

HB1075_L.005

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee_____
DateCommittee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB09-1075 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute the following:

3 "SECTION 1. 27-1-110 (1), Colorado Revised Statutes, is
4 amended to read:

5 **27-1-110. Employment of personnel - screening of applicants**
6 **- disqualifications from employment.** (1) The general assembly hereby
7 recognizes that many of the individuals receiving services from persons
8 employed by the state department pursuant to this title or title 26, C.R.S.,
9 are unable to defend themselves and are therefore vulnerable to abuse or
10 assault. It is the intent of the general assembly to minimize the potential
11 for hiring and employing persons with a propensity toward abuse, assault,
12 or similar offenses against others. ~~for positions that would provide them~~
13 ~~with unsupervised access to vulnerable persons.~~ The general assembly
14 hereby declares that, in accordance with section 13 of article XII of the
15 state constitution, for purposes of terminating employees in the state
16 personnel system who are finally convicted of criminal conduct, offenses
17 involving moral turpitude include, but are not limited to, the disqualifying
18 offenses specified in subsection (7) of this section.

19 **SECTION 2.** 27-1-110, Colorado Revised Statutes, is amended
20 BY THE ADDITION OF A NEW SUBSECTION to read:

21 **27-1-110. Employment of personnel - screening of applicants**
22 **- disqualifications from employment.** (1.9) NOTWITHSTANDING THE



1 PROVISIONS OF SUBSECTION (1.7) OF THIS SECTION, THE EMPLOYMENT
2 SCREENING AND DISQUALIFICATIONS REQUIREMENTS IN THIS SECTION
3 SHALL APPLY TO ALL PERSONS HIRED BY THE STATE DEPARTMENT ON AND
4 AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (1.9).

5 **SECTION 3.** 27-1-110 (1.5) (a), (1.5) (b), (2), (3), (7), (8) (a), the
6 introductory portion to 27-1-110 (9), 27-1-110 (9) (a) and (10), and the
7 introductory portion to 27-1-110 (11) (a), Colorado Revised Statutes, are
8 amended, and the said 27-1-110 is further amended BY THE ADDITION
9 OF A NEW SUBSECTION, to read:

10 **27-1-110. Employment of personnel - definitions - screening**
11 **of applicants - disqualifications from employment.** (1.5) For purposes
12 of this section, unless the context otherwise requires:

13 (a) "Contracting employee" means a person who contracts with
14 the state department. ~~and who is designated by the executive director of~~
15 ~~the state department or the executive director's designee as serving in a~~
16 ~~contract position involving direct contact with vulnerable persons.~~

17 (b) "Conviction" means a verdict of guilty by a judge or jury or a
18 plea of guilty or nolo contendere that is accepted by the court. ~~or~~
19 ~~adjudication for an offense that would constitute a criminal offense if~~
20 ~~committed by an adult.~~ "Conviction" also includes having received a
21 deferred judgment and sentence or deferred adjudication; except that a
22 person shall not be deemed to have been convicted if the person has
23 successfully completed a deferred sentence or deferred adjudication.

24 (2) Prior to the state department's permanent employment of any
25 person, ~~in a position that would require that person to have direct contact~~
26 ~~with any vulnerable person,~~ the executive director or any division head of
27 the state department shall make an inquiry to the director of the Colorado
28 bureau of investigation to ascertain whether ~~such~~ THE person has a
29 criminal history. ~~Such~~ THE person's employment shall be conditional
30 upon a satisfactory criminal background check, INCLUDING BUT NOT
31 LIMITED TO A FINGERPRINT-BASED CRIMINAL HISTORY RECORD CHECK.
32 Any criminal background check conducted pursuant to this subsection (2)
33 shall ALSO include but need not be limited to arrests, conviction records,
34 and the disposition of any criminal charges. The state department shall
35 require ~~said~~ THE person to have his or her fingerprints taken by a ~~local law~~
36 ~~enforcement~~ AN agency QUALIFIED TO TAKE FINGERPRINTS FOR USE IN



1 CONDUCTING CRIMINAL HISTORY RECORD CHECKS. The ~~local law~~
2 ~~enforcement~~ QUALIFIED agency shall forward those fingerprints to the
3 Colorado bureau of investigation for the purpose of ~~fingerprint processing~~
4 CONDUCTING A STATE AND NATIONAL FINGERPRINT-BASED CRIMINAL
5 HISTORY RECORD CHECK, utilizing the files and records of the Colorado
6 bureau of investigation and the federal bureau of investigation. The state
7 department shall pay for the costs of criminal ~~background checks~~
8 HISTORY RECORD CHECKS conducted pursuant to this section out of
9 existing appropriations.

10 (2.5) EXCEPT AS PROVIDED IN SUBSECTIONS (2) AND (9) OF THIS
11 SECTION, PRIOR TO THE STATE DEPARTMENT'S EMPLOYMENT OF AN
12 EMPLOYEE OR CONTRACTING EMPLOYEE FOR A POSITION THAT WOULD NOT
13 REQUIRE THE EMPLOYEE OR CONTRACTING EMPLOYEE TO HAVE DIRECT
14 CONTACT WITH A VULNERABLE PERSON, THE STATE DEPARTMENT SHALL
15 MAKE AN INQUIRY TO THE DIRECTOR OF THE COLORADO BUREAU OF
16 INVESTIGATION TO ASCERTAIN WHETHER THE PROSPECTIVE EMPLOYEE OR
17 PROSPECTIVE CONTRACTING EMPLOYEE HAS A CRIMINAL HISTORY. IF THE
18 INQUIRY INDICATES THAT A PROSPECTIVE EMPLOYEE OR PROSPECTIVE
19 CONTRACTING EMPLOYEE WAS CONVICTED OF ANY OF THE DISQUALIFYING
20 OFFENSES SET FORTH IN PARAGRAPH (b) OR (c) OF SUBSECTION (7) OF THIS
21 SECTION, AN APPOINTING AUTHORITY MAY CONSIDER THE FOLLOWING
22 INFORMATION BEFORE MAKING THE HIRING DECISION:

23 (a) THE NATURE AND SERIOUSNESS OF THE OFFENSE FOR WHICH
24 THE PROSPECTIVE EMPLOYEE OR PROSPECTIVE CONTRACTING EMPLOYEE
25 WAS CONVICTED;

26 (b) THE NUMBER OF SUCH CONVICTIONS;

27 (c) WHETHER THE CONVICTIONS ARE RELATED TO THE POSITION
28 FOR WHICH THE PERSON IS APPLYING;

29 (d) ANY INFORMATION PROVIDED BY THE PROSPECTIVE EMPLOYEE
30 OR PROSPECTIVE CONTRACTING EMPLOYEE REGARDING HIS OR HER
31 CRIMINAL HISTORY RECORD, INCLUDING BUT NOT LIMITED TO EVIDENCE OF
32 REHABILITATION, CHARACTER REFERENCES, EDUCATIONAL
33 ACHIEVEMENTS, THE LENGTH OF TIME BETWEEN THE LAST CRIMINAL
34 CONVICTION AND THE EMPLOYMENT DECISION, AND ANY OTHER
35 EXTENUATING CIRCUMSTANCES; AND



1 (e) THE ACCURACY OF THE INFORMATION ON THE RECORD.

2 (3) ~~The executive director or any division head shall contact~~
3 ~~previous employers of any person who is one of the top three finalists for~~
4 ~~a position that would require that person to have direct contact with any~~
5 ~~vulnerable person, for the purpose of obtaining information and~~
6 ~~recommendations that may be relevant to such person's fitness for~~
7 ~~employment. Any previous employer of an applicant for employment~~
8 ~~who provides information to the executive director or a division head or~~
9 ~~who makes a recommendation concerning such person shall be immune~~
10 ~~from civil liability unless the information is false and the previous~~
11 ~~employer knows such information is false or acts with reckless disregard~~
12 ~~concerning the veracity of such information.~~

13 (7) (a) ~~If the criminal background check~~ CRIMINAL HISTORY
14 RECORD CHECK conducted pursuant to subsection (2) or (9) of this section
15 indicates that a prospective employee or prospective contracting
16 employee was convicted of any of the disqualifying offenses set forth in
17 paragraph (b) or (c) of this subsection (7), said person shall be
18 disqualified from employment either as an employee or as a contracting
19 employee in a position involving direct contact with vulnerable persons.
20 A person who is disqualified as a result of this section shall not be hired
21 or retained by the state department in a position involving direct contact
22 with vulnerable persons nor be eligible to contract for or continue in a
23 contract position designated by the executive director or the executive
24 director's designee as involving direct contact with vulnerable persons.

25 (b) ~~Except as otherwise provided in paragraph (d) of this~~
26 ~~subsection (7);~~ A person shall be disqualified from employment either as
27 an employee or as a contracting employee IN A POSITION INVOLVING
28 DIRECT CONTACT WITH VULNERABLE PERSONS regardless of the length of
29 time that may have passed since the discharge of the sentence imposed for
30 any of the following criminal offenses:

31 (I) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

32 (II) ~~Any~~ A felony offense involving unlawful sexual behavior, as
33 defined in section 16-22-102 (9), C.R.S.;

34 (III) ~~Any~~ A felony, the underlying factual basis of which has been
35 found by the court on the record to include an act of domestic violence,



1 as defined in section 18-6-800.3, C.R.S.;

2 (IV) ~~Any~~ A felony offense of child abuse, as defined in section
3 18-6-401, C.R.S.;

4 (V) ~~Any~~ A felony offense in any other state, the elements of which
5 are substantially similar to the elements of any of the offenses described
6 in subparagraph (I), (II), (III), or (IV) of this paragraph (b).

7 (c) ~~Except as otherwise provided in paragraph (d) of this~~
8 ~~subsection (7),~~ A person shall be disqualified from employment either as
9 an employee or as a contracting employee IN A POSITION INVOLVING
10 DIRECT CONTACT WITH VULNERABLE PERSONS if less than ten years have
11 passed since the person was discharged from a sentence imposed for
12 conviction of any of the following criminal offenses:

13 (I) A MISDEMEANOR OFFENSE OF UNLAWFUL SEXUAL CONTACT, AS
14 DESCRIBED IN SECTION 18-3-404, C.R.S.;

15 (II) Third degree assault, as described in section 18-3-204,
16 C.R.S.;

17 (III) ~~Any~~ A misdemeanor, the underlying factual basis of
18 which has been found by the court on the record to include an act of
19 domestic violence, as defined in section 18-6-800.3, C.R.S.;

20 (IV) A violation of a protection order, as described in section
21 18-6-803.5, C.R.S.;

22 (V) ~~Any~~ A misdemeanor offense of child abuse, as defined
23 in section 18-6-401, C.R.S.;

24 (VI) ~~Any~~ A misdemeanor offense of sexual assault on a client
25 by a psychotherapist, as defined in section 18-3-405.5, C.R.S.;

26 (VII) A CLASS 2, CLASS 3, CLASS 4, OR CLASS 5 FELONY OFFENSE
27 THAT IS NOT INCLUDED IN PARAGRAPH (b) OF THIS SUBSECTION (7);

28 (VIII) ~~Any~~ A misdemeanor offense in any other state, the
29 elements of which are substantially similar to the elements of any of the
30 offenses described in subparagraph (I), (II), (III), (IV), or (V) (I), (II),



1 (III), (IV), (V), (VI), OR (VII) of this paragraph (c).

2 (d) ~~If a person was adjudicated a juvenile delinquent for the~~
3 ~~commission of any disqualifying offense set forth in either paragraph (b)~~
4 ~~or (c) of this subsection (7) and more than seven years have elapsed since~~
5 ~~the commission of the offense, the person may submit a written request~~
6 ~~to the executive director as provided in subsection (11) of this section for~~
7 ~~reconsideration of the disqualification.~~

8 (e) IF THE CRIMINAL HISTORY RECORD CHECK CONDUCTED
9 PURSUANT TO SUBSECTION (2) OR (9) OF THIS SECTION INDICATES THAT A
10 PROSPECTIVE EMPLOYEE OR PROSPECTIVE CONTRACTING EMPLOYEE WHO
11 IS APPLYING FOR A POSITION THAT DOES NOT INVOLVE DIRECT CONTACT
12 WITH VULNERABLE PERSONS WAS CONVICTED OF AN OFFENSE DESCRIBED
13 IN PARAGRAPHS (b) OR (c) OF THIS SUBSECTION (7), AN APPOINTING
14 AUTHORITY SHALL CONSIDER THE FOLLOWING BEFORE MAKING A HIRING
15 DECISION:

16 (I) THE NATURE AND SERIOUSNESS OF THE OFFENSE FOR WHICH
17 THE PROSPECTIVE EMPLOYEE OR PROSPECTIVE CONTRACTING EMPLOYEE
18 WAS CONVICTED;

19 (II) THE NUMBER OF SUCH CONVICTIONS;

20 (III) WHETHER THE CONVICTIONS ARE RELATED TO THE POSITION
21 FOR WHICH THE PERSON IS APPLYING;

22 (IV) ANY INFORMATION PROVIDED BY THE PROSPECTIVE
23 EMPLOYEE OR PROSPECTIVE CONTRACTING EMPLOYEE REGARDING HIS OR
24 HER CRIMINAL HISTORY RECORD, INCLUDING BUT NOT LIMITED TO
25 EVIDENCE OF REHABILITATION, CHARACTER REFERENCES, EDUCATIONAL
26 ACHIEVEMENTS, THE LENGTH OF TIME BETWEEN THE LAST CRIMINAL
27 CONVICTION AND THE EMPLOYMENT DECISION, AND ANY OTHER
28 EXTENUATING CIRCUMSTANCES; AND

29 (V) THE ACCURACY OF THE INFORMATION ON THE RECORD.

30 (8) (a) ~~Any AN employee who is employed in a position involving~~
31 ~~direct contact with vulnerable persons~~ BY THE STATE DEPARTMENT and
32 who is arrested, charged with, or issued a summons and complaint for any
33 of the disqualifying offenses set forth in paragraph (b) or (c) of subsection



1 (7) of this section shall inform his or her supervisor of the arrest, charges,
2 or issuance of a summons and complaint before returning to work. Any
3 WITHIN FORTY-EIGHT HOURS AFTER THE ARREST, CHARGE, OR ISSUANCE
4 OF THE SUMMONS. AN employee who fails to make such a report or
5 disclosure may be terminated from employment. The state department or
6 any facility operated by the state department shall advise its employees
7 and contracting employees in writing of the requirement for self-reporting
8 of the disqualifying offenses set forth in paragraph (b) or (c) of subsection
9 (7) of this section.

10 (9) ~~The general assembly recognizes that the state department~~
11 ~~contracts with persons to serve in positions that involve direct contact~~
12 ~~with vulnerable persons in state-operated facilities or to provide~~
13 ~~state-funded services that involve direct contact with vulnerable persons~~
14 ~~in the homes and residences of such vulnerable persons. In order to~~
15 ~~protect vulnerable persons who come into contact with these contracting~~
16 ~~employees, the executive director or the executive director's designee~~
17 ~~shall designate those contract positions that involve direct contact with~~
18 ~~vulnerable persons that shall be subject to the provisions of this~~
19 ~~subsection (9).~~ In any contract initially entered into or renewed on or
20 after July 1, 1999, concerning a contract position that has been designated
21 as involving direct contact with vulnerable persons, THE EFFECTIVE DATE
22 OF HOUSE BILL 09-1075, ENACTED IN 2009, the state department shall
23 include the following terms and conditions:

24 (a) That the contracting employee shall submit to a criminal
25 background check CRIMINAL HISTORY RECORD CHECK as described in
26 subsection (2) of this section for state employees;

27 (10) An employee or contracting employee who is disqualified
28 due to conviction of any of the disqualifying offenses set forth in
29 paragraph (b) or (c) of subsection (7) of this section may submit a written
30 request to the executive director for reconsideration of the
31 disqualification. Reconsideration under this subsection (10) may only be
32 based on a mistake of fact such as an error in the identity of the person for
33 whom the criminal background check CRIMINAL HISTORY RECORD CHECK
34 was performed. If the executive director determines that there was a
35 mistake of fact involving the identity of the person, the executive director
36 shall issue a finding that the disqualifying factor is not a bar to the
37 person's employment either as an employee or as a contracting employee.



1 (11)(a) An employee or contracting employee who is disqualified
2 for conviction of an offense specified in paragraph (c) of subsection (7)
3 of this section may submit a written request to the executive director for
4 reconsideration of the disqualification and a review of whether the person
5 poses a risk of harm to ~~vulnerable~~ persons SERVED BY THE STATE
6 DEPARTMENT. In reviewing a disqualification, the executive director shall
7 give predominant weight to the safety of ~~vulnerable~~ persons SERVED BY
8 THE STATE DEPARTMENT over the interests of the disqualified person. The
9 final determination shall be based upon a review of:

10 SECTION 4. 24-5-101 (1) (b) (III), Colorado Revised Statutes,
11 is amended to read:

12 24-5-101. Effect of criminal conviction on employment rights.
13 (1) (b) This subsection (1) shall not apply to:

14 (III) The employment of personnel in positions ~~involving direct~~
15 ~~contact with vulnerable persons as specified in section 27-1-110, C.R.S.;~~

16 SECTION 5. Effective date - applicability. This act shall take
17 effect July 1, 2009, and shall apply to employees of the department of
18 human services hired or entering into contracts with the department on or
19 after said date.

20 SECTION 6. Safety clause. The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety."

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