



SPONSOR: Rep. K. Williams & Sen. Poore

HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 256

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO BACKGROUND CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 79, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter X. Background Checks for Employees, Contractors, and Volunteers

§ 7998 Purpose.

The purpose this subchapter relating to criminal background checks is to protect the safety and well-being of children that receive services from Department of Health and Social Services employees, contractors, and volunteers.

§ 7999 Applicability.

The following classes of individuals, who visit families in their homes and in the community or have regular, direct access to children or adolescents under the age of 18, must be subject to a criminal background check, including all of the following:

(a) A current employee, contractor, or volunteer of the Department who has not completed a criminal background check.

(b) A current employee of the Department who is seeking a promotion within the same program or another child-serving program.

(c) An individual seeking to become an employee, contractor, or volunteer of the Department.

(d) A current employee, contractor, or volunteer of the Department in which the Department has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed or commencing work with the Department.

(e) All students volunteering for the Department, including those completing required clinical hours.

§ 8000 Definitions.

As used in this subchapter:

(1) "Child Protection Registry" means as defined under § 921 of Title 16.

(2) "Conviction" or "convicted" means as defined under § 902 of Title 16.

(3) "DELJIS" means the Delaware Criminal Justice Information System.

(4) "Department" means the Department of Health and Social Services.

(5) "Disqualifying criminal conviction" means all of the following and shall prohibit an individual from being an employee, contractor, or volunteer for the Department:

a. Felony convictions involving physical or sexual assault crimes against a child, an adult who is impaired, or elderly individual. Such convictions shall require a lifetime prohibition.

b. Felony convictions involving physical or sexual assault crimes against another adult. Such prohibition shall last for 10 years following the date of conviction.

c. Any other convictions for a violent felony as defined under § 4201(c) of Title 11 not already included within the convictions subject to a lifetime or 10 year prohibition under paragraphs (3) a. and b. of this section. Such prohibition shall last for 7 years following the date of conviction, unless the felony is included within the crimes that can lead to entry on the Child Protection Registry under § 923 of Title 16, in which case the length of time for the prohibition shall be as provided in the Child Protection Registry regulations.

d. Misdemeanor convictions against children. Such prohibitions shall last for 7 years following the date of conviction, unless the misdemeanor is included within the crimes that can lead to entry on the Child Protection Registry under § 923 of Title 16, in which case the length of time for the prohibition shall be as provided for in the Child Protection Registry regulations.

(6) "DSCYF" means the Department of Services for Children, Youth and Their Families.

(7) "FBI" means the Federal Bureau of Investigation.

(8) "Felony convictions involving physical or sexual assault crimes" means felony convictions under §§ 604-607, 612-613, 626, 629-636, 645, 651, 768-780, 782-783A, 785, 787, 802, 803, 1100A-1102, 1103A-1103B, 1105, 1108-1112B of Title 11, felony convictions under § 1136 of Title 16, and felony convictions under § 3913(c) of Title 31.

(9) "Misdemeanor convictions against children" means misdemeanor convictions under §§ 601-603, 611, 621, 625-628A, 763, 764, 765, 766, 767, 781, 785, 1102, 1103, 1106, 1107 of Title 11, and misdemeanor convictions under § 1136 of Title 16.

(10) "SBI" means the State Bureau of Identification.

(11) An employee, contractor, or volunteer of the Department shall not mean an employee, contractor, or volunteer who provides childcare services at a facility as referred to under § 309 (b)(4)b of Title 31.

§ 8001 Background checks for employees, contractors, and volunteers of the Department.

53           (a) Any employee, contractor, or volunteer of the Department that visits families in their homes and in the  
54 community or have regular, direct access to children or adolescents under the age of 18 are required to obtain a background  
55 check. Such background checks consist of a fingerprinted Delaware and national background check completed by the SBI  
56 and the FBI, as well as a Child Protection Registry check completed by the DSCYF.

57           (b) The Division of Management Services shall obtain a statement signed by the prospective employee, contractor,  
58 or volunteer of the Department wherein the individual authorizes a full release for the employer to obtain the information  
59 provided pursuant to such a check. The DSCYF shall process a Child Protection Registry check of the individual upon  
60 receipt of the above-mentioned statement that must be attached to the request from the employer for the Child Protection  
61 Registry check. All employees, contractors, and volunteers must inform their employer of any criminal conviction or entry  
62 on the Child Protection Registry that would lead to a prohibition under § 8000(5) of this chapter.

63           (c) The SBI shall furnish information pertaining to the identification and criminal history record of any prospective  
64 employee, contractor, or volunteer of the Department, except as otherwise allowed or required, provided that the  
65 prospective employee, contractor, or volunteer submits to a reasonable procedure established by standards set forth by the  
66 Superintendent of State Police to identify the perspective employee, contractor or volunteer whose record is sought. Such  
67 procedure must include the fingerprinting of the prospective employee, contractor, or volunteer, and a provision for other  
68 information that may be necessary to obtain a report of the individual's entire criminal history record from the SBI and a  
69 report of the individual's entire federal criminal history record pursuant to the FBI appropriation of Title II of Public Law  
70 92-544. Notwithstanding any provision to the contrary, the information to be furnished by the SBI must include child sex  
71 abuser information. The Division of State Police shall be the intermediary for purposes of this section.

72           (d) An employer may not employ an employee, contractor, or volunteer for work with the Department, if that  
73 individual will visit families in their homes and in the community or have regular, direct access to children or adolescents  
74 under the age of 18, before obtaining a criminal history. The criminal history of any individual not employed directly by the  
75 Department must be provided to the program upon the individual's commencement of work.

76           (e) The requirements under § 8001 of this chapter may be suspended for 60 days if the employer wishes to employ  
77 the prospective employee, contractor, or volunteer on a conditional basis.

78           (f) Before an employer may offer conditional employment, the employer must receive verification that the  
79 prospective employee, contractor, or volunteer has been fingerprinted by the SBI for purposes of the criminal history.

80           (g) An employer may not employ or continue to employ an individual with a conviction deemed disqualifying by  
81 the Department's guidelines.

82           (h) Costs associated with obtaining said criminal history information and Child Protection Registry information  
83           shall be borne by the employee, contractor, or volunteer or prospective employee, contractor, or volunteer.

84           § 8002 Subsequent Criminal History Information

85           (a) The DELJIS may send subsequent criminal history for an employee, contractor, or volunteer of the Department  
86           to the Department staff, designated by a Memorandum of Understanding between the Department and the DELJIS, to be  
87           used by the Department in making a determination about the individual's continued suitability in the program.

88           Section 2: This Act goes into effect within 6 months of enactment.

SYNOPSIS

This bill requires criminal background checks for any current or prospective employees, contractors, and volunteers of the Division of Health and Social Services that visit families in their homes and in the community or have regular, direct access to children or adolescents under the age of 18. This background check includes fingerprinting for Delaware and national background checks as well as a check of the Child Protection Registry.