

SESSION OF 2019

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2360

As Amended by House Committee on Children
and Seniors

Brief*

HB 2360, as amended, would authorize qualified entities, as defined by the bill, to require state and national criminal history record checks of providers, both employees and volunteers, who have supervised and unsupervised access to children, the elderly, or individuals with disabilities to determine whether that individual has the qualifications and fitness to be permitted to serve as a provider. The bill would allow qualified entities to request the Kansas Bureau of Investigation (KBI) conduct the state and national criminal history record checks. The bill would outline the information required to be provided with a request for a state and national criminal history check. The bill would require local and state law enforcement officers and agencies to assist a qualified entity in taking and processing a person's fingerprints for such criminal history record checks.

The bill would require the KBI to release all records of a person's adult convictions and diversions to the qualified entity that submitted the request for the criminal history record checks. The bill would also require a qualified entity to be solely responsible for making any determination that a person's criminal history record shows the person has been convicted of a crime that bears upon the person's fitness to serve as a provider. The bill would clarify the KBI would not be required to make such a determination of fitness on behalf of any qualified entity.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

The bill would be in effect upon publication in the *Kansas Register*.

Definitions

The bill would define the following terms:

- “Provider” would mean a person who:
 - Is employed by any qualified entity and has, seeks to have, or may have supervised or unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care;
 - Is a volunteer of a qualified entity and has, seeks to have, or may have supervised or unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care; or
 - Owns, operates, or seeks to own or operate a qualified entity; and
- “Qualified entity” would mean a business or organization that provides care to children, the elderly, or individuals with disabilities that is private, for profit, not-for-profit, or voluntary, except such businesses or organizations that are subject to the provisions of KSA 2018 Supp. 39-970 [adult care homes, which includes any nursing facility, nursing facility for mental health, intermediate care facility for people with intellectual disabilities, assisted living facilities, residential health care facilities, home plus, boarding care homes, or adult day care facilities], 39-2009 [center, facility, hospital, or provider of services] or 75-53,105 [employment or participation in any program administered by the Secretary for Children and Families or the Secretary for Aging and Disability Services for the placement, safety, protection or treatment of

vulnerable children or adults], or KSA 65-516 [child care facilities] or 65-5117 [home health agencies].

Documentation Required for Submission with Request for Criminal History Record Check

The bill would require a qualified entity to submit the following when requesting a state and national criminal history record check:

- The person's fingerprints; and
- A copy of a completed and signed statement furnished by the qualified entity that includes:
 - A waiver allowing the qualified entity to request and receive a criminal history record check to be used in determining the person's qualification and fitness to serve as a provider;
 - The name, address, and date of birth of the person as it appears on a valid identification document;
 - A disclosure of whether the person has ever been convicted of or is the subject of pending charges for a criminal offense and, if convicted, a description of the crime and the result of the conviction; and
 - A notice to the person that he or she is entitled to obtain a copy of the criminal history record check to challenge the accuracy and completeness of any information contained in such report before any final determination is made by the qualified entity.

Background

The bill was introduced by the House Committee on Children and Seniors at the request of a representative of the KBI. In the House Committee hearing, representatives of Court Appointed Special Advocates, Jobs for America's Graduates, KBI, Kansas Council on Developmental Disabilities, and the Office of Judicial Administration testified in favor of the bill. The KBI representative stated the federal Child Protection Improvements Act (CPIA), enacted in March 2018, amended the National Child Protection Act/Volunteers for Children Act to require states to have procedures, established by statute or regulation, that require qualified entities to contact an agency authorized by the state and request the background check. The KBI representative stated, beginning in March 2019, absent state legislation, the KBI will no longer be able to perform state and national criminal history record checks for the non-governmental businesses and organizations for which it currently provides these services. The KBI representative noted the CPIA allows qualified entities to submit fingerprints directly to the Federal Bureau of Investigation (FBI) through an entity designated by the U.S. Attorney General, which first requires the FBI and the U.S. Department of Justice to establish a CPIA Program; however, to date, the KBI has not received any information to suggest a CPIA Program has been established nor a designated entity identified. The other proponents generally stated their need for the KBI to continue to provide the state and national criminal background checks on which their organizations rely to continue their programs. Written-only proponent testimony was provided by a representative of The Center of Wichita.

Neutral testimony was provided by a representative of LeadingAge Kansas, who requested the bill be amended to include an exemption for licensed adult care homes, home health agencies, and disability service providers to avoid two competing and contradictory background check statutes. Written-only neutral testimony was provided by a

representative of the Kansas Health Care Association and the Kansas Center for Assisted Living.

No opponent testimony was provided.

The Senate Committee amended the bill to include supervised employees and volunteers in the definition of a provider, exclude additional businesses and organizations from the definition of a qualified entity, and make a technical amendment.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the KBI, Kansas Department for Aging and Disability Services, Kansas Department of Health and Environment, and the Kansas Department for Children and Families indicate enactment of the bill would have no fiscal effect. The League of Kansas Municipalities indicates cities would incur costs of \$30 to \$50 for fingerprinting fees for each individual affected, but it is unable to estimate a fiscal effect. Any fiscal effect associated with the bill is not reflected in *The FY 2020 Governor's Budget Report*.