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2001



HOUSE BILL 01-1227

BY REPRESENTATIVE(S) Williams T., Alexander, Boyd, Coleman, Daniel, Fairbank, Hefley, Hoppe, Jahn, Mace, Paschall, Plant, Romanoff, Snook, Stengel, Tochtrop, Webster, Williams S., and Young; also SENATOR(S) Tate, Hillman, Hernandez, Musgrave, and Nichol.

CONCERNING PROCEDURES RELATED TO A REPORT OF CHILD ABUSE OR NEGLECT, AND, IN CONNECTION THEREWITH, CLARIFYING PRACTICES OF INVESTIGATING A REPORT OF CHILD ABUSE, CLARIFYING THE BURDEN OF PROOF THAT MUST BE MET TO FURTHER REPORT THE SUBJECT OF A REPORT OF CHILD ABUSE TO THE CENTRAL REGISTRY, AND SETTING FORTH PROCEDURES RELATED TO EXPUNGEMENT OF A RECORD OF A REPORT FROM THE CENTRAL REGISTRY, AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 19-1-103 (1) (b) and (27), Colorado Revised Statutes, are amended to read:

19-1-103. Definitions. As used in this title or in the specified portion of this title, unless the context otherwise requires:

(1) (b) In all cases, those investigating reports of child abuse shall

Capital letters indicate new material added to existing statute; dashes through the words indicate deletions from existing statutes and such material not part of act.

take into account accepted child-rearing practices of the culture in which the child participates INCLUDING, BUT NOT LIMITED TO, ACCEPTED WORK-RELATED PRACTICES OF AGRICULTURAL COMMUNITIES. Nothing in this subsection (1) shall refer to acts that could be construed to be a reasonable exercise of parental discipline or to acts reasonably necessary to subdue a child being taken into custody pursuant to section 19-2-502 that are performed by a peace officer, level I, as defined in section 18-1-901 (3) (l), C.R.S., acting in the good faith performance of the officer's duties.

(27) "Confirmed", as used in part 3 of article 3 of this title, means any report made pursuant to article 3 of this title that is FOUND BY A COUNTY DEPARTMENT, LAW ENFORCEMENT AGENCY, OR ENTITY AUTHORIZED TO INVESTIGATE INSTITUTIONAL ABUSE TO BE supported by a preponderance of the evidence.

SECTION 2. 19-3-308 (5.3) (a), Colorado Revised Statutes, is amended to read:

19-3-308. Action upon report of intrafamilial, institutional, or third-party abuse - child protection team. (5.3) (a) Local law enforcement agencies shall have the responsibility for the coordination and investigation of all reports of third-party abuse or neglect by persons ten years of age or older. Upon receipt of a report, if the local law enforcement agency reasonably believes that the protection and safety of a child is at risk due to an act or omission on the part of persons responsible for the child's care, such agency shall notify the county department of social services for an assessment regarding neglect ~~and~~ OR dependency. In addition, the local law enforcement agency shall refer to the county department of social services any report of third-party abuse or neglect in which the person allegedly responsible for such abuse or neglect is under age ten. Upon the completion of an investigation, the local law enforcement agency shall forward a copy of its investigative report to the county department of social services. The county department shall review the law enforcement investigative report and shall determine whether the report ~~should~~ CONTAINS INFORMATION THAT CONSTITUTES A CASE OF CONFIRMED CHILD ABUSE AND REQUIRES IT TO be filed with the state central registry in accordance with section 19-3-313 (2) (a), which report, upon such determination, shall be filed with the state central registry within sixty days of the receipt of the report by the county department.

SECTION 3. 19-3-313 (7) (b) (I), (7) (c), and (7) (d), Colorado Revised Statutes, are amended, and the said 19-3-313 (7) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

19-3-313. Central registry - repeal. (7) (b) (I) On and after July 1, 1993, a record related to a first-time listing of a subject on the registry and which is based on a minor offense reported on or after July 1, 1991, BUT BEFORE JULY 1, 2001, shall be examined by the director of the central registry and, on the basis of such examination, shall be expunged by said director if two years have lapsed since the date the reported incident was entered into the registry records upon a determination by the director that good cause exists for expunging such record.

(7) (c) (I) (A) If a petition in dependency and neglect under section 19-3-505 on which the subject is a named respondent is not sustained, on receipt of such information, and after verifying the information with the judicial department, the director of the central registry may expunge the record of the report.

(B) If the director of the central registry expunges the record of the report, the director shall send written notice of such expungement to the subject. If the director of the central registry does not expunge the record of the report, the director shall send written notice to the subject as soon as possible after receiving information regarding a case not being sustained, and after verifying such information with the judicial department, stating that the subject may request a hearing at which the department will be required to show, by clear and convincing evidence, why the subject's name shall not be removed from the central registry. The subject may request such hearing at any time after receipt of the written notice from the director of the central registry. The hearing shall be held as soon as possible after the director of the central registry receives the subject's request.

(C) At the hearing, the department shall have the burden of proof. The administrative law judge at the hearing authorized pursuant to this paragraph (c) shall not be the same judge who presided at a hearing concerning the same subject authorized pursuant to subsection (5.5) of this section.

(II) (A) ~~The~~ ON AND AFTER JULY 1, 2001, THE provisions of subparagraph (I) of this paragraph (c) shall apply if a petition in dependency and neglect naming the subject as a respondent has not been

filed AFTER SIX MONTHS FROM THE DATE THAT A SUBJECT HAS BEEN SENT THE WRITTEN NOTICE PURSUANT TO SUBSECTION (5.5) OF THIS SECTION.

(B) THE PROVISIONS OF THIS SUBPARAGRAPH (II) SHALL ONLY APPLY TO A SUBJECT WHO IS THE SUBJECT OF A REPORT BASED ON A MINOR OFFENSE, AS DEFINED BY RULE OF THE STATE DEPARTMENT.

(III) The provisions of this paragraph (c) shall not apply to a subject whose name is on the registry for any incident other than the incident on which the criminal charge or petition in dependency and neglect was based.

(d) (I) If a subject is acquitted of an offense pursuant to part 4 of article 6 of title 18, C.R.S., section 18-3-405, C.R.S., or section 18-3-405.3, C.R.S., or if such a charge is dismissed, OR, ON AND AFTER JULY 1, 2001, IF SUCH A CHARGE HAS NOT BEEN FILED AGAINST A SUBJECT WHO IS THE SUBJECT OF A REPORT BASED ON A MINOR OFFENSE AFTER SIX MONTHS FROM THE DATE THAT SUCH SUBJECT HAS BEEN SENT THE WRITTEN NOTICE PURSUANT TO SUBSECTION (5.5) OF THIS SECTION, the director of the central registry shall expunge the subject's name pertaining to the act or acts that supported such alleged criminal offense upon the receipt by the director of notice of the acquittal or dismissal.

(II) (A) Notwithstanding the provisions of subparagraph (I) of this paragraph (d), the director may request a hearing to reinstate on the central registry a subject's name pertaining to an act or acts that supported a dismissed or acquitted criminal charge. Such hearing request shall be filed with the division of administrative hearings in the department of personnel within thirty days after the date the director receives notice of the acquittal or dismissal. The division shall send written notice of the hearing to the subject by certified mail. A hearing shall not be held if the department fails to request the hearing within thirty days after the date the director received notice of the acquittal or dismissal. The hearing shall be held as soon as possible after the hearing is requested. NOTWITHSTANDING THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), IF THE DIRECTOR REQUESTS A HEARING PURSUANT TO THIS SUB-SUBPARAGRAPH (A), THEN THE SUBJECT'S NAME SHALL BE DESIGNATED "STATUS PENDING" PENDING THE OUTCOME OF A HEARING AND ANY JUDICIAL REVIEW, AFTER WHICH THE SUBJECT'S NAME SHALL BE REINSTATED OR EXPUNGED, AS DETERMINED AT THE HEARING AND ANY JUDICIAL REVIEW.

(B) At a hearing requested pursuant to sub-subparagraph (A) of this

subparagraph (II), the department shall be required to show that there is clear and convincing evidence to support a finding of child abuse or neglect so that the subject's name should be reinstated on the registry as a perpetrator. An administrative law judge shall preside over the hearing and such judge shall not be the same judge who presided at any other hearing concerning the same subject. The hearing and any judicial review shall be in accordance with the "State Administrative Procedure Act".

(e) PRIOR TO THE DATE THAT IS SIX MONTHS AFTER THE DATE A PERSON REPORTED A SUBJECT WHO IS THE SUBJECT OF A REPORT BASED ON A MINOR OFFENSE, AS DEFINED BY RULE OF THE STATE DEPARTMENT, TO THE DIRECTOR FOR PLACEMENT ON THE CENTRAL REGISTRY AS A PERPETRATOR PURSUANT TO SUBSECTIONS (1) AND (5.5) OF THIS SECTION, THE DIRECTOR SHALL DETERMINE WHETHER ANY CRIMINAL CHARGE OR PETITION IN DEPENDENCY OR NEGLECT HAS BEEN FILED RELATED TO THE ACTIONS THAT SUPPORTED THE REPORT OF THE SUBJECT'S NAME TO THE CENTRAL REGISTRY.

SECTION 4. Appropriation. In addition to any other appropriation, there is hereby appropriated, out of any moneys in the central registry fund created in section 19-3-313 (14), Colorado Revised Statutes, not otherwise appropriated, to the department of human services, division of child welfare, for allocation to the central registry of child protection, for the fiscal year beginning July 1, 2001, the sum of sixteen thousand three hundred ninety dollars (\$16,390), or so much thereof as may be necessary, for the implementation of this act.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 2001, and shall apply to procedures related to reports of child abuse or neglect made on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Doug Dean
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Stan Matsunaka
PRESIDENT OF
THE SENATE

Judith Rodrigue
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Owens
GOVERNOR OF THE STATE OF COLORADO