

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>Jaramillo</u>	LAST UPDATED _____ ORIGINAL DATE <u>2/5/24</u>
SHORT TITLE <u>Aging Dept. Background Checks</u>	BILL NUMBER <u>Senate Bill 241/ec</u>
	ANALYST <u>Klundt</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	\$47.4	\$95.4	\$85.9	\$228.7	Recurring	General Fund

Parentheses () indicate expenditure decreases.
 *Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From
 Aging and Long-Term Services Department (ALTSD)
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Senate Bill 241

Senate Bill 241 (SB241) requires certain Aging and Long-Term Services Department (ALTSD) employees, applicants for employment, and volunteers with ALTSD programs must undergo state and national criminal history records checks.

SB241 includes definitions for:

- An employee of ALTSD to mean a person working for one of the following areas:
 - Adult Protective Services;
 - Long-Term Care Ombudsman Program; and
 - Consumer and Elder Rights.

- A selected applicant means a person who has completed the interview process, was selected as a candidate for employment and has conditionally accepted a position with the department pending the outcome of a criminal background check.

- A volunteer means a person who is not an employee and does not receive compensation for their work and has been identified to perform work in one of the following areas:
 - Adult Protective Services;

- Long-Term Care Ombudsman; and
- Consumer and Elder Rights.

SB241 directs the Department of Public Safety (DPS) to conduct a state criminal history records check and to forward fingerprints to the FBI for a national criminal history records check. The bill directs DPS to review the information returned from the criminal history checks and disseminate the information to ALTSD.

Additionally, SB241 directs that criminal history records obtained will be confidential, will not be public record for the purposes of the Inspection of Public Records Act, and will not be used for any purpose other than determining eligibility of employees, selected applicants, or volunteers.

SB241 sets forth the standard that criminal history records are not to be released or disclosed to any other person, except with a court order or the written consent of the person who is the subject of the records and establishes a violation penalty of a misdemeanor.

This bill contains an emergency clause and would become effective immediately on signature by the governor.

FISCAL IMPLICATIONS

The Aging and Long-Term Services Department reported this will have a minimal to no fiscal impact. Additionally, the department noted it is possible that background checks for certain employees and volunteers background checks may be Medicaid reimbursable through the administrative 50 percent match.

The Department of Public Safety (DPS) noted a fiscal impact to implement the background checks required for this bill. DPS reported, “The Law Enforcement Records Bureau’s (LERB) Automated Fingerprint Identifications System (AFIS) and New Mexico Applicant Processing Services (NMAPS) will require one (1) Management Analyst-Advanced dedicated to managing ALTSD’s Originating Agency Identify (ORI) as discussed in Significant Issues below, as well as reviewing all criminal history records to create reports that determine whether an employee, volunteer or prospective employee is qualified to work at or volunteer for the Department set forth in Section 2, Items C, D and E at an initial FY 2025 cost of \$95,400 and recurring annual cost of \$85,900 in FY 2026 and beyond.”

Since this bill has an emergency clause and would take effect immediately on signature by the governor, the cost of an additional FTE for the remainder of FY24 is included in the fiscal impact.

SIGNIFICANT ISSUES

ALTSD reported:

ALTSD serves aging adults and adults with disabilities, and its employees and volunteers have regular, and often unaccompanied, access to these vulnerable populations. Further, ALTSD employees and volunteers often have access to confidential and sensitive

information such as social security numbers, dates of birth and banking information which must be protected.

Currently, ALTSD is only able to obtain statewide background checks on APS employees. Statewide background checks are deficient in providing a complete background for a potential employee or volunteer. Further, many types of offenses may be uncovered by national criminal history records checks that are essential to ensuring that ALTSD employees, potential employees, and volunteers do not pose a risk to vulnerable aging adults and adults with disabilities.

DPS reported:

The Aging and Long-Term Services Department is applying for a non-criminal justice Originating Agency Identifier (ORI), commonly referred to as a civil agency ORI. The ORI is a number assigned by the DOJ to identify agencies/users authorized to access otherwise confidential criminal history record information in databases maintained by the FBI. Each agency must have an assigned ORI before submitting applicants for Live Scan Service fingerprints.

This proposed legislation authorizes the Aging and Long-Term Services Department to conduct a national fingerprint-based background (state and federal Next Generation Identification (NGI)) to determine the eligibility of specified individuals, as listed in the definitions. If the legislation is passed, the DPS will submit the new law to the Federal Bureau of Investigation (FBI) Criminal Justice Information Law Unit (CJILU). The CJILU will analyze the law and determine if it meets their standards for approval, and if the law meets the requirements of Public Law 92-544. In making this determination, the FBI considers: a) whether the authorization is a legislative enactment as opposed to an administrative rule; the statute must exist b) whether the statute requires the fingerprinting of applicants who are to be subjected to a national criminal history background check; c) whether the statute expressly ("submit to the FBI") or by implication ("submit for a national check"), authorizes the use of FBI records for the screening of applicants; d) whether the statute identifies the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth; e) that the statute is not contrary to public policy; and f) that the statute does not authorize receipt of the CHRI by a private entity. Additionally, FBI policy requires that fingerprints be initially submitted to the state identification bureau (for a check of state records) and after that forwarded to the FBI for a national criminal history check.

If any definitions are considered too broad, the request for an Originating Agency Identify (ORI) will be denied. Historically, the Criminal Justice Information Law Unit (CJILU) will grant a partial approval of the request, or they will reject the entire request, and ask for changes in the legislation. Criminal Justice Agencies use the National Crime Information Center (NCIC).

When approved by the FBI, following Public Law 92-544, DPS will produce a state rap sheet from the NM Criminal History Repository along with an FBI rap sheet, which the Aging and Long-Term Services Department may access directly from the Civil Adjudication Response Solution (CARES) portal on the applicant, volunteer, and employee.

KK/ss/ne/al