

CHAPTER 188

HUMAN SERVICES - SOCIAL SERVICES

SENATE BILL 01-032

BY SENATOR(S) Linkhart, Dyer (Arapahoe), Epps, Evans, Hanna, Nichol, Takis, and Tupa;
also REPRESENTATIVE(S) Alexander, Bacon, Boyd, Coleman, Daniel, Groff, Jameson, Mace, Romanoff, and Williams S.

AN ACT

CONCERNING CRIMINAL BACKGROUND CHECKS.

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

SECTION 1. Article 1 of title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

16-1-107. Integrated court on-line network - municipal court records - legislative declaration. (1) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT:

(a) THE REPORT ON THE PILOT PROJECT ON CRIMINAL BACKGROUND CHECKS FOR CHILD CARE PROVIDERS, PREPARED FOR THE STATE DEPARTMENT OF HUMAN SERVICES, WAS PRESENTED TO THE GENERAL ASSEMBLY IN AUGUST OF 2000;

(b) SAID REPORT CONTAINED SEVERAL RECOMMENDATIONS FOR THE IMPROVEMENT OF THE PROCESS OF OBTAINING ACCURATE AND COMPLETE CRIMINAL HISTORY RECORDS FOR CHILD CARE WORKERS AND VOLUNTEERS;

(c) SOME OF THOSE RECOMMENDATIONS INVOLVED THE RECORDS CONTAINED IN THE INTEGRATED COLORADO ON-LINE NETWORK (ICON) OF THE STATE JUDICIAL DEPARTMENT AND THE ABILITY TO IDENTIFY CASE DISPOSITIONS;

(d) OTHER RECOMMENDATIONS INVOLVED THE WORK OF THE COURTS AND THE STATE JUDICIAL DEPARTMENT IN ASSISTING IN THE COMPLETION AND IMPLEMENTATION OF THE INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM PROGRAM ESTABLISHED BY ARTICLE 20.5 OF THIS TITLE.

(2) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT, IN ORDER TO

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

ASSURE THAT CRIMINAL BACKGROUND CHECKS FOR CHILD CARE WORKERS ARE ACCURATE AND COMPLETE, IT IS CRITICAL THAT THE CRIMINAL JUSTICE AGENCIES PARTICIPATING IN THE INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM PROGRAM ESTABLISHED BY ARTICLE 20.5 OF THIS TITLE AND POLITICAL SUBDIVISIONS CONTINUE TO WORK WITH EACH OTHER TO COMPLETE AND IMPLEMENT SUCH PROGRAM IN A TIMELY MANNER AND CONSIDER THE INTEGRATION OF MUNICIPAL RECORDS, INCLUDING THE COUNTY COURT RECORDS OF THE CITY AND COUNTY OF DENVER, INTO SUCH PROGRAM.

SECTION 2. 16-20.5-101.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-20.5-101.5. Legislative declaration. (5) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE COMPLETION AND IMPLEMENTATION OF THE INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM ESTABLISHED BY THIS ARTICLE 20.5 IS CRITICAL TO THE ACCURATE, COMPLETE, AND TIMELY PERFORMANCE OF CRIMINAL BACKGROUND CHECKS AND TO THE EFFECTIVE COMMUNICATIONS BETWEEN AND AMONG LAW ENFORCEMENT, THE STATE JUDICIAL DEPARTMENT, AND EXECUTIVE AGENCIES AND POLITICAL SUBDIVISIONS OF THE STATE. THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT IT IS IN THE BEST INTERESTS OF THE CITIZENS OF THE STATE AND FOR THE ENHANCEMENT OF PUBLIC SAFETY THAT SUCH SYSTEM BE FINALIZED AND IMPLEMENTED AND THAT THE VARIOUS DATABASES BE INTEGRATED AS SOON AS POSSIBLE.

SECTION 3. 24-33.5-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-33.5-102. Definitions. As used in this article, unless the context otherwise requires:

(3) "ICON" MEANS THE COMPUTERIZED DATABASE OF COURT RECORDS KNOWN AS THE INTEGRATED COLORADO ON-LINE NETWORK USED BY THE STATE JUDICIAL DEPARTMENT.

SECTION 4. 24-33.5-412 (3), Colorado Revised Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW PARAGRAPHS to read:

24-33.5-412. Functions of bureau - legislative review. (3) (c) FOR PURPOSES OF IMPROVING THE PERFORMANCE OF CRIMINAL BACKGROUND CHECKS AND THE IMPLEMENTATION OF THE INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM ESTABLISHED IN ARTICLE 20.5 OF TITLE 16, C.R.S.:

(I) THE CRIMINAL JUSTICE INFORMATION PROGRAM TASK FORCE CREATED IN SECTION 16-20.5-103, C.R.S., SHALL ESTABLISH AND REQUIRE THE USE OF UNIFORM IDENTIFIERS IN THE INFORMATION REQUIRED BY THIS SUBSECTION (3) IN ORDER TO FACILITATE THE MATCHING OF CRIMINAL RECORDS IN THE BUREAU'S DATABASES AND IN THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT, AND SUCH IDENTIFIERS MAY BE ANY IDENTIFIERS EXISTING ON OR AFTER THE EFFECTIVE DATE OF THIS ACT; AND

(II) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION (3), EVERY LAW

ENFORCEMENT, CORRECTIONAL, AND JUDICIAL ENTITY, AGENCY, OR FACILITY IN THIS STATE SHALL FORWARD TO THE BUREAU THE INFORMATION REQUIRED BY THIS SUBSECTION (3) WITHIN SEVENTY-TWO HOURS AFTER RECEIVING SUCH INFORMATION; EXCEPT THAT THE TIME PERIOD SHALL NOT INCLUDE SATURDAYS, SUNDAYS, OR LEGAL HOLIDAYS. THE INFORMATION FORWARDED TO THE BUREAU SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, THE FINGERPRINTS OF SAID ARRESTED PERSONS.

(d) THE BUREAU SHALL ELECTRONICALLY FORWARD THE INFORMATION REQUIRED BY THIS SUBSECTION (3) TO THE JUDICIAL DEPARTMENT THROUGH THE INTEGRATED CRIMINAL JUSTICE INFORMATION SYSTEM PROGRAM ESTABLISHED BY ARTICLE 20.5 OF TITLE 16, C.R.S., WITHIN TWENTY-FOUR HOURS AFTER THE RECEIPT OF:

(I) AN ELECTRONIC VERSION OF THE SUSPECT'S ARREST AND FINGERPRINT INFORMATION BY THE BUREAU; OR

(II) A PAPER COPY OF THE SUSPECT'S ARREST AND FINGERPRINT INFORMATION BY THE BUREAU IF THE INFORMATION IS FROM A JURISDICTION THAT DOES NOT USE AN ELECTRONICALLY-BASED FINGERPRINT TRANSMISSION SYSTEM.

SECTION 5. 26-6-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-6-102. Definitions. As used in this article, unless the context otherwise requires:

(5.2) "ICON" MEANS THE COMPUTERIZED DATABASE OF COURT RECORDS KNOWN AS THE INTEGRATED COLORADO ON-LINE NETWORK USED BY THE STATE JUDICIAL DEPARTMENT.

SECTION 6. Repeal. 26-6-115, Colorado Revised Statutes, is repealed.

SECTION 7. 26-6-104 (7) (b), Colorado Revised Statutes, is amended to read:

26-6-104. Licenses - out-of-state notices and consent. (7) (b) The convictions identified in paragraph (a) of this subsection (7) shall be determined according to the records of the Colorado bureau of investigation, THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT, or any other source, AS SET FORTH IN SECTION 26-6-107 (1) (a) (I.5). A certified copy of the judgment of a court of competent jurisdiction of such conviction, deferred judgment and sentence agreement, deferred prosecution agreement, or deferred adjudication agreement shall be prima facie evidence of such conviction or agreement. No license or certificate to operate a family child care home, a foster care home, a child care center, a residential child care facility, a secure residential child care facility, or a child placement agency shall be issued if the department has a certified court order from another state indicating that the person applying for such a license or certificate has been convicted of felony child abuse or any unlawful sexual offense against a child under a law of any other state or the United States or the department has a certified court order from another state that the person applying for the license or certificate has entered into a deferred judgment or deferred prosecution agreement in another state as to felony child abuse or any sexual offense against a child.

SECTION 8. 26-6-107 (1) (a) (I), Colorado Revised Statutes, is amended, and the said 26-6-107 (1) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

26-6-107. Investigations and inspections - local authority - reports - rules.

(1) (a) (I) (A) The STATE department shall investigate and pass on each original application for a license, and each application for a permanent license following the issuance of a probationary or provisional license, to operate a facility or an agency prior to granting such license. As part of such investigation, the STATE department shall require each applicant, owner, employee, newly hired employee, licensee, and any adult who resides in the licensed facility to obtain a FINGERPRINT-BASED criminal ~~record~~ HISTORY BACKGROUND check by reviewing any record that shall be used to assist the STATE department in ascertaining whether the person being investigated has been convicted of any of the criminal offenses specified in section 26-6-104 (7) or any other felony. The state board of ~~human services~~ shall promulgate rules that define and identify what the criminal HISTORY background check shall entail.

(B) ~~Such~~ Rules PROMULGATED BY THE STATE BOARD PURSUANT TO THIS SUBPARAGRAPH (I) shall allow an exemption from the criminal background investigation and the state central registry of child protection investigation for those out-of-state employees working in Colorado at a children's resident camp in a temporary capacity for fewer than ninety days. Each person so exempted from fingerprinting and the state central registry of child protection investigation shall sign a statement that affirmatively states that he or she has not been convicted of any charge of child abuse, unlawful sexual offense, or any felony. Prospective employers of such exempted persons shall conduct reference checks of the prospective employees in order to verify previous work history and shall conduct personal interviews with each such prospective employee.

(C) ~~The~~ Rules PROMULGATED BY THE STATE BOARD PURSUANT TO THIS SUBPARAGRAPH (I) shall require the FINGERPRINT-BASED criminal HISTORY background check in all ~~other~~ circumstances OTHER THAN THOSE IDENTIFIED IN SUB-SUBPARAGRAPH (B) OF THIS SUBPARAGRAPH (I) to include a ~~fingerprint~~ FINGERPRINT-BASED CRIMINAL HISTORY BACKGROUND check through the Colorado bureau of investigation, EXCEPT FOR PERSONS RESIDING IN THIS STATE LESS THAN TWO YEARS WHO SHALL BE REQUIRED TO HAVE A FEDERAL BUREAU OF INVESTIGATION FINGERPRINT-BASED CRIMINAL HISTORY BACKGROUND CHECK THROUGH THE COLORADO BUREAU OF INVESTIGATION. As part of said investigation, the state central registry of child protection shall be accessed to determine whether the owner, applicant, employee, newly hired employee, licensee, or individual who resides in the licensed facility being investigated is the subject of a report of known or suspected child abuse. Pursuant to section 19-1-307 (2) (j), C.R.S., information shall be made available if a person's name is on the central registry of child protection, or has been designated as "status pending" pursuant to section 19-3-313, C.R.S. Any change in ownership of a licensed facility or the addition of a new resident adult or newly hired employee to the licensed facility shall require a new investigation as provided for in this section.

(D) The state board of ~~human services~~ shall promulgate rules to implement this subparagraph (I).

(I.5) RULES PROMULGATED BY THE STATE BOARD PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) SHALL ALSO INCLUDE:

(A) A COMPARISON SEARCH ON THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT WITH THE NAME AND DATE OF BIRTH INFORMATION AND ANY OTHER AVAILABLE SOURCE OF CRIMINAL HISTORY INFORMATION THAT THE STATE DEPARTMENT DETERMINES IS APPROPRIATE FOR EACH CIRCUMSTANCE IN WHICH THE CBI FINGERPRINT CHECK EITHER DOES NOT CONFIRM A CRIMINAL HISTORY OR CONFIRMS A CRIMINAL HISTORY, IN ORDER TO DETERMINE THE CRIME OR CRIMES FOR WHICH THE PERSON WAS ARRESTED OR CONVICTED AND THE DISPOSITION THEREOF; AND

(B) ANY OTHER RECOGNIZED DATABASE, IF ANY, THAT IS ACCESSIBLE ON A STATE-WIDE BASIS AS SET FORTH BY RULES PROMULGATED BY THE STATE BOARD.

SECTION 9. 26-6-108, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

26-6-108. Denial of original license - suspension - revocation - probation - refusal to renew license - fines. (2.9) THE CONVICTIONS IDENTIFIED IN THIS SECTION SHALL BE DETERMINED ACCORDING TO THE RECORDS OF THE COLORADO BUREAU OF INVESTIGATION, THE ICON SYSTEM AT THE STATE JUDICIAL DEPARTMENT, OR ANY OTHER SOURCE, AS SET FORTH IN SECTION 26-6-107 (1) (a) (I.5).

SECTION 10. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, for the fiscal year beginning July 1, 2001, to the department of human services, division of child care, for child care licensing and administration, the sum of ninety-five thousand six hundred fifty-eight dollars (\$95,658) and 2.5 FTE, or so much thereof is necessary for implementation of this act. Of said sum, nineteen thousand one hundred thirty-two dollars (\$19,132) shall be from the general fund, and seventy-six thousand five hundred twenty-six dollars (\$76,526) shall be from federal child care development funds.

(2) In addition to any other appropriation, there is hereby appropriated, for the fiscal year beginning July 1, 2001, to the department of public safety, Colorado bureau of investigation, the sum of three hundred twenty-three thousand two hundred thirty-eight dollars (\$323,238) and 1.5 FTE, or so much thereof is necessary for implementation of this act. Of said sum, two hundred forty-eight thousand nine hundred eighty-eight dollars (\$248,988) shall be from cash funds from fingerprint and name check processing fees, and seventy-four thousand two hundred and fifty dollars (\$74,250) shall be from cash funds exempt.

(3) It is the intent of the general assembly that the general fund appropriation in subsection (1) of this section for the implementation of this act shall be derived from savings generated from the implementation of the provisions of S.B. 01-77, as enacted during the first regular session of the sixty-third general assembly.

SECTION 11. Effective date. (1) This act shall take effect upon passage.

(2) Notwithstanding the provisions of subsection (1) of this section, this act shall only take effect if:

(a) The final fiscal estimate for Senate Bill 01-077, as reflected in the appropriations clause for said act, shows a net general fund savings that is equal to or greater than the final general fund fiscal estimate for this act, as reflected in section 10 of this act; and

(b) Senate Bill 01-077 is enacted at the first regular session of the sixty-third general assembly and becomes law.

SECTION 12. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 30, 2001