

SENATE BILL 152

56TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2024

INTRODUCED BY

Siah Correa Hemphill

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO BACKGROUND CHECKS; AMENDING THE CRIMINAL HISTORY INVESTIGATION PROCEDURES FOR THE EARLY CHILDHOOD EDUCATION AND CARE DEPARTMENT AND THE CHILDREN, YOUTH AND FAMILIES DEPARTMENT; SPECIFYING WHO HAS TO UNDERGO A BACKGROUND CHECK; PROVIDING DEFINITIONS; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-29-8.1 NMSA 1978 (being Laws 2022,

.226948.5SAAIC February 2, 2024 (6:07pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

Chapter 30, Section 4, as amended) is amended to read:

"9-29-8.1. CRIMINAL HISTORY INVESTIGATIONS--PROCEDURES--
CONFIDENTIALITY--VIOLATION--PENALTY.--

A. To investigate the suitability of an applicant for licensure as a licensed child care facility, registration as a child care home program or for employment or volunteering at a licensed child care facility or registered child care home, including any facility or program that has primary custody of infants, toddlers and children for twenty hours or more per week, or for employees and volunteers of the department and employees and volunteers of department-contracted providers, the department shall have access to criminal history records information furnished by the department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law.

B. An applicant for a child care facility license or registration or for employment or volunteering at a licensed child care facility or registered child care home or employees and volunteers of the department and employees and volunteers of department-contracted providers shall undergo a state and national criminal history records check, and the applicant shall submit an electronic set of fingerprints to the department of public safety for that purpose. The department of public safety shall conduct a check of state criminal

.226948.5SAAIC February 2, 2024 (6:07pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

history records and forward the fingerprints to the federal bureau of investigation for a national criminal history records check to determine the existence and content of records of convictions and arrests in this state or other law enforcement jurisdictions and to generate a criminal history records check in accordance with rules of the department of public safety and regulations of the federal bureau of investigation. The department of public safety shall review the information obtained from the criminal history records check and shall compile and provide that information to the early childhood education and care department. The early childhood education and care department shall use the information to investigate and determine whether an applicant is qualified to hold a license or an employment or volunteer position. The department shall promulgate rules for the investigation and determination of qualifications.

C. Criminal history information obtained by the department is confidential and shall be used only for the purpose of determining the suitability for licensure, employment or volunteer service and shall not be disclosed to anyone other than public employees directly involved in the decision affecting the applicant.

D. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

misdeemeanor and shall be sentenced in accordance with the provisions of Section 31-19-1 NMSA 1978."

SECTION 2. Section 32A-15-3 NMSA 1978 (being Laws 1985, Chapter 103, Section 3 and Laws 1985, Chapter 140, Section 3, as amended) is amended to read:

"32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND CHECKS.--

A. State and national criminal history records checks shall be conducted on all operators, [~~staff~~] employees, student interns and volunteers and prospective operators, [~~staff~~] employees, student interns and volunteers of [~~child care facilities, including~~] every facility or program that has primary custody of children for twenty hours or more per week, and juvenile detention facilities, juvenile correction facilities or treatment facilities. State and national criminal history records checks shall also be conducted on all prospective foster or adoptive parents and other adult relatives and non-relatives residing in the prospective foster or adoptive parent's household. The objective of conducting the records checks is to protect the children involved and promote the children's safety and welfare while receiving service from the facilities and programs.

[~~B. The early childhood education and care department shall have access to criminal history information on prospective and current operators, staff, employees and~~

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↵
delete = →bold, red, highlight, strikethrough↵

~~volunteers of child care facilities, including every facility or program under the department's authority that has primary custody of infants, toddlers and children for twenty hours or more per week.~~

~~G. The children, youth and families department shall have access to criminal history information on:~~

~~(1) prospective and current operators, staff, employees and volunteers of juvenile detention, correction or treatment facilities or a facility or program under the department's authority that has primary custody of children for twenty hours or more per week; and~~

~~(2) all prospective foster or adoptive parents or other adult relatives and non-relatives residing in a prospective foster or adoptive parent's household.~~

~~D.]~~ B. For purposes of investigating the suitability of persons enumerated in [~~Subsections B and C~~] Subsection A of this section, the [~~early childhood education and care department or the children, youth and families~~] department [~~as applicable~~] shall have access to criminal history records information furnished by the department of public safety and the federal bureau of investigation, subject to any restrictions imposed by federal law. As directed by the [~~applicable~~] department, a person enumerated in Subsection A of this section shall submit a set of electronic fingerprints to the department of public safety. The department of public

.226948.5SAAIC February 2, 2024 (6:07pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

safety shall conduct a check of state criminal history records and forward the fingerprints to the federal bureau of investigation for a national criminal history records check to determine the existence and content of records of convictions and arrests in this state or other law enforcement jurisdictions and to generate a criminal history records check in accordance with rules of the department and regulations of the federal bureau of investigation. The department of public safety shall review the information returned from the criminal history records check and compile and disseminate ~~[a response]~~ the criminal history record information to the ~~[appropriate]~~ department, which shall use the information to investigate and determine whether a person is qualified to provide care for a child or be a foster or adoptive parent.

~~[E-]~~ C. Criminal history records obtained pursuant to the provisions of this section are confidential and are not a public record for purposes of the Inspection of Public Records Act and shall not be used for any purpose other than determining suitability for licensure, employment, volunteer service, fostering or adoption. Criminal history records obtained pursuant to the provisions of this section and the information contained in those records shall not be released or disclosed to any other person or agency, except pursuant to a court order or with the written consent of the person who is the subject of the records.

.226948.5SAAIC February 2, 2024 (6:07pm)

underscored material = new

[bracketed material] = delete

Amendments: new = → bold, blue, highlight ↕

delete = → bold, red, highlight, strikethrough ↕

[F-] D. A person who releases or discloses criminal history records or information contained in those records in violation of the provisions of this section is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

E. As used in this section:

(1) "behavior management skills development" means services for children and adolescents with psychological, emotional, behavioral, neurobiological or substance abuse problems in the home, community or school when such problems are of such severity that highly supportive and structured therapeutic behavioral interventions are required. These services are designed to maintain the client in the client's home, community or school setting;

(2) "case management" means services provided in order to assist children and adolescents with identifying and meeting multiple and complex, special physical, cognitive and behavioral health care needs through planning, securing, monitoring, advocating and coordinating services;

(3) "child placement agency" means an individual or an entity licensed by the department as an adoption agency, foster care agency or both that is undertaking to place a child in a home in this or any other state for the purpose of providing foster care or adoption services;

(4) "comprehensive community support services"

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight↔
delete = →bold, red, highlight, strikethrough↔

means a variety of interventions, primarily face-to-face and in community locations, that address barriers that impede the development of skills necessary to independent functioning in the community;

(5) "day treatment" means a coordinated and intensive set of structured individualized therapeutic services, in a school or a facility licensed by the department, provided for children, adolescents and their families who are living in the community;

(6) "employee" means a person working for a facility or program who has direct care responsibilities or potential unsupervised access to care recipients;

(7) "facility" means a juvenile correction facility, a juvenile detention facility or a treatment facility;

(8) "group home" means mental and behavioral health services offered in a supervised, licensed facility that provides structured therapeutic group living for children or adolescents with moderate behavioral, psychological, neurobiological or emotional problems, when clinical history and opinion establish that the needs of the client cannot be met in a less restrictive environment;

(9) "intensive outpatient programming" means a time-limited, multifaceted approach to treatment services for children or adolescents who require structure and support to

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

achieve and sustain recovery;

(10) "juvenile correction facility" means the physical plant and buildings operated by or on behalf of the juvenile justice division of the department or any other facility or location designated by the juvenile justice division's director to house or provide care to clients committed to the custody of the department;

(11) "juvenile detention facility" means a place where a child may be detained under the Children's Code pending a court hearing and does not include a facility for the care and rehabilitation of an adjudicated delinquent child;

(12) "operator" means a person who has any SJC→~~direct or indirect~~←SJC oversight over a facility's or program's employees or day-to-day operations;

(13) "prevention, intervention and reunification services" means prevention awareness, family support and reunification services for families that are at high risk of child maltreatment;

(14) "primary custody" means that a facility or program holds temporary or long-term custody or supervision over children in the absence of a parent or guardian;

(15) "program" means behavior management skills development, case management, a group home, day treatment, treatment foster care services, a child placement agency, licensed shelter care, comprehensive community support

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

services, intensive outpatient programming, supervised visitation and safe exchange and children, youth and families department contractors and providers receiving funding or reimbursement to provide prevention, intervention and reunification services;

(16) "residential treatment facility" means a program that provides twenty-four-hour therapeutic care to children or adolescents with severe behavioral, psychological, neurobiological or emotional problems who are in need of psychosocial rehabilitation in a residential facility;

(17) "shelter care" means any facility that provides short-term emergency living accommodations to children in a crisis situation, such as abandonment, abuse or neglect, or who are runaways;

(18) "student intern" means a person who is paid or unpaid and is present in a facility or program to work, observe or gain skills in a particular profession;

(19) "supervised visitation and safe exchange" means a service that provides children and their parents with a safe, nurturing environment for supervised visitation and exchange, allowing a child to continue the child's relationship with the noncustodial parent without being placed in the middle of parental conflicts;

(20) "treatment facility" means a residential treatment facility or group home;

.226948.5SAAIC February 2, 2024 (6:07pm)

underscored material = new
[bracketed material] = delete
Amendments: new = →bold, blue, highlight←
delete = →bold, red, highlight, strikethrough←

(21) "treatment foster care services" means a program that provides therapeutic services to children or adolescents who are psychologically or emotionally disturbed or behaviorally disordered and are placed in a foster family setting; and

(22) "volunteer" means a person who spends less than six hours per week at a program, is under direct physical supervision and is not counted in the program facility ratio."

SECTION 3. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.