SPONSOR: Sen. Peterson & Rep. Bolden & Rep. Heffernan
Sens. Bushweller, Hall-Long, Lopez, Marshall, McBride;
Reps. Bennett, Keeley, Longhurst, Lynn, Mitchell,
Osienski, K. Williams

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 144

AN ACT TO AMEND TITLES 11, 16 AND 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:

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

§ 309. ~~Criminal history information relating to child care personnel and foster and adoptive parents.~~ Background Checks for Child-Serving Entities.

~~(a) "Child care facility" as used in this section means residential child care facilities under contract to or operated directly by the Department of Services for Children, Youth and Their Families (DSCYF).~~

~~(b) "Child care personnel" as used in this section means all persons who seek employment for compensation or persons who volunteer to provide direct child care service or persons who for any reason have regular direct access to children and/or adolescents under the age of 18 at any facility as referred to in subsection (a) of this section. This definition shall include any employee or volunteer of the Department of Services for Children, Youth and Their Families or one of its contractors who have regular direct access to children and/or adolescents under the age of 18, but who do not provide child care services at a facility as referred to in subsection (a) of this section. Child care personnel, for purposes of this section, shall also include applicants wishing to become adoptive or foster parents.~~

~~(c) All prospective child care personnel are covered by the provisions of this section as well as current child care personnel who have been providing said child care for a period of less than 1 year. In the case of adoptive parents, criminal background checks shall be performed in all cases in which a final adoption decree has not yet been filed.~~

~~(d) All child care personnel covered by this section shall be required to submit their fingerprints and other necessary information in order for the following to be obtained:~~

~~(1) Report of the individual's entire criminal history record from the Delaware State Police or a statement from the Delaware State Police that the State Police Central Repository contains no such information relating to that person.~~

~~(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544. The Division of State Police shall be the intermediary for the purposes of this paragraph.~~

~~(3) A certification from the Department of Services for Children, Youth and Their Families as to whether the individual is named in the Central Register as the perpetrator of a report of child abuse.~~

~~(e) Costs associated with obtaining said criminal history information and child abuse registry information shall be borne by the applicant.~~

~~(f) All information required in subsection (d) of this section shall be forwarded to the DSCYF which will assess the information and make a determination of suitability for employment based upon the types of offenses, recency, record since the offenses, and responsibilities of the position which the individual has obtained or is seeking to obtain. The DSCYF must exercise case-by-case judgment on the results. Any adverse judgment affecting the current or prospective child care individual shall be reviewed subject to regulations promulgated by the DSCYF under subsection (h) of this section.~~

~~(g) Upon making its determination of suitability, the DSCYF shall forward the determination, together with the results of the investigation, to the applicant and to the prospective or current employer or agency.~~

~~(h) The DSCYF shall, in the manner provided by law, promulgate regulations necessary to implement this section. These regulations shall:~~

~~(1) Set forth criteria for unsuitability for employment in or certification for child care services. Such criteria shall relate to criminal history record information and may include other information in addition to that set forth above. Such criteria and information shall be reasonably related to the prevention of child abuse.~~

~~(2) Prohibit any individual convicted of a sexually related offense or offenses against children or adolescents from employment in child care services.~~

~~(3) Set forth sanctions for employers who wilfully hire or retain individuals in violation of this section or in violation of the regulations promulgated hereunder.~~

~~(4) Provide for the confidentiality of information obtained pursuant to subsection (d) of this section.~~

~~(5) Provide for administrative review of an adverse judgment by the DSCYF.~~

~~(i) Facilities and agencies which are subject to this section may provisionally hire an employee or a volunteer or place a child, pending the determination of the DSCYF. The failure of an individual to disclose any relevant criminal history information requested by the DSCYF as part of an application process that is subsequently~~

~~disclosed as a result of a criminal history check performed pursuant to this chapter shall be grounds for immediate termination or removal of a placement.~~

~~(j) The DSCYF shall issue its determination in a reasonable amount of time following the receipt of information obtained pursuant to subsection (d) of this section.~~

(a) A background check for employees or volunteers of Child-Serving Entities shall consist of a fingerprinted Delaware and national background check completed by the State Bureau of Identification (SBI) and the FBI as well as a Child Protection Registry check completed by DSCYF.

(b) Definitions.

The following words, terms and phrases, when used in this section, shall have the meaning ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) "Administrator of Educator Preparation Program" means the individual identified by the Higher Education Institution as being responsible for overseeing the placement of candidates into Student Teaching Placements in a Delaware Public School.

(2) "Adult Who is Impaired" shall have the meaning as defined in § 3902 of this title.

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

(4) "Child-Serving Entity" as used in this section shall mean:

a. The Department of Services for Children, Youth and Their Families (DSCYF); which includes any employee or volunteer of DSCYF or one of its contractors who have regular direct access to children and/or adolescents under the age of 18, but who do not provide child care services at a facility as referred to in subsection (4)(b) of this section;

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

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

d. Child Care providers as defined in Title 31, Section 342(1); or

e. Youth camps or summer schools that are exempt from child care licensing requirements;

f. Facilities and individuals registered and eligible for Federal Child Care Development Block Grant funds through the Delaware Department of Health and Social Services

(5) "Contractor" means a person, not an employee, providing services within a Child-Serving Entity and who has direct access to children.

(6) "Conviction" or "Convicted" shall have the same meaning as defined in § 902(6) of Title 16.

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

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

(9) “Employee” means any person seeking employment for compensation with a Child-Serving Entity, or any person who for any reason has regular direct access to children at a Child-Serving Entity. This definition shall also include applicants wishing to become adoptive, foster, or respite parents and their adult household members and any person seeking a Student Teaching Placement in a Public School.

(10) “Felony Convictions Involving Physical or Sexual Assault Crimes” shall include: §§604- 607, 612-613, 629-636, 645, 651, 768-780, 1100A-1102, 1103A-1103B, 1105, 1108-1112B of Title 11.

(11) "Higher Education Institution" means a Delaware college or university that has a teacher preparation program that places candidates into Student Teaching Placements in a Delaware Public School.

(12) “Misdemeanor Convictions Against Children” shall include: §§ 763, 764, 765, 766, 767, 781, 1102, 1103, 1106, 1107 of Title 11.

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

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

(15) "Student Teaching Placement" means a structured, supervised classroom teaching, internship, clinical or field experience in a teacher education program in which the Student Teacher practices the skills being learned in the teacher education program and gradually assumes increased responsibility for instruction, classroom management, and other related duties for a class of students in a local school district or charter school. These skills are practiced under the direct supervision of the certified teacher who has official responsibility for the class. Successful completion of a Student Teaching Placement may be used to meet the requirements for an initial license set forth in § 1210 of Title 14.

(16) "Student Teacher" means an individual participating in a Student Teaching Placement.

(17) “Volunteer” means a person providing volunteer services within a Child-Serving Entity and who has regular direct access to children.

(18) “Youth Camp” means a Child-Serving Entity having custody or control of one or more school-age children, unattended by parent or guardian, for the purpose of providing a program of recreational, athletic, educational and/or religious instruction or guidance and operates for up to 12 weeks for three or more hours per day, during the months of

May through September or some portion thereof, or during holiday breaks in the course of a school year and is operated in a space or at a location other than a space or location subject to licensing pursuant to § 344 of Title 31.

(c) Except as provided in subsection (4), all Child-Serving Entities are required to obtain criminal and Child Protection Registry checks for prospective Employees, Volunteers and Contractors.

(1) The State Bureau of Identification (SBI) shall furnish information pertaining to the identification and criminal history record of prospective Employees, Volunteers and Contractors of Child-Serving Entities, except as otherwise allowed or required, provided that the prospective 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. Such procedure shall include the fingerprinting of the prospective employee, and the provision of such other information as may be necessary to obtain a report of the person's entire criminal history record from SBI and a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation (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 employer who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the prospective Employee, Volunteer, or Contractor wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check. DSCYF will process a Child Protection Registry check of the individual upon receipt of the above-mentioned statement.

(3) Notwithstanding subsection (c)(1), 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 ten (10) years.

(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 subsections (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.

(5) Costs associated with obtaining said criminal history information and Child Protection Registry information shall be borne by the applicant. Notwithstanding the foregoing, 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 act who work in more than 1 school district during the course of a year.

(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 pursuant to 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), 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.

(d) Prohibitions.

(1) The following criminal convictions or entries on the Child Protection Registry shall prohibit an individual from being an Employee, Volunteer, or Contractor for a Child-Serving Entity for the amount of time indicated:

a. Felony Convictions Involving Physical or Sexual Assault Crimes against a Child, an Adult who is Impaired, or Elderly Person. Such convictions shall require a lifetime prohibition.

b. Felony Convictions Involving Physical or Sexual Assault Crimes against another adult. Such prohibition shall last for 10 years following the date of conviction.

c. All other felony convictions shall prohibit the individual for 7 years following the date of conviction, unless the felony is included within the crimes that can lead to entry on the Child Protection Registry pursuant to Title 16, §923, in which case the length of time for the prohibition shall be as provided in the Child Protection Registry regulations.

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

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

(3) For any other criminal conviction that does not prohibit employment according to subsection (1), the Child-Serving Entity may set forth job-related prohibitions for Employees, Contractors, and Volunteers considering number and types of offenses, their recency, the individual's criminal record since the offenses, and the responsibilities of the position which the individual has obtained or is seeking to obtain, provided that such prohibitions are not otherwise prohibited by law.

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

(1) Where the entity is a Public or Private School:

a. SBI shall provide the criminal background information and DSCYF shall provide the Child Protection Registry check information to the individual and the employing school or district, which shall determine whether the individual is prohibited from being employed by the school or district, pursuant to subsection (d). If the individual is not prohibited from employment by subsection (d) but the individual has a criminal conviction or is or has been on the Child Protection Registry, the school or district shall make a determination regarding suitability for employment using the factors in (d)(3). Information obtained under this subsection is confidential and may only be disclosed to the chief school officer or Head of School and the chief personnel officer of the school and one person in each school who shall be designated to assist in the processing of criminal background checks, receive training in confidentiality and be required to sign an agreement to keep such information confidential.

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

c. In the case of a Student Teacher,

1. 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) 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) but the individual has a criminal conviction or is or has been on the Child Protection Registry, the school or district shall make a

determination regarding suitability for employment using the factors in (d)(3). Information obtained under this subsection is confidential and may only be disclosed to the chief school officer or Head of School and the chief personnel officer of the school, and one person in each school who shall be designated to assist in the processing of criminal background checks, receive training in confidentiality and be required to sign an agreement to keep such information confidential.

2. Upon making its determination of suitability, the public school shall forward the determination to the Administrator of Educator Preparation Program of the designated Higher Education Institution.

(2) Where the entity is DSCYF, a residential child care facility under contract to or operated directly by DSCYF, or where the individual is applying to become an adoptive, foster or respite parent, SBI shall provide the criminal background information to DSCYF and DSCYF shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited based on the results of the criminal background and Child Protection Registry checks. Upon making its determination, the DSCYF shall forward the determination to the applicant and the employer. Any adverse judgment affecting the applicant may be reviewed subject to regulations promulgated by DSCYF. The State Bureau of Identification may release all subsequent criminal history to DSCYF.

(3) Where the entity is a Child Care provider, facility receiving Federal Child Care Development Block Grant funds, or a Youth Camp, SBI shall provide the criminal background information to DSCYF, and DSCYF shall perform the Child Protection Registry check. DSCYF shall determine whether or not the individual is prohibited by subsection (d) based on the results of the criminal background and Child Protection Registry checks. If the applicant has a criminal conviction or is on the Child Protection Registry but is not prohibited from employment pursuant to subsection (d)(1), DSCYF will assess the background check information and make a determination of suitability based upon factors set forth by DSCYF regulation consistent with subsection (d)(3). If an applicant is determined unsuitable by DSCYF, the employer shall be informed. The employer shall make the final determination of whether or not to employ the individual. Notwithstanding the above, if the employer is a Family Child Care provider, DSCYF shall make the final decision based on the criteria established by regulations. If an 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 entity is a Private School or Youth Camp that chooses to perform background checks using the method permitted in Subsection (c)(3), 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.

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

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

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

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

(3) Establishment of a procedure for determining other job-related prohibitions for Employees, Volunteers and Contractors, pursuant to subsection (d)(3).

§ 310 Penalties

(a) Any Child-Serving Entity which fails to comply with the requirements of §309 of this title, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of Title 11. The Superior Court shall have exclusive jurisdiction for any offense under this subsection.

(b) Any Child-Serving Entity which fails to comply with the requirements of § 309 of this title shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation.

(c) Any person seeking employment with a Child-Serving Entity or any person seeking a license under Chapter 12 of Title 14 who knowingly provides false, incomplete or inaccurate criminal history information, Child Protection Registry information, or child sex abuser information or who otherwise knowingly violates § 309 of this title shall be guilty of a class G felony and shall be punished according to Chapter 42 of Title 11. The Superior Court shall have exclusive jurisdiction for any offense under this subsection.

(d) The failure of an individual to disclose any relevant criminal history or Child Protection Registry information shall be grounds for immediate termination or for removal of a placement.

(e)Sanctions shall be promulgated via DSCYF regulation for Employees, Volunteers, or Contractors who fail to inform their employer of any criminal conviction or entrance on the Child Protection Registry and for employers who willfully hire or retain individuals in violation of this section or in violation of the regulations promulgated hereunder.

Renumber the existing § 310 as § 311

Section 2. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8560 ~~Definitions.~~

~~The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~(1) "Child care provider" means any child care facility which by law is required to be licensed or any facility registered and eligible for Federal Child Care Development Block Grant funds;~~

~~(2) "Children" means persons who are less than 18 years old;~~

~~(3) "Child sex abuser information" shall have the meaning prescribed by § 8550(3) of this title;~~

~~(4) "Person seeking employment with a child care provider" means any person seeking employment for compensation with a child care provider or any person who for any reason has regular direct access to children at any facility referred to in paragraph (2) of this section.~~

~~§ 8561 Information to be provided to child care providers.~~

~~(a) Anything contained in subchapter I of this chapter to the contrary notwithstanding, the State Bureau of Identification, hereinafter referred to as the "Bureau" shall furnish information pertaining to the identification and criminal history record of any person seeking employment with a child care provider, provided that the person seeking employment with a child care provider submits to a reasonable procedure established by standards set forth by the Superintendent of State Police to identify the person whose record is sought. Such procedure shall include the fingerprinting of the person seeking employment with a child care provider, and the provision of such other information as may be necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.~~

~~(b) Subsection (a) of this section shall apply to the dissemination of the identification and the entire criminal history record to:~~

~~(1) Any person seeking employment with a child care provider; and/or~~

~~(2) Child care providers for the purpose of obtaining such background information relating to the employment requirements for the person whose record is sought; and/or~~

~~(3) The Department of Services for Children, Youth and Their Families for the purpose of determining the suitability for child care facility licensing.~~

~~(c) Any person seeking employment with a child care provider shall as a condition of employment provide to such child care provider prior to employment, the person's identification and criminal history record, if any, as the same appears on file with the State Bureau of Identification.~~

~~(d) Notwithstanding any provision to the contrary, the information to be furnished by the Bureau shall include child sex abuser information. The Division of State Police shall be the intermediary for purposes of this section.~~

~~(e) Costs associated with obtaining said information and child sex abuser information shall be borne by the State.~~

~~(f) No person seeking employment with a child care provider shall be hired by the child care provider if such person seeking employment has been convicted of having committed a crime of child sex abuse as defined in § 8550(2) of this title.~~

~~(1) Child care providers which are subject to this subchapter may provisionally hire a person seeking employment, pending the furnishing by the Bureau of the information required by this subchapter.~~

~~(2) A person who is employed in a health care facility or child care facility or public school has an affirmative duty to inform, and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry established pursuant to Chapter 9 of Title 16.~~

~~(g) Any person or organization whose primary concern is that of child welfare and care, including any nonpublic school, and which is not otherwise required to do so under the provisions of this subchapter 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. The provisions of § 8562 of this title shall not apply to such persons or organizations.~~

~~(h) No person who has been convicted of having committed a crime of child sexual abuse as defined in § 8550(2) of this title shall have direct access to a child care facility.~~

~~§ 8562 Penalties.~~

~~(a) Any child care provider or designated agent for a child care provider who fails to obtain the information required by § 8561 of this title from a person seeking employment with such child care provider or otherwise violates the provisions of § 8561 of this title, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.~~

~~(b) Any person seeking employment with a child care provider who knowingly provides false, incomplete or inaccurate child sex abuser information shall be guilty of a class G felony and shall be punished according to Chapter 42 of this title.~~

~~(c) The Superior Court shall have exclusive jurisdiction of offenses under this subchapter.~~

Title 11 § 8563 Child Protection Registry check for health care.

(a) *Definitions. —*

~~(1) "Child care facility" means any child care facility which is required to be licensed by the Department of Services for Children, Youth and Their Families.~~

(1)~~(2)~~ "Direct Access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(2) ~~(3)~~ "Health Care Facility" means any custodial or residential facility where health, nutritional or personal care is provided for persons, including nursing homes, hospitals, home health care facilities and adult day care facilities.

(3)~~(4)~~ "Person Seeking Employment" means ~~any person applying for employment in a public school or a public school district,~~ any person applying for employment in a health care facility ~~or child care facility, or any person applying for a license to operate a child care facility~~.

~~(5) "Person seeking employment with a public school" means any person seeking employment for compensation with a public school or with an agency that supplies contracted services to students of a public school or any other person who for any reason has regular direct access to children at any public school, as that term is defined in this section, including substitute teachers.~~

~~(6) "Public school" means any public school and includes any board of education, school district, reorganized school district, special school district, or charter school, and any person acting as an agent thereof.~~

(b) No employer who operates a health care facility ~~or child care facility and no public school~~ may hire any person seeking employment without requesting and receiving a Child Protection Registry check for the person. Notwithstanding any provision to the contrary, no person seeking employment with such an employer may be hired if the person seeking employment is currently on the Child Protection Registry at Child Protection Level III or IV as provided in subchapter II of Chapter 9 of Title 16, or has been convicted of any offense contained in Child Protection Level IV, or for 7 years after the conviction date if the person has been convicted of any Level III offense in which a child was the victim. A person who is employed in a health care facility ~~or child care facility or~~

~~public school~~ has an affirmative duty to inform, and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry.

(c) Any employer who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.

(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested a Child Protection Registry check. The employment of the person pursuant to this subsection shall be conditional and contingent upon the receipt of the Child Protection Registry check by the employer. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person's own employment is conditional, and contingent upon receipt of the Child Protection Registry check.

(e) The Department of Services for Children, Youth and Their Families shall promulgate regulations giving guidance for a procedure to notify employers of any relevant matters indicated in the Child Protection Registry check.

(f) Costs associated with providing a Child Protection Registry check shall be borne by the Applicant.

(g) Any employer who hires a person seeking employment without requesting and receiving a Child Protection Registry check for such person shall be subject to a civil penalty or not less than $1,000 nor more than $5,000 for each violation.

~~(h) Any person or organization whose primary concern is that of child welfare and care, including any nonpublic school, and which is not otherwise required to do so under the provisions of this section may voluntarily submit to the provisions of this section at such person's or organization's expense pursuant to procedures established by the Department of Services for Children, Youth and Their Families. The provisions of § 8562 of this title do not apply to such persons or organizations.~~

Title 11 § 8570 ~~Definitions.~~

~~The following words, terms and phrases, when used in this subchapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~(1) "Children" means persons who are enrolled in public schools in this State.~~

~~(2) "Child sex abuse" shall have the meaning prescribed by § 8550(2) of this title.~~

~~(3) "Person seeking employment with a public school" means any person seeking employment for compensation with a public school or agency that supplies contracted services directly to students of a public school or any person who for any reason has regular direct access to children at any facility referred to in paragraph (4) of this section, including substitute teachers; provided, however, that any person who has been continuously employed in a public school district or by an agency that supplies contracted services directly to students in Delaware shall be exempt from the screening provisions of § 8571 of this title while employed in the same district.~~

~~a. The phrase "any person who for any reason has regular direct access to children" in paragraph (3) above applies only to persons who are employed, either directly or through a contract, to work at any facility referred to in paragraph (4) of this section, except that it shall apply to any person who fills an Extra Pay for Extra Responsibility ("EPER") or extra duty position, whether the person receives compensation or not.~~

~~b. This definition shall not apply to substitute food service workers, directly supervised professional artists sponsored by the Division of the Arts, Arts in Education Program; Very Special Arts; and/or the Delaware Institute for the Arts in Education, instructors in prison programs, Apprenticeship/Trade Extension programs or avocational general interest Adult Education programs or instructors in Adult Basic Education or GED programs who do not serve students under age 18.~~

~~(4) "Public school" means any public school and includes any board of education, school district, reorganized school district, special school district, and any person acting as an agent thereof. For the purposes of subchapter VI of this chapter only, the phrase, "person seeking employment with a public school" shall include employees of the Department of Education.~~

~~§ 8571 Screening procedure required.~~

~~(a) Any person seeking employment with a public school shall be required to submit fingerprints and other necessary information in order to obtain the following:~~

~~(1) Report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.~~

~~(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 [28 U.S.C. § 534]. The State Bureau of Identification shall be the intermediary for the purposes of this section and the public school shall be the screening point for the receipt of said federal criminal history records.~~

~~(b) All information obtained pursuant to subsection (a) of this section shall be forwarded to the public school which will assess the information and make a determination of suitability for employment. The person seeking employment shall be provided with a copy of all information forwarded to the public school pursuant to this subsection. Information obtained under this subsection is confidential and may only be disclosed to the chief school officer and the chief personnel officer of the public school, and one person in each public school, as defined in § 8570(4) of this title, who shall be designated to assist in the processing of criminal background checks, receive training in confidentiality and be required to sign an agreement to keep such information confidential. The State Bureau of Identification may release any subsequent criminal history to the public school.~~

~~(c) Costs associated with obtaining criminal history information and child sex abuse repository information shall be paid by the person seeking employment; provided, however, that subject to a specific annual appropriation in the Annual Appropriations Act, costs associated with obtaining criminal history information and child sex abuse repository information may be paid by the State. Notwithstanding the foregoing, 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 act who work in more than 1 school district during the course of a year.~~

~~(d) A person seeking employment shall have an opportunity to respond to the public school regarding any information obtained pursuant to subsection (b) of this section prior to a determination of suitability for employment being made. The determination of suitability for employment shall be based upon the type of offenses, if any; the length of time since any offenses; record since any offenses; and responsibilities of the position which the person is seeking; provided that a person seeking employment with a public school may be disqualified from employment for any of the following reasons:~~

~~(1) Conviction of manufacture, delivery or possession, or possession with intent to deliver a controlled substance, or a counterfeit controlled substance classified in Chapter 47 of Title 16 or in similar laws of any other jurisdiction;~~

~~(2) Conviction of any felony in this State or any other jurisdiction in the last 5 years; or~~

~~(3) Conviction of any crime against a child in this State or any other jurisdiction.~~

~~(e) Upon making its determination of suitability, the public school shall forward the determination to the person seeking employment. If a determination is made to deny the person from employment based upon the criminal history of the person, the person shall have an opportunity to appeal to the chief school officer or designee for reconsideration.~~

~~(f) A public school may conditionally hire a person seeking employment, pending the determination of suitability for employment. If the information obtained from the criminal background check reveals that the person is disqualified from employment pursuant to subsection (d) of this section, the person may not continue in employment and is subject to termination.~~

~~(g) A person who is employed in a health care facility or child care facility or public school has an affirmative duty to inform, and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry established pursuant to Chapter 9 of Title 16.~~

~~(h) The State Department of Education shall, in the manner provided by law, promulgate regulations necessary to implement this subchapter. These regulations shall include:~~

~~(1) Establishment, in conjunction with the State Bureau of Identification, of a procedure for fingerprinting persons seeking employment with a public school and providing the reports and certificate obtained pursuant to subsection (a) of this section;~~

~~(2) Establishment of a procedure for reconsideration of a determination to deny employment based upon a person's criminal history; and~~

~~(3) Establishment of a procedure to provide confidentiality of information obtained pursuant to subsection (a) of this section and of the determination of suitability for employment.~~

~~§ 8572 Penalties.~~

~~Any person seeking a license under Chapter 12 of Title 14 or employment with a public school who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of § 8571 of this title shall be guilty of a class G felony and shall be punished according to Chapter 42 of this title.~~

~~Title 11 § 8590 Definitions.~~

~~The following words, terms and phrases, when used in this subchapter, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:~~

~~(3) "Public School" means any public school and includes any board of education, school district, reorganized school district, special school district, charter school and any person acting as an agent thereof.~~

~~Title 11 § 8591 Screening Procedures.~~

~~(a) Any person seeking a student teaching placement shall be required to submit fingerprints and other necessary information in order to obtain the following:~~

~~(1) Report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.~~

~~(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for the purposes of this section and the higher education institution shall be the screening point for the receipt of said federal criminal history records.~~

~~(b) Each school district and charter school shall make the final determination of suitability for placement of a candidate in a student teaching position in its school.~~

~~(c) A candidate for a student teaching placement may not participate in any classroom teaching internship, clinical or field experience if:~~

~~(1) The public school's policies and procedures would prohibit an employee or prospective employee from being employed under those circumstances; or~~

~~(2) The candidate is currently on the Child Protection Registry at Child Protection Level III or IV as provided in § 923 of Title 16; or~~

~~(3) The candidate has been convicted of any offense contained in Child Protection Level IV as provided in § 923 of Title 16; or~~

~~(4) The candidate was convicted within the last seven years of any Child Protection Level III offense in which a child was the victim.~~

~~(d) A student teacher or a person seeking a student teaching placement has an affirmative duty to inform, and shall inform, the person's higher education institution and public school placement of any criminal conviction or of any entry on the Child Protection Registry established pursuant to Chapter 9 of Title 16.~~

~~(e) Costs associated with obtaining criminal history information shall be paid by the person seeking a student teaching placement.~~

~~(f) The State Department of Education shall, in the manner provided by law, promulgate regulations necessary to implement this subchapter. The regulations shall provide for confidentiality of criminal history record information obtained pursuant to this subchapter.~~

~~§ 8592 Penalties.~~

~~(a) Any higher education institution, or administrator, or other person responsible for placing student teachers in a public school who places an individual in a student teaching placement without receiving the candidate's criminal~~

~~record information, or who knowingly violates the provisions of § 8591 of this title shall be subject to a civil penalty of not less than $1000 nor more than $5,000 for each violation. The Justice of the Peace Courts shall have jurisdiction over this offense.~~

~~(b) Any person seeking a student teaching placement who knowingly provides false, incomplete or inaccurate criminal history information or who otherwise knowingly violates the provisions of § 8591 of this title shall be guilty of a class G felony and shall be punished according to Chapter 42 of this title.~~

Section 3. Amend Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 923 Child Protection Levels.

(a) A person who has been substantiated for abuse or neglect pursuant to this subchapter must be entered on the Child Protection Registry. The Division shall develop regulations that assess the risk of future harm to children from acts of abuse or neglect and designate Child Protection Levels.

(b) The following paragraphs describe the 4 child protection levels:

(1) *Child Protection Level I.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level I:

a. An incident of abuse or neglect, including emotional neglect, presenting a low risk of future harm to children; or

b. Conviction of a violation of compulsory school attendance requirements or truancy when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title.

A person who is substantiated for abuse or neglect at Child Protection Level I must not be reported in response to a Child Protection Registry check made pursuant to Chapter 3 of Title 31 or Chapter 85 of Title 11 for that incident or conviction. The person is eligible for employment in a ~~child care facility~~ Child-Serving Entity as defined in defined in § 309 of Title 31 or health-care facility ~~or public school, as those terms are~~ as defined in § 8563 of Title 11.

(2) *Child Protection Level II.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level II:

a. An incident of abuse or neglect, including severe emotional neglect, presenting a moderate risk of future harm to children; or

b. Conviction of interference with custody when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this subchapter.

A person who is substantiated for abuse or neglect at Child Protection Level II must be reported for a period of 3 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31. The person must remain on the Registry for a period of 3 years, but the person is eligible for employment in a ~~child care facility~~ Child-Serving Entity as defined in Chapter 3 of Title 31, or health-care facility as ~~or public school, as those terms are~~ defined in Chapter 85 of Title 11, while the person is on the Registry at Child Protection Level II; and a prospective employer making a Child Protection Registry check must be so informed. If the person is not substantiated for abuse or neglect while on the Registry, the person on the Registry at Child Protection Level II is automatically removed from the Registry after 3 years and must not be reported in a Child Protection Registry check for that incident or conviction.

(3) *Child Protection Level III.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level III:

a. An incident of abuse or neglect presenting a high risk of future harm to children, including but not limited to: physical injury, nonorganic failure to thrive, malnutrition, or abandonment of a child 13 to 17 years of age; or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: offensive touching, menacing, reckless endangering in the second degree, assault in the third degree, child abuse in the third degree, terroristic threatening, unlawful administration of drugs or controlled substances, indecent exposure in the first or second degree, sexual harassment, unlawful imprisonment in the second degree, abandonment of a child, or misdemeanor endangering the welfare of a child.

A person who is substantiated for abuse or neglect at Child Protection Level III must be reported for a period of 7 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31. The person is ineligible for employment in a ~~child care facility,~~ Child-Serving Entity as defined in Chapter 3 of Title 31 , or health-care facility as ~~or public school, as those terms are~~ defined in Chapter 85 of Title 11, while the person is on the Child Protection Registry at Child Protection Level III. If the person is not substantiated for a different incident of abuse or neglect while on the Registry, the person entered on the Registry at Child Protection Level III is

automatically removed from the Registry after 7 years and is, thereafter, eligible for employment in a child care facility, health-care facility or public school, and must not be reported in a Child Protection Registry check for that incident or conviction.

(4) *Child Protection Level IV.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level IV:

a. An incident of abuse or neglect presenting the highest risk of future harm to children, including but not limited to serious physical injury, sexual abuse, torture, criminally negligent treatment, or abandonment of a child 12 years of age or younger (but not including the voluntary surrender of a baby pursuant to the Safe Arms for Babies program as provided in § 907A of this title); or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first degree, assault in the second degree, reckless endangering in the first degree, unlawful imprisonment in the first degree, child abuse in the first degree, child abuse in the second degree, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, felony sex offender unlawful sexual conduct against a child, felony sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree or second degree, trafficking of persons and involuntary servitude, bestiality, continuous sexual abuse of a child, possession of child pornography, unlawfully dealing in child pornography, felony endangering the welfare of a child, dangerous crime against a child, kidnapping, coercion, dealing in children, unlawful dealing with a child, sexual exploitation of a child, or promoting suicide.

A person who is substantiated for abuse or neglect at Child Protection Level IV must be reported as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31. The person is ineligible for employment in a ~~child care facility,~~ Child-Serving Entity as defined in Chapter 3 of Title 31 or health-care facility as defined in Chapter 85 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry check for the incident or conviction, except as provided in § 929(c) of this title.

(c) A person who is substantiated for an incident of abuse or neglect while on the Child Protection Registry is ineligible for automatic removal from the Registry, but may be removed from the Registry by order of the Family Court as provided in § 929 of this title. If a person is substantiated for abuse or neglect while on the Registry, the imposed conditions for each incident must be completed consecutively, with the conditions for the most restrictive

Child Protection Level or Levels being completed before those for the less restrictive level or levels. A person who has partially completed a level when assigned to a more restrictive level is given credit for that partial completion when that person has completed the conditions for the more restrictive level or levels.

§ 924 Notice of Intent to Substantiate; process.

(a) In response to a report where abuse or neglect is alleged, the Division shall conduct an investigation into the facts and circumstances of the alleged abuse or neglect as required by § 906 of this title.

(1) If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing. The Division shall develop regulations for classifying unsubstantiated cases in its internal information system.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter an adult person on the Child Protection Registry, it shall give written notice to the person by certified mail, return receipt requested, at that person's last known address. The written notice must:

a. Briefly describe the alleged incident of abuse or neglect;

b. Advise the person that the Division intends to substantiate the allegations and enter the person on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;

c. State the consequences of being entered on the Registry at the designated level, including whether the person will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31;

d. Inform the person of that person's own right to request a hearing in the Family Court before the person is entered on the Child Protection Registry;

e. Further advise that the person will be entered on the Registry for the incident at the designated Child Protection Level unless, within 30 days of the date of mailing of the notice, the person responds to the Division in writing, requesting a hearing in the Family Court on the Division's intent to substantiate the person for abuse or neglect and enter the person on the Registry;

f. Contain a written form for the person to return to the Division to request a hearing.

(3) If the Division determines from its investigation that it intends to substantiate a child and enter the child on the Child Protection Registry, it shall give written notice to the child and the child's parent, guardian, and legal custodian by certified mail, return receipt requested, at the child's last known address. The written notice must:

a. Briefly describe the alleged incident of abuse or neglect;

b. Advise the child that the Division intends to substantiate the allegations and enter the child on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;

c. State the consequences of being entered on the Registry at the designated level, including whether the child will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31;

d. Inform the child that a hearing will be held in the Family Court before the child is entered on the Child Protection Registry.

e. Provide notice to the child's guardian ad litem or attorney if the child is in DSCYF custody.

(4) If the Division determines from its investigation that it intends to enter a person on the Child Protection Registry as a result of a conviction of an enumerated offense set forth in § 923 of this title, the Division shall send a Notice of Substantiation to the person informing them of the substantiation and notifying them of the right to file a Petition for Limited Purpose Hearing. The Petition for Limited Purpose Hearing shall be filed by the person in Family Court within 30 days of the Notice of Substantiation, shall include a copy of the Notice of Substantiation, and shall set forth why the person alleges the conviction does not meet the requirements set forth in § 922(1) of this title. A Limited Purpose Hearing shall be limited to determining whether the conviction meets the requirements of § 922(1) of this title. If a Petition for Limited Purpose Hearing is not filed within 30 days of the Notice of Substantiation, the person shall remain automatically placed on the registry pursuant to § 922(1) of this title.

(b) A person, other than a child, who fails to request a hearing as provided in subsection (a) of this section must, at the expiration of 30 days from the date of mailing of the notice of intent to substantiate the allegations of abuse or neglect and enter the person on the Registry, be entered on the Child Protection Registry at the Child Protection Level designated in the notice.

(c) The Division shall file a Petition for Substantiation before any child is entered on the Child Protection Registry, regardless of the written request of the child.

§ 928 Persons entered on the Registry between August 1, 1994, and February 1, 2003.

(a) The Division shall review each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry and the Central Abuse Registry) between August 1, 1994, and the effective date of this subchapter and designate each case to a Child Protection Level in accordance with the regulations developed pursuant to § 923 of this title.

(b) A person who has been entered on the Child Protection Registry for the time prescribed in the designated Child Protection Level for the person's incident of abuse or neglect must be automatically removed from the Child Protection Registry, provided that the person has not been substantiated for an incident of abuse or neglect while on the Child Protection Registry. The Division shall notify the person of the removal.

(c) The Division shall notify a person who does not qualify for automatic removal from the Child Protection Registry of the Child Protection Level to which the person has been designated and of the consequences of designation to that level, including whether the person will be reported as substantiated for abuse or neglect in a Child Protection Registry check pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31.

§ 929 Removal of name from the Child Protection Registry.

(a) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III will be automatically removed from the Registry under § 923 of this title, provided that the person has not been substantiated for an incident of abuse or neglect while on the Registry.

(b) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III may file a Petition for Removal in the Family Court prior to the expiration of the time designated for the level. The Family Court shall have the discretion to remove the person from the registry. In making this determination, the Court shall consider all relevant factors, including:

(1) The nature and circumstances of the original substantiated incident;

(2) Any substantiated incidents of abuse or neglect while on the Registry;

(3) The criminal history of the person, including whether the person's criminal record of arrest or conviction of the incident leading to placement on the Registry was expunged;

(4) Compliance with the terms of probation, if applicable;

(5) The risk, if any, the registrant poses to the victim, the community and to other potential victims;

(6) The impact of registration and employer notification on the victim, community and other potential victims;

(7) The rehabilitation, if any, of the person, or successful completion of a program of evaluation and treatment including any court-ordered or division-recommended case plan; and

(8) The adverse impact of registration on the person and the rehabilitative process, including the impact on employment opportunities.

(c) A person who was entered on the Child Protection Registry at any level as a child, may, at any time after his or her eighteenth birthday, file a Petition for Removal in the Family Court. The Family Court shall have the discretion

to remove the person from the registry. In making this determination, the Court shall consider all relevant factors, including those in § 929(b) of this title.

(d) A Petition for Removal from the Registry must be filed in the Family Court in the county in which the substantiation occurred. A copy of the petition must be served on the Division, which may file an objection or answer to the petition within 30 days after being served. In every case, the Division shall inform the Court whether or not the person applying for removal has been substantiated for abuse or neglect while on the Child Protection Registry. The Family Court may, in its discretion, dispose of a Petition for Removal without a hearing.

(e) Removal from the Child Protection Registry means only that the person's name has been removed from the Registry and may no longer be reported to employers pursuant to Chapter 85 of Title 11 or Chapter 3 of Title 31. Notwithstanding removal from the Registry, the person's name and other case information remains in the Division's internal information system as substantiated for all other purposes, including, but not limited to, the Division's use of the information for historical, treatment and investigative purposes, child care licensing decisions, foster and adoptive parent decisions, ~~reporting pursuant to § 309 of Title 31,~~ reporting to law enforcement authorities, or any other purpose set forth in § 906(e) of this title.

Section 4. This legislation shall take effect 180 days after enacted into law.

Section 5. This bill shall be known as the "Joseph R. 'Beau' Biden III Child Protection Act."

SYNOPSIS

The Joseph R. "Beau" Biden III Child Protection Act is the result of the work of the Delaware Background Checks Task Force, which was established by Executive Order 42. This legislation will consolidate into one chapter and section of the code the background checks that must be completed for individuals who seek to work or volunteer for a child-serving entity. The legislation will address inconsistencies as to what types of background checks those individuals who seek to work or volunteer for a child-serving entity must have and the types of criminal convictions and/or what level of entrance on the Child Protection Registry will prohibit an individual from working or volunteering with such an entity. Finally, this legislation includes individuals who seek to work with a private school or youth camp, who previous to this legislation, were not required to have background checks on staff or volunteers.

Author: Senator Peterson