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AN ACT

RELATING TO CRIMINAL HISTORY RECORDS CHECKS; ENACTING A NEW SECTION OF THE AGING AND LONG-TERM SERVICES DEPARTMENT ACT REQUIRING CRIMINAL HISTORY RECORDS CHECKS FOR CERTAIN DEPARTMENT EMPLOYEES, APPLICANTS OR VOLUNTEERS; PROVIDING FOR PROCEDURES FOR CONDUCTING CRIMINAL HISTORY RECORDS CHECKS; ENSURING THE CONFIDENTIALITY OF THE CRIMINAL HISTORY RECORDS; PROVIDING PENALTIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 9-23-1 NMSA 1978 (being Laws 2004, Chapter 23, Section 1) is amended to read:

"9-23-1. SHORT TITLE.--Chapter 9, Article 23 NMSA 1978 may be cited as the "Aging and Long-Term Services Department Act"."

SECTION 2. A new section of the Aging and Long-Term Services Department Act is enacted to read:

"CRIMINAL HISTORY RECORDS CHECKS--PROCEDURES--CONFIDENTIALITY--VIOLATION--PENALTY.--

A. For the purposes of this section:

(1) "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

1 program; or

2 (c) the consumer and elder rights
3 division;

4 (2) "selected applicant" means a person who
5 has completed the interview process, was selected as a
6 candidate for employment and has conditionally accepted a
7 position with the department pending a criminal history
8 records check; and

9 (3) "volunteer" means a person who:

10 (a) performs work or who has been
11 identified by the department to perform work in: 1) the
12 adult protective services division; 2) the long-term care
13 ombudsman program; or 3) the consumer and elder rights
14 division;

15 (b) is not an employee; and

16 (c) does not receive compensation for
17 the person's work.

18 B. State and national criminal history records
19 checks shall be conducted on employees, selected applicants
20 and volunteers.

21 C. As directed by the department, an employee, a
22 selected applicant or a volunteer shall submit a set of
23 electronic fingerprints to the department of public safety.
24 The department of public safety shall conduct a state
25 criminal history records check and forward the fingerprints

1 to the federal bureau of investigation for a national
2 criminal history records check to determine the existence and
3 content of records of convictions and arrests in this state
4 or other law enforcement jurisdictions and to generate a
5 criminal history records check in accordance with rules of
6 the department of public safety and regulations of the
7 federal bureau of investigation.

8 D. The department of public safety shall review
9 the information returned from the criminal history records
10 checks and compile and disseminate the information to the
11 department, which shall use the information to investigate
12 and determine whether an employee, selected applicant or
13 volunteer is qualified.

14 E. Criminal history records obtained pursuant to
15 the provisions of this section shall:

16 (1) be confidential;

17 (2) not be a public record for purposes of
18 the Inspection of Public Records Act;

19 (3) not be used for any purpose other than
20 determining the eligibility of employees, selected applicants
21 or volunteers; and

22 (4) not be released or disclosed to any
23 other person, except pursuant to a court order or with the
24 written consent of the person who is the subject of the
25 records.

1 F. A person who releases or discloses criminal
2 history records in violation of this section is guilty of a
3 misdemeanor and shall be sentenced in accordance with the
4 provisions of Section 31-19-1 NMSA 1978.

5 G. The department shall promulgate rules for the
6 investigation and determination of qualifications; provided
7 that the department shall not exclude an otherwise selected
8 applicant, employee or volunteer on the sole basis that the
9 person has been previously arrested or convicted of a crime,
10 unless that person has a disqualifying criminal conviction
11 pursuant to the Criminal Offender Employment Act."

12 SECTION 3. APPLICABILITY.--The provisions of Section 2
13 of this act apply to selected applicants of, employees
14 employed by or volunteers of the aging and long-term services
15 department on or after the effective date of this act.

16 SECTION 4. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect
18 immediately.

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