

CHAPTER 211
FORMERLY
SENATE BILL NO. 178
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO BACKGROUND CHECKS FOR CHILD-SERVING ENTITIES.

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

Section 1. Amend § 309, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 309. Background checks for child-serving entities. [Effective Apr. 7, 2016]

(b) *Definitions.* — The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(4) "Child-serving entity" as used in this section shall mean:

a. The DSCYF; which includes any employee or volunteer of DSCYF or 1 of its contractors who have regular direct access to children and/or adolescents under the age of 18, but who do not provide child-care services at a facility as referred to in paragraph (b)(4)b. of this section;

b. Residential child-care facilities in Delaware which are under contract with or operated directly by DSCYF;

c. Public ~~and private~~ schools, including employees of the Department of Education;

d. Child-care providers as defined in § 342 of this title; or

e. Youth camps or summer schools that are exempt from child-care licensing requirements;

f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant funds through the Delaware Department of Health and Social Services.

(7) "Direct access" means the opportunity to have personal, unsupervised contact with persons receiving care or education during the course of one's assigned duties.

(10) "Felony convictions involving physical or sexual assault crimes" shall include: §§ 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 of § 1136 of Title 16, and felony convictions of § 3913(c) of Title 31.

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

~~(13) "Private school" means a school having any or all of grades kindergarten through 12, operating under a board of trustees and maintaining a faculty and plant which are properly supervised.~~

(c) ~~Except as provided in paragraph (c)(4) of this section, all~~ All child-serving entities are required to obtain criminal and Child Protection Registry checks for prospective employees, volunteers and contractors.

(3) Notwithstanding paragraph (c)(1) of this section, ~~private schools and~~ youth camps may choose to perform a name-based Delaware criminal background check for prospective employees, volunteers and contractors through the Delaware Justice Information System (DELJIS) and an out-of-state criminal record check using private, third-party providers of such checks, provided that any out-of-state criminal record check shall include a Social Security trace search and county-based criminal record search in the counties in which the individual has resided within the past 10 years. Such check shall be valid for a 5 year period.

~~(4) Any private school, including youth camps directly operated by a private school, may choose not to perform the background checks and Child Protection Registry checks described in paragraphs (c)(1) and (c)(2) of this section, provided that the private school or youth camp that is directly operated by the private school informs parents or guardians of the youth in attendance that the school or youth camp is not meeting minimum background check safety requirements for its staff members. The school or camp must obtain and retain for at least 1 year a signed acknowledgement of same from the parents or guardians.~~

(d) *Prohibitions.* —

(1) The following criminal convictions or entries on the Child Protection Registry shall prohibit an individual from being an employee, volunteer, or contractor for a child-serving entity for the amount of time indicated:

a. Felony convictions involving physical or sexual assault crimes against a child, an adult who is impaired, or elderly person. 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. ~~All other felony convictions~~ Any other convictions for a violent felony as defined in § 4201(c) of Title 11 not already included within the convictions subject to a lifetime or 10 year prohibition under paragraphs (d)(1)a. and b. of this section shall prohibit the individual 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 pursuant to § 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 pursuant to § 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.

(4) The child-serving entity may prohibit employment for longer than that set out in paragraph (d)(1) of this section for those crimes that are prohibited and are job-related. The prohibition must not be shorter than the time proscribed in paragraph (d)(1) of this section, provided such time restrictions are not otherwise prohibited by law.

(e) Upon completion of the criminal background and Child Protection Registry checks:

(1) Where the child-serving entity is a public ~~or private~~ school:

(4) Where the child-serving entity is a ~~private school or~~ youth camp that chooses to perform background checks using the method permitted in paragraph (c)(3) of this section, DELJIS shall perform a name-based criminal check based on the identifying information provided by the ~~private school or~~ youth camp. If the individual is found to have a criminal background that would make them prohibited for employment, DELJIS shall so inform the employer. If the individual's background would not make them prohibited from employment, then DELJIS shall forward the information to DSCYF, which shall perform a check of the Child Protection Registry. DSCYF shall determine whether or not the individual is prohibited based on the results of the Child Protection Registry check.

Section 2. Amend § 309, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 309. Background checks for child-serving entities. [Effective April 7, 2016]

(b) *Definitions.* — The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(4) "Child-serving entity" as used in this section shall mean:

a. The DSCYF; which includes any employee or volunteer of DSCYF or 1 of its contractors who have regular direct access to children and/or adolescents under the age of 18, but who do not provide child-care services at a facility as referred to in paragraph (b)(4)b. of this section;

b. Residential child-care facilities in Delaware which are under contract with or operated directly by DSCYF;

c. Public and private schools, including employees of the Department of Education;

d. Child-care providers as defined in § 342 of this title; or

e. Youth camps or summer schools that are exempt from child-care licensing requirements;

f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant funds through the Delaware Department of Health and Social Services.

(13) "Private school" means a school having any or all of grades kindergarten through 12, operating under a board of trustees and maintaining a faculty and plant which are properly supervised.

(c) ~~All~~ Except as provided in paragraph (c)(4) of this section, all child-serving entities are required to obtain criminal and Child Protection Registry checks for prospective employees, volunteers and contractors.

(3) Notwithstanding paragraph (c)(1) of this section, private schools and youth camps may choose to perform a name-based Delaware criminal background check for prospective employees, volunteers and contractors through the Delaware Justice Information System (DELJIS) and an out-of-state criminal record check using private, third-party providers of such checks, provided that any out-of-state criminal record check shall include a Social Security trace search and county-based criminal record search in the counties in which the individual has resided within the past 10 years. Such check shall be valid for a 5 year period.

(4) Any private school, including youth camps directly operated by a private school, may choose not to perform the background checks and Child Protection Registry checks described in paragraphs (c)(1) and (c)(2) of this section, provided that the private school or youth camp that is directly operated by the private school informs parents or guardians of the youth in attendance that the school or youth camp is not meeting minimum background check safety requirements for its staff members. The school or camp must obtain and retain for at least 1 year a signed acknowledgement of same from the parents or guardians.

(e) Upon completion of the criminal background and Child Protection Registry checks:

(1) Where the child-serving entity is a public or private school:

(4) Where the child-serving entity is a private school or youth camp that chooses to perform background checks using the method permitted in paragraph (c)(3) of this section, DELJIS shall perform a name-based criminal check based on the identifying information provided by the private school or youth camp. If the individual is found to have a criminal background that would make them prohibited for employment, DELJIS shall so inform the employer. If the individual's background would not make them prohibited from employment, then DELJIS shall forward the information to DSCYF, which shall perform a check of the Child Protection Registry. DSCYF shall determine whether or not the individual is prohibited based on the results of the Child Protection Registry check.

Section 3. Section 2 of this Act is effective on April 7, 2017.

Approved April 07, 2016