

2019 Regular Session

HOUSE BILL NO. 548

BY REPRESENTATIVE COX

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/BUREAU CRIML ID: Requires the Bureau of Criminal Identification and Information to release certain criminal history record information to the Department of Children and Family Services

1 AN ACT

2 To amend and reenact R.S. 15:587(A)(2)(a) and (b) and 587.1(A)(1)(a) and R.S.
3 44:4.1(B)(8) and to enact R.S. 15:587.1.2 and R.S. 40:2008.10, relative to the
4 Louisiana Bureau of Criminal Identification and Information's duty to provide
5 information; to authorize the release of certain criminal history information to the
6 Department of Children and Family Services; to grant the department the authority
7 to receive such information; to provide relative to the provision of information to
8 protect children; to provide relative to the provision of information to protect
9 children who receive services at a therapeutic group home and child care institutions;
10 to provide relative to criminal history record information of certain persons who
11 own, operate, or manage a therapeutic group home or who are employees,
12 contractors, volunteers, or interns of a therapeutic group home; to provide relative
13 to the procedures to obtain and costs of the background check; to provide for
14 exceptions to the Public Records Law; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 15:587(A)(2)(a) and (b) and 587.1(A)(1)(a) are hereby amended and
17 reenacted and R.S. 15:587.1.2 is hereby enacted to read as follows:

18 §587. Duty to provide information; processing fees; Louisiana Bureau of Criminal
19 Identification and Information

20 A.

21 * * *

1 (2)(a) The bureau, in accordance with its powers to regulate and to enforce
2 provisions herein, may further restrict those agencies eligible to receive information.
3 However, the bureau shall make available to the Department of Children and Family
4 Services all criminal history record information as defined in R.S. 15:576 related to
5 foster and adoptive parent applicants and adult members of foster and adoptive
6 parent households; parents whose children have been removed from their custody;
7 parents or caretakers involved in investigations of abuse or neglect; potential
8 caretakers of a child who is either in the custody of the department, is the subject of
9 an investigation of abuse or neglect, or is or has been receiving services through the
10 office of children and family services; ~~and~~ potential employees of the department
11 whose duties include the investigation of child abuse or neglect, the supervisory or
12 disciplinary authority over children, direct care of a child, or performance of
13 licensing surveys; and individuals employed directly or indirectly by institutions or
14 facilities providing, or with the potential of providing, daily care or supervision to
15 any child or youth in the custody of or under the supervision of any Louisiana state
16 government agency. For the purposes of this Section, the bureau shall employ such
17 methods and procedures and shall observe such duty hours as to provide information
18 upon request within forty-eight hours from its receipt.

19 (b) The bureau shall facilitate national criminal history record checks of
20 prospective foster and adoptive parent applicants and adult members of foster and
21 adoptive parent households; parents whose children have been removed from their
22 custody; parents or caretakers involved in investigations of abuse or neglect;
23 potential caretakers of a child who is either in the custody of the department, is the
24 subject of an investigation of abuse or neglect, or is or has been receiving services
25 through the office of children and family services; ~~and~~ potential employees of the
26 department whose duties include the investigation of child abuse or neglect, the
27 supervisory or disciplinary authority over children, direct care of a child, or
28 performance of licensing surveys; and individuals employed directly or indirectly by
29 institutions or facilities providing, or with the potential of providing, daily care or

1 supervision to any child or youth in the custody of or under the supervision of any
2 Louisiana state government agency by receiving and forwarding fingerprint cards to
3 the Federal Bureau of Investigation. The Department of Children and Family
4 Services is authorized to receive and screen the results of the state and national
5 criminal history record checks in order to determine foster or adoptive parent
6 applicants' eligibility for certification or recertification as a placement resource for
7 children; to assist in the determination of the appropriateness of a parent or potential
8 caregiver as a placement resource for a child; to assess the situation for safety issues
9 and risks to the child and worker; ~~and~~ to assess the qualifications of a potential
10 department employee; and to assess the qualifications of individuals employed,
11 directly or indirectly, by institutions or facilities providing, or with the potential of
12 providing, daily care or supervision to any child or youth in the custody of or under
13 the supervision of any Louisiana state government agency. The department shall
14 maintain the confidentiality of criminal history information received in accordance
15 with applicable federal or state law.

* * *

17 §587.1. Provision of information to protect children

18 A.(1)(a) As provided in R.S. 15:825.3, R.S. 17:15, 407.42, and 407.71,
19 Children's Code Article 424.1, and R.S. 46:51.2 ~~and 1441.13~~, any employer or others
20 responsible for the actions of one or more persons who have been given or have
21 applied to be considered for a position of supervisory or disciplinary authority over
22 children, and as provided in R.S. 46:51.2(A), the Department of Children and Family
23 Services as employer of one or more persons who have been given or have applied
24 to be considered for a position whose duties include the investigation of child abuse
25 or neglect, supervisory or disciplinary authority over children, direct care of a child,
26 or performance of licensing surveys, and for individuals who are employed by or
27 contracted staff of a child care institution, as defined in 42 U.S.C. 672, licensed by
28 the department, shall request in writing that the bureau supply information to
29 ascertain whether that person or persons have been arrested for or convicted of, or

1 volunteers, interns, or contracted members of the staff of the therapeutic group home,
2 including but not limited to plumbers, landscapers, or visiting resources.

3 (3) In responding to a request for information as provided for in Paragraph
4 (1) of this Subsection, the bureau shall make available a record of all criminal arrests
5 and convictions of the person prior to the date of the request.

6 (4) The Louisiana Department of Health, as recipient of the information from
7 the bureau, shall maintain the confidentiality of such criminal history information in
8 accordance with applicable federal or state law.

9 B.(1) Upon receiving a request pursuant to the provisions of R.S. 40:2008.10
10 that meets the requirements of Subsection A of this Section, the bureau shall survey
11 its criminal history records and identification files and make a simultaneous request
12 of the Federal Bureau of Investigation for like information from other jurisdictions.
13 The bureau shall provide a report promptly and in writing, but provide only such
14 information as is necessary to specify whether or not that person has been arrested
15 for or convicted of or pled nolo contendere to any crime or crimes, the crimes for
16 which he has been arrested or convicted or to which he has pled nolo contendere, and
17 the date or dates on which they occurred. The report provided pursuant to the
18 provisions of this Subsection shall include arrests, convictions, or other dispositions,
19 including convictions dismissed pursuant to Code of Criminal Procedure Article 893
20 or 894.

21 (2)(a) When an individual's record contains information which has been
22 expunged, the bureau shall include in its report to the Louisiana Department of
23 Health the date of the arrest and a notation that the individual's record contains
24 information which has been expunged and that the requestor may contact the bureau
25 in order to obtain further information regarding the expunged information.

26 (b) The bureau shall establish policies and procedures by which the
27 Louisiana Department of Health may be furnished with expunged information. These
28 policies and procedures shall not require the Louisiana Department of Health to

1 personally appear at the office of the bureau in order to obtain access to the
2 expunged information.

3 (c) The Louisiana Department of Health shall maintain the confidentiality
4 of the information as provided by law, and the expunged information shall not be
5 deemed a public record.

6 C. The costs of any criminal background check which is required under this
7 Section or R.S. 40:2008.10 shall be the responsibility of the therapeutic group home.

8 D. The Louisiana Department of Health may adopt rules and regulations in
9 accordance with the Administrative Procedure Act to implement the provisions of
10 this Section.

11 Section 2. R.S. 40:2008.10 is hereby enacted to read as follows:

12 §2008.10. Therapeutic group homes licensed by the Louisiana Department of
13 Health; state central registry of child abuse and neglect; criminal background
14 checks

15 A.(1)(a) The provisions of this Section shall apply to the following persons:

16 (i) Any person who owns, operates, or manages a licensed therapeutic group
17 home.

18 (ii) Any person who has applied for a license to operate a therapeutic group
19 home.

20 (iii) Any person who is employed by, is contracted by, volunteers at, or
21 interns with a therapeutic group home.

22 (iv) Any person who has applied to be employed or contracted by a
23 therapeutic group home.

24 (v) Any person who has applied to volunteer or intern with a therapeutic
25 group home.

26 (b) This Section shall not apply to contractors and other individuals
27 providing a service at the therapeutic group home who are not employees,
28 volunteers, interns, or contracted members of the state of the therapeutic group
29 home, including but not limited to plumbers, landscapers, or visiting resources.

1 (2) The Louisiana Department of Health shall request, consistent with the
2 provisions of R.S. 15:587.2, from the Bureau of Criminal Identification and
3 Information, information concerning whether or not any of the persons listed in
4 Paragraph (1) of this Subsection has been arrested for, convicted of, or pled nolo
5 contendere to any criminal offense.

6 (3) The therapeutic group home shall request information from the
7 Department of Children and Family Services as to whether the individual's name is
8 recorded on the state central registry as a perpetrator for a justified finding of abuse
9 or neglect of a child.

10 (4) For any individual subject to these provisions that has lived in any other
11 state within the last five years, the Louisiana Department of Health shall request
12 information from the child abuse and neglect registry or repository of each of those
13 states as to whether the individual's name is recorded on that state's registry or
14 repository.

15 (5) The Louisiana Department of Health may request any information
16 necessary from the therapeutic group home, any person subject to the provisions of
17 this Section, or any other appropriate agency, to ensure compliance with this Section.

18 (6) The Louisiana Department of Health shall require and provide for the
19 submission of a person's fingerprints in a form acceptable to the Louisiana Bureau
20 of Criminal Identification and Information.

21 (7) The Louisiana Department of Health may charge a processing fee not to
22 exceed fifteen dollars, and may collect from the therapeutic group home the charges
23 and processing fees charged by the Bureau of Criminal Identification and
24 Information for a state criminal history report, the Federal Bureau of Investigation
25 for a federal criminal history information report, and any other state's registry or
26 repository of abuse and neglect. The Louisiana Department of Health shall timely
27 submit the appropriate charges and processing fees to the appropriate agencies.

Proposed law adds to the applicants listed in present law by including individuals employed directly or indirectly by institutions or facilities providing or with the potential of providing daily care or supervision to any child or youth in the custody of or under the supervision of any La. state government agency.

Present law provides that the bureau shall facilitate national criminal history record checks on certain individuals as it relates to the fostering and adopting of certain children subject to DCFS investigation or custody.

Proposed law adds to the applicants listed in present law by including individuals employed directly or indirectly by institutions or facilities providing or with the potential of providing daily care or supervision to any child or youth in the custody of or under the supervision of any La. state government agency.

Proposed law authorizes the La. Dept. of Health (LDH) to request in writing that the bureau supply certain criminal history record information to ascertain whether certain persons have been arrested for, convicted of, or pled nolo contendere to, any criminal offense.

Proposed law applies to the following persons:

- (1) Any person who owns, operates, or manages a licensed therapeutic group home.
- (2) Any person who has applied for a license to operate a therapeutic group home.
- (3) Any person who is employed by, is contracted by, volunteers at, or interns with a therapeutic group home.
- (4) Any person who has applied to be employed or contracted by a therapeutic group home.
- (5) Any person who has applied to volunteer or intern with a therapeutic group home.

Proposed law requires LDH to maintain the confidentiality of such criminal history information in accordance with applicable federal or state law.

Proposed law provides that the costs of the criminal background check are the responsibility of the therapeutic group home.

Proposed law authorizes LDH to adopt rules and regulations in accordance with the Administrative Procedure Act to implement the provisions of proposed law.

Present law provides for exceptions to the Public Records Law.

Proposed law adds certain sections of present law and proposed law to the present law exceptions.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 15:587(A)(2)(a) and (b) and 587.1(A)(1)(a) and R.S. 44:4.1(B)(8); Adds R.S. 15:587.1.2 and R.S. 40:2008.10)

Summary of Amendments Proposed by House

The Floor Amendments Proposed by the House to the original bill:

1. Provide for the request of criminal history record information of certain persons who own, operate, or manage a therapeutic group home or who are employees, contractors, volunteers, or interns of a therapeutic group home.

2. Provide relative to the procedures and costs to obtain the criminal background check.
3. Provide relative to the request of criminal history records checks of certain individuals employed or contracted by a Child Care Institution.

The House Floor Amendments to the engrossed bill:

1. Make technical corrections.
2. Add exceptions to the Public Records Law relative to the present law provision that requires DCFS to maintain confidentiality of criminal history record information and the proposed law provision that requires LDH to maintain confidentiality of criminal history record information.