



SPONSOR: Rep. Q. Johnson & Sen. McDowell
Reps. Baumbach, Brady, Hensley, Jaques, Kowalko,
Minor-Brown, Mitchell, Osienski, Michael Smith; Sens.
Ennis, Hocker, Lopez, Paradee, Pettyjohn, Sokola, Wilson

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 266

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:

1 Section 1. Amend § 309 of Title 31 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline:

3 § 309 Background checks for child-serving entities [Effective until July 1, 2020].

4 (a) A background check for employees or volunteers of child-serving entities shall consist of a fingerprinted
5 Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of
6 Investigation (FBI) as well as a Child Protection Registry check completed by the Department of Services for Children,
7 Youth and Their Families (DSCYF).

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

10 (1) “Administrator of educator preparation program” means the individual identified by the higher education
11 institution as being responsible for overseeing the placement of candidates into student teaching placements in a
12 Delaware public school.

13 (2) “Adult who is impaired” shall have the meaning as defined in § 3902 of this title.

14 (3) “Child Protection Registry” as used in this section, shall have the meaning as defined in § 921 of Title 16.

15 (4) “Child-serving entity” as used in this section shall mean:

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

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

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

- 22 d. Child-care providers as defined in § 342 of this title; or
23 e. Youth camps or summer schools that are exempt from child-care licensing requirements;
24 f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant
25 funds through the Delaware Department of Health and Social Services.

26 (5) “Contractor” means a person, not an employee, providing services within a child-serving entity and who:

- 27 a. Has regular direct access to children, or
28 b. Provides services directly to a child or children.

29 (6) “Conviction” or “convicted” shall have the same meaning as defined in § 902 of Title 16.

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

32 (8) “Elderly person” shall have the meaning as defined in § 222 of Title 11.

33 (9) “Employee” means any person seeking employment for compensation with a child-serving entity, or any
34 person who for any reason has regular direct access to children at a child-serving entity. This definition shall also
35 include applicants wishing to become adoptive, foster, or respite parents and their adult household members and any
36 person seeking a student teaching placement in a public school.

37 (10) “Felony convictions involving physical or sexual assault crimes” shall include: §§ 604-607, 612-613,
38 626, 629-636, 645, 651, 768-780, 782-783A, 785, 787, 802, 803, 1100A-1102, 1103A-1103B, 1105, 1108-1112B of
39 Title 11, felony convictions of § 1136 of Title 16, and felony convictions of § 3913(c) of Title 31.

40 (11) “Higher education institution” means a Delaware college or university that has a teacher preparation
41 program that places candidates into student teaching placements in a Delaware public school.

42 (12) “Misdemeanor convictions against children” shall include: §§601-603, 611, 621, 625-628A, 763, 764,
43 765, 766, 767, 781, 785, 1102, 1103, 1106, 1107 of Title 11 , and misdemeanor convictions of § 1136 of Title 16.

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

46 (14) “Public school” means any public school and includes any board of education, school district,
47 reorganized school district, special school district, charter school or charter school board and any person acting as an
48 agent thereof.

49 (15) “Student teacher” means an individual participating in a student teaching placement.

50 (16) “Student teaching placement” means a structured, supervised classroom teaching, internship, clinical or
51 field experience in a teacher education program in which the student teacher practices the skills being learned in the

52 teacher education program and gradually assumes increased responsibility for instruction, classroom management, and
53 other related duties for a class of students in a local school district or charter school. These skills are practiced under
54 the direct supervision of the certified teacher who has official responsibility for the class. Successful completion of a
55 student teaching placement may be used to meet the requirements for an initial license set forth in § 1210 of Title 14.

56 (17) "Volunteer" means a person providing volunteer services within a child-serving entity and who has
57 regular direct access to children.

58 (18) "Youth camp" means a child-serving entity having custody or control of 1 or more school-age children,
59 unattended by parent or guardian, for the purpose of providing a program of recreational, athletic, educational and/or
60 religious instruction or guidance and operates for up to 12 weeks for 3 or more hours per day, during the months of
61 May through September or some portion thereof, or during holiday breaks in the course of a school year and is
62 operated in a space or at a location other than a space or location subject to licensing pursuant to § 344 of this title.

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

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

74 (2) Any employer who is required to request a Child Protection Registry check under this section shall obtain
75 a statement signed by the prospective employee, volunteer, or contractor wherein the person authorizes a full release
76 for the employer to obtain the information provided pursuant to such a check. The DSCYF will process a Child
77 Protection Registry check of the individual upon receipt of the above-mentioned statement which shall be attached to
78 the request from the employer for the Child Protection Registry check.

79 (3) Notwithstanding paragraph (c)(1) of this section, private schools and youth camps may choose to perform
80 a name-based Delaware criminal background check for prospective employees, volunteers and contractors through the
81 Delaware Justice Information System (DELJIS) and an out-of-state criminal record check using private, third-party

82 providers of such checks, provided that any out-of-state criminal record check shall include a Social Security trace
83 search and county-based criminal record search in the counties in which the individual has resided within the past 10
84 years. Such check shall be valid for a 5-year period.

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

91 (5) Costs associated with obtaining said criminal history information and Child Protection Registry
92 information shall be borne by the applicant, except for those designated in paragraph (b)(4)d. of this section, whose
93 costs shall be borne by the State. Notwithstanding the foregoing, public schools may use funds other than state funds to
94 pay for criminal background check costs and may enter into consortia of school districts to pay such costs for persons
95 covered by this act who work in more than 1 school district during the course of a year.

96 (6) All employees, volunteers and contractors shall inform their employer of any criminal conviction or entry
97 on the Child Protection Registry which would lead to a prohibition pursuant to subsection (d) of this section.

98 (7) Child-serving entities may conditionally hire an employee or volunteer or place a child, pending the
99 determination of suitability for employment. If the information obtained from the background checks indicates that the
100 individual is prohibited from employment pursuant to subsection (d) of this section, the person may not continue in
101 employment and is subject to termination.

102 (8) Any persons or organization whose primary concern is that of child welfare and care, which is not
103 otherwise required to do so under the provisions of this section may voluntarily submit to the provisions of this
104 subchapter at such person's or organization's expense pursuant to procedures established by the Superintendent of
105 State Police.

106 (9) Notwithstanding any provision to the contrary, an employee, volunteer, or contractor may authorize a
107 child-serving entity to share with another child-serving entity designated by the employee, volunteer, or contractor, the
108 results of a background check required under this section only if such authorization is in writing and provided to the
109 Office of Child Care Licensing.

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

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

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

117 c. Any other convictions for a violent felony as defined in § 4201(c) of Title 11 not already included
118 within the convictions subject to a lifetime or 10 year prohibition under paragraphs (d)(1)a. and b. of this section
119 shall prohibit the individual for 7 years following the date of conviction, unless the felony is included within the
120 crimes that can lead to entry on the Child Protection Registry pursuant to § 923 of Title 16, in which case the
121 length of time for the prohibition shall be as provided in the Child Protection Registry regulations.

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

126 (2) If an individual has more than 1 prohibition, the higher level prohibition shall apply.

127 (3) For any other criminal conviction that does not prohibit employment according to paragraph (d)(1) of this
128 section, the child-serving entity may set forth job-related prohibitions for employees, contractors, and volunteers
129 considering number and types of offenses, their recency, the individual's criminal record since the offenses, and the
130 responsibilities of the position which the individual has obtained or is seeking to obtain, provided that such
131 prohibitions are not otherwise prohibited by law.

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

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

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

137 a. The SBI shall provide the criminal background information and DSCYF shall provide the Child
138 Protection Registry check information to the individual and the employing school or district, which shall
139 determine whether the individual is prohibited from being employed by the school or district, pursuant to

140 subsection (d) of this section. If the individual is not prohibited from employment by subsection (d) of this section
141 but the individual has a criminal conviction or is on the Child Protection Registry, the school or district shall make
142 a determination regarding suitability for employment using the factors in paragraph (d)(3) of this section.
143 Information obtained under this subsection is confidential and may only be disclosed to the chief school officer or
144 head of school and the chief personnel officer of the school and 1 person in each school who shall be designated to
145 assist in the processing of criminal background checks, receive training in confidentiality and be required to sign
146 an agreement to keep such information confidential.

147 b. Upon making its determination of suitability, the public school shall forward the determination to the
148 person seeking employment. If a determination is made to deny the person from employment based on the
149 criminal history of the person, the person shall have an opportunity to appeal to the chief school officer and/or
150 head of school or designee for reconsideration.

151 c. In the case of a student teacher:

152 1. The SBI shall provide the criminal background information and DSCYF shall provide the Child
153 Protection Registry check information to the individual and to the Higher Education Institution identified by
154 the individual, through the Administrator of Educator Preparation Program. The Higher Education Institution
155 shall determine whether the individual is prohibited from being employed pursuant to subsection (d) of this
156 section and shall send a copy of the complete criminal background check and Child Protection Registry check
157 information to the district superintendent or charter school director of the Delaware school district or charter
158 school considering the person as a candidate for a student teaching position. If the individual is not prohibited
159 from employment by subsection (d) of this section but the individual has a criminal conviction or is or has
160 been on the Child Protection Registry, the school or district shall make a determination regarding suitability
161 for employment using the factors in paragraph (d)(3) of this section. Information obtained under this
162 subsection is confidential and may only be disclosed to the chief school officer or head of school and the chief
163 personnel officer of the school, and 1 person in each school who shall be designated to assist in the processing
164 of criminal background checks, receive training in confidentiality and be required to sign an agreement to
165 keep such information confidential.

166 2. Upon making its determination of suitability, the public school shall forward the determination to
167 the administrator of educator preparation program of the designated higher education institution.

168 (2) Where the child-serving entity is DSCYF, a residential child-care facility under contract to or operated
169 directly by DSCYF, or where the individual is applying to become an adoptive, foster or respite parent, SBI shall

170 provide the criminal background information to DSCYF and DSCYF shall perform the Child Protection Registry
171 check. DSCYF shall determine whether or not the individual is prohibited based on the results of the criminal
172 background and Child Protection Registry checks. DSCYF may, by regulation, set forth criteria for unsuitability for its
173 employees, contractors, volunteers, residential child-care employees, individuals applying to become an adoptive,
174 foster or respite parent. These criteria shall relate to criminal history information and other information in addition to
175 that set forth above. Such criteria and information shall be reasonably related to the prevention of child abuse. Upon
176 making its determination, the DSCYF shall forward the determination to the applicant and the employer. Any adverse
177 judgment affecting the applicant may be reviewed subject to regulations promulgated by DSCYF. The State Bureau of
178 Identification may release all subsequent criminal history to DSCYF.

179 (3) Where the child-serving entity is a child-care provider, facility receiving Federal Child Care Development
180 Block Grant funds, or a Youth Camp, SBI shall provide the criminal background information to DSCYF, and DSCYF
181 shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited
182 by subsection (d) of this section based on the results of the criminal background and Child Protection Registry checks.
183 If the applicant has a criminal conviction or is on the Child Protection Registry but is not prohibited from employment
184 pursuant to paragraph (d)(1) of this section, DSCYF will assess the background check information and make a
185 determination of suitability based upon factors set forth by DSCYF regulation consistent with paragraph (d)(3) of this
186 section. If an applicant is determined unsuitable by DSCYF, the employer shall be informed. The employer shall make
187 the final determination of whether or not to employ the individual. Notwithstanding the above, if the employer is a
188 family child-care provider, DSCYF shall make the final decision based on the criteria established by regulations. If an
189 applicant is determined unsuitable by DSCYF, the applicant and employer shall be informed. Any adverse judgment
190 affecting the applicant shall be reviewed subject to regulations promulgated by the DSCYF. SBI may release all
191 subsequent criminal history to DSCYF.

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

199 (f) The DSCYF shall, in the manner provided by law, promulgate regulations necessary to implement this section.

200 (g) The State Department of Education shall, in the manner provided by law, promulgate regulations necessary to
201 implement this section. These regulations shall include:

202 (1) Establishment, in conjunction with SBI, of a procedure for fingerprinting persons seeking employment
203 with a public school and providing the reports and certificate obtained pursuant to subsection (c) of this section;

204 (2) Establishment of a procedure to provide confidentiality of information obtained pursuant to subsection (c)
205 of this section.

206 (3) Establishment of a procedure for determining other job-related prohibitions for employees, volunteers and
207 contractors, pursuant to paragraph (d)(3) of this section.

208 (4) Establishment of a procedure to allow employees, volunteers, and contractors to authorize a child-serving
209 entity to provide another child-serving entity designed by the employee, volunteer, or contractor the results of a
210 background check required under this section.

211 § 309 Background checks for child-serving entities [Effective July 1, 2020].

212 (a) A background check for employees or volunteers of child-serving entities shall consist of a fingerprinted
213 Delaware and national background check completed by the State Bureau of Identification (SBI) and the Federal Bureau of
214 Investigation (FBI) as well as a Child Protection Registry check completed by the Department of Services for Children,
215 Youth and Their Families (DSCYF).

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

218 (1) “Administrator of educator preparation program” means the individual identified by the higher education
219 institution as being responsible for overseeing the placement of candidates into student teaching placements in a
220 Delaware public school.

221 (2) “Adult who is impaired” shall have the meaning as defined in § 3902 of this title.

222 (3) “Child Protection Registry” as used in this section, shall have the meaning as defined in § 921 of Title 16.

223 (4) “Child-serving entity” as used in this section shall mean:

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

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

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

230 d. Child-care providers as defined in § 3002A of Title 14; or
231 e. Youth camps or summer schools that are exempt from child-care licensing requirements;
232 f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant
233 funds through the Delaware Department of Health and Social Services.

234 (5) “Contractor” means a person, not an employee, providing services within a child-serving entity and who:

235 a. Has regular direct access to children, or

236 b. Provides services directly to a child or children.

237 (6) “Conviction” or “convicted” shall have the same meaning as defined in § 902 of Title 16.

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

240 (8) “Elderly person” shall have the meaning as defined in § 222 of Title 11.

241 (9) “Employee” means any person seeking employment for compensation with a child-serving entity, or any
242 person who for any reason has regular direct access to children at a child-serving entity. This definition shall also
243 include applicants wishing to become adoptive, foster, or respite parents and their adult household members and any
244 person seeking a student teaching placement in a public school.

245 (10) “Felony convictions involving physical or sexual assault crimes” shall include: §§ 604-607, 612-613,
246 626, 629-636, 645, 651, 768-780, 782-783A, 785, 787, 802, 803, 1100A-1102, 1103A-1103B, 1105, 1108-1112B of
247 Title 11, felony convictions of § 1136 of Title 16, and felony convictions of § 3913(c) of Title 31.

248 (11) “Higher education institution” means a Delaware college or university that has a teacher preparation
249 program that places candidates into student teaching placements in a Delaware public school.

250 (12) “Misdemeanor convictions against children” shall include: §§601-603, 611, 621, 625-628A, 763, 764,
251 765, 766, 767, 781, 785, 1102, 1103, 1106, 1107 of Title 11 , and misdemeanor convictions of § 1136 of Title 16.

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

254 (14) “Public school” means any public school and includes any board of education, school district,
255 reorganized school district, special school district, charter school or charter school board and any person acting as an
256 agent thereof.

257 (15) “Student teacher” means an individual participating in a student teaching placement.

258 (16) “Student teaching placement” means a structured, supervised classroom teaching, internship, clinical or
259 field experience in a teacher education program in which the student teacher practices the skills being learned in the

260 teacher education program and gradually assumes increased responsibility for instruction, classroom management, and
261 other related duties for a class of students in a local school district or charter school. These skills are practiced under
262 the direct supervision of the certified teacher who has official responsibility for the class. Successful completion of a
263 student teaching placement may be used to meet the requirements for an initial license set forth in § 1210 of Title 14.

264 (17) "Volunteer" means a person providing volunteer services within a child-serving entity and who has
265 regular direct access to children.

266 (18) "Youth camp" means a child-serving entity having custody or control of 1 or more school-age children,
267 unattended by parent or guardian, for the purpose of providing a program of recreational, athletic, educational and/or
268 religious instruction or guidance and operates for up to 12 weeks for 3 or more hours per day, during the months of
269 May through September or some portion thereof, or during holiday breaks in the course of a school year and is
270 operated in a space or at a location other than a space or location subject to licensing pursuant to § 3004A of Title 14.

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

273 (1) The SBI shall furnish information pertaining to the identification and criminal history record of
274 prospective employees, volunteers and contractors of child-serving entities, except as otherwise allowed or required,
275 provided that the prospective employee, volunteer or contractor submits to a reasonable procedure established by
276 standards set forth by the Superintendent of State Police to identify the person whose record is sought. Such procedure
277 shall include the fingerprinting of the prospective employee, and the provision of such other information as may be
278 necessary to obtain a report of the person's entire criminal history record from SBI and a report of the person's entire
279 federal criminal history record pursuant to the FBI appropriation of Title II of Public Law 92-544. Notwithstanding any
280 provision to the contrary, the information to be furnished by SBI shall include child sex abuser information. The
281 Division of State Police shall be the intermediary for purposes of this section.

282 (2) Any employer who is required to request a Child Protection Registry check under this section shall obtain
283 a statement signed by the prospective employee, volunteer, or contractor wherein the person authorizes a full release
284 for the employer to obtain the information provided pursuant to such a check. The DSCYF will process a Child
285 Protection Registry check of the individual upon receipt of the above-mentioned statement which shall be attached to
286 the request from the employer for the Child Protection Registry check.

287 (3) Notwithstanding paragraph (c)(1) of this section, private schools and youth camps may choose to perform
288 a name-based Delaware criminal background check for prospective employees, volunteers and contractors through the
289 Delaware Justice Information System (DELJIS) and an out-of-state criminal record check using private, third-party

290 providers of such checks, provided that any out-of-state criminal record check shall include a Social Security trace
291 search and county-based criminal record search in the counties in which the individual has resided within the past 10
292 years. Such check shall be valid for a 5-year period.

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

299 (5) Costs associated with obtaining said criminal history information and Child Protection Registry
300 information shall be borne by the applicant, except for those designated in paragraph (b)(4)d. of this section, whose
301 costs shall be borne by the State. Notwithstanding the foregoing, public schools may use funds other than state funds to
302 pay for criminal background check costs and may enter into consortia of school districts to pay such costs for persons
303 covered by this act who work in more than 1 school district during the course of a year.

304 (6) All employees, volunteers and contractors shall inform their employer of any criminal conviction or entry
305 on the Child Protection Registry which would lead to a prohibition pursuant to subsection (d) of this section.

306 (7) Child-serving entities may conditionally hire an employee or volunteer or place a child, pending the
307 determination of suitability for employment. If the information obtained from the background checks indicates that the
308 individual is prohibited from employment pursuant to subsection (d) of this section, the person may not continue in
309 employment and is subject to termination.

310 (8) Any persons or organization whose primary concern is that of child welfare and care, which is not
311 otherwise required to do so under the provisions of this section may voluntarily submit to the provisions of this
312 subchapter at such person's or organization's expense pursuant to procedures established by the Superintendent of
313 State Police.

314 (9) Notwithstanding any provision to the contrary, an employee, volunteer, or contractor may authorize a
315 child-serving entity to share with another child-serving entity designated by the employee, volunteer, or contractor, the
316 results of a background check required under this section only if such authorization is in writing and provided to the
317 Office of Child Care Licensing.

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

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

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

325 c. Any other convictions for a violent felony as defined in § 4201(c) of Title 11 not already included
326 within the convictions subject to a lifetime or 10 year prohibition under paragraphs (d)(1)a. and b. of this section
327 shall prohibit the individual for 7 years following the date of conviction, unless the felony is included within the
328 crimes that can lead to entry on the Child Protection Registry pursuant to § 923 of Title 16, in which case the
329 length of time for the prohibition shall be as provided in the Child Protection Registry regulations.

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

334 (2) If an individual has more than 1 prohibition, the higher level prohibition shall apply.

335 (3) For any other criminal conviction that does not prohibit employment according to paragraph (d)(1) of this
336 section, the child-serving entity may set forth job-related prohibitions for employees, contractors, and volunteers
337 considering number and types of offenses, their recency, the individual's criminal record since the offenses, and the
338 responsibilities of the position which the individual has obtained or is seeking to obtain, provided that such
339 prohibitions are not otherwise prohibited by law.

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

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

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

345 a. The SBI shall provide the criminal background information and DSCYF shall provide the Child
346 Protection Registry check information to the individual and the employing school or district, which shall
347 determine whether the individual is prohibited from being employed by the school or district, pursuant to

348 subsection (d) of this section. If the individual is not prohibited from employment by subsection (d) of this section
349 but the individual has a criminal conviction or is on the Child Protection Registry, the school or district shall make
350 a determination regarding suitability for employment using the factors in paragraph (d)(3) of this section.
351 Information obtained under this subsection is confidential and may only be disclosed to the chief school officer or
352 head of school and the chief personnel officer of the school and 1 person in each school who shall be designated to
353 assist in the processing of criminal background checks, receive training in confidentiality and be required to sign
354 an agreement to keep such information confidential.

355 b. Upon making its determination of suitability, the public school shall forward the determination to the
356 person seeking employment. If a determination is made to deny the person from employment based on the
357 criminal history of the person, the person shall have an opportunity to appeal to the chief school officer and/or
358 head of school or designee for reconsideration.

359 c. In the case of a student teacher:

360 1. The SBI shall provide the criminal background information and DSCYF shall provide the Child
361 Protection Registry check information to the individual and to the Higher Education Institution identified by
362 the individual, through the Administrator of Educator Preparation Program. The Higher Education Institution
363 shall determine whether the individual is prohibited from being employed pursuant to subsection (d) of this
364 section and shall send a copy of the complete criminal background check and Child Protection Registry check
365 information to the district superintendent or charter school director of the Delaware school district or charter
366 school considering the person as a candidate for a student teaching position. If the individual is not prohibited
367 from employment by subsection (d) of this section but the individual has a criminal conviction or is or has
368 been on the Child Protection Registry, the school or district shall make a determination regarding suitability
369 for employment using the factors in paragraph (d)(3) of this section. Information obtained under this
370 subsection is confidential and may only be disclosed to the chief school officer or head of school and the chief
371 personnel officer of the school, and 1 person in each school who shall be designated to assist in the processing
372 of criminal background checks, receive training in confidentiality and be required to sign an agreement to
373 keep such information confidential.

374 2. Upon making its determination of suitability, the public school shall forward the determination to
375 the administrator of educator preparation program of the designated higher education institution.

376 (2) Where the child-serving entity is DSCYF, a residential child-care facility under contract to or operated
377 directly by DSCYF, or where the individual is applying to become an adoptive, foster or respite parent, SBI shall

378 provide the criminal background information to DSCYF and DSCYF shall perform the Child Protection Registry
379 check. DSCYF shall determine whether or not the individual is prohibited based on the results of the criminal
380 background and Child Protection Registry checks. DSCYF may, by regulation, set forth criteria for unsuitability for its
381 employees, contractors, volunteers, residential child-care employees, individuals applying to become an adoptive,
382 foster or respite parent. These criteria shall relate to criminal history information and other information in addition to
383 that set forth above. Such criteria and information shall be reasonably related to the prevention of child abuse. Upon
384 making its determination, the DSCYF shall forward the determination to the applicant and the employer. Any adverse
385 judgment affecting the applicant may be reviewed subject to regulations promulgated by DSCYF. The State Bureau of
386 Identification may release all subsequent criminal history to DSCYF.

387 (3) Where the child-serving entity is a child-care provider, facility receiving Federal Child Care Development
388 Block Grant funds, or a Youth Camp, SBI shall provide the criminal background information to DSCYF, and DSCYF
389 shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited
390 by subsection (d) of this section based on the results of the criminal background and Child Protection Registry checks.
391 If the applicant has a criminal conviction or is on the Child Protection Registry but is not prohibited from employment
392 pursuant to paragraph (d)(1) of this section, DSCYF will assess the background check information and make a
393 determination of suitability based upon factors set forth by DSCYF regulation consistent with paragraph (d)(3) of this
394 section. If an applicant is determined unsuitable by DSCYF, the employer shall be informed. The employer shall make
395 the final determination of whether or not to employ the individual. Notwithstanding the above, if the employer is a
396 family child-care provider, DSCYF shall make the final decision based on the criteria established by regulations. If an
397 applicant is determined unsuitable by DSCYF, the applicant and employer shall be informed. Any adverse judgment
398 affecting the applicant shall be reviewed subject to regulations promulgated by the DSCYF. SBI may release all
399 subsequent criminal history to DSCYF.

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

407 (f) The DSCYF shall, in the manner provided by law, promulgate regulations necessary to implement this section.

408 (g) The State Department of Education shall, in the manner provided by law, promulgate regulations necessary to
409 implement this section. These regulations shall include:

410 (1) Establishment, in conjunction with SBI, of a procedure for fingerprinting persons seeking employment
411 with a public school and providing the reports and certificate obtained pursuant to subsection (c) of this section;

412 (2) Establishment of a procedure to provide confidentiality of information obtained pursuant to subsection (c)
413 of this section.

414 (3) Establishment of a procedure for determining other job-related prohibitions for employees, volunteers and
415 contractors, pursuant to paragraph (d)(3) of this section.

416 (4) Establishment of a procedure to allow employees, volunteers, and contractors to authorize a child-serving
417 entity to provide another child-serving entity designed by the employee, volunteer, or contractor the results of a
418 background check required under this section.

SYNOPSIS

This bill addresses an on-going problem relating to background checks for employees, volunteers, and contractors of child-serving entities. Currently, a person working a child-serving entity who obtains the required background check must undergo another background check when that person obtains employment at another child-serving entity even if that background check had recently been completed. This put an undue burden on the employee and the State Bureau of Identification who run the background checks. This bill would allow an employee, volunteer, or contractor who is required to obtain a background check to authorize a child-serving entity to share the results of a background check with another child-serving entity so long as the authorization is in writing and provided to the Office of Child Care Licensing. This bill also requires the Department of Education to establish a procedure to allow employees, volunteers and contractors to authorize the sharing of background checks between child-serving entities.