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FISCAL IMPACT REPORT

ORIGINAL DATE 03/04/11

SPONSOR Rue LAST UPDATED _____ HB _____

SHORT TITLE CYFD Placement Home Background Checks SB 558

ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY11 | FY12 | FY13 | 3 Year Total Cost | Recurring or Non-Rec | Fund Affected |
|--------------|------|------|------|----------------------|-------------------------|------------------|
| Total | | NFI | NFI | | | |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Bill

Senate Bill 558, with the emergency clause, would add a new section to the Children's Code permitting the Children Youth and Families Department to request a federal name-based criminal history record check of each adult residing in a home where a child will be placed in an emergency due to the absence of the child's parents or custodians. The bill has additional requirements for fingerprint verification by the department of public safety and then submission to the federal bureau of investigation with timelines for each. Removal of a child shall result if any adult fails to provide their fingerprints or refuses to give permission for a federal criminal history record check.

FISCAL IMPLICATIONS

According to the CYFD, any additional cost or employee time associated with running the checks permitted by this bill will be absorbed by existing resources. As a result, there is no additional fiscal impact.

SIGNIFICANT ISSUES

The CYFD reports:

The use of a name-based criminal history check as an initial step may overlook someone with a significant criminal history for the relatively short period of time that a fingerprint check is completed. It is during that time period that a child may be at risk.

Law enforcement may place a child into the emergency protective custody of the department when law enforcement has evidence giving rise to reasonable grounds to believe that the child is abused or neglected and that there is an immediate threat to the child's safety. In these circumstances the parent is unavailable to provide care and protection to the child. This bill allows children, youth and families department to request law enforcement do a name-based criminal history check of those person who may be stepping forward during the emergency offering to provide care for the child. The results of this check can be used in the assessment of the safety and viability of the placement. The majority of persons stepping forward during times of crisis are the child's relatives. Enhancing the department's ability to safely place with a family member immediately upon removal of the child reduces the trauma experienced by the child that results from removal and is created by placement with a person unknown to them. Ensuring that a child is not placed with someone with a history of disqualifying criminal offenses improves child safety and placement stability.

CYFD currently conducts fingerprint based national criminal records background checks on all foster and adoptive parent applicants, however these checks do not provide immediate results.

In a report to the Texas legislature by the Department of Public Safety on the topic of Criminal History Background Checks dated January 2009; the Executive Summary, *Issue #2, what level of background check is sufficient*, states "While searches by name and date of birth are very quick, less expensive than fingerprint searches, and can be processed very efficiently, they lack the crucial positive identification attained by fingerprint submissions". The North Dakota Attorney General states that a name-based criminal check will not identify records of an individual if they used a different name from that on the record request form. Fingerprints, however, will identify someone with a criminal history regardless of the name used.

TECHNICAL ISSUES

The AOC comments:

The timeframe for activity is confusing. Say that on February 1, CYFD sends a name to the local sheriff's office for a background check, and the sheriff *conducts the name-based check on February 4*. SB 558 would require that CYFD provide a complete set of fingerprints to DPS *within 20 days of the date the name check was done*, e.g. before February 24, for immediate submission to the FBI. DPS then tries to identify the prints and forwards them to the FBI *within 15 calendar days of the date the name check was conducted*, e.g. before February 25. If CYFD doesn't submit the prints to DPS until February 24, then SB 558 would require DPS to send them to the FBI on the next day, February 25. The use of the term "immediate" as compared to 15 calendar days, and the 20-day timeframe vs. the 15-calendar-day timeframe should be clarified.

Subsection B of SB 558 sets forth the procedure when the child's placement in the home is denied because of the name-based criminal history records check. The bill recognizes that the resident may contest the denial. However, no hearing or other process for appeal is provided; instead the only recourse is for the resident to submit his/her fingerprints and written permission to conduct the check within 5 business days. Would CYFD conduct a hearing to allow the resident to raise concerns regarding the denial?