



SPONSOR: Rep. K. Williams & Sen. Poore
Reps. Briggs King, Cooke, Heffernan, K. Johnson,
Mitchell, Michael Smith; Sens. Gay, Mantzavinos,
Sokola, Walsh, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 206

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:

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

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

4 § 7998. Purpose; application; definitions

5 (a) The purpose of this subchapter is to protect the safety and well-being of children who receive services from the
6 Department of Health and Social Services by requiring individuals who visit children in their homes and in the community
7 or have regular, direct access to children or adolescents under the age of 18 to submit to a criminal background check.

8 (b) All of the following individuals must submit to a criminal background check:

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

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

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

14 (4) A current employee, contractor, or volunteer of the Department who the Department has a reasonable basis
15 to suspect has been arrested for a disqualifying crime since becoming employed or commencing work with the
16 Department.

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

18 (6) Notwithstanding any provision to the contrary in this subchapter, a current or potential employee,
19 volunteer or contractor of the Department may authorize a child-serving entity as defined in §309, Title 31 to share

with the Department the results of a background check required under this section only if such authorization is in writing and provided to the Department.

(c) As used in this subchapter:

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

(2) "Criminal background check" means a report of an individual's federal and state criminal history record from the Delaware State Bureau of Identification and the Federal Bureau of Investigation.

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

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

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

(5) "Disqualifying criminal conviction" means any of the following occurring under the laws of this State or any other jurisdiction, and shall disqualify an individual from being an employee, contractor, or volunteer for the Department for the time periods set forth in this subchapter.

a. Conviction of the following offenses require lifetime disqualification:

1. Felony conviction of a crime against a child.

2. Any conviction of a crime constituting a felony sexual offense.

3. Any conviction of a crime constituting a Class A or Class B felony.

4. Any conviction of a crime constituting a felony homicide.

b. Misdemeanor conviction of a crime against a child. Disqualification shall endure for 7 years following the date of conviction, unless the misdemeanor is included within the crimes that result in entry on the Child Protection Registry under § 923 of Title 16, in which case disqualification shall be determined by the Child Protection Registry regulations.

c. Any other conviction for a felony shall disqualify an individual from being an employee, contractor, or volunteer for the Department for 7 years following the date of the conviction, unless the felony is included in within the crimes that result in entry on the Child Protection Registry under § 923 of Title 16, in which case disqualification shall be determined by the Child Protection Registry regulations.

d. The Department may promulgate regulations to specify additional offenses that shall constitute disqualifying criminal convictions under this subchapter.

(d) This subchapter does not apply to individuals who are otherwise required by state or federal law or regulation to submit to a background check.

§ 7999. Background checks for employees, contractors, and volunteers of the Department.

51 (a) An employee, contractor, or volunteer of the Department who visits children in their homes and in the
52 community or has regular, direct access to children or adolescents under the age of 18 is required to obtain a
53 background check. An employee, contractor, or volunteer who provides childcare services at a facility as referred to
54 under § 309 (b)(4)b of Title 31, is exempt from the requirements of this subchapter.

55 (b) An individual who has a disqualifying criminal conviction or is on the Child Protection Registry at Level
56 III or Level IV may not be an employee, contractor, or volunteer for the Department in any capacity where that
57 individual would visit children in their home or in the community or have regular, direct access to children or
58 adolescents under the age of 18.

59 (c) An employer may not employ an employee, contractor, or volunteer for work with the Department, if that
60 individual will visit children in their homes and in the community or have regular, direct access to children or
61 adolescents under the age of 18, before obtaining a criminal background check. The criminal history of any individual
62 not employed directly by the Department must be provided to the Department upon the individual's commencement of
63 work. The Department shall have the right to review every criminal background check obtained under this subchapter
64 and make its own determination of the individual's qualification for employment. If the Department determines that an
65 individual has a disqualifying criminal conviction, the individual may not continue in employment.

66 (d) An employer may conditionally hire an employee, contractor or volunteer covered by this subchapter who
67 has been fingerprinted pending the determination of suitability for employment. An employer may not employ or
68 continue to employ an individual with a disqualifying criminal conviction. Subject to the Department's right to review
69 every background check obtained under this subchapter, each employer is responsible for making the determination of
70 suitability for employment.

71 (e) Costs associated with obtaining a criminal background check shall be borne by the employee, contractor,
72 or volunteer or prospective employee, contractor, or volunteer.

73 (f) The Department shall promulgate regulations to implement this subchapter and may develop rules or
74 procedures governing the authorization of a contractor covered by this subchapter to provide the Department with the
75 results of a background check required under this subchapter at the request of a current or potential employee,
76 volunteer, or contractor.

77 Section 2. Amend § 7972, Title 29 of the Delaware Code by making deletions as shown by strike through and
78 insertions as shown by underline as follows:

79 § 7972. Background Check Center.

80 (d) The Department may use the Background Check Center to process background checks required under § 7999
81 of this title.

82 ~~(d)~~ (e) The Department of Health and Social Services shall establish the appropriate fee to collect from BCC users.

83 (1) The fee shall approximate and reasonably reflect all costs necessary to defray the maintenance, operation,
84 and development of the BCC.

85 (2) At the beginning of each calendar year the Department of Health and Social Services shall compute the
86 appropriate fee and determine the effective date of any fee modification.

87 (3) All revenue generated under this section must be deposited in a special BCC fund account in the
88 ~~Department of Health and Social Services.~~ Department.

89 ~~(e)~~ (f) Due process protections of notice and opportunity to be heard must be provided to an applicant for
90 employment who wishes to appeal BCC errors, or to appeal the imposition of sanctions under § 1141 or § 1145 of Title 16.
91 The hearing process shall be consistent with the Administrative Procedures Act, Chapter 101 of this title.

92 Section 3. This Act is effective immediately and is to be implemented the earlier of the following:

93 (1) 1 year from the date of enactment.

94 (2) Notice by the Secretary of the Department of Health and Social Services published in the Register of
95 Regulations that final regulations to implement this Act have been promulgated.

SYNOPSIS

This bill requires criminal background checks for any current or prospective employee, contractor, and volunteer of the Division of Health and Social Services (DHSS) who visits children in their homes and in the community and has regular, direct access to children or adolescents under the age of 18. The background check includes fingerprinting for Delaware and national background checks as well as a check of the Child Protection Registry. An individual who has a disqualifying criminal conviction or is on the Child Protection Registry at Level III or IV may not be an employee, contractor, or volunteer in any capacity that involves visiting children in their homes or the community or having regular, direct access to children. DHSS, if it chooses, may use its Background Check Center, which processes background checks for individuals working in home-care and long-term care facilities.

It differs from the original bill in that it permits DHSS to use its Background Check Center to accomplish these additional background checks, specifies Child Protection Registry status that is disqualifying, and makes other minor technical changes.