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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 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.

1 B. An applicant for a child care facility license
2 or registration or for employment or volunteering at a
3 licensed child care facility or registered child care home or
4 employees and volunteers of the department and employees and
5 volunteers of department-contracted providers shall undergo a
6 state and national criminal history records check, and the
7 applicant shall submit an electronic set of fingerprints to
8 the department of public safety for that purpose. The
9 department of public safety shall conduct a check of state
10 criminal history records and forward the fingerprints to the
11 federal bureau of investigation for a national criminal
12 history records check to determine the existence and content
13 of records of convictions and arrests in this state or other
14 law enforcement jurisdictions and to generate a criminal
15 history records check in accordance with rules of the
16 department of public safety and regulations of the federal
17 bureau of investigation. The department of public safety
18 shall review the information obtained from the criminal
19 history records check and shall compile and provide that
20 information to the early childhood education and care
21 department. The early childhood education and care
22 department shall use the information to investigate and
23 determine whether an applicant is qualified to hold a license
24 or an employment or volunteer position. The department shall
25 promulgate rules for the investigation and determination of

1 qualifications.

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

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

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

16 "32A-15-3. CRIMINAL HISTORY RECORDS CHECK--BACKGROUND
17 CHECKS.--

18 A. State and national criminal history records
19 checks shall be conducted on all operators, employees,
20 student interns and volunteers and prospective operators,
21 employees, student interns and volunteers of every facility
22 or program that has primary custody of children for twenty
23 hours or more per week, and juvenile detention facilities,
24 juvenile correction facilities or treatment facilities.

25 State and national criminal history records checks shall also

1 be conducted on all prospective foster or adoptive parents
2 and other adult relatives and non-relatives residing in the
3 prospective foster or adoptive parent's household. The
4 objective of conducting the records checks is to protect the
5 children involved and promote the children's safety and
6 welfare while receiving service from the facilities and
7 programs.

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

1 returned from the criminal history records check and compile
2 and disseminate the criminal history record information to
3 the department, which shall use the information to
4 investigate and determine whether a person is qualified to
5 provide care for a child or be a foster or adoptive parent.

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

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

22 E. As used in this section:

23 (1) "behavior management skills development"
24 means services for children and adolescents with
25 psychological, emotional, behavioral, neurobiological or

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

7 (2) "case management" means services
8 provided in order to assist children and adolescents with
9 identifying and meeting multiple and complex, special
10 physical, cognitive and behavioral health care needs through
11 planning, securing, monitoring, advocating and coordinating
12 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
16 undertaking to place a child in a home in this or any other
17 state for the purpose of providing foster care or adoption
18 services;

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

24 (5) "day treatment" means a coordinated and
25 intensive set of structured individualized therapeutic

1 services, in a school or a facility licensed by the
2 department, provided for children, adolescents and their
3 families who are living in the community;

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

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

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

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

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

1 committed to the custody of the department;

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

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

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

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

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

1 and reunification services;

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

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

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

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

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

23 (21) "treatment foster care services" means
24 a program that provides therapeutic services to children or
25 adolescents who are psychologically or emotionally disturbed

1 or behaviorally disordered and are placed in a foster family
2 setting; and

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

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

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