



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

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

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 and applicability.

5 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 (1) Individuals who must submit to a criminal background check include all of the following:

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

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

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

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

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

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

22 (2) Definitions.

23 As used in this subchapter:

24 a. "Child Protection Registry" means as defined under § 921 of Title 16.

25 b. "Conviction" or "convicted" means as defined under § 902 of Title 16.

26 c. "DELJIS" means the Delaware Criminal Justice Information System.

27 d. "Department" means the Department of Health and Social Services.

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

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

33 1. Conviction of the following offenses require lifetime disqualification:

34 A. Felony conviction of a crime against a child.

35 B. Any conviction of a crime constituting a felony sexual offense.

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

37 D. Any conviction of a crime constituting a felony homicide.

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

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

46 4. The Department may promulgate regulations to specify specific offenses that shall constitute
47 disqualifying convictions under this subchapter.

48 g. "DSCYF" means the Department of Services for Children, Youth and Their Families.

49 h. "FBI" means the Federal Bureau of Investigation.

50 i. "SBI" means the State Bureau of Identification.

j. 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.

(3) 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.

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

(2) The employer shall obtain a statement signed by the prospective employee, contractor, or volunteer of the Department in which the individual authorizes a full release in order for the employer to obtain information pertaining to the identification and criminal history record of the prospective employee, contractor or volunteer. The release shall remain effective for the duration of the individual's employment and shall authorize the employer to obtain subsequent background checks as necessary. DSCYF shall process a Child Protection Registry check of the individual upon receipt of the release required by this section that must be attached to the request from the employer for the Child Protection Registry check. All employees, contractors, and volunteers must inform their employer of any disqualifying criminal conviction or entry on the Child Protection Registry.

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

(4) An employer may not employ an employee, contractor, or volunteer for work with the Department, if that individual will visit children in their homes and in the community or have regular, direct access to children or adolescents under the age of 18, before obtaining a criminal history. The criminal history of any individual not

81 employed directly by the Department must be provided to the Department upon the individual's commencement of
82 work. The Department shall have the right to review every background check obtained under this subchapter and make
83 its own determination of the individual's qualification for employment. If the Department determines that an individual
84 is disqualified for employment under § 7998(2)(f) of this subchapter, the individual may not continue in employment.

85 (5) An employer may conditionally hire an employee, contractor or volunteer covered by this subchapter who
86 has been fingerprinted and who has complied with § 7999(2) of this title pending the determination of suitability for
87 employment. An employer may not employ or continue to employ an individual with a conviction deemed
88 disqualifying under this subchapter or Department regulations developed in accordance with this subchapter. Subject
89 to the Department's right to review every background check obtained under this subchapter, each employer is
90 responsible for making the determination of suitability for employment. An individual who is determined to be
91 disqualified shall have no right to reconsideration of the determination.

92 (6) Costs associated with obtaining criminal history information and Child Protection Registry information
93 shall be borne by the employee, contractor, or volunteer or prospective employee, contractor, or volunteer.

94 (7) Upon the Department's request, DELJIS and the SBI may send subsequent criminal history for an
95 employee, contractor, or volunteer of the Department to a Department staff person designated by a Memorandum of
96 Understanding between the SBI, the Department and the DELJIS, to be used by the Department in making a
97 determination about the individual's continued suitability as an employee, contractor or volunteer. If the "Rap Back
98 System" as defined by § 8502(13) of Title 11 is available to SBI, it shall provide all subsequent criminal history record
99 information available through the Rap Back System.

100 (8) The Department shall promulgate regulations to implement this subchapter and may develop rules or
101 procedures governing the authorization of a child-serving entity to provide the Department with the results of a
102 background check required under this subchapter at the request of a current or potential employee, volunteer or
103 contractor.

104 Section 2: This Act takes effect upon enactment and is implemented not less than 12 months following the
105 publication in the Register of Regulations of final regulations promulgated by the Department to implement this subchapter.

SYNOPSIS

This bill requires criminal background checks for any current or prospective employee, contractor, and volunteer of the Division of Health and Social Services 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.