

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 18-1046.01 Jane Ritter x4342

HOUSE BILL 18-1411

HOUSE SPONSORSHIP

Pabon,

SENATE SPONSORSHIP

Smallwood,

House Committees

Public Health Care & Human Services

Senate Committees

Finance

A BILL FOR AN ACT

101 **CONCERNING ELIMINATING REDUNDANCY RELATED TO**
102 **FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECKS FOR**
103 **PERSONS WHO HAVE OR WILL HAVE DIRECT CONTACT WITH**
104 **VULNERABLE PERSONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Current law requires employees of the department of human services and independent contractors with the department of human services (employees) who have or will have direct contact with vulnerable

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 4, 2018

SENATE
2nd Reading Unamended
May 3, 2018

HOUSE
3rd Reading Unamended
May 1, 2018

HOUSE
Amended 2nd Reading
April 30, 2018

persons to undergo a fingerprint-based criminal history record check (background check) in order to work in a facility operated by or licensed by the department of human services. Current law also requires employees or operators of licensed child care facilities or child placement agencies to undergo a background check. Employees or operators of licensed child care facilities that are under contract with the department of human services must obtain 2 separate background checks, one pursuant to title 26, Colorado Revised Statutes, and one pursuant to title 27, Colorado Revised Statutes.

The bill adds language to statute that allows for a single background check for such employees who have or will have direct contact with vulnerable persons, reducing redundancy for such employees.

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

2 **SECTION 1.** In Colorado Revised Statutes, 26-6-104, **add**
3 (7)(a)(III) as follows:

4 **26-6-104. Licenses - out-of-state notices and consent -**
5 **demonstration pilot program.** (7) (a) (III) ANY APPLICANT, LICENSEE,
6 OR EMPLOYEE OF THE APPLICANT OR LICENSEE WHO MEETS THE DEFINITION
7 OF A DEPARTMENT EMPLOYEE OR AN INDEPENDENT CONTRACTOR, AS
8 THOSE TERMS ARE DEFINED IN SECTION 27-90-111 OR WHO WORKS FOR A
9 CONTRACTING AGENCY, AS DEFINED IN SECTION 27-90-111, AND WHO WILL
10 HAVE DIRECT CONTACT WITH VULNERABLE PERSONS, AS DEFINED IN
11 SECTION 27-90-111 (2)(e), IS REQUIRED TO SUBMIT TO A STATE AND
12 NATIONAL FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK IN THE
13 SAME MANNER AS REQUIRED PURSUANT TO SECTION 27-90-111 (9);
14 EXCEPT THAT THE STATE DEPARTMENT SHALL NOT BEAR THE COST OF
15 SUCH CRIMINAL HISTORY RECORD CHECK REQUIRED BY THIS SUBSECTION
16 (7)(a)(III). THE STATE DEPARTMENT MAY ALSO CONDUCT A COMPARISON
17 SEARCH ON THE COLORADO STATE COURTS PUBLIC ACCESS SYSTEM TO
18 DETERMINE THE CRIME OR CRIMES FOR WHICH THE INDIVIDUAL HAVING

1 DIRECT CONTACT WITH VULNERABLE PERSONS WAS ARRESTED OR
2 CONVICTED AND THE DISPOSITION OF SUCH CRIME OR CRIMES. THE
3 CRIMINAL HISTORY RECORD CHECK REQUIRED BY THIS SUBSECTION
4 (7)(a)(III) MUST BE SUBMITTED TO THE STATE DEPARTMENT PRIOR TO THE
5 INDIVIDUAL HAVING DIRECT CONTACT WITH VULNERABLE PERSONS, AND
6 AN APPLICANT, LICENSEE, OR EMPLOYEE OF AN APPLICANT OR LICENSEE
7 MUST NOT BE ALLOWED TO HAVE DIRECT CONTACT WITH VULNERABLE
8 PERSONS IF HE OR SHE DOES NOT MEET THE REQUIREMENTS SET FORTH IN
9 THIS SUBSECTION (7) AND IN SECTION 27-90-111 (9).

10 **SECTION 2.** In Colorado Revised Statutes, 27-90-111, **amend**
11 (1), (2)(a), (2)(c), (3)(d), (4), (7), (9)(a), (9)(b) introductory portion, (9)(c)
12 introductory portion, (10), (11), (12), and (13)(a) introductory portion;
13 **repeal** (2)(d); and **add** (2)(b.5), (2)(d.5), and (11.5) as follows:

14 **27-90-111. Employment of personnel - screening of applicants**
15 **- disqualifications from employment - contracts - rules - definitions.**

16 (1) The general assembly hereby recognizes that many of the individuals
17 receiving services from persons employed by the department EMPLOYEES
18 pursuant to ~~this title or title 26 C.R.S.~~, OR THIS TITLE 27 are unable to
19 defend themselves and are therefore vulnerable to abuse or assault. It is
20 the intent of the general assembly to minimize the potential for hiring and
21 employing persons with a propensity toward abuse, assault, or similar
22 offenses against others for positions that would provide them with
23 unsupervised access to vulnerable persons. The general assembly hereby
24 declares that, in accordance with section 13 of article XII of the state
25 constitution, for purposes of terminating employees in the state personnel
26 system who are finally convicted of criminal conduct, offenses involving
27 moral turpitude include, but are not limited to, the disqualifying offenses

1 specified in subsection (9) of this section.

2 (2) For purposes of this section, unless the context otherwise
3 requires:

4 (a) "Contracting ~~employee~~ AGENCY" means ~~a person who~~ AN
5 AGENCY, CORPORATION, NONPROFIT ENTITY, OR ANY OTHER OUTSIDE
6 ENTITY THAT contracts with the department ~~and who is designated by the~~
7 ~~executive director or the executive director's designee as serving in a~~
8 ~~contract position involving direct contact with vulnerable persons~~ TO
9 PROVIDE SERVICES PURSUANT TO TITLE 26 OR THIS TITLE 27 AND THAT
10 PROVIDES SERVICES THAT INVOLVE DIRECT CONTACT WITH VULNERABLE
11 PERSONS.

12 (b.5) "DEPARTMENT EMPLOYEE" MEANS AN EMPLOYEE OF THE
13 DEPARTMENT WHO IS EMPLOYED THROUGH THE STATE PERSONNEL SYSTEM
14 OF THE STATE OF COLORADO.

15 (c) "Direct contact" means providing face-to-face care, training,
16 supervision, counseling, consultation, or medication assistance to
17 vulnerable persons, regardless of the level of supervision of the
18 DEPARTMENT employee. "Direct contact" may include positions in which
19 persons have access to or unsupervised time with clients or patients,
20 including but not limited to maintenance personnel, housekeeping staff,
21 kitchen staff, and security personnel.

22 (d) ~~"Employee" means an employee of the department who is~~
23 ~~under the state personnel system of the state of Colorado.~~

24 (d.5) "INDEPENDENT CONTRACTOR" MEANS AN INDIVIDUAL WHO
25 CONTRACTS DIRECTLY WITH THE DEPARTMENT AND WHO IS DESIGNATED,
26 BY THE EXECUTIVE DIRECTOR OR THE EXECUTIVE DIRECTOR'S DESIGNEE,
27 AS SERVING IN A CONTRACT POSITION INVOLVING DIRECT CONTACT WITH

1 VULNERABLE PERSONS.

2 (3) The employment screening and disqualification requirements
3 in this section apply to the following facilities or programs operated by
4 the department:

5 (d) Any direct services identified and provided by the department
6 in which DEPARTMENT employees, INDEPENDENT CONTRACTORS, OR
7 CONTRACTING AGENCIES have direct contact with vulnerable persons in
8 a state-operated facility or in a vulnerable person's home or residence;

9 (4) Prior to the department's permanent employment of a person
10 in a position that would require that person to have direct contact with ~~any~~
11 A vulnerable person, the executive director or any division head of the
12 department shall make an inquiry to the director of the Colorado bureau
13 of investigation to ascertain whether the person has a criminal history.
14 The person's employment is conditional upon a satisfactory ~~criminal~~
15 ~~background check. Any criminal background~~ STATE AND NATIONAL
16 FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK. A CRIMINAL
17 HISTORY RECORD check conducted pursuant to this subsection (4) must
18 include but need not be limited to arrests, conviction records, and the
19 disposition of any criminal charges. The department shall require the
20 person to have his or her fingerprints taken by a local law enforcement
21 agency or any third party approved by the Colorado bureau of
22 investigation. If an approved third party takes the person's fingerprints,
23 the fingerprints may be electronically captured using Colorado bureau of
24 investigation-approved livescan equipment. Third-party vendors shall not
25 keep the applicant information for more than thirty days unless requested
26 to do so by the applicant. The department shall forward those fingerprints
27 to the Colorado bureau of investigation for the purpose of fingerprint

1 processing utilizing the files and records of the Colorado bureau of
2 investigation and the federal bureau of investigation. The department
3 shall pay for the costs of ~~criminal background~~ CRIMINAL HISTORY RECORD
4 checks conducted pursuant to this section out of existing appropriations.

5 (7) The executive director, any division head, or any local agency
6 or provider who relies on information obtained pursuant to this section in
7 making an employment decision or who concludes that the nature of any
8 information disqualifies the person from employment as either ~~an~~ A
9 DEPARTMENT employee or ~~a contracting employee shall be~~ AN
10 INDEPENDENT CONTRACTOR IS immune from civil liability for that
11 decision or conclusion unless the information relied upon is false and the
12 executive director, division head, or local agency or provider knows the
13 information is false or acts with reckless disregard concerning the
14 veracity of the information.

15 (9) (a) If the criminal ~~background~~ HISTORY RECORD check
16 conducted pursuant to subsection (4) or (11) of this section indicates that
17 a prospective DEPARTMENT employee or prospective ~~contracting~~
18 ~~employee~~ INDEPENDENT CONTRACTOR was convicted of any of the
19 disqualifying offenses set forth in ~~paragraph (b) or (c) of this subsection~~
20 ~~(9)~~ SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION, the person ~~shall be~~ IS
21 disqualified from employment either as ~~an~~ A DEPARTMENT employee or
22 as ~~a contracting employee~~ AN INDEPENDENT CONTRACTOR in a position
23 involving direct contact with vulnerable persons. THE DEPARTMENT
24 SHALL NOT HIRE OR RETAIN a person who is disqualified as a result of this
25 section ~~shall not be hired or retained by the department in~~ FOR a position
26 involving direct contact with vulnerable persons nor ~~be~~ IS THE PERSON
27 eligible to contract for or continue in a contract position designated by the

1 executive director or the executive director's designee as involving direct
2 contact with vulnerable persons.

3 (b) Except as otherwise provided in ~~paragraph (d) of this~~
4 ~~subsection (9)~~ SUBSECTION (9)(d) OF THIS SECTION, a person ~~shall be~~ IS
5 disqualified from employment either as ~~an~~ A DEPARTMENT employee or
6 as a ~~contracting employee~~ AN INDEPENDENT CONTRACTOR, regardless of
7 the length of time that may have passed since the discharge of the
8 sentence imposed for any of the following criminal offenses:

9 (c) Except as otherwise provided in ~~paragraph (d) of this~~
10 ~~subsection (9)~~ SUBSECTION (9)(d) OF THIS SECTION, a person ~~shall be~~ IS
11 disqualified from employment either as ~~an~~ A DEPARTMENT employee or
12 as a ~~contracting employee~~ AN INDEPENDENT CONTRACTOR if less than ten
13 years have passed since the person was discharged from a sentence
14 imposed for conviction of any of the following criminal offenses:

15 (10) (a) Any DEPARTMENT employee who is employed in a
16 position involving direct contact with vulnerable persons and who is
17 arrested, charged with, or issued a summons and complaint for any of the
18 disqualifying offenses set forth in ~~paragraph (b) or (c) of subsection (9)~~
19 SUBSECTION (9)(b) OR (9)(c) of this section shall inform his or her
20 supervisor of the arrest, charges, or issuance of a summons and complaint
21 before returning to work. Any DEPARTMENT employee who fails to make
22 such a report or disclosure may be terminated from employment. The
23 department or any facility operated by the department shall advise its
24 employees and ~~contracting employees~~ INDEPENDENT CONTRACTORS in
25 writing of the requirement for self-reporting of the disqualifying offenses
26 set forth in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR
27 (9)(c) of this section.

1 (b) ~~An employee who is charged with any of the disqualifying~~
2 ~~offenses set forth in paragraph (b) of subsection (9) of this section shall~~
3 ANY DEPARTMENT EMPLOYEE WHO IS CHARGED WITH ANY OF THE
4 DISQUALIFYING OFFENSES SET FORTH IN SUBSECTION (9)(b) OF THIS
5 SECTION MUST be suspended until resolution of the criminal charges or
6 completion of administrative action by the department. ~~An~~ A
7 DEPARTMENT employee who is charged with any of the disqualifying
8 offenses set forth in ~~paragraph (c) of subsection (9)~~ SUBSECTION (9)(c) of
9 this section may be suspended at the discretion of the department until
10 resolution of the criminal charges or completion of administrative action
11 by the department. The DEPARTMENT employee shall inform his or her
12 supervisor of the disposition of the criminal charges. Any DEPARTMENT
13 employee who fails to report such information may be terminated from
14 employment. Upon notification to the department that the DEPARTMENT
15 employee has received a conviction for any of the disqualifying offenses
16 described in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR
17 (9)(c) of this section, the DEPARTMENT employee ~~shall~~ MUST be
18 terminated from employment. Nothing in this ~~paragraph (b) shall prohibit~~
19 SUBSECTION (10)(b) PROHIBITS the department from taking administrative
20 action if the DEPARTMENT employee's conduct would justify disciplinary
21 action under section 13 of article XII of the state constitution for failure
22 to comply with standards of efficient service or competence or for willful
23 misconduct, willful failure, or inability to perform his or her duties.

24 (11) The general assembly recognizes that the department
25 contracts with persons to serve in positions that involve direct contact
26 with vulnerable persons in state-operated facilities or to provide
27 state-funded services that involve direct contact with vulnerable persons

1 in the homes and residences of such vulnerable persons. In order to
2 protect vulnerable persons who come into contact with these ~~contracting~~
3 ~~employees~~ INDEPENDENT CONTRACTORS, the executive director or ~~the~~
4 ~~executive director's~~ HIS OR HER designee shall designate those contract
5 positions that involve direct contact with vulnerable persons that ~~shall be~~
6 ARE subject to the provisions of this subsection (11). In any contract
7 initially entered into or renewed on or after July 1, 1999, concerning a
8 contract position that has been designated as involving direct contact with
9 vulnerable persons, the department shall include the following terms and
10 conditions:

11 (a) That the ~~contracting employee~~ INDEPENDENT CONTRACTOR
12 shall submit to a ~~criminal background~~ STATE AND NATIONAL
13 FINGERPRINT-BASED CRIMINAL HISTORY RECORD check as described in
14 subsection (4) of this section for state employees, EXCEPT THAT THE
15 INDEPENDENT CONTRACTOR SHALL BEAR THE COST OF SUCH CRIMINAL
16 HISTORY RECORD CHECKS;

17 (b) That the ~~contracting employee~~ INDEPENDENT CONTRACTOR
18 shall report any arrests, charges, or summonses for any of the
19 disqualifying offenses specified in ~~paragraph (b) or (c) of subsection (9)~~
20 SUBSECTION (9)(b) OR (9)(c) of this section to the ~~contracting employee's~~
21 INDEPENDENT CONTRACTOR'S supervisor at the department before
22 returning to work;

23 (c) That the ~~contracting employee~~ INDEPENDENT CONTRACTOR
24 may be suspended or terminated, at the discretion of the department, prior
25 to the resolution of the criminal charges for any of the disqualifying
26 offenses specified in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION
27 (9)(b) OR (9)(c) of this section;

1 (d) That, upon notification to the department that the ~~contracting~~
2 ~~employee has received a conviction~~ INDEPENDENT CONTRACTOR HAS BEEN
3 CONVICTED for any of the disqualifying offenses described in ~~paragraph~~
4 ~~(b) or (c) of subsection (9)~~ SUBSECTION (9)(b) OR (9)(c) of this section,
5 the ~~contracting employee's~~ INDEPENDENT CONTRACTOR'S position with the
6 department ~~shall~~ MUST be terminated.

7 (11.5) (a) THE GENERAL ASSEMBLY ALSO RECOGNIZES THAT THE
8 DEPARTMENT CONTRACTS WITH OUTSIDE CONTRACTING AGENCIES FOR
9 SERVICES WHERE THE CONTRACTING AGENCY'S EMPLOYEES WILL HAVE
10 DIRECT CONTACT WITH VULNERABLE PERSONS WHO RECEIVE SERVICES
11 PURSUANT TO TITLE 26 AND THIS TITLE 27. TO PROTECT VULNERABLE
12 PERSONS WHO COME INTO CONTACT WITH EMPLOYEES OF A CONTRACTING
13 AGENCY, THE EXECUTIVE DIRECTOR, OR HIS OR HER DESIGNEE, SHALL
14 DESIGNATE THOSE CONTRACTS THAT WILL INVOLVE DIRECT CONTACT WITH
15 VULNERABLE PERSONS AND THAT ARE THEREFORE SUBJECT TO THE
16 PROVISIONS OF THIS SUBSECTION (11.5). ANY CONTRACT WITH A
17 CONTRACTING AGENCY THAT IS INITIALLY ENTERED INTO OR IS RENEWED
18 ON OR AFTER JULY 1, 2018, AND THAT HAS BEEN DESIGNATED AS A
19 CONTRACT THAT INVOLVES DIRECT CONTACT WITH VULNERABLE PERSONS,
20 MUST INCLUDE THE FOLLOWING TERMS AND CONDITIONS:

21 (I) THE CONTRACTING AGENCY SHALL SUBMIT ITS EMPLOYEES WHO
22 WILL HAVE DIRECT CONTACT WITH VULNERABLE PERSONS AS A RESULT OF
23 THE CONTRACT TO A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL
24 HISTORY RECORD CHECK. THE CONTRACTING AGENCY SHALL PROVIDE THE
25 INFORMATION REQUIRED BY SUBSECTION (4) OF THIS SECTION TO THE
26 EXECUTIVE DIRECTOR OR ANY DIVISION HEAD OF THE DEPARTMENT THAT
27 WORKS DIRECTLY WITH THE CONTRACTING AGENCY.

1 (II) THAT THE CONTRACTING AGENCY SHALL REQUIRE ITS
2 EMPLOYEES WHO WILL HAVE DIRECT CONTACT WITH VULNERABLE
3 PERSONS AS A RESULT OF THE CONTRACT TO REPORT ANY ARRESTS,
4 CHARGES, OR SUMMONSES FOR ANY OF THE DISQUALIFYING OFFENSES
5 SPECIFIED IN SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION TO THE
6 CONTRACTING AGENCY'S SUPERVISOR BEFORE RETURNING TO WORK. THE
7 CONTRACTING AGENCY'S SUPERVISOR SHALL IMMEDIATELY NOTIFY THE
8 EXECUTIVE DIRECTOR OR THE RESPECTIVE DIVISION HEAD OF THE
9 DEPARTMENT THAT WORKS DIRECTLY WITH THE CONTRACTING AGENCY
10 UPON NOTIFICATION OF ANY SUCH REPORT MADE BY AN EMPLOYEE.

11 (III) THAT THE CONTRACTING AGENCY MAY BE REQUIRED TO
12 REMOVE AN EMPLOYEE FROM HAVING DIRECT CONTACT WITH VULNERABLE
13 PERSONS, AT THE DISCRETION OF THE DEPARTMENT, PRIOR TO THE
14 RESOLUTION OF THE CRIMINAL CHARGES FOR ANY OF THE DISQUALIFYING
15 OFFENSES SPECIFIED IN SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION;

16 (IV) THAT, UPON NOTIFICATION TO THE DEPARTMENT THAT THE
17 CONTRACTING AGENCY'S EMPLOYEE WHO HAS DIRECT CONTACT WITH
18 VULNERABLE PERSONS AS A RESULT OF THE CONTRACT HAS BEEN
19 CONVICTED OF ANY OF THE DISQUALIFYING OFFENSES SPECIFIED IN
20 SUBSECTION (9)(b) OR (9)(c) OF THIS SECTION, SUCH EMPLOYEE IS NO
21 LONGER PERMITTED TO WORK IN ANY CAPACITY WITH THE DEPARTMENT
22 WHERE HE OR SHE WOULD HAVE DIRECT CONTACT WITH VULNERABLE
23 PERSONS AS A RESULT OF THE CONTRACT; AND

24 (V) THAT, IF THE CONTRACTING AGENCY FAILS TO COMPLY WITH
25 SUBSECTIONS (11.5)(a)(I) TO (11.5)(a)(IV) OF THIS SECTION, THE
26 CONTRACT MAY BE IMMEDIATELY TERMINATED.

27 (b) IF THE CONTRACTING AGENCY IS ALSO LICENSED PURSUANT TO

1 SECTION 26-6-104 AND HAS CONDUCTED A CRIMINAL HISTORY RECORD
2 CHECK PURSUANT TO SECTION 26-6-104 (7)(a)(III) FOR ITS EMPLOYEES
3 WHO WILL HAVE DIRECT CONTACT WITH VULNERABLE PERSONS AS A
4 RESULT OF THE CONTRACT, THE DEPARTMENT MAY ACCEPT SUCH
5 CRIMINAL HISTORY RECORD CHECK TO SATISFY THE REQUIREMENTS OF
6 THIS SUBSECTION (11.5).

7 (12) ~~An employee or contracting employee~~ A DEPARTMENT
8 EMPLOYEE, INDEPENDENT CONTRACTOR, OR EMPLOYEE OF A CONTRACTING
9 AGENCY who is disqualified due to conviction of any of the disqualifying
10 offenses set forth in ~~paragraph (b) or (c) of subsection (9)~~ SUBSECTION
11 (9)(b) OR (9)(c) of this section may submit a written request to the
12 executive director for reconsideration of the disqualification.
13 Reconsideration ~~under~~ PURSUANT TO this subsection (12) may only be
14 based on a mistake of fact such as an error in the identity of the person for
15 whom the criminal ~~background~~ HISTORY RECORD check was performed
16 PURSUANT TO SUBSECTION (11) OF THIS SECTION. If the executive director
17 determines that there was a mistake of fact involving the identity of the
18 person, the executive director shall issue a finding that the disqualifying
19 factor is not a bar to the person's employment either as ~~an~~ A DEPARTMENT
20 employee or as ~~a contracting employee~~ AN INDEPENDENT CONTRACTOR OR
21 EMPLOYEE OF A CONTRACTING AGENCY.

22 (13) (a) ~~An employee or contracting employee~~ A DEPARTMENT
23 EMPLOYEE, AN INDEPENDENT CONTRACTOR, OR AN EMPLOYEE OF A
24 CONTRACTING AGENCY who is disqualified for conviction of an offense
25 specified in ~~paragraph (c) of subsection (9)~~ SUBSECTION (9)(c) of this
26 section may submit a written request to the executive director for
27 reconsideration of the disqualification and a review of whether the person

1 poses a risk of harm to vulnerable persons. In reviewing a
2 disqualification, the executive director shall give predominant weight to
3 the safety of vulnerable persons over the interests of the disqualified
4 person. The final determination ~~shall~~ MUST be based upon a review of:

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