

LFC Requester: Kelly Klundt

**AGENCY BILL ANALYSIS
2024 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, UPLOAD ANALYSIS TO:

Analysis.nmlegis.gov

{Analysis must be uploaded as a PDF}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute, or a correction of a previous bill}

Check all that apply:

Original **Amendment**
Correction **Substitute**

Date 30 JAN 2024
Bill No: SB 241

Sponsor: Leo Jaramillo
Short Title: _____

Agency Name and Code 790-Department of Public Safety
Number: _____
Person Writing Jessica Rodarte
Phone: 505-699-5422 **Email** Jessica.rodarte@dps.nm.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY24	FY25		
\$0.0	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY24	FY25	FY26		
\$0.0	\$0.0	\$0.0		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	\$0.0	\$95.4	\$85.9	\$181.3	Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

BILL SUMMARY

SB 241 enacts a new section of the Aging and Long-Term Services Department (ALTSD) Act to require criminal background checks for employees, prospective employees and volunteers in the Adult Protective Services Division, the Long-Term Care Ombudsman Program and the Consumer and Elder Rights Division.

The bill additionally outlines specific requirements for the background checks:

They would need to include both state and federal criminal history checks. Employees, volunteers and job applicants slated for employment (pending a criminal background check) would also submit a set of electronic fingerprints to the FBI for a national criminal history records check to determine whether there were prior convictions or arrests in New Mexico or other states.

The criminal history records would be reviewed by the Department of Public Safety, which would create a report for the Aging and Long-Term Services Department to determine whether an employee, volunteer or prospective employee (who is a “selected applicant, defined below) is qualified to work at or volunteer for the department.

The bill requires the department to create rules to investigate and determine qualifications related to criminal background checks: It is not prescriptive as it relates to criminal background or prior arrests, but does state that previous arrests or criminal convictions should not be the sole reason for disqualifying an otherwise qualified, selected applicant slated for employment (except for criminal convictions related to the Criminal Offender Employment Act, which allows state agencies to refuse employment to people convicted of crimes directly relating to their particular employment or trade, or crimes involving “moral turpitude; crimes not directly related to their employment under certain circumstances; and crimes involving drug trafficking, criminal sexual penetration or child abuse).

Confidentiality:

Background checks would be confidential and not subject to disclosure under IPRA. They would also not be used for any purpose other than determining eligibility for employment or volunteering, would not be released to any other person except with a court order or with written consent of the person who is the subject of the records. Releasing information in violation of the confidentiality provisions of the bill would be a misdemeanor under Sec. 31-19-1.

The act would take effect immediately upon being signed by the Governor.

Definitions:

"employee" means a person working for the department in one of the following areas:

(a) the adult protective services division; (b) the long-term care ombudsman program; or (c) the consumer and elder rights division.

"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 a criminal history records check.

"volunteer" means a person who: (a) performs work or who has been identified by the department to perform work in: 1) the adult protective services division; 2) the long-term care ombudsman program; or 3) the consumer and elder rights division; (b) is not an employee; and (c) does not receive compensation for the person's work.

FISCAL IMPLICATIONS

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 Identifier (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.

SIGNIFICANT ISSUES

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 NMDPS 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 Identifier (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.

PERFORMANCE IMPLICATIONS

None identified.

ADMINISTRATIVE IMPLICATIONS

None identified.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

None identified.

TECHNICAL ISSUES

None identified.

OTHER SUBSTANTIVE ISSUES

None identified.

ALTERNATIVES

The Federal Bureau of Investigations (FBI) provides the authority to collect and exchange criminal history information (CHRI) and is generally predicated upon 28 U.S.C. 534. The FBI with the assistance of the United States Department of Justice, has determined the criteria to include: a) The statute must exist as a result of a legislative enactment; b) it must require the fingerprinting of applicants who are to be subjected to a national criminal history background check; c) it must, expressly ("submit to the FBI") or by implication ("submit for a national check"), authorize the use of FBI records for the screening of applicants; d) it must identify the specific category(ies) of licensees/employees falling within its purview, thereby avoiding overbreadth; e) it must not be against public policy; and f) it may 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 thereafter forwarded to the FBI for a national criminal history check.

Aging and Long-Term Services Department (ALTSD) will need to apply for their own Originating Agency Identifier (ORI) through the Criminal Justice Information Law Unit (CJILU). The CJILU makes the final determination if the language suffices under Public Law 92-544 to grant the agency an ORI.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo will remain.

AMENDMENTS

None identified.