

CHAPTER 175

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 05-1175

BY REPRESENTATIVE(S) Hodge, Berens, Boyd, Buescher, Carroll M., Coleman, Curry, Garcia, Green, Jahn, Madden, Paccione, Rose, Stafford, and Vigil;
also SENATOR(S) Takis, Fitz-Gerald, Groff, Hanna, Shaffer, Tapia, Tupa, Veiga, and Williams.

AN ACT

CONCERNING THE USE OF CRIMINAL HISTORY RECORD INFORMATION FOR EMERGENCY PLACEMENT OF CHILDREN IN CASES OF DEPENDENCY OR NEGLECT, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Part 4 of article 3 of title 19, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

19-3-406. Fingerprint-based criminal history records check - providers of emergency placement for children - use of criminal justice records. (1) (a) A COUNTY DEPARTMENT MAY ELECT TO COLLABORATE WITH LOCAL LAW ENFORCEMENT AGENCIES TO PERFORM INITIAL CRIMINAL HISTORY RECORD CHECKS FOLLOWED BY FINGERPRINT VERIFICATION PURSUANT TO THE PROVISIONS OF THIS SECTION. IF A COUNTY DEPARTMENT ELECTS TO COLLABORATE WITH LOCAL LAW ENFORCEMENT AGENCIES PURSUANT TO THIS SECTION, THEN ANY TIME A CHILD IS TAKEN INTO TEMPORARY CUSTODY BY A LAW ENFORCEMENT OFFICER AND ANY TIME THE COURT PLACES TEMPORARY CUSTODY OF A CHILD WITH A COUNTY DEPARTMENT PURSUANT TO THE PROVISIONS OF THIS PART 4, AND A RELATIVE OR OTHER AVAILABLE PERSON IS IDENTIFIED AS A POTENTIAL EMERGENCY PLACEMENT FOR THE CHILD, THE LOCAL LAW ENFORCEMENT AGENCY SHALL CONDUCT AN INITIAL CRIMINAL HISTORY RECORD CHECK OF THE RELATIVE OR OTHER AVAILABLE PERSON PRIOR TO THE COUNTY DEPARTMENT OR THE LAW ENFORCEMENT OFFICER PLACING THE CHILD IN THE EMERGENCY PLACEMENT. WHEN A COUNTY DEPARTMENT OF SOCIAL SERVICES HAS TEMPORARY CUSTODY OF A CHILD PURSUANT TO THE PROVISIONS OF THIS PART 4 AND CONTACTS THE LOCAL LAW ENFORCEMENT AGENCY FOR AN INITIAL CRIMINAL HISTORY RECORD CHECK OF A PERSON WHO IS IDENTIFIED AS A POTENTIAL EMERGENCY PLACEMENT FOR THE CHILD PURSUANT TO THE PROVISIONS OF THIS SECTION, THE LOCAL LAW ENFORCEMENT AGENCY SHALL PROVIDE THE COUNTY

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

DEPARTMENT WITH A VERBAL RESPONSE REGARDING THE PERSON'S CRIMINAL HISTORY AND SHALL NOT PROVIDE THE COUNTY DEPARTMENT WITH DOCUMENTATION OF THE PERSON'S CRIMINAL HISTORY, CONSISTENT WITH THE PROVISIONS OF PUBLIC LAW 92-544, AND REGULATIONS PROMULGATED THEREUNDER, AS AMENDED.

(b) IF A COUNTY DEPARTMENT OF SOCIAL SERVICES ELECTS TO REQUEST AN INITIAL CRIMINAL HISTORY RECORD CHECK PURSUANT TO THE PROVISIONS OF THIS SECTION, THE CHILD MAY NOT BE PLACED WITH THE RELATIVE OR OTHER AVAILABLE PERSON IF THE INITIAL CRIMINAL HISTORY RECORD CHECK CONDUCTED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (1) REFLECTS A CRIMINAL HISTORY DESCRIBED IN SUBSECTION (4) OF THIS SECTION.

(c) IF A COUNTY DEPARTMENT OF SOCIAL SERVICES ELECTS TO REQUEST AN INITIAL CRIMINAL HISTORY RECORD CHECK PURSUANT TO THE PROVISIONS OF THIS SECTION, THE CHILD MAY BE PLACED WITH THE RELATIVE OR OTHER AVAILABLE PERSON IF THE INITIAL CRIMINAL HISTORY RECORD CHECK DOES NOT REFLECT A CRIMINAL HISTORY DESCRIBED IN SUBSECTION (4) OF THIS SECTION.

(2) A RELATIVE OR OTHER AVAILABLE PERSON WHO IS NOT DISQUALIFIED AS AN EMERGENCY PLACEMENT FOR A CHILD PURSUANT TO PARAGRAPH (b) OF SUBSECTION (1) OF THIS SECTION AND WHO AUTHORIZES A CHILD TO BE PLACED WITH HIM OR HER ON AN EMERGENCY BASIS PURSUANT TO THE PROVISIONS OF THIS PART 4 SHALL REPORT TO A LOCAL LAW ENFORCEMENT AGENCY FOR THE PURPOSE OF PROVIDING FINGERPRINTS TO THE LAW ENFORCEMENT AGENCY NO LATER THAN SEVENTY-TWO HOURS AFTER THE CHILD IS PLACED IN THE PERSON'S HOME. IF THE RELATIVE OR OTHER AVAILABLE PERSON FAILS TO REPORT TO THE LOCAL LAW ENFORCEMENT AGENCY WITHIN THIS TIME PERIOD, THE COUNTY DEPARTMENT OF SOCIAL SERVICES OR THE LAW ENFORCEMENT OFFICER, AS APPROPRIATE, MAY IMMEDIATELY REMOVE THE CHILD FROM THE PHYSICAL CUSTODY OF THE PERSON, IF SUCH REMOVAL IS IN THE BEST INTERESTS OF THE CHILD. THE COUNTY DEPARTMENT OF SOCIAL SERVICES SHALL CONTACT THE LOCAL LAW ENFORCEMENT AGENCY TO VERIFY THAT A RELATIVE OR OTHER AVAILABLE PERSON IDENTIFIED BY THE COUNTY DEPARTMENT REPORTED TO THE LOCAL LAW ENFORCEMENT AGENCY FOR FINGERPRINTING WITHIN THE TIME PERIOD SPECIFIED BY THIS SUBSECTION (2).

(3) WHEN A PERSON REPORTS TO A LOCAL LAW ENFORCEMENT AGENCY PURSUANT TO THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, THE LOCAL LAW ENFORCEMENT AGENCY SHALL FINGERPRINT THE PERSON AND FORWARD THE FINGERPRINTS TO THE COLORADO BUREAU OF INVESTIGATION FOR THE PURPOSE OF OBTAINING A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. UPON RECEIPT OF FINGERPRINTS AND PAYMENT FOR THE COSTS, THE COLORADO BUREAU OF INVESTIGATION SHALL CONDUCT A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK UTILIZING RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION. THE LOCAL LAW ENFORCEMENT AGENCY SHALL BE THE AUTHORIZED AGENCY TO RECEIVE INFORMATION REGARDING THE RESULTS OF THE STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS. IF THE FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK INDICATES THAT THE PERSON HAS A CRIMINAL HISTORY DESCRIBED IN SUBSECTION (4) OF THIS SECTION, THE COUNTY DEPARTMENT OF SOCIAL SERVICES OR THE LOCAL LAW ENFORCEMENT OFFICER, WHICHEVER IS APPROPRIATE, SHALL IMMEDIATELY REMOVE THE CHILD FROM THE EMERGENCY

PLACEMENT AND SHALL NOT PLACE A CHILD WITH THE PERSON WHO HAS THE CRIMINAL HISTORY WITHOUT COURT INVOLVEMENT AND AN ORDER OF THE COURT AFFIRMING PLACEMENT OF THE CHILD WITH THE PERSON.

(4) A COUNTY DEPARTMENT OR A LOCAL LAW ENFORCEMENT AGENCY THAT ELECTS TO PERFORM AN INITIAL CRIMINAL HISTORY RECORD CHECK PURSUANT TO THE PROVISIONS OF THIS SECTION SHALL NOT MAKE AN EMERGENCY PLACEMENT OR CONTINUE THE EMERGENCY PLACEMENT OF A CHILD WITH A PERSON WHO HAS BEEN CONVICTED OF ONE OR MORE OF THE FOLLOWING OFFENSES:

(a) CHILD ABUSE, AS DESCRIBED IN SECTION 18-6-401, C.R.S.;

(b) A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406, C.R.S.;

(c) A FELONY OFFENSE INVOLVING UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9), C.R.S.;

(d) A FELONY, THE UNDERLYING FACTUAL BASIS OF WHICH HAS BEEN FOUND BY THE COURT ON THE RECORD TO INCLUDE AN ACT OF DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3, C.R.S.;

(e) A FELONY INVOLVING PHYSICAL ASSAULT OR A DRUG-RELATED OFFENSE, COMMITTED WITHIN THE PRECEDING FIVE YEARS;

(f) VIOLATION OF A PROTECTION ORDER, AS DESCRIBED IN SECTION 18-6-803.5, C.R.S.;

(g) A CRIME INVOLVING HOMICIDE; OR

(h) AN OFFENSE IN ANY OTHER STATE, THE ELEMENTS OF WHICH ARE SUBSTANTIALLY SIMILAR TO THE ELEMENTS OF ANY ONE OF THE OFFENSES DESCRIBED IN PARAGRAPHS (a) TO (g) OF THIS SUBSECTION (4).

(5) THE STATE BOARD OF HUMAN SERVICES SHALL PROMULGATE RULES TO IMPLEMENT THE PROVISIONS OF THIS SECTION, CONSISTENT WITH THE PROVISIONS CONTAINED IN PART 3 OF ARTICLE 72 OF TITLE 24, C.R.S.

(6) FOR PURPOSES OF THIS SECTION, "INITIAL CRIMINAL HISTORY RECORD CHECK" MEANS A NAME-BASED STATE AND FEDERAL CRIMINAL HISTORY RECORD CHECK PERFORMED BY A LOCAL LAW ENFORCEMENT AGENCY UTILIZING THE RECORDS OF THE COLORADO BUREAU OF INVESTIGATION AND THE FEDERAL BUREAU OF INVESTIGATION.

SECTION 2. Appropriation. In addition to any other appropriation, there is hereby appropriated, to the department of public safety, for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 2005, the sum of twenty-one thousand sixty dollars (\$21,060), or so much thereof as may be necessary, for fingerprint processing services related to the implementation of this act. Of said sum, nine thousand twenty-six dollars (\$9,026) shall be cash funds received from local law enforcement agencies and twelve thousand thirty-four dollars (\$12,034) shall be cash funds exempt pass-through moneys received from local law enforcement agencies.

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

Approved: May 27, 2005