

Testimony
Senate Bill Number 2123 – Department Of Human Services
House Judiciary Committee
Representative Duane DeKrey, Chairman
March 4, 2009

Chairman DeKrey, members of the House Judiciary Committee, I am Jonathan Alm, an attorney with the Department of Human Services. I am here today in support of Senate Bill 2123.

This bill is designed to allow the Department to conduct a fingerprint-based criminal history record investigation for licensees, employees, and others. Fingerprint-based criminal history record investigations are another step the Department may take to protect children and other vulnerable populations served by the Department. SB 2123 would allow the North Dakota Bureau of Criminal Investigation to provide the Department with the FBI's response to and with any statewide criminal history record information in response to the Department's request for a fingerprint-based criminal history record investigation.

Current Law

Currently, the Department is required by statute to conduct a fingerprint-based criminal history record investigation for foster care license holders, prospective adoptive parents, and legal guardians. Additionally, the Department conducts a fingerprint-based criminal history record investigation for early childhood services providers and employees on a voluntary basis for providers and employees who choose to be listed on the Carecheck registry. There are over 1,500 individuals listed on the Carecheck registry. The Department also currently conducts a criminal background check on certain employees, as do other state agencies.

The Department, by administrative rule, restricts early childhood service providers, household members of a child care provider providing care out of a residence, and childcare employees from licensure or having contact with children in a childcare setting if the individual has been convicted of certain offenses. In addition, the Department prohibits an individual from having contact with children residing in a residential treatment center, with individuals receiving services and residing in residential care facilities for the developmentally disabled, and with adolescents enrolled in substance abuse treatment programs, if that individual is an operator or employee of the facility and has certain criminal convictions. The conviction must be for an offense identified as a “direct bearing offense” meaning that it has a direct bearing on an individual’s ability to provide care or treatment to the identified populations.

SB 2123

This bill would allow the Department to request a fingerprint-based criminal history record investigation from an individual to ensure that the individual is in compliance with the Department’s administrative rules relative to those providers. Specifically, this bill would allow the Department to conduct fingerprint-based criminal history record investigations for:

1. Early Childhood Services

SB 2123, along with SB 2162, would make fingerprint-based criminal history record investigations mandatory for childcare providers, household members of a provider providing care out of a residence, and employees of a licensed provider, holder of a self-declaration, and an in-home provider. The Department has encountered situations in which an individual applies to become a childcare provider and fails to disclose

that the individual or a household member have been convicted of a criminal offense as required on the application form. The Department currently checks the North Dakota Supreme Court website and Child Abuse and Neglect Index as part of the application investigation process. The Department has discovered, both prior to granting applications and after applications have been granted, instances in which applicants, providers, employees, and household members have been convicted of sexual offenses, assaults, burglary, thefts, crimes against children, drug crimes, and other offenses that directly impact those individuals' abilities to provide care to children.

While the North Dakota Supreme Court website has been a useful tool for the Department, it does not disclose offenses committed in other states. SB 2123 and SB 2162, as amended, would ensure that prior to receiving a non-provisional license, self-declaration, or in-home registrant document and unrestricted employment in a childcare setting the Department is aware of any crimes for which a provider, applicant, household member, or staff member has a criminal conviction. The Department would then assess whether those convictions impact an application or current provider status.

The proposed amendment would allow the Department to conduct fingerprint-based criminal history record investigation during the application process for licensure, self-declarations, and registered providers. This amendment does not change the fiscal note on this bill and reconciles with the language of SB 2162.

2. Licensed Providers

This bill would allow the Department to conduct a fingerprint-based criminal history record investigation on providers licensed under chapters 25-03.2 – residential treatment centers for children, 25-16 – residential care and services for the developmentally disabled, and 50-12 – child placing agencies, and under section 50-31-02 – substance abuse treatment programs. As I mentioned earlier, the Department, by administrative rule, currently restricts operators and employees of residential treatment centers for children, residential treatment or care facilities for persons with developmental disabilities, and adolescent substance abuse treatment programs from having contact with children residing in a residential treatment center, with individuals receiving services and residing in residential care facilities for the developmentally disabled, and with adolescents enrolled in substance abuse treatment programs, if the operators or employees have certain criminal convictions.

3. Department and County Social Service Board Employees

SB 2123 also allows the Department to require a fingerprint-based criminal history record investigation for new employees of the Department and County Social Service Board employees responsible for providing services under programs supervised by the Department.

4. Fiscal Impact

SB 2123 carries a fiscal note. The Executive Budget includes funding for the Department's cost of conducting fingerprint-based criminal history record investigations on applicants for and holders of early childhood service licenses, applicants for and holders of a self declaration, applicants to be registered providers and registered providers,

employees, and household members under SB 2162. The Executive Budget recommendation also included funding for the Office of the Attorney General for 5.5 FTE positions to process the fingerprint-based criminal history record investigations, \$310,500 to cover the \$17.25 FBI fee per check, and \$145,454 in operating costs. This bill does not change the requirements for conducting fingerprint-based criminal history record investigations for foster care license holders, prospective adoptive parents, or legal guardians. Any Department costs associated with these checks along with those associated with conducting fingerprint-based criminal history record investigations for the Department's new employees are included in the Executive Budget for the Department.

During the 2009-2011 biennium, the Department does not anticipate requesting any additional fingerprint-based criminal history record investigations other than for Department staff, childcare providers, their employees and some of their household members, and what is currently authorized by law. The additional authority in the bill makes it possible for the Department to conduct additional fingerprint-based criminal history record investigations if determined necessary due to a federal mandate or unforeseen events.

Other Measures

The engrossed bill reflects the Senate's amendment that removed the authority for the Department to conduct fingerprint-based criminal history record investigations on vendors or grantees and their employees under contract or agreement with the Department. An amendment was also adopted by the Senate replacing "Licenses" with "Applicants for licenses" on page 2, line 5 of the engrossed bill.

The other proposed amendments to this bill reflect that the Department has proposed two other bills, the passage or failure of which would affect the language of this bill. SB 2162, which the House Human Services Committee heard yesterday, proposes to make background checks mandatory for any applicant or provider of early childhood services. HB 1090, which the Senate Human Service Committee heard yesterday, proposes to make background checks mandatory for an approved relative provider for purposes of receiving child care assistance payments.

This concludes my testimony. I would be happy to try to answer any questions the committee may have. Thank you.