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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 204

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO BACKGROUND CHECKS AND
SUBSEQUENT CRIMINAL HISTORIES FOR POTENTIAL OR CURRENT EMPLOYEES OF CHILD SERVING
ENTITIES.

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

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

3 § 309. Background checks for child-serving entities.

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 all of the following:

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

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

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

- 22 d. Child-care providers as defined in § 3002A of Title 14; ~~or 14.~~
- 23 e. Youth camps or summer schools that are exempt from child-care licensing ~~requirements; 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 children.~~
- 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,~~ 803, 1100A-1102, 1103A-1103B, 1105,
- 39 1108-1112B of 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 § 3004A of Title 14.

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. A private school and a youth camp directly operated by a private
85 school may elect to request the identification and criminal history record, including an entire federal criminal history
86 and record, and a Child Protection Registry check, as provided for in paragraphs (c)(1) and (c)(2) of this section, for
87 current or prospective employees, volunteers and contractors pursuant to the Adam Walsh Child Protection and Safety
88 Act of 2006 (Public Law 109-248). All requests under this paragraph must be fingerprint-based. The Superintendent of
89 State Police is authorized to develop rules and procedures, including user agreements and consent forms, which entities
90 requesting records must follow and complete in order to obtain the records identified in paragraph (c)(1) and (c)(2) of
91 this section.

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

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

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

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

109 (8) Any persons or organization whose primary concern is that of child welfare and care, which is not
110 otherwise required to do so under the provisions of this section may voluntarily submit to the provisions of this

111 subchapter at such person's or organization's expense pursuant to procedures established by the Superintendent of
112 State Police.

113 (9) The Superintendent of State Police is authorized to promulgate regulations governing the circumstances
114 under which a background check may be re-used upon the written authorization of the individual upon whom a
115 background check was conducted. The regulations permitting re-use must be limited in scope and address the
116 relationship between the original purpose for which the background check was requested, the agency or agencies
117 requesting re-use, the type of license, position of employment or benefit upon which use and re-use is predicated and
118 the application process.

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

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

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

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

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

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

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

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

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

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

146 a. The SBI shall provide the criminal background information and DSCYF shall provide the Child
147 Protection Registry check information to the individual and the employing school, ~~or district,~~ or the Department of
148 Education which shall determine whether the individual is prohibited from being employed by the school, ~~or~~
149 district, or the Department of Education pursuant to subsection (d) of this section. If the individual is not
150 prohibited from employment by subsection (d) of this section but the individual has a criminal conviction or is on
151 the Child Protection Registry, the school, ~~or district,~~ or the Department of Education shall make a determination
152 regarding suitability for employment using the factors in paragraph (d)(3) of this section. Information obtained
153 under this subsection is confidential and may only be disclosed to the chief school officer ~~or head of school~~ and
154 the chief personnel officer of the school and 1 person in each school who shall be designated to assist in the
155 processing of criminal background checks, receive training in confidentiality and be required to sign an agreement
156 to keep such information confidential.

157 b. Upon making its determination of suitability, the ~~public~~ school, district or the Department of
158 Education shall forward the determination to the person seeking employment. If a determination is made to deny
159 the person from employment based on the criminal history of the person, the person shall have an opportunity to
160 appeal to the chief school officer ~~and/or head of school~~ or designee for reconsideration.

161 c. In the case of a student teacher:

162 1. The SBI shall provide the criminal background information and DSCYF shall provide the Child
163 Protection Registry check information to the individual and to the Higher Education Institution identified by
164 the individual, through the Administrator of Educator Preparation Program. The Higher Education Institution
165 shall determine whether the individual is prohibited from being employed pursuant to subsection (d) of this
166 section and shall send a copy of the complete criminal background check and Child Protection Registry check
167 information to the district superintendent or charter school director of the Delaware school district or charter
168 school considering the person as a candidate for a student teaching position. If the individual is not prohibited
169 from employment by subsection (d) of this section but the individual has a criminal conviction or is or has
170 been on the Child Protection Registry, the school or district shall make a determination regarding suitability

171 for employment using the factors in paragraph (d)(3) of this section. Information obtained under this
172 subsection is confidential and may only be disclosed to the chief school officer or head of school and the chief
173 personnel officer of the school, and 1 person in each school who shall be designated to assist in the processing
174 of criminal background checks, receive training in confidentiality and be required to sign an agreement to
175 keep such information confidential.

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

178 d. The SBI and the DELJIS shall continue to provide all subsequent Delaware criminal history of the
179 individual as it becomes available to those designated to receive the original criminal background information
180 under subsection (e)(1) of this section and the Department of Education. If the “Rap Back System” as defined by §
181 8502(13) of Title 11 is available to the SBI, it shall provide all subsequent criminal history record information
182 available through the Rap Back System.

183 (2) Where the child-serving entity is DSCYF, a residential child-care facility under contract to or operated
184 directly by DSCYF, or where the individual is applying to become an adoptive, foster or respite parent, SBI shall
185 provide the criminal background information to DSCYF and DSCYF shall perform the Child Protection Registry
186 check. DSCYF shall determine whether or not the individual is prohibited based on the results of the criminal
187 background and Child Protection Registry checks. DSCYF may, by regulation, set forth criteria for unsuitability for its
188 employees, contractors, volunteers, residential child-care employees, individuals applying to become an adoptive,
189 foster or respite parent. These criteria shall relate to criminal history information and other information in addition to
190 that set forth above. Such criteria and information shall be reasonably related to the prevention of child abuse. Upon
191 making its determination, the DSCYF shall forward the determination to the applicant and the employer. Any adverse
192 judgment affecting the applicant may be reviewed subject to regulations promulgated by DSCYF. ~~The State Bureau of~~
193 ~~Identification may release all subsequent criminal history to DSCYF.~~ The SBI and the DELJIS shall continue to
194 provide all subsequent Delaware criminal history of the individual as it becomes available to DSCYF. If the “Rap Back
195 System” as defined by § 8502(13) of Title 11 is available to the SBI, it shall provide all subsequent criminal history
196 record information available through the Rap Back System.

197 (3) Where the child-serving entity is a child-care provider, facility receiving Federal Child Care Development
198 Block Grant funds, or a Youth Camp, SBI shall provide the criminal background information to DSCYF, and DSCYF
199 shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited
200 by subsection (d) of this section based on the results of the criminal background and Child Protection Registry checks.

201 If the applicant has a criminal conviction or is on the Child Protection Registry but is not prohibited from employment
202 pursuant to paragraph (d)(1) of this section, DSCYF will assess the background check information and make a
203 determination of suitability based upon factors set forth by DSCYF regulation consistent with paragraph (d)(3) of this
204 section. If an applicant is determined unsuitable by DSCYF, the employer shall be informed. The employer shall make
205 the final determination of whether or not to employ the individual. Notwithstanding the above, if the employer is a
206 family child-care provider, DSCYF shall make the final decision based on the criteria established by regulations. If an
207 applicant is determined unsuitable by DSCYF, the applicant and employer shall be informed. Any adverse judgment
208 affecting the applicant shall be reviewed subject to regulations promulgated by the DSCYF. ~~SBI may release all~~
209 ~~subsequent criminal history to DSCYF.~~ The SBI and the DELJIS shall continue to provide all subsequent Delaware
210 criminal history of the individual as it becomes available to DSCYF. If the “Rap Back System” as defined by §
211 8502(13) of Title 11 is available to the SBI, it shall provide all subsequent criminal history record information
212 available through the Rap Back System.

213 (4) Where the child-serving entity is a private school or youth camp that chooses to perform background
214 checks ~~using the method~~ using either of the methods permitted in paragraph (c)(3) of this section, DELJIS shall
215 perform a name-based criminal check based on the identifying information provided by the private school or youth
216 ~~camp.~~ camp, or the SBI shall perform a finger-print based criminal history record check under paragraph (c)(1) of this
217 section. If the individual is found to have a criminal background that would make them prohibited for employment,
218 DELJIS or the SBI shall so inform the employer. If the individual's background would not make them prohibited from
219 employment, then DELJIS or the SBI shall forward the information to DSCYF, which shall perform a check of the
220 Child Protection Registry. DSCYF shall determine whether or not the individual is prohibited based on the results of
221 the Child Protection Registry check. The SBI, the DELJIS and the DSCYF shall continue to provide all subsequent
222 Delaware criminal history of the individual as it becomes available to those designated to receive the original criminal
223 background information under subsection (e)(1) of this section. If the “Rap Back System” as defined by § 8502(13) of
224 Title 11 is available to the SBI, it shall provide all subsequent criminal history record information available through the
225 Rap Back System.

SYNOPSIS

This Act provides a means by which private schools and youth camps operated by private schools can obtain criminal background checks for potential employees and volunteers under the auspices of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248) and authorizes the SBI and DELJIS to provide Delaware criminal history information subsequent to the original background check without the requirement of a new criminal background check. When the federal “rap back system” becomes available, the SBI may provide subsequent federal criminal history information for individuals who have had a background check performed. This Act also authorizes the Superintendent of State Police to promulgate regulations that would permit, in limited circumstances, re-use of a criminal background check.

This Act also clarifies that the Department of Education is a child serving entity and its employees are obligated to undergo background checks

This Act also makes minor stylistic changes and changes to make the current law conform to the Legislative Drafting Manual. .