hospice care. In addition, the Division of Prevention and Intervention provides limited oversight to some volunteer organizations that work with children and receive state grants. These include organizations such as Big Brothers/Big Sisters; Summation, Inc.; and Boys' and Girls' Clubs.
- **The Department of Health Care Policy and Financing** is responsible for overseeing and administering Medicaid programs in Colorado. Programs that serve the elderly and individuals with disabilities include Home and Community Based Services (such as adult day care, personal care, homemaker services, and nonmedical transportation) and Home Health Services (such as nursing, occupational and physical therapy, and speech/language pathology).
- **The Department of Education** is responsible for licensing public elementary and secondary educators in the State. The Department also has general supervisory oversight of the school districts that employ educators and others who have direct contact with children.
- **The Department of Human Services (Division of Child Care Licensing)** licenses and monitors all child care facilities, including family child care homes, foster care homes, child care centers, residential child care facilities, secure residential child care facilities, and child placement agencies.
- **The Judicial Department (State Court Administrator's Office)** provides limited oversight of the Court Appointed Special Advocate (CASA) Program, a volunteer program that provides assistance in dependency and neglect court cases. Specifically, CASA volunteers review relevant records, conduct interviews of the parties involved in a case, observe the child with parents or caretakers, and make recommendations to the court as to what should happen in a case.

Although the populations served by the employees, volunteers, or licensees of these agencies are similar to those specified in Section 27-1-110, C.R.S., they are not defined by statute as vulnerable. As a result, the criminal history check requirements that protect them are not the same as those for persons served by state employees of the Department of Human Services facilities described above. While broadening the definition of vulnerable persons to include all children, elderly, or individuals with disabilities will not, in and of itself, lead to greater protection, such a definition serves as a starting point for increasing consistency in criminal history check requirements. Throughout this chapter we discuss areas in which the statutes could be strengthened to protect those most susceptible to abuse or mistreatment.

Not All Individuals Working With Vulnerable Persons Are Required to Undergo Criminal History Checks

In addition to the lack of a statewide definition of who should be protected, the statutes do not require criminal history checks for some individuals who work with children, the elderly, and persons with disabilities. First, there are no statutory requirements of any kind for criminal history checks of providers of home and community based services and home health services. These services are typically provided to elderly, blind, and disabled clients. In our 2001 audit of these programs we recommended legislation authorizing the Department of Health Care Policy and Financing to require criminal history checks of all persons providing these services. We also recommended that the Department work with CBI and the Judicial Department to ensure they obtain complete criminal history information.

In addition, we found other programs serving vulnerable persons that are not statutorily required to conduct any type of criminal history screening, such as the following two Department of Human Services programs:

- **Developmental Disabilities Community Centered Boards.** There are currently 20 Community Centered Boards that provided services to 11,735 developmentally disabled children and adults in Fiscal Year 2001.
- **Mental Health Centers, Specialty Clinics, and Mental Health Assessment Service Agencies (MHASAs).** There are currently 17 Mental Health Centers, 6 Specialty Clinics, and 8 MHASAs. Altogether, these facilities provided services to 87,758 mentally ill children and adults in Fiscal Year 2001.

These programs are referenced in Section 27-1-110(4), C.R.S., which allows, but does not require, local agencies or providers of services to investigate applicants for employment. According to the Department, most of these local agencies and providers do conduct a CBI name check on their employees. However, in our 2000 audit of the Division of Developmental Disabilities we found that neither the Regional Centers nor the local agencies checked employees in the ICON system for criminal history information. We recommended legislation authorizing the Division to require Regional Centers and local agencies to conduct criminal history checks consistent with the authority in the child care licensing system.

In order to provide all vulnerable persons receiving services from state employees, volunteers, contractors, or licensees with the same protections, statutory changes are needed. Adopting a statewide definition of "vulnerable person" that includes all children, elderly, and individuals with disabilities, and expanding the statutory requirements with respect to who must undergo a criminal history check, would help ensure that adequate protection is provided to all vulnerable persons.

Recommendation No. 2:

The Department of Human Services, the Department of Public Health and Environment, and the Department of Health Care Policy and Financing should work together to develop and propose statutory changes to:

- a. Establish a standard definition of "vulnerable person" that may be applied to all individuals receiving services from persons employed or licensed by the State, or from programs with some degree of state oversight, who are susceptible to abuse or mistreatment because of their circumstances. Factors such as age, disability, frailty, mental illness, developmental disability, and ill health should be considered in developing the definition.
- b. Requiring criminal history checks for all individuals serving vulnerable persons within programs under the oversight of the State.

Department of Human Services Response:

- a. Agree. The definition used in Section 27-1-110, C.R.S., has been very helpful in determining the scope of crimes, and CDHS will work together with the Departments of Public Health & Environment and Health Care Policy &

Financing to review and possibly further refine the definition of “vulnerable persons” as indicated.

- b. Agree. CDHS will work with the Departments of Public Health & Environment and Health Care Policy & Financing to develop consistent history checks for all individuals serving vulnerable persons within programs under the oversight of the state.

Department of Public Health and Environment Response:

Agree. The Department will work cooperatively with the Department of Human Services and the Department of Health Care Policy and Financing to study the feasibility of establishing a standard definition applicable to the vulnerable persons encompassed within the scope of this audit. In addition, the Department will evaluate methods to implement criminal history checks for individuals serving vulnerable persons. As part of this evaluation, the Department will assess whether it is more effective and cost-efficient to place the responsibility for conducting background checks with the providers or with another agency.

The Department of Public Health and Environment will propose any recommended statutory changes for programs under the oversight of the Department to the Legislative Audit Committee.

Implementation Date: January 1, 2003

Department of Health Care Policy and Financing Response:

Partially agree. The Department of Health Care Policy and Financing agrees that a standard definition of “vulnerable person” would be beneficial. In its response to the recent Home and Community Based Services and Home Health Services Audit, June 2001, the Department agreed that caregivers who come into direct contact with vulnerable persons should be required to have background checks and to work with the Judicial and Public Safety Departments to ensure that providers get complete information. The Department also agreed to work with the Department of Public Health and Environment to include review of providers’ background check procedures in the survey process and with the Department of

Human Services to include the same review in monitoring Single Entry Point agencies. Discussions regarding development of a definition and how to best formalize such definition can begin as early as October 1, 2001 with recommendations completed by January 31, 2002.

The Level of Criminal History Check Required Should Be Assessed for Each Program

We found that statutory requirements for criminal history checks are most extensive in the following areas:

- Department of Human Services employees working with vulnerable persons who must complete both a CBI and an FBI fingerprint check prior to employment.
- Individuals applying to the Department of Education for a provisional teaching license or to a school district for a nonlicensed position at an elementary or secondary school who are required to have both a CBI and an FBI fingerprint check completed.
- Child care providers who are required to have a CBI fingerprint check, an ICON check, and a check of the Colorado Central Registry for Child Protection. Providers who have lived in Colorado for less than two years must also have an FBI fingerprint check.

All of these organizations and programs employ or license individuals who have frequent, direct, and often unsupervised contact with children, the elderly, and the disabled. However, we found that other programs providing services to these same populations in similar circumstances have minimal statutory requirements related to criminal history checks. For example, some programs have chosen to conduct only name checks rather than fingerprint checks, which are typically more accurate. Other programs have no requirements for criminal history checks of any kind. Examples of programs with limited screening processes in place include the following:

- The Department of Public Health and Environment is required to conduct criminal history checks on operators of personal care boarding homes and employees of

nursing care facilities, both of which provide services to elderly and disabled persons. The relevant statutory sections, however, do not specify what type of criminal history check must be completed. Therefore, the Department has interpreted these provisions to mean only a CBI name check and any follow-up necessary to determine dispositions.

- CASA volunteers, who work with children, are required to undergo a criminal history check. Since statutes do not specify the type of check that must be conducted, the program has interpreted the provision to require a CBI name check and any follow-up necessary to determine dispositions.
- Providers of home and community based services and home health services do not have any statutory requirements related to criminal history checks. According to the Department of Health Care Policy and Financing, some of these providers do conduct CBI name checks on their employees and follow up to determine dispositions.

Because these programs conduct limited screening of employees, volunteers, or licensees, they may expose the vulnerable individuals they serve to a greater risk of abuse.

Expanding Criminal History Check Procedures Provides More Complete Information

By expanding the criminal history check process and collecting information from a variety of sources, decision makers gain confidence that they have complete and reliable information on each case. Individually, each of the criminal history information systems can only provide part of a person's criminal history. For example, as discussed in Chapter 2, with a CBI name check there is no positive assurance that the criminal history associated with a particular name actually belongs to the individual being checked. In addition, neither the CBI database nor the ICON system contains complete arrest and disposition information.

We have made recommendations in previous audits that criminal history checks be expanded to ensure accuracy and completeness. For example, in our 1998 audit of the Division of Child Care Licensing and in our 2001 audit of the Department of Education we found that neither the CBI's database nor the ICON system contained complete information on all license applicants and holders who had been convicted of serious crimes. This is because some local law enforcement agencies do not report arrests to the CBI, and in some cases, individuals who are charged with serious crimes are issued a summons rather than arrested. If a law enforcement agency does not report an arrest or if a

summons is issued and an arrest is never made, CBI's database will not contain a record of the crime. In addition, the ICON system is not complete because it does not include information from some city and municipal courts, including Denver County Court. We believe using a combination of these resources, specifically the CBI fingerprint check with the flagging option and a check of the ICON system, will provide the most comprehensive criminal history information available for individuals working with vulnerable persons.

Criminal history check requirements for individuals working with vulnerable persons should be assessed to determine the appropriate level of check necessary to ensure these persons are adequately protected. We believe the Department of Human Services, the Department of Public Health and Environment, and the Department of Health Care Policy and Financing should work together to identify appropriate practices to be followed for criminal history checks.

Recommendation No. 3:

The Department of Human Services, the Department of Public Health and Environment, and the Department of Health Care Policy and Financing should work together to propose statutory changes that consider the value of all of the sources of criminal history information available and ensure criminal history check requirements adequately protect vulnerable persons.

Department of Human Services Response:

Agree. To be thorough, the Background Investigation Unit agrees that all sources available should be utilized to research criminal checks. CBI is currently working with ICON to intertwine the systems and to be more efficient, and the Background Investigation Unit will be utilizing that effort to the greatest extent.

Department of Public Health and Environment Response:

Partially agree. While the Department agrees to work cooperatively with the Department of Human Services and the Department of Health Care Policy and Financing to consider the value of all sources of criminal history information available, Department staff does not believe that specific methods of conducting such checks should be incorporated in statute. Specifying such methods in statute prevents agencies from being responsive to changes in technology and may

preclude private sector solutions to conducting background checks more efficiently. In addition, the Department acknowledges that no single process or procedure can adequately ensure the protection of vulnerable persons.

The Department of Public Health and Environment will propose any recommended statutory changes for programs under the oversight of the Department to the Legislative Audit Committee.

Implementation Date: January 1, 2003

Department of Health Care Policy and Financing Response:

Partially agree. The Department of Health Care Policy and Financing agrees that the state departments should work together, as discussed above, to discuss a definition of “vulnerable persons,” what risks should be screened against and the appropriate tools for achieving the goal of prevention. The results of those discussions will indicate what statutory changes are necessary, if any. Discussions can begin as early as October 1, 2001 with recommendations completed by January 31, 2002.

Statutes Lack Direction on Dealing With Criminal Histories

Both the vulnerable persons statutes, which apply to certain Department of Human Services employees, and child care licensing statutes list specific crimes that automatically disqualify individuals from employment or licensure, regardless of when the crime was committed. These crimes include:

- A crime of violence.
- Any felony involving unlawful sexual behavior.
- Any felony that includes an act of domestic violence.
- Any felony offense of child abuse.
- A felony offense in another state that is similar to the crimes above.

In addition, the vulnerable persons statute disqualifies prospective employees and contracting employees who have been convicted of one of the crimes described below within the 10 years preceding their employment:

- Third-degree assault.
- Any misdemeanor involving domestic violence.
- Violation of a restraining order.
- Any misdemeanor offense of child abuse.
- Any misdemeanor offense of sexual assault.
- A misdemeanor offense in another state that is similar to the crimes above.

These kinds of specific provisions are important because they help ensure that all those being served through programs operated by the Department of Human Services or through licensed child care facilities are protected from individuals with certain criminal backgrounds. For example, the statute would prohibit someone who was denied a child care license due to a felony conviction of child abuse from then obtaining employment as a youth counselor with the Department of Human Services. By the same token, this specificity ensures equal treatment for all applicants and informs potential applicants in advance that certain histories are not acceptable.

We found that the statutory provisions related to other programs and agencies providing services to children, the elderly, and individuals with disabilities are less specific with respect to how criminal history information should be used when making employment and licensing decisions. For example, some programs we reviewed, such as child care licensing, educator licensing, and some volunteer programs, have statutes that specify crimes which *may* be grounds for denying contact with a vulnerable person. However, we found other programs for which there is no statutory direction, so the decisions regarding the effect of a criminal history are entirely discretionary. Generally, the individual responsible for making these discretionary decisions differs among agencies and programs. One example is the Department of Public Health and Environment's licensing of personal care boarding homes. Since the statutes do not specify any crimes that would prohibit licensure, Department staff review criminal history results to determine how long ago the conviction occurred and how the crime relates to the care of residents, with the final licensing decision being made by the program director. Another example is the hiring of employees in various types of licensed facilities such as a child care center. The decision to hire an individual, regardless of the results of a criminal history check, is made solely by the licensee. Although the licensing agency will typically make a hiring recommendation, the final decision is made by the licensee.

Recommendation No. 4:

The Department of Human Services, the Department of Public Health and Environment, and the Department of Health Care Policy and Financing should work together to propose

statutory changes that provide guidance related to criminal histories that state agencies can use when making licensing and hiring decisions. Statutes should:

- a. Specify the crimes that are not acceptable for individuals working with vulnerable persons to have committed.
- b. Require state agencies to develop their own regulations or guidelines for decisions related to discretionary crimes.

Department of Human Services Response:

- a. Agree. CDHS will work with Public Health & Environment and Health Care Policy & Financing to specify the crimes that are not acceptable for individuals working with vulnerable persons using Section 27-1-110, C.R.S., as the benchmark.
- b. Agree. Under any circumstance, if an organization chooses to restrict employment related to discretionary crimes, absolute guidelines should be discussed and developed. The Background Investigation Unit looks forward to working with the CBI task force and the audit agencies to bring knowledge and experience to other departments.

Department of Public Health and Environment Response:

Agree. The Department will work cooperatively with the Department of Human Services and the Department of Health Care Policy and Financing to review the types of crimes that are not acceptable for individuals working with vulnerable persons to have committed, using the crimes listed under Section 24-72-305.3 (2) (b), C.R.S., as reference points. In addition, the Department will examine the benefits of promulgating regulations pertaining to discretionary crimes. However, Department regulations concerning health facilities typically address mandatory requirements rather than discretionary actions.

The Department of Public Health and Environment will propose any recommended statutory changes for programs under the oversight of the Department to the Legislative Audit Committee.

Implementation Date: January 1, 2003

Department of Health Care Policy and Financing Response:

Partially agree. Unlike the Department of Human Services and the Department of Public Health and Environment, the Department of Health Care Policy and Financing does not license any persons or entities that work with vulnerable persons and does not employ any persons who work directly with vulnerable persons. The Department of Health Care Policy and Financing agrees that more guidance for state agencies regarding the crimes which can be the basis for their licensing and hiring decisions would be beneficial in assisting those agencies to make informed and consistent decisions. Discussions with other state agencies can begin as early as October 1, 2001 with recommendations completed by January 31, 2002.

Ensuring Criminal History Checks Are Completed Is Important

When a program is statutorily required to conduct criminal history checks, it is important that the state agency overseeing the program ensure the checks are actually conducted. We found that most state agencies have some kind of monitoring process in place. For example, licensing staff at the Division of Child Care Licensing conduct periodic reviews of all licensed facilities. These reviews include checking employee files to ensure criminal history check results are included in the files. If the Division finds that a facility routinely fails to conduct criminal history checks on employees, it can take action against the facility license. The Department of Public Health and Environment conducts similar reviews of licensed facilities and employee files. According to Department staff, however, statutes and Department rules give them very little authority to enforce the criminal history check requirements.

We found examples of state agencies that do not have a mechanism or process in place to effectively monitor programs and facilities to ensure they are conducting criminal history checks on prospective employees and licensees who will have direct contact with vulnerable persons. In particular, the Department of Human Services' Background Investigation Unit conducts the criminal history check process for all state positions having direct contact with vulnerable persons. According to Department staff, however, it is up to each agency to determine if a position is a direct contact position. The Background Investigation Unit does not monitor agency decisions to ensure that all positions actually

having direct contact with vulnerable persons are designated as such. Department staff expressed concern that if agencies have difficulties finding employees, they may not designate a position as a direct contact position and will therefore bypass the criminal history check process just to fill the position.

We believe having a monitoring mechanism in place is an essential element of an adequate screening process. Although most agencies already have some type of monitoring mechanism in place, if the changes are made as recommended throughout this chapter, it is important that all state agencies and programs monitor to ensure criminal history checks are completed on everyone having direct contact with vulnerable persons. In addition, state agencies should have the authority to enforce the criminal history check requirements.

Recommendation No. 5:

The Department of Human Services, the Department of Public Health and Environment, and the Department of Health Care Policy and Financing should work together to propose statutory changes that require state agencies have a monitoring process in place to ensure criminal history checks are completed for all individuals having direct contact with vulnerable persons. These changes should also provide state agencies with the authority to enforce criminal history check requirements.

Department of Human Services Response:

Agree. The Department of Human Services agrees that monitoring and enforcing processes are critical and will work with the Department of Health Care Policy and Financing and the Department of Public Health and Environment to ensure adequate processes are in place. Regarding the Department's current process for monitoring agency decisions, the Background Investigation Unit challenges exceptions on a case-by-case basis, but the Department agrees that a standard monitoring or oversight policy is needed.

Department of Public Health and Environment Response:

Agree. The Department agrees to work cooperatively with the Department of Human Services and the Department of Health Care Policy and Financing to propose a monitoring process whose purpose it is to ensure criminal history checks are completed for individuals having contact with vulnerable persons.

However, the Department is concerned about the considerable fiscal impact associated with 1) developing and implementing a monitoring system capable of ensuring that all appropriate individuals have undergone a background check and 2) establishing and imposing penalties for non-compliance.

The Department of Public Health and Environment will propose any recommended statutory changes for programs under the oversight of the Department to the Legislative Audit Committee.

Implementation Date: January 1, 2003

Department of Health Care Policy and Financing Response:

Partially agree. The Department of Health Care Policy and Financing agrees that the issue of criminal background checks to protect vulnerable persons needs to be examined to ensure the maximum protection for vulnerable persons while accounting for the administrative costs to providers to put such a program in place. The Department agrees that state agencies would require statutory authority to enforce criminal history check requirements and the resources to conduct a meaningful enforcement process. Discussions with other state agencies can begin as early as October 1, 2001, with recommendations completed by January 31, 2002.

Criminal History Check Processes

Chapter 2

Background

The Colorado Bureau of Investigation's Civil Identification Section is responsible for processing criminal history check requests for non-criminal justice purposes, such as for employment and licensing screening. The CBI's databases contain information on arrests in Colorado as well as some data on case dispositions. Criminal history checks may be done based on a name or fingerprints, as described below.

- **Name check.** When processing a name check request, the CBI runs an individual's name and date of birth against its Colorado Crime Information Center (CCIC) records to determine if there is a match. Name checks, however, are dependent on the accuracy of the name and other identifying information provided by the person for whom the check is requested. If the subject of the check uses an alias or another person's name, the name check results will not be accurate. In addition, since names are not unique identifiers, numerous individuals with the same name and date of birth may be identified, making it difficult to determine which record, if any, belongs to the person for whom the check is requested.
- **CBI Fingerprint check.** When processing a fingerprint check request, the CBI first runs a name check. If a match is found through the name check, the CBI runs the fingerprints through the Automated Fingerprint Information System (AFIS) to compare them with the fingerprints of the individuals identified through the name check. If a match is not found through the name check, the CBI runs the fingerprints through the entire AFIS system. When AFIS indicates a match, a fingerprint technician confirms the match visually. The CBI can also flag fingerprints within its system. With the flagging option the CBI will notify the state agency if an individual is arrested subsequent to the initial fingerprint check. Fingerprint checks are the most accurate means of determining a person's criminal history.
- **FBI fingerprint check.** For FBI fingerprint check requests, the CBI mails a copy of the individual's fingerprints to the FBI for processing. The FBI runs the fingerprints against the National Crime Information Center (NCIC) to see if they

match any fingerprints in this system. The NCIC is a national criminal information database that contains fingerprint and arrest records for every state. In order for the FBI to conduct a fingerprint check for non-criminal justice purposes, the check must be authorized in either state or federal statutes.

There are several methods by which criminal history checks can be requested from the CBI. For example, requests can be personally delivered or mailed in and the results are mailed back to the requestor. In addition, some state agencies and private organizations have established a modem link with the CBI to allow more efficient processing of large numbers of name checks. The requestor electronically transmits the name check information, and the CBI electronically returns the results. Although not currently available, the CBI is also in the process of implementing a Web-based name check system that will allow name checks to be conducted via the Internet.

The CBI's Fee-Setting Process Results in Criminal History Check Fees That Are Consistent With Other Western States

The CBI's Civil Identification Section is funded through the fees it charges for conducting name and fingerprint checks. Section 24-72-306(1), C.R.S., states that "criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and copying of criminal justice records...." On the basis of this provision, the CBI must determine its costs associated with conducting name and fingerprint checks to establish reasonable fees. To determine its costs, the CBI established a fee-setting method that incorporates the following elements:

- **Personal Services Cost**, which is the cost of staff time required to process criminal history checks.
- **Indirect Cost**, which is the cost of items such as executive director office costs, personnel, accounting, Department of Public Safety central Information Technology assistance, statewide risk management, and telecommunication services.
- **CCIC Overhead Cost**, which is the cost of the CCIC computer processing time needed to conduct criminal history checks.
- **Lease Purchase Cost**, which is the cost of equipment used by the Civil Identification Section.

- **Operating Cost**, which is the cost of items such as maintenance on fingerprint equipment, office supplies, and equipment.
- **Administrative Cost**, which is the cost of one program assistant outside the Civil Identification Section, with associated operating expenses, who performs duties supporting the Section.

The following table shows the estimated amount of each cost element for Fiscal Year 2001.

Criminal History Check Costs Fiscal Year 2001								
Cost Element	Fingerprint Check				Name Check			
	Flagged		Not Flagged		Manual		Batch/Electronic	
	Amount	% of Total	Amount	% of Total	Amount	% of Total	Amount	% of Total
Personal Services	\$9.47	68	\$8.52	66	\$6.15	60	\$2.37	39
Indirect	\$.96	7	\$.86	7	\$.62	6	\$.24	4
CCIC Overhead	\$1.29	9	\$1.29	10	\$1.29	13	\$1.29	21
Lease Purchase	\$1.24	9	\$1.24	10	\$1.24	12	\$1.24	21
Operating	\$.75	6	\$.75	6	\$.75	7	\$.75	12
Administrative	\$.15	1	\$.15	1	\$.15	2	\$.15	3
Total	\$13.86	100	\$12.81	100	\$10.20	100	\$6.04	100
FY 2001 Fee	\$14.00		\$13.00		\$10.00		\$5.50	

Source: Office of the State Auditor's analysis of fee-setting data from the CBI.

We compared Colorado's criminal history check fees with 15 other western states' fees for both name and fingerprint checks. We found that the CBI's fee-setting process results in fees that are consistent with these other states, whose fees ranged from \$5 to \$20 for a name check and \$6 to \$32 for a fingerprint check. Colorado's \$10 name check fee and \$13 fingerprint check fee (\$14 for fingerprint with flagging) are just below the other states' average of \$11.55 and \$15.92 respectively.

The CBI Should Improve Its Fee-Setting Process

The CBI's fee-setting process encompasses virtually all the cost elements that appear to relate to conducting criminal history checks. However, there are several areas in which the CBI could improve the process. Specifically, we noted the use of some outdated information and the exclusion of some relevant costs in the CBI's calculation of its Fiscal Year 2001 fees, as discussed in the following sections.

To calculate the personal services costs associated with conducting name and fingerprint checks, the CBI uses the following process:

- The Civil Identification Section calculates the number of annual available work hours for all section staff.
- The CBI multiplies the total number of work hours by 60 to come up with the total number of annual work minutes.
- Total annual personal services costs are divided by the total number of annual work minutes to get a personal services cost per work minute.
- The personal services cost per work minute is multiplied by the estimated number of minutes required to complete each type of check to get a total personal services cost for each type of check. Currently the estimated number of minutes for each type of check is based on data from 1996, as discussed later in this chapter.

We reviewed the personal services cost calculation for Fiscal Year 2001 and found two areas in which the calculations should be modified. Both of these issues relate to the use of potentially outdated information and highlight the need for regular review and updating of the process and underlying data used to calculate fees.

First, the CBI does not include temporary and overtime staff hours when calculating the total annual number of available work hours. We reviewed fee-setting cost analysis memos from 1996 and 1998 to determine how the CBI calculates its cost per work hour. We found the CBI has historically divided total personal services costs by an estimate of the total number of non-overtime hours worked for all permanent staff; the CBI did not include overtime hours or time worked by temporary staff. Including temporary and overtime hours in the calculation reduces the personal services cost per work minute by about 4

percent. Staff of the CBI indicated they do not know why these hours have been excluded.

In addition, the inclusion of temporary and overtime hours affects the indirect costs attributable to criminal history checks. This is because indirect costs are estimated to be 10.1 percent of personal services costs. The following table shows the effect of excluding the temporary and overtime hours from the personal services cost when determining fees for Fiscal Year 2001.

Effect of Temporary and Overtime Hours on Total Cost Calculations			
Type of Check	Original CBI Cost Figures	Overestimation of Cost Figures	Adjusted Cost Figure
Fingerprint	\$12.81	\$.48	\$12.33
Fingerprint with Flag	\$13.86	\$.54	\$13.32
Manual Name	\$10.20	\$.34	\$9.86
Batch/Electronic Name	\$6.04	\$.14	\$5.90
Source: Office of the State Auditor's analysis of CBI fee-setting cost analysis memo.			

Although the inclusion of temporary and overtime hours in the cost calculation has only a small effect on the cost of each check, because the CBI completes a large number of criminal history checks each year, the overall impact is substantial. For example, by not including temporary and overtime hours in its cost calculation, we estimate the fees charged by the CBI for criminal history checks in Fiscal Year 2001 exceeded the costs by almost \$90,000.

The second area in which the CBI uses outdated information is in estimating the amount of staff time required to process each type of criminal history check. We found the CBI does not have a standard method to periodically estimate personal services processing time. To set fees for Fiscal Year 2001, the CBI used staff processing times that were originally determined in 1996 and then adjusted in the intervening years. The following table shows the estimates used by the CBI for fee-setting for Fiscal Years 1998, 2000, and 2002.

CBI Personal Services Processing Time Estimates			
Type of Check	Fiscal Year 1998	Fiscal Year 2000	Fiscal Year 2002
Fingerprint	20 minutes	18 minutes	18 minutes
Fingerprint with Flag	20 minutes	18 minutes	20 minutes
Manual Name	11 minutes	15 minutes	13 minutes
Batch/Electronic Name	5 minutes	5 minutes	5 minutes
Source: Office of the State Auditor's analysis of CBI fee-setting data.			

CBI staff stated there is no firm basis for making these adjustments. Therefore, the personal services processing time used to calculate fees may not accurately reflect the actual amount of time required to complete criminal history checks. Improved technology and procedures, staff turnover, and increased efficiency could all affect the time it takes to process different types of criminal history checks. CBI management reported they do periodically time selected staff to determine the time required to process the different types of checks. This information, however, is used primarily for measuring and managing staff performance; it is not communicated to the budget office for use in fee-setting.

Although we were not able to independently determine whether the staff time figures used by the CBI for setting fees were accurate, we did estimate the impact of the figures' being incorrect by even a small margin. For Fiscal Year 2001, if the amount of time required to process each criminal history check is overestimated by one-half minute, the total overestimation of time would equal almost 200,000 work minutes, or the equivalent of about two FTE. These FTE represent a combined personal services and indirect cost of nearly \$100,000.

As indicated in the table on page 37, the expense of staff time represents a large percentage of the total costs associated with all types of criminal history checks. Specifically, personal services costs make up between about 40 and 70 percent of the total costs of any given type of check. Because personal services account for such a large percentage of the cost, it is important that the CBI use current, complete, and accurate information to estimate this cost.

Computer Processing Costs Should Be Updated

The cost of computer processing time is another component of the criminal history check process that the CBI includes when calculating fees. The CBI accesses the Automated Fingerprint Identification System (AFIS) for fingerprint checks and the Colorado Crime Information Center (CCIC) system, the state database for arrest information, for both name and fingerprint checks. However, we found that the CBI only accounts for its use of CCIC in setting its fees.

For all types of criminal history checks, the CBI runs the individual's name through the CCIC system. For fingerprint check requests, the fingerprints are run through AFIS after the name check has been done. When a fingerprint check with the flagging option is requested, there is additional computer processing time for the flagging notification. Although all fingerprint checks use AFIS processing time, the CBI does account for this time when estimating costs to set fees. For CCIC processing time, the CBI estimates 13.2 seconds are required for each check.

In its December 1996 fee-setting memo, the CBI included a separate cost element in its fee-setting methodology to account for the cost of processing fingerprint checks through AFIS. Fingerprint checks and name checks were assigned different processing times and the reasons for doing so were clearly explained and documented. However, the CBI has since removed the AFIS costs from its calculations.

Current, Accurate Data Should Be Used to Set Fees

Using inaccurate information to determine the costs used to set fees for criminal history checks can have two impacts:

- Fees may exceed costs. The Civil Identification Section is cash-funded and cannot maintain a fund balance. Any revenues in excess of costs are reverted to the State General Fund. Therefore, if fees are too high, users are subsidizing the General Fund.
- Costs may exceed fees. The Civil Identification Section uses some resources from other units in the CBI that are funded by the General Fund. If the costs of these resources are not accurately captured and paid, the General Fund is subsidizing the criminal history check function.

It appears that a general underlying cause of the issues we've noted is that the complete fee-setting process is not regularly reviewed and evaluated to ensure that items included in the cost analysis are current, complete, and accurate. Although the CBI has a process

that is generally comprehensive, periodically evaluating whether the fee-setting approach addresses all relevant costs could help ensure fees are set appropriately.

Recommendation No. 6:

The Colorado Bureau of Investigation should improve its criminal history check fee-setting methodology by:

- a. Using a personal services cost formula that includes overtime and temporary work minutes when calculating the total number of available work minutes.
- b. Developing a process for accurately determining the amount of personal services processing time needed to complete each type of criminal history check and clearly documenting its practice as part of its fee-setting calculation.
- c. Developing a process for accurately determining the computer processing time required to complete each type of criminal history check by considering costs for Colorado Crime Information Center and Automated Fingerprint Identification System overhead separately and clearly documenting its practice as a part of its fee-setting calculation.
- d. Periodically reviewing the entire fee-setting approach to ensure current, complete, and accurate data are being used.

Colorado Bureau of Investigation Response:

- a. Agree. CBI will be implementing a new time keeping system in March of 2002. This system will capture the amount of time worked by employees (regular and overtime) and temporaries. This information will then be included in the formula that is used to determine fees.
 - b. Agree. CBI will establish and document a process to analyze the amount of time it takes staff to perform each type of criminal history check.
 - c. Agree. CBI will establish and document a process to analyze the amount of time it takes the Colorado Crime Information Center computers to perform each type of criminal history check.
 - d. Agree. The CBI will review annually its fee setting practices.
-

CBI Response Time

According to Section 24-72-303(3), C.R.S., criminal justice agencies are required to make public information available within three working days of the date the information was requested. We reviewed a sample of name and fingerprint check requests processed in the last half of Fiscal Year 2001 and found that, overall, the CBI completed 100 percent of the 317 name checks in our sample within 20 hours and 99.6 percent of the 1,049 fingerprint checks within 60 hours. On average, the CBI processed name requests in about 10 hours and fingerprint requests in about 15 hours, as shown in the following table.

Criminal History Check Processing Time Fiscal Year 2001				
Month	Name Checks		Fingerprint Checks	
	# of Checks Reviewed	Average Processing Time	# of Checks Reviewed	Average Processing Time
January			171	13.2 hrs.
February			188	16.1 hrs.
March			219	24.9 hrs.
April	67	9.5 hrs.	175	12.3 hrs.
May	151	10.0 hrs.	140	9.5 hrs.
June	99	12.1 hrs.	156	13.1 hrs.
Average	106	10.5 hrs.	175	15.3 hrs.
Source: Office of the State Auditor's analysis of CBI criminal history check data. Note: Name check information was not available for January, February, or March.				

The CBI Does Not Have an Adequate Time Tracking System

To evaluate the CBI's timeliness in processing criminal history checks, we traced a sample of 1,366 requests from the time they were checked in by the CBI staff until the computer reports were printed. This process was necessary because the CBI does not have an automated system in place to track requests from the time of receipt to completion.

Currently CBI management monitors timeliness by requiring supervisors to send daily e-mails reporting the status of requests being processed at the end of each shift. In addition, supervisors notify management of problems, such as computer processing slowdowns, that might affect timeliness. Management uses this information to make staffing and workload changes when necessary.

Tracking Timeliness Can Be an Important Management Tool

Because the CBI does not have an automated means of tracking timeliness, its ability to effectively manage the criminal history check process is limited. For example, CBI management is not able to track trends over time to determine gains or losses in efficiency due to seasonal- and operational-related changes. In addition, the CBI cannot identify, examine, or address anomalies in the criminal history check process. In our sample we found one fingerprint request that took 41 minutes to complete and another that took more than 90 hours. CBI managers did not know the specific reasons for these extreme variations in processing time.

With the upcoming implementation of an Internet-based name check system it is important that CBI management be able to accurately assess the timeliness of its criminal history check process. The Web-based system may have a significant impact on the CBI's workload because the general public will be able to enter a person's name and date of birth into the system and receive a record of the person's criminal history. One impact CBI management anticipates is a large increase in customer service calls related to Internet name check results. The same technicians that manually process name and fingerprint checks will also be responsible for answering customer service calls. If the number of customer service calls increases too dramatically, the technicians may not be able to process the name and fingerprint checks within the appropriate time frame. Another reason tracking time to help ensure efficiency may become more critical is that our recommendations in Chapter 1 to expand the definition of "vulnerable person" and to make statutory processes for criminal history checks consistent may cause a significant increase in the number of check requests. Although the CBI appears to be consistently meeting the three working-day time requirement for processing criminal history checks, this could change if there is a significant increase in the number of checks required by statute.

In order to effectively plan for these changes, CBI management must have a system in place that can accurately monitor the timeliness of criminal history checks on an ongoing basis. Management can use this information to measure the effect operational and workload changes will have on the timeliness of criminal history checks. Due to the manual nature of the current criminal history check process, one short-term alternative may be for CBI management to regularly review a sample of name and fingerprint check requests to

determine the processing time associated with those requests. In the future, CBI should encourage state agencies to obtain the equipment necessary for them to submit fingerprint check requests electronically. This would provide the CBI with a more cost-efficient means of processing criminal history check requests, as well as provide them with an automated method for tracking timeliness.

Recommendation No. 7:

The Colorado Bureau of Investigation should improve how it monitors the timeliness of criminal history checks.

Colorado Bureau of Investigation Response:

Agree. Processing time data is important information. As this report points out, CBI consistently responds to requests within the statutory limit. CBI will review a sample of name and fingerprint check requests to determine the processing time associated with those requests. As directed in the footnote number 227, the CBI as well as representatives from the Department of Education, Department of Law, Department of Public Health and Environment, Department of Human Services, Department of Revenue and the Department of Regulatory Affairs have established a task force to improve the criminal history check process. As part of this process we are exploring options to expand the availability of equipment necessary for those agencies to submit fingerprint check requests electronically.

The Department of Human Services Could Improve Its Criminal History Check Process

The Background Investigation Unit (BIU), within the Department of Human Services, conducts the criminal history check process for employees of the Department who have direct contact with vulnerable persons. Currently the BIU conducts a CBI name check on the top three finalists for every direct contact position. If the candidates clear the name check, they are referred to the division that is actually filling the position for interviews. After a candidate has been selected from among the top three finalists, the individual's fingerprints must be taken by a local law enforcement agency. The BIU will then conduct

both a CBI and an FBI fingerprint check on the individual. We found this criminal history check process is duplicative and inefficient.

During Fiscal Year 2001 the Department filled 1,048 direct contact positions for the various units and divisions that provide services to vulnerable persons. If there were at least three candidates for each of these positions, the BIU conducted 3,144 CBI name checks on these positions. The BIU requests CBI name checks electronically at a cost of \$5.50 per check. Therefore, the Department spent \$17,292 on name checks for these direct contact positions during Fiscal Year 2001. Subsequently, the BIU conducted both CBI and FBI fingerprint checks on the 1,048 final candidates. CBI charges \$14 for a fingerprint check with the flagging option and the FBI charges \$22 for each fingerprint check, for a total of \$36 per fingerprint check. Therefore, the Department spent \$37,728 on fingerprint checks for the 1,048 direct contact positions filled during Fiscal Year 2001. Overall, the Department spent \$55,020 (\$17,292 + \$37,728) during Fiscal Year 2001 on criminal history checks for positions having direct contact with vulnerable persons.

Changes Could Make the Department's Criminal History Check Process More Cost-Efficient

After reviewing the BIU's criminal history check process, we question the benefit of conducting a CBI name check on the top three candidates for each direct contact position. The Department is the only state agency we found that conducts criminal history checks on multiple applicants for a position. In all other cases, we found the agencies only conduct a criminal history check once a final candidate has been selected for a position.

In addition to the costs of conducting multiple levels of criminal history checks on job candidates, the Department incurs expenses to comply with a statutory provision requiring local law enforcement agencies to take the required fingerprints. To facilitate the hiring process, the Department pays a law enforcement officer to take fingerprints for job candidates. The Department undertook this expense because candidates reported it is sometimes difficult to find law enforcement offices that are accessible and willing to take fingerprints for civil purposes. For the BIU, we believe that the total costs of the current process may outweigh the benefits and that alternative approaches should be considered. The Department of Human Services should evaluate the following alternatives to improve the efficiency of its current criminal history check process:

- **Reconsider the practice of conducting CBI name checks on the top three candidates for every direct contact position.** During Fiscal Year 2001 alone, the Department could have saved over \$17,000 by either not conducting a CBI name check on the top three candidates for every direct contact position or by

using ICON for the name check. According to Department staff, the value of the name checks is that results are received within 24 hours, allowing the Department to offer immediate employment before the CBI and FBI check results are returned. Although FBI fingerprint check results usually take about six weeks, CBI fingerprint results are returned in about a week. The Department could require that employment be delayed until the CBI fingerprint check results are received and then make an offer of employment conditional on the FBI fingerprint check results.

- **Propose that the statutory provision requiring FBI fingerprint checks on every direct contact employee be amended.** In Fiscal Year 2001 the Department spent over \$23,000 on FBI fingerprint checks. The Department could propose statutory language similar to Child Care Licensing statutes that would require FBI fingerprint checks be conducted only on final candidates who have lived in Colorado for two years or less.
- **Propose that the statutory provision requiring fingerprints be taken by a local law enforcement agency be amended and pursue methods to enable Department staff to take fingerprints for job candidates.** The current process of requiring job candidates to find a law enforcement agency willing to take employee fingerprints or hiring an officer to take fingerprints at the Department creates a burden on both candidates and the BIU. The fingerprint process would be more effective and cost-efficient if the Department were able to designate and train someone from its own staff who could be responsible for taking fingerprints for prospective employees.

Recommendation No. 8:

The Department of Human Services should improve the efficiency of its criminal history check process for state employees providing services to vulnerable persons by implementing one or all of the following changes:

- a. Reconsidering the practice of conducting Colorado Bureau of Investigation name checks on the top three candidates for every direct contact position.
- b. Proposing that the statutory provision which requires Federal Bureau of Investigation fingerprint checks for every direct contact employee be amended to require these checks only on individuals living in Colorado for 24 or fewer months or any other appropriate time period.

- c. Proposing that the statutory provision requiring fingerprints to be taken by local law enforcement agencies be amended to allow the Department to designate one of its own staff to perform this function.

Department of Human Services Response:

- a. Agree. The Department of Human Services is interested in exploring more cost-efficient options for conducting criminal history checks. Because the Department has experienced significant recruiting and staffing difficulties in the health care environment, it is important to receive at least some immediate assurance that an applicant does not have an inappropriate criminal history. On-line access to ICON could be a feasible alternative that would be more cost-efficient as well as provide immediate criminal history information.
- b. Agree. We agree that possible legislation requiring only those living in Colorado 24 months or less to have an FBI fingerprint check would be feasible.
- c. Agree. In addition, the BIU is absolutely in support of adopting legislation to include competent and trained staff members among those eligible to collect fingerprints.

Annual Criminal History Checks for Personal Care Boarding Homes Are Expensive and Inefficient

Section 25-27-105, C.R.S., requires individuals applying for an original or renewal license to operate a personal care boarding home to have a criminal history check completed before the license can be granted or renewed. Because this provision does not specify the type of check required, the Department of Public Health and Environment has implemented its own policy requiring a name check through the CBI. By statute, the applicant or licensee is responsible for any costs associated with the criminal history checks.

We found this annual name check requirement to be ineffective and inefficient. Specifically:

- Name checks, as discussed previously, are not as accurate as fingerprint checks. According to the CBI, without a fingerprint, a person's identity cannot be verified.

Fingerprint checks are the only way an agency can positively identify an individual's criminal history.

- Requiring licensees to pay an annual \$10 fee for a name check is less cost-efficient than requiring licensees to pay a one-time \$14 fee for a fingerprint check with the flagging option. During Fiscal Year 2001 the Department of Public Health and Environment renewed 480 existing licenses. At the \$10 fee charged by the CBI, licensees paid a total of \$4,800 for criminal history checks during Fiscal Year 2001. If this were the second year of licensure for each of the 480 licensees, they would have paid a total \$9,600 ($\$10 \times 2 \text{ years} \times 480$) for name checks. If the licensees had paid the \$14 for a CBI fingerprint with flagging at the time of initial application, they would have paid a total of \$6,720 ($\14×480). Therefore, over a two-year period licensees could have saved \$2,880. If the same 480 licensees were licensed for 10 years, they could save \$41,280 (or \$86 per licensee) over the period. A one-time fingerprint check with flagging is not only less costly than a name check for licensees, it is also less time-consuming for both the State and the licensees.

Requiring a one-time CBI fingerprint check with the flagging option would make the criminal history check process more effective and cost-efficient for the licensees. Changing the annual criminal history check requirement, however, will require statutory change.

Recommendation No. 9:

The Department of Public Health and Environment should propose legislation to require individuals licensed to operate personal care boarding homes have a Colorado Bureau of Investigation fingerprint check with the flagging option completed at the time of the initial licensing application. This legislation should replace the current statutory provision that requires annual criminal history checks as part of the license renewal process.

Department of Public Health and Environment Response:

Agree. The Department agrees it should propose legislation to remove the requirement that individuals licensed to operate personal care boarding homes have a criminal history check each year, as part of the license renewal process, and based on current knowledge supports legislative changes to use CBI fingerprint checks with flagging options.

APPENDIX A

Criminal History Check Procedures¹									
Programs/Facilities	CBI Name Check?	CBI Fingerprint Check?	FBI Fingerprint Check?	ICON Check?	Other Check?	State Oversight?²	Automatic Disqualifying Crimes?³	Discretionary Disqualifying Crimes?⁴	Under Vulnerable Person Definition?⁵
Mental Health Institutes operated by the Dept. of Human Services	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Developmental Disabilities Regional Centers operated by the Dept. of Human Services	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Vocational Rehab. Services provided by the Dept. of Human Services	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
State & Veterans Nursing Homes operated by the Dept. of Human Services	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Division of Youth Corrections Facilities	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Local Providers of Developmental Disabilities Services	Yes	No	No	No	No	No	No	No	No
Local Providers of Mental Health Services	Yes	No	No	No	No	No	No	No	No
Child Care Licensees	Yes	Yes	Yes ⁶	Yes	Child Abuse Registry	Yes	Yes	Yes	No
Charitable and Volunteer Organizations	Maybe ⁸	Maybe ⁸	Maybe ⁸	No	Some ⁷	No	No	No	No
Court Appointed Special Advocates (CASA)	Yes	No	No	No	Child Abuse Registry	No	No	No	No

Criminal History Check Procedures¹ (Continued)

Programs/Facilities	CBI Name Check?	CBI Fingerprint Check?	FBI Fingerprint Check?	ICON Check?	Other Check?	State Oversight? ²	Automatic Disqualifying Crimes? ³	Discretionary Disqualifying Crimes? ⁴	Under Vulnerable Person Definition? ⁵
Youth Mentoring Services	Maybe ⁸	Maybe ⁸	Maybe ⁸	No	No	No	No	No	No
Nursing Care Facilities	Yes	No	No	No	No	No	No	No	No
Personal Care Boarding Homes	Yes	No	No	No	No	Yes	No	No	No
Home and Community Based Services/Home Health Services	Yes	No	No	No	No	No	No	No	No
Educator Licensing	Yes	Yes	Yes	No	No	Yes	No	Yes	No
School District Boards of Education	Yes	Yes	Yes	No	Dept. of Education	No	No	Yes	No
Private Schools	Yes	Yes	Yes	No	Dept. of Education	No	No	Yes	No

Source: Office of the State Auditor's analysis of information obtained from the Department of Human Services, the Department of Public Health and Environment, the Department of Health Care Policy and Financing, the Judicial Department, the Department of Education, and from local providers of various health care services.

¹ This chart depicts the procedures that various agencies reported to us as their criminal history check procedures.

² State Oversight: A “yes” in this column indicates that a state agency conducts the criminal history check or has procedures in place to ensure checks are done by others.

³ Automatic Disqualifying Crimes: A “yes” in this column indicates that statutes specify which crimes *will* automatically disqualify someone from having contact with vulnerable persons.

⁴ Discretionary Disqualifying Crimes: A “yes” in this column indicates that statutes specify which crimes *may* disqualify someone from having contact with vulnerable persons.

⁵ Under Vulnerable Person Definition: A “yes” in this column indicates the program or facility currently falls within the statutory definition of vulnerable persons.

⁶ Child Care licensees undergo an FBI fingerprint check only if they have resided in Colorado less than two years.

⁷ Some, but not all, charitable organizations we contacted check other sources, such as the Central Registry of Child Abuse.

⁸ Individual service providers determine the type and extent of check to be done. Department of Public Health and Environment staff indicated that some programs at least do name checks, but there is no consistency.

Distribution

Copies of this report have been distributed to:

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