

NOTE: As provided in LFC policy, this report is intended only for use by the standing finance committees of the legislature. The Legislative Finance Committee does not assume responsibility for the accuracy of the information in this report when used for other purposes.

The most recent FIR version (in HTML & Adobe PDF formats) is available on the Legislative Website. The Adobe PDF version includes all attachments, whereas the HTML version does not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR: Swissstack DATE TYPED: 3/16/03 HB 629/aHJC
 SHORT TITLE: Child Care Facility Staff Fingerprinting SB _____
 _____ ANALYST: Maloy

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
			See Narrative		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

Responses Received From
Office of the Attorney General

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee has amended House Bill 629 to expressly provide that the fingerprinting and background check requirements set forth in the bill will also apply to all prospective and licensed foster parents.

Synopsis of Original Bill

House Bill 629 amends NMSA 1978, Sections 32A-15-1 through 3 to permit the Children, Youth and Families Department to conduct background checks, including fingerprinting, on prospective operators, staff and employees of childcare facilities. The bill provides certain confidentiality protections for these records, and the current records of the Department for operators, staff and employees of child care facilities.

Significant Issues

1. This bill seeks to promote the safety of New Mexico's children by ensuring the trustworthiness of those to whom they are entrusted for care.
2. The child care facilities covered include:

- Every facility or program that has primary custody of children for 20 hours or more per week, and
 - Juvenile detention, correction and treatment facilities.
3. Criminal history records obtained pursuant to the provisions of this section shall not be used for any purpose other than conducting background checks. 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 that is the subject of the record.

FISCAL IMPLICATIONS

There will be fiscal implications for the Children, Youth and Families Department in obtaining and submitting the fingerprints.

OTHER SUBSTANTIVE ISSUES

In its review of this bill, the Office of the Attorney General notes:

1. Sections 32A-15-1 through -3, even with the additions made in this bill, are still not as comprehensive as the Caregivers Criminal History Screening Act, NMSA 1978, Sections 29-17-1 to -5. This bill copies some of the language from this other law (dealing with confidentiality issues), but not all of it.
2. The Caregivers Criminal History Screening Act includes explanatory language on who can work, who can't work, when they can start working, and the application of the Criminal Offender Employment Act, NMSA 1978, Sections 28-2-1 to -6. This bill is silent on these matters.

In addition to the Office of the Attorney General's comments, these questions are raised:

3. For clarification purposes, does this provision apply only to state/CYFE facilities and programs and those childcare facilities providing services under contract to the state?

Does the Caregivers Criminal History Screening Act similarly cover *non-state* day-cares that operate with a state license?

4. Should CYFD be permitted to share information regarding an applicant to work at a children's facility with law enforcement if it is determined that the applicant is currently wanted (i.e., there exists a warrant) in another state for criminal conduct, which may include a crime against a child? Would a bench warrant constitute a "court order" exception to the confidentiality requirements of this provision?

Should the ability to share such criminal record information with law enforcement personnel be contingent on such factors as:

- i. there is a current, unresolved legal matter;
- ii. the matter is criminal in nature, and/or
- iii. the matter involves serious charges, violent behavior and/or a child (i.e., the matter is not a such that it is a traffic violation)?

Arguably, this sort of exception to sharing information with law enforcement personnel will result in greater general safety for all New Mexico.

SJM/sb:yr