

CHAPTER 241

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 96-1208

BY REPRESENTATIVES Friednash, Chlouber, Keller, Lyle, Mace, Reeser, and Sullivant;
also SENATORS Blickensderfer, L. Powers, Bishop, Hopper, Schroeder, Tebedo, and Wham.

AN ACT

**CONCERNING REPORTS THAT AFFECT THE WELFARE OF CHILDREN, AND MAKING AN APPROPRIATION
IN CONNECTION THEREWITH.**

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

SECTION 1. 14-10-127 (1) (b), Colorado Revised Statutes, 1987 Repl. Vol., as amended, is amended to read:

14-10-127. Evaluation and reports. (1) (b) ~~For the purposes of this section, a "licensed mental health professional" means an individual person licensed in a field of the healing arts with specific training in psychiatry, psychology, or a related field and the persons working under his supervision, whether or not those persons working under supervision are licensed.~~ THE PERSON SIGNING A REPORT OR EVALUATION AND SUPERVISING ITS PREPARATION SHALL BE A LICENSED MENTAL HEALTH PROFESSIONAL. THE MENTAL HEALTH PROFESSIONAL MAY HAVE ASSOCIATES OR PERSONS WORKING UNDER HIM OR HER WHO ARE UNLICENSED.

SECTION 2. 19-3-313 (4), (5), and (7), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended, and the said 19-3-313 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

19-3-313. Central registry - repeal. (4) ~~Unless an investigation of a report conducted pursuant to this part 3 determines there is a preponderance of evidence to support a finding of abuse or neglect, all information identifying the subject of the report shall be expunged from the central registry forthwith. The decision to expunge the record shall be made by the director of the central registry based upon the investigation made by the county department or the local law enforcement agency.~~

(5) (a) ~~In all other cases,~~ Except as otherwise provided in paragraph (b) of this

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

subsection (5) OR SUBPARAGRAPHS (I) AND (II) OF PARAGRAPH (b) OF SUBSECTION (7) OF THIS SECTION, the record of the reports to the central registry shall be sealed no later than ten years after the child's eighteenth birthday. Once sealed, the record shall not otherwise be available unless the director of the central registry, pursuant to rules promulgated by the state board and upon notice to the subject of the report, gives his OR HER personal approval for an appropriate reason. In any case and at any time, except as otherwise provided in paragraph (b) of this subsection (5) and paragraph (b) of subsection (7) of this section, the director may amend, seal, or expunge any record upon good cause shown and notice to the subject of the report.

(b) No record of a report of sexual abuse shall be sealed pursuant to paragraph (a) of this subsection (5). Such record, however, may be sealed, expunged, or amended pursuant to paragraph (a) of subsection (7) of this section.

(5.5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (5.5), EFFECTIVE APRIL 1, 1997, THE DIRECTOR OF THE CENTRAL REGISTRY SHALL SEND A WRITTEN NOTICE TO EACH SUBJECT WHOSE NAME THE DIRECTOR RECEIVES FOR PLACEMENT ON THE CENTRAL REGISTRY. THE NOTICE SHALL INCLUDE THE NAME OF THE CHILD, TYPE OF ABUSE, DATE OF THE INCIDENT, COUNTY DEPARTMENT THAT FILED A REPORT WITH THE REGISTRY, INFORMATION CONCERNING PERSONS OR AGENCIES THAT HAVE ACCESS TO THE REPORT, AND INFORMATION CONCERNING THE SUBJECT'S RIGHT TO HAVE AN ADMINISTRATIVE REVIEW PURSUANT TO THE PROVISIONS OF THIS SUBSECTION (5.5) BEFORE HAVING HIS OR HER NAME PLACED ON THE CENTRAL REGISTRY.

(b) (I) THE SUBJECT OF THE REPORT MAY REQUEST THE DIRECTOR OF THE CENTRAL REGISTRY TO REVIEW THE INVESTIGATION MADE BY THE COUNTY DEPARTMENT OR LOCAL LAW ENFORCEMENT AGENCY. THE REQUEST SHALL BE IN WRITING AND SHALL BE MADE WITHIN FOURTEEN DAYS AFTER THE DATE OF THE MAILING OF THE NOTICE SENT TO THE SUBJECT IN ACCORDANCE WITH PARAGRAPH (a) OF THIS SUBSECTION (5.5). UPON RECEIPT OF WRITTEN NOTICE OF THE DECISION OF THE DIRECTOR, THE SUBJECT SHALL HAVE THIRTY DAYS TO REQUEST A FAIR HEARING AS PROVIDED UNDER THE "STATE ADMINISTRATIVE PROCEDURE ACT", ARTICLE 4 OF TITLE 24, C.R.S., TO DETERMINE WHETHER THE RECORD OF THE REPORT IS ACCURATE AND THERE IS A PREPONDERANCE OF EVIDENCE TO SUPPORT A FINDING OF CHILD ABUSE OR NEGLECT SO THAT THE SUBJECT'S NAME SHOULD BE PLACED ON THE REGISTRY. THE BURDEN OF PROOF IN SUCH A HEARING SHALL BE ON THE DEPARTMENT.

(II) (A) FOR THE PURPOSES OF DETERMINING THE NECESSITY OF ADDITIONAL PERSONNEL TO IMPLEMENT THE PROVISIONS OF THIS PARAGRAPH (b), THE DEPARTMENT SHALL REPORT TO THE JOINT BUDGET COMMITTEE OF THE GENERAL ASSEMBLY ON OR BEFORE MARCH 1, 1998, AND ON OR BEFORE MARCH 1, 1999, REGARDING THE NUMBER OF PERSONS WHO REQUEST THE FAIR HEARING AUTHORIZED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) FOR THE PRECEDING YEAR.

(B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE JULY 1, 2000.

(c) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO A SUBJECT WHO HAS BEEN CONVICTED OF CHILD ABUSE PURSUANT TO ARTICLE 6 OF TITLE 18, C.R.S. THE DIRECTOR SHALL PLACE THE NAME OF A SUBJECT WHO HAS BEEN CONVICTED OF CHILD ABUSE PURSUANT TO ARTICLE 6 OF TITLE 18, C.R.S., ON THE REGISTRY IMMEDIATELY

UPON RECEIPT OF THE NOTICE OF THE CONVICTION FROM THE COURT PURSUANT TO SECTION 18-6-405 (2), C.R.S.

(7) (a) Except as otherwise provided in ~~paragraph~~ PARAGRAPHS (b) AND (c) of this subsection (7), the subject of the report may request the director to amend, seal, or expunge the record of the report. A request shall be written and shall be made within two years after the date of the mailing of the notice sent to the subject in accordance with paragraph (a) of subsection (6) of this section. The decision to expunge the record shall be made by the director of the central registry based on the investigation made by the county department or the local law enforcement agency. If the director refuses or does not act within a reasonable time, but in no event later than thirty days after such request, the subject shall have the right to a fair hearing as provided under the "State Administrative Procedure Act" to determine whether the record of the report in the central registry should be amended, sealed, or expunged on the grounds that it is inaccurate or it is being maintained in a manner inconsistent with this part 3. The appropriate county department shall be given notice of the hearing. The burden of proof in such a hearing shall be on the state department. At such hearings, the fact that a county department, law enforcement agency, or entity authorized to investigate institutional abuse made a finding of confirmed child abuse or neglect shall be presumptive evidence that the report was accurate.

(b) (I) On and after July 1, 1993, a record related to a first-time listing of a subject on the registry and which is based on a minor offense reported on or after July 1, 1991, shall be examined by the director of the central registry and, on the basis of such examination, shall be expunged by said director if two years have lapsed since the date the reported incident was entered into the registry records upon a determination by the director that good cause exists for expunging such record.

(II) On and after July 1, 1991, a record related to a first-time listing of a subject on the registry and which is based on a minor offense reported before said date shall be examined by the director of the central registry upon request by the subject for expungement and, on the basis of such examination, may be expunged by said director if two years have lapsed since the date the reported incident was entered into the registry record upon a determination by the director that good cause exists for expunging such record.

(III) The state department, through rule-making, shall define minor offense and good cause; except that minor offense shall not include any incident involving sexual abuse. Each subject provided a notice in accordance with paragraph (a) of subsection (6) of this section shall be informed about expungement pursuant to this paragraph (b). In addition, each subject shall be notified of the director's decision concerning expungement pursuant to this paragraph (b) no later than ninety days after the expiration of the two years. A subject denied expungement pursuant to this paragraph (b) may seek to amend, expunge, or seal a record pursuant to paragraph (a) of this subsection (7). Such appeal shall be made no later than ninety days after the date of the mailing to the subject of the notice of denial.

(c) (I) (A) IF A SUBJECT IS ACQUITTED OF CHILD ABUSE PURSUANT TO ARTICLE 6 OF TITLE 18, C.R.S., OR IF A PETITION IN DEPENDENCY AND NEGLECT UNDER SECTION 19-3-505 ON WHICH THE SUBJECT IS A NAMED RESPONDENT IS NOT SUSTAINED, ON RECEIPT OF A NOTICE FROM THE COURT PURSUANT TO SECTION 18-6-405 (2), C.R.S.,

OR SECTION 19-3-505 (6), THE DIRECTOR OF THE CENTRAL REGISTRY MAY EXPUNGE THE RECORD OF THE REPORT.

(B) IF THE DIRECTOR OF THE CENTRAL REGISTRY EXPUNGES THE RECORD OF THE REPORT, THE DIRECTOR SHALL SEND WRITTEN NOTICE OF SUCH EXPUNGEMENT TO THE SUBJECT. IF THE DIRECTOR OF THE CENTRAL REGISTRY DOES NOT EXPUNGE THE RECORD OF THE REPORT, THE DIRECTOR SHALL SEND WRITTEN NOTICE TO THE SUBJECT WITHIN THIRTY DAYS AFTER RECEIPT OF NOTICE FROM THE COURT PURSUANT TO SECTION 19-3-505 (6) OR SECTION 18-6-405 (2), C.R.S., STATING THAT THE SUBJECT MAY REQUEST A HEARING AT WHICH THE DEPARTMENT WILL BE REQUIRED TO SHOW, BY CLEAR AND CONVINCING EVIDENCE, WHY THE SUBJECT'S NAME SHALL NOT BE REMOVED FROM THE CENTRAL REGISTRY. THE SUBJECT MAY REQUEST SUCH HEARING AT ANY TIME AFTER RECEIPT OF THE WRITTEN NOTICE FROM THE DIRECTOR OF THE CENTRAL REGISTRY. THE HEARING SHALL BE HELD AS SOON AS POSSIBLE AFTER THE DIRECTOR OF THE CENTRAL REGISTRY RECEIVES THE SUBJECT'S REQUEST.

(C) AT THE HEARING, THE DEPARTMENT SHALL HAVE THE BURDEN OF PROOF. THE ADMINISTRATIVE LAW JUDGE AT THE HEARING AUTHORIZED PURSUANT TO THIS PARAGRAPH (c) SHALL NOT BE THE SAME JUDGE WHO PRESIDED AT A HEARING CONCERNING THE SAME SUBJECT AUTHORIZED PURSUANT TO SUBSECTION (5.5) OF THIS SECTION.

(II) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) SHALL APPLY IF THE SUBJECT IS ACQUITTED OF CHILD ABUSE PURSUANT TO ARTICLE 6 OF TITLE 18, C.R.S., AND A PETITION IN DEPENDENCY AND NEGLECT NAMING THE SUBJECT AS A RESPONDENT HAS NOT BEEN FILED.

(III) THE PROVISIONS OF THIS PARAGRAPH (c) SHALL NOT APPLY TO A SUBJECT WHOSE NAME IS ON THE REGISTRY FOR ANY INCIDENT OTHER THAN THE INCIDENT ON WHICH THE CRIMINAL CHARGE OR PETITION IN DEPENDENCY AND NEGLECT WAS BASED.

SECTION 3. 19-3-505 (6), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

19-3-505. Adjudicatory hearing - findings - adjudication. (6) When the court finds that the allegations of the petition are not supported by a preponderance of the evidence, the court shall order the petition dismissed and the child discharged from any detention or restriction previously ordered. His OR HER parents, guardian, or legal custodian shall also be discharged from any restriction or other previous temporary order. THE COURT SHALL INFORM THE RESPONDENT THAT, PURSUANT TO SECTION 19-3-313 (7) (c), THE DEPARTMENT MAY HOLD A HEARING, AS SOON AS POSSIBLE, TO SHOW CAUSE WHY THE RESPONDENT'S NAME SHOULD NOT BE REMOVED FROM THE CENTRAL REGISTRY. THE COURT SHALL ALSO SEND WRITTEN NOTICE THAT THE PETITION WAS NOT SUSTAINED TO THE DIRECTOR OF THE CENTRAL REGISTRY CREATED IN SECTION 19-3-313.

SECTION 4. 18-6-405, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

18-6-405. Reports of convictions to department of education. (1) When a

person is convicted, pleads nolo contendere, or receives a deferred sentence for a violation of the provisions of this part 4 and the court knows the person is a current or former employee of a school district in this state or holds a certificate or letter of authorization pursuant to the provisions of article 60 of title 22, C.R.S., the court shall report such fact to the department of education.

(2) UPON ACQUITTAL OF A CHARGE BROUGHT PURSUANT TO THE PROVISIONS OF THIS PART 4, THE COURT SHALL INFORM THE DEFENDANT THAT PURSUANT TO SECTION 19-3-313 (7) (c), C.R.S., THE DEPARTMENT MAY HOLD A HEARING, AS SOON AS POSSIBLE, TO SHOW CAUSE WHY THE DEFENDANT'S NAME SHOULD NOT BE REMOVED FROM THE CENTRAL REGISTRY. THE COURT SHALL REPORT ALL ACQUITTALS AND CONVICTIONS FOR VIOLATIONS OF THE PROVISIONS OF THIS PART 4 TO THE DIRECTOR OF THE CENTRAL REGISTRY CREATED IN SECTION 19-3-313, C.R.S.

SECTION 5. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of human services, for the fiscal year beginning July 1, 1996, the sum of four hundred twelve thousand three hundred twenty-eight dollars (\$412,328) and 4.5 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of personnel, for the fiscal year beginning July 1, 1996, the sum of one hundred ninety thousand nine hundred ninety-seven dollars (\$190,997) and 0.4 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from cash funds exempt received from the department of human services out of the appropriation made in subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated, to the department of law, for the fiscal year beginning July 1, 1996, the sum of sixty-two thousand three hundred twenty-two dollars (\$62,322) and 0.8 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from cash funds exempt received from the department of human services out of the appropriation made in subsection (1) of this section.

SECTION 6. Effective date. This act shall take effect January 1, 1997.

SECTION 7. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 1996