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SENATE BILL 152

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

INTRODUCED BY

Siah Correa Hemphill

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, 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

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1 home, including any facility or program that has primary  
2 custody of infants, toddlers and children for twenty hours or  
3 more per week, or for employees and volunteers of the  
4 department and employees and volunteers of department-  
5 contracted providers, the department shall have access to  
6 criminal history records information furnished by the  
7 department of public safety and the federal bureau of  
8 investigation, subject to any restrictions imposed by federal  
9 law.

10 B. An applicant for a child care facility license  
11 or registration or for employment or volunteering at a licensed  
12 child care facility or registered child care home or employees  
13 and volunteers of the department and employees and volunteers  
14 of department-contracted providers shall undergo a state and  
15 national criminal history records check, and the applicant  
16 shall submit an electronic set of fingerprints to the  
17 department of public safety for that purpose. The department  
18 of public safety shall conduct a check of state criminal  
19 history records and forward the fingerprints to the federal  
20 bureau of investigation for a national criminal history records  
21 check to determine the existence and content of records of  
22 convictions and arrests in this state or other law enforcement  
23 jurisdictions and to generate a criminal history records check  
24 in accordance with rules of the department of public safety and  
25 regulations of the federal bureau of investigation. The

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1 department of public safety shall review the information  
2 obtained from the criminal history records check and shall  
3 compile and provide that information to the early childhood  
4 education and care department. The early childhood education  
5 and care department shall use the information to investigate  
6 and determine whether an applicant is qualified to hold a  
7 license or an employment or volunteer position. The department  
8 shall promulgate rules for the investigation and determination  
9 of qualifications.

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

16 D. A person who releases or discloses criminal  
17 history records or information contained in those records in  
18 violation of the provisions of this section is guilty of a  
19 misdemeanor and shall be sentenced in accordance with the  
20 provisions of Section 31-19-1 NMSA 1978."

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

24 "32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND  
25 CHECKS.--

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

16           ~~[B. The early childhood education and care~~  
17 ~~department shall have access to criminal history information on~~  
18 ~~prospective and current operators, staff, employees and~~  
19 ~~volunteers of child care facilities, including every facility~~  
20 ~~or program under the department's authority that has primary~~  
21 ~~custody of infants, toddlers and children for twenty hours or~~  
22 ~~more per week.~~

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

25                   ~~(1) prospective and current operators, staff,~~

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1 ~~employees and volunteers of juvenile detention, correction or~~  
2 ~~treatment facilities or a facility or program under the~~  
3 ~~department's authority that has primary custody of children for~~  
4 ~~twenty hours or more per week; and~~

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

8 ~~D.]~~ B. For purposes of investigating the  
9 suitability of persons enumerated in [~~Subsections B and C~~]  
10 Subsection A of this section, the [~~early childhood education~~  
11 ~~and care department or the children, youth and families~~]  
12 department [~~as applicable~~] shall have access to criminal  
13 history records information furnished by the department of  
14 public safety and the federal bureau of investigation, subject  
15 to any restrictions imposed by federal law. As directed by the  
16 [~~applicable~~] department, a person enumerated in Subsection A of  
17 this section shall submit a set of electronic fingerprints to  
18 the department of public safety. The department of public  
19 safety shall conduct a check of state criminal history records  
20 and forward the fingerprints to the federal bureau of  
21 investigation for a national criminal history records check to  
22 determine the existence and content of records of convictions  
23 and arrests in this state or other law enforcement  
24 jurisdictions and to generate a criminal history records check  
25 in accordance with rules of the department and regulations of

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1 the federal bureau of investigation. The department of public  
2 safety shall review the information returned from the criminal  
3 history records check and compile and disseminate [~~a response~~]  
4 the criminal history record information to the [~~appropriate~~]  
5 department, which shall use the information to investigate and  
6 determine whether a person is qualified to provide care for a  
7 child or be a foster or adoptive parent.

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

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

24 E. As used in this section:

25 (1) "behavior management skills development"

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1 means services for children and adolescents with psychological,  
2 emotional, behavioral, neurobiological or substance abuse  
3 problems in the home, community or school when such problems  
4 are of such severity that highly supportive and structured  
5 therapeutic behavioral interventions are required. These  
6 services are designed to maintain the client in the client's  
7 home, community or school setting;

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

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

18 (4) "comprehensive community support services"  
19 means a variety of interventions, primarily face-to-face and in  
20 community locations, that address barriers that impede the  
21 development of skills necessary to independent functioning in  
22 the community;

23 (5) "day treatment" means a coordinated and  
24 intensive set of structured individualized therapeutic  
25 services, in a school or a facility licensed by the department,

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1 provided for children, adolescents and their families who are  
2 living in the community;

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

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

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

16 (9) "intensive outpatient programming" means a  
17 time-limited, multifaceted approach to treatment services for  
18 children or adolescents who require structure and support to  
19 achieve and sustain recovery;

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

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

5                   (12) "operator" means a person who has any  
6 direct or indirect oversight over a facility's or program's  
7 employees or day-to-day operations;

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

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

15                   (15) "program" means behavior management  
16 skills development, case management, a group home, day  
17 treatment, treatment foster care services, a child placement  
18 agency, licensed shelter care, comprehensive community support  
19 services, intensive outpatient programming, supervised  
20 visitation and safe exchange and children, youth and families  
21 department contractors and providers receiving funding or  
22 reimbursement to provide prevention, intervention and  
23 reunification services;

24                   (16) "residential treatment facility" means a  
25 program that provides twenty-four-hour therapeutic care to

1 children or adolescents with severe behavioral, psychological,  
2 neurobiological or emotional problems who are in need of  
3 psychosocial rehabilitation in a residential facility;

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

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

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

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

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

24 (22) "volunteer" means a person who spends  
25 less than six hours per week at a program, is under direct

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1 physical supervision and is not counted in the program facility  
2 ratio."

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

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