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HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
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 and other organizations.

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

8 (b) Definitions. — For purposes of this section:

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

12 (13) “Misdemeanor convictions against children” shall include: §§601-603, 611, 621, 625-628A, 763, 764,
13 765, 766, 767, 781, 785, 1102, 1103, 1106, 1107 of ~~Title 11~~, Title 11 and misdemeanor convictions of § 1136 of Title
14 16.

15 (c) ~~Except as provided in paragraph (c)(4) of this section, all~~ All child-serving entities are required to obtain
16 criminal and Child Protection Registry checks for prospective employees, volunteers, and contractors. Members of school
17 boards must obtain criminal and Child Protection Registry checks under § 209 or § 511 of Title 14.

(1) The SBI shall furnish information pertaining to the identification and criminal history record of prospective employees, volunteers, and contractors of child-serving entities, and members of school boards, except as otherwise allowed or required, provided that the prospective board member, employee, volunteer, or contractor submits to a reasonable procedure established by standards set forth by the Superintendent of State Police to identify the person whose record is sought. This procedure must include the fingerprinting of the individual subject to a criminal background check and the provision of such other information as may be necessary to obtain a report of the individual's entire criminal history record from SBI and a report of the individual's entire federal criminal history record under the FBI appropriation of Title II of Public Law 92-544. Notwithstanding any provision to the contrary, the information to be furnished by SBI shall include child sex abuser information. The Division of State Police shall be the intermediary for purposes of this section.

(2) Any person who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the prospective board member, employee, volunteer, or contractor wherein the individual authorizes a full release for the person to obtain the information provided as a result of a check. The DSCYF will process a Child Protection Registry check of the individual upon receipt of the signed statement which shall be attached to the request from the person for the Child Protection Registry check.

~~(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. [Repealed.]~~

~~(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. [Repealed.]~~

(5) Costs associated with obtaining said criminal history information and Child Protection Registry information are borne by the applicant, except for applicants designated in paragraph (b)(4)d. of this section, whose costs are borne by the State. Notwithstanding the foregoing:

a. Public schools may use funds other than state funds to pay for criminal background check costs and may enter into consortia of school districts to pay such costs for persons covered by this section who work in more than 1 school district during the course of a year.

b. A candidate for election to a school board may use campaign funds to pay for background check costs under § 1075 of Title 14.

c. The Department of Education may pay for criminal background check costs for its prospective employees.

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

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

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

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

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

(1) Where the child-serving entity is a public or private school, a contractor with a school ~~district~~ district, or the Department of Education, or an employee of a contractor who is an early intervention service provider:

a. 1. The SBI shall provide the criminal background information and DSCYF shall provide the Child Protection Registry check information to the individual and the ~~employing or contracting school or school district~~ employer or prospective employer ~~or if applicable, a contractor employing the individual.~~

2. The school, school district, Department of Education, or employing contractor shall determine whether the individual is prohibited from being employed by or contracting with the school, school district, or contractor under subsection (d) of this section. If the individual is not prohibited from employment by subsection (d) of this section but the individual has a criminal conviction or is on the Child Protection Registry, the school or district shall make a determination regarding suitability for employment or contracting using the factors in paragraph (d)(3) of this section.

3. Information obtained under this subsection is confidential and may only be disclosed to any of the following, as applicable:

A. The chief school officer.

B. The head of school.

C. The employing contractor.

D. The chief personnel officer of the school or school district.

E. One person in each school or school district who is designated to assist in the processing of criminal background checks, receive training in confidentiality, and is required to sign an agreement to keep such information confidential.

F. The Secretary of Education, or the Secretary's designee.

b. Upon making its determination of suitability, the ~~public school~~ school, contractor, or Department of Education shall forward the determination to the person seeking employment or a contract. If a determination is made to deny the person employment or a contract with a school or the Department of Education based on the criminal history of the person, the person shall have an opportunity to appeal to the chief school ~~officer or officer,~~ head of ~~school~~ school, Secretary of Education, or designee for reconsideration.

c. In the case of a student teacher:

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

107 been on the Child Protection Registry, the school or district shall make a determination regarding suitability
108 for employment using the factors in paragraph (d)(3) of this section. Information obtained under this
109 subsection is confidential and may only be disclosed to the chief school officer or head of school and the chief
110 personnel officer of the school, and 1 person in each school who shall be designated to assist in the processing
111 of criminal background checks, receive training in confidentiality and be required to sign an agreement to
112 keep such information confidential.

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

115 (2) Where the child-serving entity is DSCYF, a residential child-care facility under contract to or operated
116 directly by DSCYF, or where the individual is applying to become an adoptive, foster or respite parent, SBI shall
117 provide the criminal background information to DSCYF and DSCYF shall perform the Child Protection Registry
118 check. DSCYF shall determine whether or not the individual is prohibited based on the results of the criminal
119 background and Child Protection Registry checks. DSCYF may, by regulation, set forth criteria for unsuitability for its
120 employees, contractors, volunteers, residential child-care employees, individuals applying to become an adoptive,
121 foster or respite parent. These criteria shall relate to criminal history information and other information in addition to
122 that set forth above. Such criteria and information shall be reasonably related to the prevention of child abuse. Upon
123 making its determination, the DSCYF shall forward the determination to the applicant and the employer. Any adverse
124 judgment affecting the applicant may be reviewed subject to regulations promulgated by DSCYF. The State Bureau of
125 Identification may release all subsequent criminal history to DSCYF.

126 (3) Where the child-serving entity is a child-care provider, facility receiving Federal Child Care Development
127 Block Grant funds, or a Youth Camp, SBI shall provide the criminal background information to DSCYF, and DSCYF
128 shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited
129 by subsection (d) of this section based on the results of the criminal background and Child Protection Registry checks.
130 If the applicant has a criminal conviction or is on the Child Protection Registry but is not prohibited from employment
131 pursuant to paragraph (d)(1) of this section, DSCYF will assess the background check information and make a
132 determination of suitability based upon factors set forth by DSCYF regulation consistent with paragraph (d)(3) of this
133 section. If an applicant is determined unsuitable by DSCYF, the employer shall be informed. The employer shall make
134 the final determination of whether or not to employ the individual. Notwithstanding the above, if the employer is a
135 family child-care provider, DSCYF shall make the final decision based on the criteria established by regulations. If an
136 applicant is determined unsuitable by DSCYF, the applicant and employer shall be informed. Any adverse judgment

affecting the applicant shall be reviewed subject to regulations promulgated by the DSCYF. SBI may release all subsequent criminal history to DSCYF.

~~(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. [Repealed.]~~

(5) a. When the background checks are for a member of a school board, the SBI shall provide the criminal background information and DSCYF shall provide the Child Protection Registry check information pertaining to members and prospective members within 15 days of a request under subsection (c) of this section as follows:

1. To the Governor, for an individual seeking appointment to or serving on the State Board of Education or a vocational-technical school district.

2. To the Commissioner of Elections, for an individual seeking to be a candidate for election to a school board.

3. To the superintendent of a school district, for an individual serving as a member of the school district board.

4. To the board of a charter school, for an individual seeking to serve or serving on the charter school board.

b. Information provided under paragraph (e)(5)a. of this section is confidential and is not a public record under Chapter 100 of Title 29.

(6) The SBI and DELJIS shall continue to provide all subsequent Delaware criminal history of any individual subject to a background check under this section to the entity designated to receive the original criminal history information under paragraphs (e)(1) through (5) of this section. If the "Rap Back System" as defined by § 8502 of Title 11 is available to SBI, SBI shall provide all subsequent criminal history record information available through the Rap Back System to the entity designated to receive the original criminal history record information under paragraphs (e)(1) through (5) of this section.

Section 2. This Act takes effect 180 days after its enactment.

SYNOPSIS

This Act removes the exemption for private schools and youth camps that allows them to use a name, rather than fingerprint, based background check or to choose not to do background checks at all for employees, contractors, or volunteers.

The Act also provides that 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 relating to re-use of a criminal background check.

Authority is given to Department of Education to pay the costs of background checks for its employees. This bill also adds clarifications for when the Department of Education is the employer.

This Act also corrects existing typos in § 309 of Title 31 and makes clarifying changes to the processing of background checks when the Department of Education is the employer.