

2009 SENATE JUDICIARY

SB 2123

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2123

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6907

Committee Clerk Signature



Minutes: Senator Nething

**Relating to allowing the department of human services to require criminal history record checks in certain circumstances, relating to criminal history record checks conducted by the bureau of criminal investigation.**

Jonathan Alm – Attorney with Department of Human Services. See written testimony. In support of the bill.

Senator Nething – Asks about the proposed amendments.

Alm – This bill depends of if SB2162 and HB1090 pass. He then reads through the amendments.

Senator Fiebiger- Inquires on the finger print background check. He said he is confused about the background check and who it is on, individual or license. Also what is the necessary information it asks for.

There is discussion about waiting on this bill to see if the other bills pass before anything can be done.

Senator Schneider – Asks how many providers of early childhood services are currently on the caretaker registry.

Alm – replied he would get that information.

Senator Nething asks why we need such a bill.

Alm – Replies, we have vulnerable children and adults that can be taken advantage of. There have been some situations that have occurred.

Senator Nething- Asks if we can get a list of these situations.

There is discussion on what this would cost and there is a fiscal note.

Alm – Says the fiscal note addresses the department's costs as well as BCI costs. It is the applicant's expense for the background check.

Senator Fiebiger – Asks what the fee is for a background check.

Alm – States \$47.25.

There is discussion about the number of background checks that will occur.

Alm – Discusses what would eliminate someone from obtaining a license. Usually those are the murder, rapists, burglary, crimes against a person.

Veronica Zietz – Represents Arc of Bismarck and Arc of Cass County. See written testimony.

Rod St. Aubyn – BC BS of ND – He is unsure if this will affect them. They now serve the Healthy Steps program. Does this mean his department will have to have background checks on all employees or just those that work with Healthy Steps. He doesn't think it affects them but the bill leaves a lot of questions.

Senator Olafson – Would like to know what the Healthy Steps program is.

St. Aubyn – Explains the Healthy Step program.

Senator Olafson – Asks if any of his employees have direct contact to which is responds no.

Senator Nelson - asks how long it will take for someone to get their clearance.

Judy Volk – BCI – Says that turnaround time is usually 2-3 days. FBI time is 24 hours or less.

Sometimes it takes longer if there is an issue.

Senator Nething discusses the employees that will be needed to get this going. He wonders where they will office these people.

Arnold Thomas – President of the ND Health Care Association – Neutral. He is unsure how this will affect them. Does this extend to hospitals. He says their goals are the same, to have qualified individuals who are not a threat to those that they take care of. He believes this provision would be very disruptive and that the appropriations request wouldn't be adequate to handle the log of background checks.

Alm – would like to clarify to points: 1. Turnaround time – two weeks. Receive it and get it back. 2. To limit it to contractors, individuals, not for hospitals.

Senator Nething – It could be amended to clarify that it doesn't include the hospitals.

Closed Hearing

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No 2123

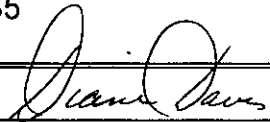
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7735

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Discussion from the committee on who would be covered and the fiscal note. The committee did not like the amendments. Committee felt the language was too broad. These amendments are tied to other bills. Senator Lyson said a record check is not a cure all. It needs to stop. Senator Olafson says this should be limited to those with direct contact with the children. There was concern if the fiscal note would even cover all of this. Senator Fiebiger doesn't think limiting the language to direct contact would work.

Senator Lyson moves do not pass, seconded by Senator Olafson.

Discussion. Senator Nething said bill 2162 already addresses early childhood provider.

Senator Schneider thinks there is a lot of overlapping territory in SB2162 and SB2123. He would like to know how come we have to two similar bills in two different communities.

Committee discusses the two bills and who they cover. There is a lot of confusion. Senator Lyson and Senator Olafson said they would withdraw their motions until they learn more about the amendments.

Committee adjourns till afternoon

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2123

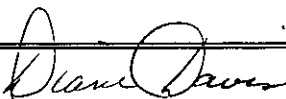
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/26/09

Recorder Job Number: 7744

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work.

Committee resumes work on 2123.

Senator Nething said the amendments made on SB2162 will not have any effect on what is being considered here.

Senator Lyson makes do not pass motion, Senator Olafson seconds

Vote 6 yes 0 no

Senator Schneider will carry

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2123

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/2/09

Recorder Job Number: 8364 forward to 16:10

Committee Clerk Signature

*Diane Davis*

Minutes: **Senator D. Nething, Chairman**

Committee work

This bill was voted on as a do not pass then brought back from the floor to reconsider.

Committee discusses the proposed amendments. They decide not to go with the proposed amendments but to go with the amendments by Senator Schneider.

**Senator Schneider** -Motions for a reconsider do not pass

**Senator Lyson** – seconds

Verbal vote – all yea

**Senator Nelson** moves the amendments

**Senator Lyson** seconds

Verbal vote on the amendments, all yea

**Senator Schneider** moves do pass as amended

**Senator Lyson** seconds

Vote – 6-0

**Senator Schneider** will carry

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/04/2009

Amendment to: SB 2123

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$320,850	\$0	\$134,550
<b>Expenditures</b>	\$0	\$0	\$1,247,653	\$323,645	\$932,847	\$137,345
<b>Appropriations</b>	\$0	\$0	\$1,247,653	\$323,645	\$932,847	\$134,345

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill increases the entities to which the Department of Human Services can require fingerprint-based criminal history record checks. The amendments to the bill do not change the fiscal impact.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill allows for fingerprint-based criminal history record checks for:

- Employees hired by the Department,
- County social service board employees providing Department services,
- Licensed service providers of services to the mentally ill, developmentally disabled, child-placing agencies and substance abusers,
- Licensed and nonlicensed early childcare service providers, and
- Licensed legal guardian appointments and petitioners for adoption.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill provides for the Office of Attorney General to charge a reasonable fee to offset the cost of providing the background checks. Approximately 18,600 background checks are anticipated for the 2009-11 biennium and 7,800 for the 2011-13 biennium.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The 2009-11 biennium expenditures include 5.5 FTE's and associated costs in the Office of Attorney General to process criminal background checks, and the cost of FBI finger-print based background checks. Also included are two .5 FTE's and 4 temporary staff for the Department of Human Services (DHS) which will handle the child abuse and neglect checks and review applications prior to sending them to the Office of Attorney General (OAG) for background checks.

The adopted amendments to the bill do not change the fiscal note impact.

The difference between the fiscal notes for Senate Bill Nos. 2123 and 2162 is as follows:



Senate Bill No. 2162 includes Executive Recommendation funding for both the OAG and DHS. This bill includes \$310,500 in the OAG's budget to pay the 18,000 FBI background checks anticipated with this bill, the same staffing levels as shown above and adequate funding to perform the background check duties.

Senate Bill (SB) No. 2123 includes 600 more background checks (for DHS employees), than does Senate Bill No. 2162, which increases general fund expenditures by \$10,350 for FBI background check fees (a total of 18,600 background checks). SB No. 2123 allows the OAG to charge for background checks (current practice and preferred method), which is reflected as special fund revenues, expenditures, and appropriations. Since the Executive Recommendation includes funding for the OAG staff and operating expenses (including \$310,500 for FBI fees), and the OAG will bill DHS for the FBI background check fees, DHS needs \$320,850 more from the general fund in its budget to pay the FBI fees. Of this amount, the Executive Recommendation included \$310,500 in the OAG budget, which will need to be transferred to DHS, and DHS would need an additional \$10,350 for the additional estimated 600 background checks for its employees (these additional background checks are excluded in SB 2162). SB 2123 includes the same staffing levels as shown above.

Based on conversations with Department of Human Services staff, the Department does not anticipate requesting additional background checks other than for Department staff and childcare providers. The additional entities are included in the bill so if DHS determined it necessary, due to federal mandate, unforeseen events, etc., an avenue exists to request FBI checks on a certain group of providers. The majority of the providers already have background checks from the Office of Attorney General. No additional funds are built into expenditures or appropriations for these background checks.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The amendments do not change the fiscal impact.

The 2009-11 biennium expenditures include 5.5 FTE's and associated costs in the Office of Attorney General to process criminal background checks, and the cost of FBI finger-print based background checks. Also included are two .5 FTE's and 4 temporary staff at the Department of Human Services (DHS) which will handle the child abuse and neglect checks and review applications prior to sending them to the Office of Attorney General (OAG) for background checks.

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<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	02/04/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/22/2009

**REVISION**

Bill/Resolution No.: SB 2123

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
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**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill increases the entities to which the Department of Human Services can require fingerprint-based criminal history record checks.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill allows for fingerprint-based criminal history record checks for:

- Employees hired by the Department,
- Vendors or grantees and their employees under contract or agreement with the Department who provide services which are paid with Department funding,
- County social service board employees providing Department services,
- Licensed service providers of services to the mentally ill, developmentally disable, child-placing agencies and substance abusers,
- Licensed and nonlicensed early childcare service providers, and
- Licensed legal guardian appointments and petitioners for adoption.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The bill provides for the Office of Attorney General to charge a reasonable fee to offset the cost of providing the background checks. Approximately 18,600 background checks are anticipated for the 2009-11 biennium and 7,800 for the 2011-13 biennium.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The 2009-11 biennium expenditures include 5.5 FTE's and associated costs in the Office of Attorney General to process criminal background checks, and the cost of FBI finger-print based background checks. Also included are two .5 FTE's and 4 temporary staff at the Department of Human Services (DHS) which will handle the child abuse and neglect checks and review applications prior to sending them to the Office of Attorney General (OAG) for background checks.

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- C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

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<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/23/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/06/2009

Bill/Resolution No.: SB 2123

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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<b>Revenues</b>	\$0	\$0	\$0	\$320,850	\$0	\$134,550
<b>Expenditures</b>	\$0	\$0	\$830,373	\$330,125	\$704,118	\$144,275
<b>Appropriations</b>	\$0	\$0	\$830,373	\$330,125	\$704,118	\$144,275

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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- Licensed legal guardian appointments and petitioners for adoption.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

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**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The expenditures include 5.5 FTE's in the Office of Attorney General to process criminal background checks, and the associated cost of FBI finger-print based checks. Also included are two .5 FTE's and 4 temporary staff at the Department of Human Services who will handle the child abuse and neglect checks and review applications prior to sending them to the Office of Attorney General for background checks.

Based on conversations with Department of Human Services staff, the Department does not anticipate requesting additional background checks other than for Department staff and childcare providers. The additional entities in the

bill so if it determined necessary, due to federal mandate, unforeseen events, etc., an avenue exists to request FBI checks on a certain group of providers. The majority of the providers already have background checks from the Office of Attorney General. No additional funds are built into expenditures or appropriations for these background checks.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Executive Recommendation included funding for the Department of Human Services expenditures in its appropriation bill and to the Office of Attorney General in its appropriation bill.

Based on conversations with Department of Human Services staff, the Department does not anticipate requesting additional background checks other than for Department staff and childcare providers. The additional entities in the bill so if the Department determined necessary, due to federal mandate, unforeseen events, etc., an avenue exists to request FBI checks on a certain group of providers. The majority of the providers already have background checks from the Office of Attorney General. No additional funds are built into expenditures or appropriations for these background checks.

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/12/2009

Date: 1/26/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB 2123  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ Amended

Motion Made By Sen. Lyson Seconded By Sen. Olafson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment Sen. Schneider

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2123: Judiciary Committee (Sen. Nething, Chairman) recommends DO NOT PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2123 was placed on the  
Eleventh order on the calendar.

Date: 2/2/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

SB 2123

Senate JUDICIARY Committee

☐ Check here for Conference Committee

*Reconsider do not pass*

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Schneider Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	1		Sen. Tom Fiebiger	1	
Sen. Curtis Olafson – V. Chair.			Sen. Carolyn Nelson		
Sen. Stanley W. Lyson			Sen. Mac Schneider		

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*Verbal yes*



PROPOSED AMENDMENTS TO SENATE BILL NO. 2123

Page 1, line 17, replace the underscored semicolon with an underscored period

Page 1, line 18, remove "Vendors or grantees and their employees under contract or agreement with"

Page 1, remove lines 19 and 20

Page 1, line 21, remove "c."

Page 1, line 23, replace the underscored semicolon with an underscored period

Page 2, line 1, replace "d." with "c."

Page 2, line 2, replace the underscored semicolon with an underscored period

Page 2, line 3, replace "e." with "d."

Page 2, line 9, replace "f." with "e." and replace "Licenses" with "Applicants for licenses"

Renumber accordingly

Date: 2/4/09  
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB 2123  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee amendments

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Schneider Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	/		Sen. Tom Fiebiger	/	
Sen. Curtis Olafson – V. Chair.	/		Sen. Carolyn Nelson	/	
Sen. Stanley W. Lyson	/		Sen. Mac Schneider	/	

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Verbal yes

Date: 2/2/09  
Roll Call Vote #: 3

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

2123

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen Schneider Seconded By Sen Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment Senator Schneider

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2123: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2123 was placed on the Sixth order on the calendar.

Page 1, line 17, replace the underscored semicolon with an underscored period

Page 1, line 18, remove "Vendors or grantees and their employees under contract or agreement with"

Page 1, remove lines 19 and 20

Page 1, line 21, remove "c."

Page 1, line 23, replace the underscored semicolon with an underscored period

Page 2, line 1, replace "d." with "c."

Page 2, line 2, replace the underscored semicolon with an underscored period

Page 2, line 3, replace "e." with "d."

Page 2, line 9, replace "f." with "e." and replace "Licenses" with "Applicants for licenses"

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2123

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2123

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/4/09

Recorder Job Number: 10175

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2123.

**Jonathan Alm, attorney with Dept. of Human Services:** Sponsor, support (attachment).

Explained the bill.

**Rep. Delmore:** There is no money for this in the Governor's budget or in DHS's budget to cover this? Can you explain this to me; I have a lot of upset people in my district. There is a very large fiscal note attached to this bill.

**Jonathan Alm:** The fiscal note contains 5.5 FTE's for the AG's office was put into the AG's budget which is in Appropriations. It was then removed by Appropriations. We still have the temporary employees in DHS budget. The funds that the Dept. pays I believe are still there. This fiscal note is mostly dealing with trying to provide the FTE's for the AG's office.

**Rep. Delmore:** It was my understanding when I talked to the DHS that the money was included in their budget, otherwise I had a standalone bill that I was prepared to offer that would have included the money for this program. It was my understanding that DHS was going to cover it in their budget. If the other two bills you referenced pass, will the fiscal note change on this bill?

**Jonathan Alm:** No, it will not. SB 2162 has the same fiscal impact, the only difference between SB 2123 and SB 2162 is the additional 600 individuals at \$10,350.

**Rep. Koppelman:** Are these checks going to be conducted by the DHS and not by BCI or AG's office.

**Jonathan Alm:** The process is as follows: We will receive the fingerprints, send them up BCI; BCI will process them and send us back the results. We will look at the results and determine, based on our Administrative rules, do they bar someone from caring for children.

**Rep. Koppelman:** So just like the other agencies and entities in the government, you're not doing the checks in DHS, you're shuffling the paper. How much of this fiscal note is for your department and how much for the AG's office.

**Jonathan Alm:** The impact to the DHS budget is covered in our budget. The impact to the AG's office is really set forth in this fiscal note.

**Rep. Koppelman:** So the \$1.2 million is general fund dollars is money that will be paid to the AG's office to cover the cost of doing the checks.

**Jonathan Alm:** I'll let Kathy Roll take this.

**Kathy Roll, AG's Office:** If you look at SB 2123, it reflects both the fiscal impact on the AG's office and DHS. The DHS's impact is \$308,000 and then the impact on the AG's office is the \$600,000 plus the 5 FTE's. These amounts were included in our original budget approved by the Governor and were removed.

**Rep. Koppelman:** That money was removed by the Governor's budget or in the Senate.

**Kathy Roll:** In the House.

**Rep. Koppelman:** So, 5.5 FTE's, and that's the cost over the biennium, how many background checks are going to required.

**Kathy Roll:** The AG estimates that there will be around 18,000 background checks.

**Rep. Koppelman:** Can you explain the \$308,000 impact to the DHS.

**Kathy Roll:** In the DHS's budget there were two half-time FTE's and four temporary staff that will handle the child and neglect case checks.

**Rep. Koppelman:** Are the temporary employees anticipated to be working throughout the biennium, or just for a short period of time.

**Kathy Roll:** I'm not sure.

**Rep. Koppelman:** Are the two 1/2 FTE's equivalent of 1 FTE then, is that a current employee or a new position.

**Kathy Roll:** (can't hear).

**Rep. Koppelman:** I think the DHS has the largest staff, and now we're going to employ people to process this paperwork.

**Jon Alm:** I know on my side of things, on the legal department, we are stretched. I know we have the largest staff available to provide the largest service to everybody around the state of North Dakota. We deal with vulnerable situations and it takes time, energy and expertise to deal with these matters.

**Rep. Koppelman:** What is the cost of the background checks, I understand from your testimony that this is being funded by the Department or the taxpayers funding the cost of these checks and the people getting the checks not having to pay for them.

**Jon Alm:** You're correct. The fiscal note anticipates the coverage around \$17.25 which is what the FBI charges.

**Rep. Koppelman:** I have a question about that; we sponsored legislation in last session to require these background checks in many areas that were needed just as much as in the area of childcare providers. However, I think in the other cases, the people getting the checks are



required to pay for those checks. In the other fields, if you are required to do something, you pay for that. Why are we waiving the fee for this group of people?

**Jon Alm:** I think both Houses have concurred and heard testimony from providers asking for assistance because they are having difficulty in maintaining services for children. If they are going to be bearing this cost, the State will be providing this expense.

**Rep. Boehning:** The first biennium you plan on checking 18,600 background checks and the following biennium you check 7,800. What is the reason for the difference?

**Jon Alm:** The 18,600 for the first biennium includes all the providers and employees based on what we know now. The difference, because there are currently about 14,626 that would have to have background checks. Then there is the 25% turnover rate in childcare services. So that would get us to the 18,000 figure. What we're looking at doing is not making applicants or providers to reapply and have background checks. If they've already gone through us, that's fine; all they have to do is sign and attest that they have not been convicted of a crime and that will be acceptable. Then that would reduce the number of background checks that have to be done. I can't answer the question as far as the FTE's for the AG's office.

**Rep. Boehning:** Do all members of the family of an in-home provider have to be fingerprinted and checked if they are under 18.

**Jon Alm:** No. The definition under section 21-62 includes the household member being 18 and up. That would be how we would do it temporarily or permanently.

**Rep. Boehning:** So if you are under 18 and are convicted as a sexual predator, that means they don't have to have the background check.

**Jon Alm:** You're correct. My understanding is that the FBI does their own check, and it will not list the juvenile offenses on it. So we can't get that information, and we felt that there wasn't a reason to spend money to try and get it when it isn't available.

**Rep. Boehning:** Can you check with Juvenile Services when you are doing a background check on family members to obtain that information.

**Jon Alm:** I don't believe that it can be checked. We ask the question on the application form to determine if anyone in the household has been convicted of a crime. We've had individuals where they do list what they have been convicted of such as gross sexual imposition charge, etc. We do deal with that on the application process. There's also small communities, people know individuals, parents who also call and say this person's child has been convicted of this, and we deal with that accordingly. There is also a sex offender website where sometimes a juvenile offense for someone will show up on the site. We check that list all the time.

**Rep. Boehning:** What is the total cost of a background check?

**Jon Alm:** I know the AG's office can answer that. SB 2162 waives a certain fee that would normally be charged by the AG's office for childcare providers. That falls into the current law.

**Rep. Griffin:** I have a question on the second amendment, on section 3, where it refers to HB 1090, relative providers approved under that HB, is there language listing the providers. What's the reason for the reference to the providers in that section?

**Jon Alm:** When we drafted this legislation for SB 2123, we didn't have the language for HB 1090, it is a new one statute that we are proposing. So we put in a reference to that bill when we prepared this bill. I didn't draft the amendment, so I don't know what that is related to.

**Rep. Zaiser:** Why doesn't DHS do the checks instead of the AG and DHS?

**Jon Alm:** That would create a problem. The BCI in the AG's office has to look through the paperwork to make sure that everything is included before it sends it to the FBI. Once the information is returned to BCI, and returned to the Department, we do the review and make a judgment call.

**Rep. Zaiser:** Is there a way to streamline the paper shuffle process to make it more efficient and lower costs.

**Jon Alm:** The Department is trying to work with providers and offer services and work with all parties. We have some portable scanners that would be able to take the fingerprints of a whole family at one time and then those can be sent off with the paperwork at one time. We're not going to delay an individual. We can also issue a provisional license where if it takes up to a couple of weeks to get back the background check, the person can still provide the childcare services in the meantime. Then if it comes back that they have a record, they wouldn't be issued a license.

**Rep. Vig:** With these background checks, how many people are denied a license because of something found in the background check?

**Jon Alm:** We have found a few. It does occur.

**Rep. Vig:** Of the 18,000 background checks, is that current employees.

**Jon Alm:** The 14,000 number is the providers, employees, family members, etc.

**Rep. Vig:** What kind of a nuisance is this for the employees to go through the check?

**Jon Alm:** That's where we are looking at making the changes to use the digital scanner to print the whole family at one time, and working in a community to get this finished quickly. Then they wouldn't have to go to the police station for the fingerprint scan. That is also an option, though, for them to go to the police station or other law enforcement agency to do a fingerprint card. We are talking about 903 self-certified checks where we calculate 2.5 background checks per home; 768 approved relative with 2.5 checks per home; 47 multi-license, childcare centers, etc. and we figure 12 checks per center; and about 407 family providers with 4 checks per home.

**Rep. Wolf:** On the fiscal note, the \$17.25 FBI fee, I know that it costs more than that for a background check.

**Judy Volk, BCI:** The fees are as follows: \$17.25 for the FBI charge and the Care Check registry fee is waived by BCI. Those fees are \$15 for the ND check and \$15 for processing that card and getting it to the FBI and back again.

**Rep. Wolf:** Will the waiver continue with the Carecheck registry.

**Judy Volk:** Yes, we will continue the waiver.

**Rep. Wolf:** When you have a business, aren't you able to expense those fees as part of your business.

**Judy Volk:** I don't know.

**Rep. Koppelman:** You referred to the two \$15 charges plus the \$17.25, so that's almost \$50. Is that what someone off the street would be charged if they wanted a background check?

**Judy Volk:** Anybody off the street cannot get a check.

**Rep. Koppelman:** If it were in an authorized group.

**Judy Volk:** It would be \$47.25.

**Rep. Koppelman:** In my quick calculations of the fiscal note, because the money for the AG's office and the money going to DHS on the bill, it comes out to over \$100 per check. Why the extra amount, because of the additional employees? Do you know? Why is the budget so bloated?

**Kathy Roll:** When we do the calculations, we know that an employee can perform so many checks in a year. This also reflects training costs, etc.

**Rep. Koppelman:** Could there be a way for the AG's office to cut down on the red tape of doing this by somehow having the checks come directly to you versus someone at DHS do the

intake of the information, get it to you, you do the check, you send it back, shuffle more paperwork.

**Kathy Roll:** When we do background checks, we need someone to review them, to say that is okay or not.

**Rep. Koppelman:** That would imply that the important decisions regarding the childcare workers would be reviewed by temporary or new employees and decisions made by those that aren't necessarily trained for that. You mentioned that there would be 18,600 background checks the first year, 7,800 the second, there are 5.5 FTE's in the AG's office as a result of this bill. Are those ongoing employees and if the necessary number of checks falls each year after that, do you still need those workers.

**Kathy Roll:** In the first biennium we believe there will be about 18,600. The current staff will also be helping with that, just because of the sheer numbers that will need to be completed. In the next biennium, we figured that there would be less checks needed.

**Rep. Koppelman:** Even though the number of checks will be cut in half, you're only dropping a .5 FTE of the 5.5.

**Kathy Roll:** That's correct.

**Rep. Delmore:** Those same employees are included in SB 2162. There has to be some reconciliation somewhere because you do not need both sets of employees.

**Kathy Roll:** They are the same employees.

**Rep. Zaiser:** If this concern hadn't come out before our committee, what would have happened?

**Kathy Roll:** That is a budgeting issue and will be resolved. In case one of the bills wasn't passed, the needed FTE's would be budgeted for.

**Rep. Zaiser:** The Appropriation Committee wouldn't have knowledge of that, that the same FTE's were in both bills.

**Kathy Roll:** Yes, they do know, because we make them aware of that in Appropriations when the bill comes before them. Then they do work through in conference committees as well to blend everything together.

**Rep. Zaiser:** It would be easier if we were to know as well, that it would be mentioned during testimony.

**Kathy Roll:** How?

**Rep. Zaiser:** By pointing that out in testimony.

**Kathy Roll:** In the fiscal note, it does reference the other bill.

**Rep. Kingsbury:** I'm wondering about other states, are other states doing this wide sweep on the background checks as this bill proposes here.

**Judy Volk, BCI:** States vary a lot, as to who and how background checks are done. A number of them do background checks for childcare providers.

**Rep. Kingsbury:** To this extent.

**Judy Volk:** Yes.

**Chairman DeKrey:** If you want to know why, it all goes back to a sheriff in Barnes County who did the check, but didn't pick up the piece of paper off the desk and read it. Now that is costing ND citizens millions of dollars.

**Rep. Boehning:** You said that the each FTE can do about 2,000 background checks a year. So in the next biennium you would only need 4 FTE's.

**Kathy Roll:** They had the training (can't hear).

**Rep. Boehning:** In the first biennium you anticipate 2 half-time FTE's and 4 FT FTE's, how many will be carried over to the next biennium.

**Jon Alm:** One FTE and 3 half-time FTE's.

**Rep. Wolf:** You mentioned the digital scanners to take the fingerprints, is there anything in this fiscal note to pay for those machines or is it something you already have.

**Jon Alm:** DHS purchased them in the current biennium.

**Chairman DeKrey:** Thank you. Further testimony in support.

**Veronica Zietz, Executive Director, The Arc of Bismarck:** Support (attachment).

**Chairman DeKrey:** Thank you. Further testimony in support.

**Bryan Quigley, Mountrail County Social Services:** Support. We certainly support the timely checks being done.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

**(This bill was subsequently withdrawn from our committee and rereferred directly to Appropriations from the House Floor.)**

2009 HOUSE APPROPRIATIONS

SB 2123



## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2123

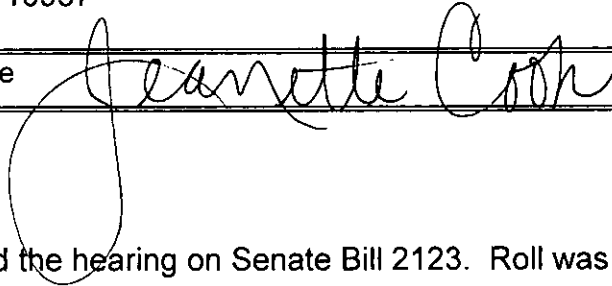
House Appropriations Committee  
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/13/09

Recorder Job Number: 10937

Committee Clerk Signature



Minutes:

Chairman Delzer opened the hearing on Senate Bill 2123. Roll was taken at a previous hearing.

Chairman Delzer asked Representative DeKrey to explain the bill.

Rep. DeKrey: I don't have a lot to say. We held the hearing and listened to the bill. After we talked about it, we came to the conclusion that we really weren't the right committee to make any decisions on the bill. There is another bill floating around that is doing about the same thing. Our understanding of this bill was that there's 5-4-5 (?) FTE's in the Attorney General's budget that we are going to do this, and that this was also for the Health Department and the Human Services Department – the \$1.2 million dollar fiscal note. We did not think that we were the place to sort this all out. We sent it straight to appropriations. We knew that you would have to put the three together somehow. If you want a determination on the policy, our committee kicked out a criminal records check bill. It was passed overwhelmingly by the House. There is probably not much opposition to it, so it depends on how much money you can put into the bill.

**Chairman Delzer:** The fiscal note says that this would require another \$18,000 over what we are currently doing.

**Rep. Berg:** Just to be clear, you are carrying the committee's recommendation, Rep. DeKrey?

**Representative DeKrey:** We never took a vote. We just re-referred it to Appropriations. The policy is financially driven.

**Chairman Delzer:** Committee members, we already had that discussion with the Class C felonies, with DNA checks.

**Representative Kaldor:** Did the legislation that we passed last session just prescribe that records checks were required with employment?

**Representative DeKrey:** Someone threw the bill out last session on hiring people. Just about every agency in the state jumped on it and wanted everybody to be checked before the state hired anybody. This is now for child care providers. This is probably a higher priority than some of the people that are getting checked now.

**Chairman Delzer:** I think this would require grandparents and everyone else to be checked.

We will have to see what happens with the bill that comes out of the Human Service Committee. We will have to visit with the Human Resources section in Appropriations because they have the Health Department budget. In the first half we took the 5.5 FTE's out of the AD's office that were related to this.

**Representative Meyer:** You made a reference about everyone having to be investigated. Are you referencing the non-license holders of the self declaration?

**Chairman Delzer:** As far as I know, it would be those and grandparents or anyone who comes into a house regularly where there is child care.

**Representative Meyer:** Did you discuss what a "non-license holder of the self-declaration" is?

**Chairman Delzer:** That is the ones that deal with less than five children.

**Chairman Delzer:** closed the hearing.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2123

House Appropriations Committee  
Government Operations Division

☐ Check here for Conference Committee

Hearing Date: 3/19/09

Recorder Job Number: 11321

Committee Clerk Signature
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Minutes:

**Chairman Delzer** brought up 2123 and 2162. Both bills do the same thing. This issue is up in the air. It would be just as easy, if the committee agrees, to do away with 2123 and work that issue out of 2162.

**Representative Berg:** As crazy as things, I think that the more that you can consolidate the better.

**Representative Glassheim:** They do about the same thing?

**Representative Weisz:** SB 2162 is quite a bit more expansive than 2123. It has a record check, but it does have additional things in there. After discussion it did seem like there was overlap. I visited with the governor's office, and they have some suggested amendments that would reconcile both of them. Based on that, I would recommend that we look at one vehicle. I have a subcommittee on 2162. We could still take up the issues in 2123.

**Chairman Delzer:** Committee members, our interest in this would be in the Attorney General's Budget when it goes to Commerce. That's why we removed the 5.5 FTEs, and I believe the \$310,000. There were concerns about how expansive we are getting with our background checks. I could not support 2123 whether we are going to work on it or not. I know the issue is in the other bill.

**Representative Kempenich:** A lot of these day care providers are already doing finger prints.

Is this for people that just have casual contact? Where do they get the \$18,000?

**Representative Weisz:** It is casual to the standpoint where it would not be someone knocking on the door. I think they are getting at someone like a boyfriend.

**Representative Kempenich:** But who is going to report that?

**Representative Weisz:** The day care provider is supposed to report anyone who is there. We questioned the fact that it may not be reported, especially if there was someone questionable.

**Representative Kempenich:** That is the problem. The ones that hit the news are probably a family member or someone in the neighborhood that they wouldn't know about anyway. All of this is opportunity. We are trying to stop predators. They are not going to announce their presence.

**Representative Weisz:** There is one thing that we looked at. If I am going to hire someone to work in my daycare center, I would want a background check if I don't know them. You can already do that under current law. It makes sense to do that. When we get to peripheral people, they already know them and their history. The odds are that they are not going to report them.

**Chairman Delzer:** I can't speak for the committee, but my personal take is that the bill needed to die even without you working on it in 2162. I think the committee needs to know that there is another bill that you are working on. I don't think that there is a lot of support.

**Representative Weisz:** I don't think that there is a lot of support in our committee either. We want to make sure that there isn't some little glitch isn't going to get checked if he needs to be.

**Representative Berg:** Can you just recap this for me?

**Chairman Delzer:** SB 2123 is before us. SB 2162 is in Human Services and will not come to Appropriations.

**Representative Weisz:** SB 2162 is a lot broader. There is a lot more in this bill than record checks.

**Representative Berg:** If we act on this with a do not pass, there are things in here that can be acted upon in the subcommittee if needed?

**Representative Weisz:** Yes.

**Chairman Delzer:** What are the committee's wishes?

**Representative Berg:** I will move a Do Not Pass.

**Chairman Delzer:** We have a motion. Is there a second?

**Representative Kempenich:** Second.

**Chairman Delzer:** Discussion?

**Representative Glassheim:** It is a lot more people that just daycare.

**Representative Weisz:** There are also county social workers and some of those that are in 2123 that aren't in 2162.

**Chairman Delzer:** In the fiscal note it says, " employees hired by the department, county and social service board employees providing department services, licensed service providers that service the mentally ill, the developmentally disabled, child placing agencies and substance abusers". The department can do all those already.

**Representative Glassheim:** They can?

**Representative Weisz:** Yes, they do.

**Representative Weisz:** If you recall one of the first bills out of our committee that had to do with background checks. It didn't have a fiscal note. The reason for that was that they were already doing it. The feds said it wasn't required by law, so they said that we had to put that

in. We will take a look at some of this in 2123 to see if the feds require it to be in law we can add it in there.

**Chr. Delzer:** The other bill needs to come into play because that was already passed by the House.

**A roll call vote was taken on a Do Not Pass on 2123.**

**Aye 6 Nay 0 Absent 2**

**The motion carried.**

**Rep. Kempenich will carry the bill.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2123

House Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11403

Committee Clerk Signature

*Shirley Branning*

Minutes:

**Rep. Delzer** explained SB 2123 which came out of Government Operations with a 6-0 **Do Not Pass**. The essence of the bill as it came out of the Judiciary Committee has to do with increasing the number of background checks having to do with child support and related industries. SB 2162, which resides in the Human Service committee have been having discussions with the Governor's Office on a way to lower this and on how to make this more palatable and they are going to look at if there was something needed that would be the vehicle used. I move a Do Not pass on 2123.

**Rep. Dosch:** Second.

Roll call vote is requested for a Do Not Pass on SB 2123.

**Vote Taken: Yes 23 No 0 Absent 2 Motion to Do Not Pass Carries. Carrier: Rep. Kempenich.**

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2123**

House House Appropriations- Government Operations Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO NOT PASS

☐ Voice Vote

☒ Roll Call Vote

Motion Made By Representative Berg: Seconded By Representative Glassheim:

Representatives	Yes	No	Representatives	Yes	No
Chairman Delzer	X		Representative Glassheim	X	
Vice Chairman Thoreson			Representative Meyer		
Representative Kempenich	X		Representative Kaldor	x	
Representative Berg	X				
Representative Dosch	x				

Total (Yes) 6 No 0

Absent 2

Floor Assignment Representative Kempenich:

If the vote is on an amendment, briefly indicate intent:



Date: 3/23/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2123

**Full House Appropriations Committee**

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Not Pass

Motion Made By Delzer Seconded By Delzer Dosch

Representatives	Yes	No	Representatives	Yes	No
Chairman Svedjan	✓				
Vice Chairman Kempenich	✓				
Rep. Skarphol	✓		Rep. Kroeber	✓	
Rep. Wald	✓		Rep. Onstad	✓	
Rep. Hawken	✓		Rep. Williams	✓	
Rep. Klein	✓				
Rep. Martinson	✓				
Rep. Delzer	✓		Rep. Glassheim	✓	
Rep. Thoreson	✓		Rep. Kaldor	✓	
Rep. Berg	✓		Rep. Meyer	✓	
Rep. Dosch	✓				
Rep. Pollert	✓		Rep. Ekstrom	✓	
Rep. Bellew	✓		Rep. Kerzman	✓	
Rep. Kreidt	✓		Rep. Metcalf	✓	
Rep. Nelson	✓				
Rep. Wieland	✓				

Total (Yes) 23 No 0

Absent 2

Floor Assignment Kempenich

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
March 23, 2009 12:22 p.m.

Module No: HR-52-5543  
Carrier: Kempenich  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

SB 2123, as engrossed: Appropriations Committee (Rep. Svedjan, Chairman)  
recommends **DO NOT PASS** (23 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).  
Engrossed SB 2123 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2123

**Testimony**  
**Senate Bill Number 2123 – Department Of Human Services**  
**Senate Judiciary Committee**  
**Senator Dave Nething, Chairman**  
**January 13, 2009**

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

The bill is designed to allow the Department to conduct criminal history record investigations for licensees, employees and others. Criminal history record investigations will be another step the Department takes to protect children and other vulnerable populations served by the Department.

**Current Law**

Currently, the Department is required to conduct a criminal history background investigation for foster care license holders, prospective adoptive parents, and legal guardians. Additionally, the Department conducts criminal background checks for early childhood services on a voluntary basis for providers who choose to be listed on the carecheck registry. The Department also conducts a criminal background check on employees, as do other state agencies.

**SB 2123**

This bill would allow the Department to conduct criminal history background checks for the following:

**1. Early Childhood Services**

As required under the proposed SB 2162 concerning criminal history

background checks for an individual, a household member, or a staff member who is going to provide early childhood services.

## **2. Licensed Providers**

This bill would allow the Department to conduct a criminal background check on providers licensed, if necessary, 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.

## **3. Vendors**

The Department may require a criminal history record investigation as the Department determines appropriate for vendors or grantees and their employees under contract or agreement with the Department.

## **4. Department and County Social Service Board Employees**

In addition, the Department may require a criminal history background check for new employees of the Department and County Social Service Board employees responsible for providing services under programs supervised by the Department.

SB 2123 carries a fiscal note. The governor has included funding in his budget for the Department's cost of conducting criminal background checks on applicants for early childhood service licenses, holders of a self declaration and registered providers under SB 2162. This bill does not change the requirements for conducting criminal background checks for foster care license holders, prospective adoptive parents, or legal guardians. Any Department costs associated with these checks along

with those associated with conducting criminal background checks on the Department's new employees are included in the governor's budget for the Department.

The Department does not anticipate during this biennium any additional expenses to conduct criminal background checks on vendors, grantees, and their employees under contract and County Social Service Board employees. The additional authority in the bill makes it possible for the Department to conduct additional criminal history background checks if determined necessary due to a federal mandate or unforeseen events.

### **Other Measures**

The 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 Senate Human Services Committee will be hearing this morning, proposes to make background checks mandatory for any provider of early childhood services. HB 1090, which the House Human Service Committee will be hearing later this week, proposes to make background checks mandatory for an approved relative provider to receive child care assistance payments.

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

**PROPOSED AMENDMENTS TO SENATE BILL NO. 2123**

Page 1, line 7, replace "Subdivision" with "If the amendments to section 50-11.1-06.2 of the North Dakota Century Code as set forth in Senate Bill No. 2162 do not become effective and House Bill No. 1090 does not become effective, subdivision"

Page 1, line 10, replace "2" with "5"

Page 1, after line 10, insert:

**"SECTION 2. AMENDMENT.** If the amendments to section 50-11.1-06.2 of the North Dakota Century Code as set forth in Senate Bill No. 2162 do not become effective and House Bill No. 1090 becomes effective, subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for carecheck registrations under section 50-11.1-06.2 and investigations conducted pursuant to section 6 of this Act.

**SECTION 3. AMENDMENT.** If the amendments to section 50-11.1-06.2 of the North Dakota Century Code as set forth in Senate Bill No. 2162 become effective and House Bill No. 1090 does not become effective, subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for ~~carecheck registrations~~ background investigations under section 50-11.1-06.2 and investigations conducted pursuant to section 5 of this Act.

**SECTION 4. AMENDMENT.** If the amendments to section 50-11.1-06.2 of the North Dakota Century Code as set forth in Senate Bill No. 2162 become effective and House Bill No. 1090 becomes effective, subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for ~~carecheck registrations~~ background investigations under section 50-11.1-06.2 and investigations conducted pursuant to section 6 of this Act."

Page 1, line 11, replace "2" with "5" and replace "A" with "If House Bill No. 1090 does not become effective, a"

Page 2, after line 25 insert:

"**SECTION 6.** If House Bill No. 1090 becomes effective, a new section to chapter 50-06 of the North Dakota Century Code is created and enacted as follows:

**Criminal history record investigation for licensees, employees, and others – Fees - Rules.**

1. The department may require criminal history record investigations as the department determines appropriate for:
  - a. Employees of the department upon hiring;
  - b. Vendors or grantees and their employees under contract or agreement with the department who are responsible for providing services that are financed in whole or in part with funds allocated or distributed by the department;
  - c. County social service board employees responsible for providing services under programs supervised by the department and administered by the county;
  - d. Providers licensed by the department under chapters 25-03.2, 25-16, and 50-12 and section 50-31-02, as well as for any employees of those providers;
  - e. Licensed providers of early childhood services, nonlicensed holders of a self declaration, and nonlicensed registered providers, under chapter 50-11.1. The department also may require criminal history record checks for staff members of those providers, or for adult household members of the provider if the provider is providing early childhood services within the provider's home and the adult household member resides within that home.
  - f. Licenses issued under chapter 50-11, for appointment of a legal guardian under chapter 50-11.3, and for a petition for adoption under chapter 50-12.
  - g. Relative providers approved under House Bill No. 1090.
2. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.
3. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under



- chapter 12-60 to the department of human services. Unless otherwise provided within title 50, the bureau of criminal investigation may charge a reasonable fee to offset the cost of providing any criminal history record information and may require payment of any charge imposed by the federal bureau of criminal investigation for a nationwide background check.
4. The department may adopt rules to identify how the results of an investigation completed under this section will impact a licensee, employee, or other individual."

Renumber accordingly



## The Arc of Bismarck

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Attachment 3

SB 2123

### Testimony of Support

#### Senate Bill No. 2123

January 13, 2009

Good Morning Chairman and members of the Judiciary Committee. My name is Veronica Zietz (#166); I am here today representing The Arc of Bismarck and The Arc of Cass County.

I support Senate Bill No. 2123 because it provides enhanced protection to vulnerable populations. This bill requires the Department of Human Services to conduct criminal background checks for all employees. This would include employees who have daily contact with individuals who have disabilities, such as providers and direct care staff.

Many of these employees are greatly relied upon by individuals with disabilities. At times individuals with disabilities are considered to be more easily taken advantage of, especially by those which the need and trust the most. Reasons for this are as follows:

- Individuals with a disability may be easier to manipulate and less likely to report.
- Are abused by those they know and trust.
- Have a need for personal care.
- Are at times isolated from the community.
- Are at times physically defenseless.
- May have language, speech or vocabulary barriers.
- May have impaired or limited cognitive abilities.
- Lack of abuse prevention education.

Therefore, requiring background checks would ensure we are giving people with disabilities the best and safest care possible, by the most qualified and appropriate staff.

**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.



## **PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2123**

Page 1, line 23, replace "Licensed" with "Applicants for licensure to provide and licensed" and after the first comma insert "applicants to be a nonlicensed holder of and"

Page 1, line 24, after "and" insert "applicants to be a nonlicensed registered provider and"

Renumber accordingly

## **PROPOSED AMENDMENTS TO SENATE BILL NO. 2123**

Page 1, line 7, replace "Subdivision" with "If the amendments to section 50-11.1-06.2 of the North Dakota Century Code as set forth in Senate Bill No. 2162 do not become effective and House Bill No. 1090 does not become effective, subdivision"

Page 1, line 10, replace "2" with "4"

Page 1, after line 10, insert:

**"SECTION 2. AMENDMENT.** If the amendments to section 50-11.1-06.2 of the North Dakota Century Code as set forth in Senate Bill No. 2162 become effective, subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for ~~carecheck-registrations~~ background investigations under section 50-11.1-06.2 and investigations conducted pursuant to section 4 of this Act.

**SECTION 3. AMENDMENT.** If House Bill No. 1090 becomes effective, subdivision g of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- g. The department of human services for carecheck registrations under section 50-11.1-06.2, relative providers approved under House Bill No. 1090, and investigations conducted pursuant to section 4 of this Act."

Page 1, line 11, replace "**2**" with "**4**"

Renumber accordingly



## The Arc of Bismarck

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### Testimony of Support

#### Senate Bill No. 2123

March 4, 2009

Good Morning Chairman DeKrey and members of the Judiciary Committee. My name is Veronica Zietz (#166); I am the Executive Director at The Arc of Bismarck. I am here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is a non-profit organization focused on providing education, advocacy and supports to children and adults with disabilities to foster empowerment and full inclusion in the community.

I support Senate Bill No. 2123 because it provides enhanced protection to vulnerable populations. This bill requires the Department of Human Services to conduct criminal background checks on employees. This would include employees who have daily contact with individuals who have disabilities, such as licensed providers and direct care staff.

Many of these employees are greatly relied upon by individuals with disabilities. At times individuals with disabilities are considered to be more easily taken advantage of, especially by those which they need and trust the most. Reasons for this are as follows:

- Individuals with a disability may be easier to manipulate and less likely to report abuse.
- Are abused by those they know and trust.
- Have a need for personal care.
- Are at times isolated from the community.
- Are at times physically defenseless.
- May have language, speech or vocabulary barriers.
- May have impaired or limited cognitive abilities.
- Lack of abuse prevention education.

Therefore, requiring background checks would ensure we are giving people with disabilities the best and safest care possible, by the most qualified and appropriate staff. By supporting this bill you would be helping to prevent instances of abuse against vulnerable populations especially against individuals with disabilities. I urge you to vote do pass on SB2123.

Thank you for your time and consideration.