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§§1-6,8-11 -
C.30:4C-27.16
to 30:4C-27.25
§7 - C.53:1-20.9d
§12 - Note to
§§1-11

P.L. 2003, CHAPTER 186, *approved September 26, 2003*
Senate, No. 2695 (*First Reprint*)

1 **AN ACT** requiring criminal history record background and child abuse
2 record information checks for staff in residential child care facilities
3 and supplementing Titles 30 and 53 of the Revised Statues.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1 . As used in sections 1 through 6 and 8 through 11 of this act:

9 "Department" means the Department of Human Services.

10 "Division" means the Division of Youth and Family Services in the
11 Department of Human Services.

12 "Residential child care facility" or "facility" means any public or
13 private establishment subject to the regulatory authority of the
14 department that provides room, board, care, shelter or treatment
15 services for children on a 24-hour-a-day basis. The term shall include:
16 residential facilities operated by or under contract or agreement with
17 the division to serve 13 or more children with emotional or behavioral
18 problems as defined pursuant to section 2 of P.L.1951, c.138
19 (C.30:4C-2); group homes, treatment homes, teaching family homes,
20 alternative care homes and supervised transitional living homes
21 operated by or under contract or agreement with the division to serve
22 12 or fewer children with emotional or behavioral problems as defined
23 pursuant to N.J.A.C.10:128-1.2; and shelter care facilities and homes,
24 including shelters serving children in juvenile-family crisis and in need
25 of temporary shelter care, as defined pursuant to section 3 of
26 P.L.1982, c.77 (C.2A:4A-22).

27 "Staff member" means an individual 18 years of age or older who
28 is an administrator of, employed by, or works in a facility on a
29 regularly scheduled basis during the facility's operating hours,
30 including full-time, part-time, voluntary, contract, consulting and
31 substitute staff, whether compensated or not.

32

33 2. a. As a condition of securing or maintaining a certificate of
34 approval from the department, the administrator of a facility shall
35 ensure that a criminal history record background check is conducted

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SHH committee amendments adopted June 23, 2003.

1 on each staff member of the facility.

2 b. If the administrator of the facility refuses to consent to, or
3 cooperate in, the securing of a criminal history record background
4 check, the department shall suspend, deny, revoke or refuse to renew
5 the facility's certificate of approval, as appropriate.

6 c. If a staff member of a facility, other than the administrator,
7 refuses to consent to, or cooperate in, the securing of a criminal
8 history record background check, the individual shall be immediately
9 terminated from employment at the facility.

10

11 3. a. In the case of a facility established after the effective date of
12 this act, the administrator of the facility, prior to the facility's opening,
13 shall ensure that a request for a criminal history record background
14 check on each staff member is sent to the department for processing
15 by the Division of State Police in the Department of Law and Public
16 Safety and the Federal Bureau of Investigation.

17 A staff member shall not be left alone as the only adult caring for
18 a child at the facility until the staff member's criminal history record
19 background has been reviewed by the department pursuant to this act.

20 b. In the case of a facility granted a certificate of approval prior to
21 the effective date of this act, the administrator of the facility, at the
22 time of the facility's first renewal of its certificate of approval, shall
23 ensure that a request for a criminal history record background check
24 on each staff member is sent to the department for processing by the
25 Division of State Police and the Federal Bureau of Investigation.

26 c. Within two weeks after a new staff member begins employment
27 at a facility, the administrator of the facility shall ensure that a request
28 for a criminal history record background check on the new staff
29 member is sent to the department for processing by the Division of
30 State Police and the Federal Bureau of Investigation.

31 A new staff member shall not be left alone as the only adult caring
32 for a child at the facility until the staff member's criminal history
33 record background has been reviewed by the department pursuant to
34 this act.

35

36 4. Except as provided in subsection d. of this section, a current
37 staff member or an applicant for employment shall be permanently
38 disqualified from employment at or administering a facility if the
39 criminal history record background check of the staff member or
40 applicant reveals a record of conviction for any of the following crimes
41 and offenses:

42 a. In New Jersey, any crime or disorderly persons offense as
43 follows:

44 (1) a crime against a child, including endangering the welfare of a
45 child and child pornography pursuant to N.J.S.2C:24-4; child
46 molestation as set forth in N.J.S.2C:14-1 et seq.;

- 1 (2) abuse, abandonment or neglect of a child pursuant to
2 R.S.9:6-3;
- 3 (3) endangering the welfare of an incompetent person pursuant to
4 N.J.S.2C:24-7;
- 5 (4) sexual assault, criminal sexual contact or lewdness pursuant to
6 N.J.S.2C:14-2 through N.J.S.2C:14-4;
- 7 (5) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to
8 N.J.S.2C:11-4;
- 9 (6) stalking pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10);
- 10 (7) kidnaping and related offenses including criminal restraint, false
11 imprisonment, interference with custody, criminal coercion, or enticing
12 a child into a motor vehicle, structure or isolated area pursuant to
13 N.J.S.2C:13-1 through N.J.S.2C:13-5 and section 1 of P.L.1993,
14 c.291 (C.2C:13-6);
- 15 (8) arson pursuant to N.J.S.2C:17-1, or causing or risking
16 widespread injury or damage, which would constitute a crime of the
17 second degree pursuant to N.J.S.2C:17-2;
- 18 (9) aggravated assault, which would constitute a crime of the
19 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;
- 20 (10) robbery, which would constitute a crime of the first degree
21 pursuant to N.J.S.2C:15-1;
- 22 (11) burglary, which would constitute a crime of the second degree
23 pursuant to N.J.S.2C:18-2;
- 24 (12) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17
25 et seq.);
- 26 (13) terroristic threats pursuant to N.J.S.2C:12-3; or
- 27 (14) an attempt or conspiracy to commit any of the crimes or
28 offenses listed in paragraphs (1) through (13) of this subsection.
- 29 b. In any other state or jurisdiction, of conduct which, if committed
30 in New Jersey, would constitute any of the crimes or disorderly
31 persons offenses described in subsection a. of this section.
- 32 c. Notwithstanding the provisions of this section to the contrary,
33 an individual shall not be disqualified from employment at or
34 administering a facility under this act on the basis of any conviction
35 disclosed by a criminal history record background check performed
36 pursuant to this act without an opportunity to challenge the accuracy
37 of the disqualifying criminal history record pursuant to the provisions
38 of section 7 of this act.
- 39 d. If a staff member of a facility is convicted of a crime specified
40 in subsection a. of this section, the staff member shall be terminated
41 from employment at or administering a facility, except that the
42 department may approve the individual's employment at, or
43 administration of, the facility if all of the following conditions are met:
- 44 (1) the department determines that the crime does not relate
45 adversely to the position the individual is employed in pursuant to the
46 provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.);

1 (2) the conviction is not related to a crime committed against a
2 child, as specified in subsection a. of this section;

3 (3) the facility documents that the individual's employment or
4 administration of the facility does not create a risk to the safety or
5 well-being of children due to the nature and requirements of the
6 position; as necessary, the facility shall identify restrictions regarding
7 the individual's contact with, care or supervision of children;

8 (4) the facility documents that the individual is uniquely qualified
9 for the position due to specific skills, qualifications, characteristics or
10 prior employment experiences; and

11 (5) the department determines that the individual has affirmatively
12 demonstrated rehabilitation, pursuant to the factors specified in
13 subsection b. of section 5 of this act.

14

15 5. a. For crimes and offenses other than those cited in subsection
16 a. of section 4 of this act, an applicant or staff member may be eligible
17 for employment at, or to administer, a facility if the individual has
18 affirmatively demonstrated to the department clear and convincing
19 evidence of rehabilitation pursuant to subsection b. of this section.

20 b. In determining whether an individual has affirmatively
21 demonstrated rehabilitation, the following factors shall be considered:

22 (1) the nature and responsibility of the position at the facility that
23 the convicted individual would hold, has held or currently holds, as the
24 case may be;

25 (2) the nature and seriousness of the offense;

26 (3) the circumstances under which the offense occurred;

27 (4) the date of the offense;

28 (5) the age of the individual when the offense was committed;

29 (6) whether the offense was an isolated or repeated incident;

30 (7) any social conditions that may have contributed to the offense;

31 and

32 (8) any evidence of rehabilitation, including good conduct in prison
33 or in the community, counseling or psychiatric treatment received,
34 acquisition of additional academic or vocational schooling, successful
35 participation in correctional work-release programs, or the
36 recommendation of those who have had the individual under their
37 supervision.

38 c. The department shall make the final determination regarding the
39 employment of the administrator of a facility with a criminal conviction
40 specified under this section.

41 d. The administrator of the facility or the facility's board of
42 directors shall make the final determination regarding the employment
43 of a staff member or applicant with a criminal conviction specified
44 under this section.

45 e. If the administrator of a facility has knowledge that a staff
46 member has criminal charges pending against the staff member, the

1 administrator shall promptly notify the department to determine
2 whether or not any action concerning the staff member is necessary in
3 order to ensure the safety of the children who are placed in the facility.

4
5 6. a. A facility that has received an employment application from
6 an individual or currently employs a staff member shall be immune
7 from liability for acting upon or disclosing information about the
8 disqualification or termination of that applicant or staff member to
9 another facility seeking to employ that individual if the facility has:

10 (1) received notice from the department or the facility's board of
11 directors, as applicable, that the applicant or staff member has been
12 determined by the department or the board of directors to be
13 disqualified from employment at a facility pursuant to this act; or

14 (2) terminated the employment of a staff member because the
15 individual was disqualified from employment at the facility on the basis
16 of a conviction of a crime pursuant to section 4 of this act after
17 commencing employment at the facility.

18 b. A facility that acts upon or discloses information pursuant to
19 subsection a. of this section shall be presumed to be acting in good
20 faith unless it is shown by clear and convincing evidence that the
21 facility acted with actual malice toward the individual who is the
22 subject of the information.

23
24 7. a. The Commissioner of Human Services is authorized to
25 exchange fingerprint data with, and to receive ¹criminal history
26 record¹ information from, the Division of State Police in the
27 Department of Law and Public Safety and the Federal Bureau of
28 Investigation.

29 Upon receipt of the criminal history record information for an
30 applicant or staff member of a residential child care facility from the
31 Federal Bureau of Investigation and the Division of State Police, the
32 Department of Human Services shall notify the applicant or staff
33 member, as applicable, and the residential child care facility, in writing,
34 of the applicant's or staff member's qualification or disqualification for
35 employment or service under sections 4 or 5 of P.L. , c. (C)
36 (pending before the Legislature as this bill). If the applicant or staff
37 member is disqualified, the convictions that constitute the basis for the
38 disqualification shall be identified in the written notice to the applicant
39 or staff member. The applicant or staff member shall have 14 days
40 from the date of the written notice of disqualification to challenge the
41 accuracy of the criminal history record information. If no challenge is
42 filed or if the determination of the accuracy of the criminal history
43 record information upholds the disqualification, the department shall
44 notify the facility that the applicant or staff member has been
45 disqualified from employment.

46 b. The Division of State Police shall promptly notify the

1 Department of Human Services in the event an applicant or staff
2 member, who was the subject of a criminal history record background
3 check conducted pursuant to subsection a. of this section, is convicted
4 of a crime or offense in this State after the date the background check
5 was performed. Upon receipt of such notification, the department shall
6 make a determination regarding the employment of the applicant or
7 staff member.

8
9 8. a. As a condition of securing or maintaining a certificate of
10 approval from the department, the administrator of a facility shall
11 ensure that the division conducts a child abuse record information
12 check of its child abuse records to determine if an incident of child
13 abuse or neglect has been substantiated, pursuant to section 4 of
14 P.L.1971, c.437 (C.9:6-8.11), against any staff member of the facility.

15 b. The department shall not issue a certificate of approval to a
16 facility until the facility has requested that the division conduct a child
17 abuse record information check on each staff member employed by or
18 working at the facility.

19 c. The department shall deny, revoke or refuse to renew the
20 facility's certificate of approval, as appropriate, if the department
21 determines that an incident of child abuse or neglect by an
22 administrator of a facility has been substantiated.

23 d. Each staff member of a facility shall provide prior written
24 consent for the division to conduct a child abuse record information
25 check.

26 e. If the administrator of the facility refuses to consent to, or
27 cooperate in, the securing of a division child abuse record information
28 check, the department shall suspend, deny, revoke or refuse to renew
29 the facility's certificate of approval, as appropriate.

30 f. If a staff member of the facility, other than the administrator,
31 refuses to consent to, or cooperate in, the securing of a division child
32 abuse record information check, the individual shall be immediately
33 terminated from employment at the facility.

34 g. The division shall complete the child abuse record information
35 check within 45 days after receiving the request for the check.

36
37 9. a. In the case of a facility established after the effective date of
38 this act, the administrator of the facility, prior to the facility's opening,
39 shall ensure that a request for a child abuse record information check
40 on each staff member is sent to the division.

41 A staff member shall not be left alone as the only adult caring for
42 a child at the facility until the results of the staff member's child abuse
43 record information check have been received by the administrator of
44 the facility.

45 b. In the case of a facility granted a certificate of approval prior to
46 the effective date of this act, the administrator of the facility, at the

1 time of the facility's first renewal of its certificate of approval, shall
2 ensure that a request for a child abuse record information check on
3 each staff member is sent to the division.

4 c. Within two weeks after a new staff member begins employment
5 at a facility, the administrator of the facility shall ensure that a request
6 for a child abuse record information check on the new staff member is
7 sent to the division.

8 A new staff member shall not be left alone as the only adult caring
9 for a child at the facility until the results of the staff member's child
10 abuse record information check have been received by the
11 administrator of the facility.

12 d. If the division determines that an incident of child abuse or
13 neglect by a staff member has been substantiated, the division shall
14 advise the administrator of the facility of the results of the child abuse
15 record information check and the facility shall immediately terminate
16 the individual from employment at the facility.

17 e. The department shall consider, for the purposes of this act, any
18 incidents of child abuse or neglect that were substantiated on or after
19 June 29, 1995, to ensure that perpetrators have had an opportunity to
20 appeal a substantiated finding of abuse or neglect; except that the
21 department may consider substantiated incidents prior to that date, if
22 the department, in its judgment, determines that the individual poses
23 a risk of harm to children in a facility. In cases involving incidents
24 substantiated prior to June 29, 1995, the department shall offer the
25 individual an opportunity for a hearing to contest its action restricting
26 the individual from employment at a facility.

27
28 10. In the case of a facility located outside the State serving
29 children who are residents of the State, the administrator of the facility
30 shall ensure that an applicant or staff member meets all applicable laws
31 and regulations in that state governing criminal history record
32 background and child abuse record information checks that may be
33 required as a condition of employment. In the event that criminal
34 history record background and child abuse record information checks
35 are not mandated, the administrator of the facility shall require that the
36 applicant or staff member make a voluntary disclosure of any criminal
37 conviction. The results of the disclosure shall be made available to the
38 department, so the department can determine the suitability of the
39 individual for employment at the facility during the time children who
40 are residents of the State are placed in the facility.

41
42 11. The department shall be responsible for the cost of processing
43 and funding all criminal history record background and child abuse
44 record information checks required pursuant to this act. The
45 department shall also be responsible for paying the cost of obtaining
46 the fingerprints or other identifier authorized by the Division of State

1 Police, unless that service is available at no cost to the employee or
2 individual seeking employment.

3

4 12. This act shall take effect take effect 180 days after enactment.

5

6

7

8

9 Requires staff members of residential child care facilities to undergo
10 criminal history record background and child abuse record information
11 checks.

SENATE, No. 2695

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED JUNE 19, 2003

Sponsored by:

Senator JOSEPH CONIGLIO

District 38 (Bergen)

Senator GEORGE F. GEIST

District 4 (Camden and Gloucester)

SYNOPSIS

Requires staff members of residential child care facilities to undergo criminal history record background and child abuse record information checks.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT requiring criminal history record background and child abuse
2 record information checks for staff in residential child care facilities
3 and supplementing Titles 30 and 53 of the Revised Statues.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1 . As used in sections 1 through 6 and 8 through 11 of this act:
9 "Department" means the Department of Human Services.

10 "Division" means the Division of Youth and Family Services in the
11 Department of Human Services.

12 "Residential child care facility" or "facility" means any public or
13 private establishment subject to the regulatory authority of the
14 department that provides room, board, care, shelter or treatment
15 services for children on a 24-hour-a-day basis. The term shall include:
16 residential facilities operated by or under contract or agreement with
17 the division to serve 13 or more children with emotional or behavioral
18 problems as defined pursuant to section 2 of P.L.1951, c.138
19 (C.30:4C-2); group homes, treatment homes, teaching family homes,
20 alternative care homes and supervised transitional living homes
21 operated by or under contract or agreement with the division to serve
22 12 or fewer children with emotional or behavioral problems as defined
23 pursuant to N.J.A.C.10:128-1.2; and shelter care facilities and homes,
24 including shelters serving children in juvenile-family crisis and in need
25 of temporary shelter care, as defined pursuant to section 3 of
26 P.L.1982, c.77 (C.2A:4A-22).

27 "Staff member" means an individual 18 years of age or older who
28 is an administrator of, employed by, or works in a facility on a
29 regularly scheduled basis during the facility's operating hours,
30 including full-time, part-time, voluntary, contract, consulting and
31 substitute staff, whether compensated or not.

32
33 2. a. As a condition of securing or maintaining a certificate of
34 approval from the department, the administrator of a facility shall
35 ensure that a criminal history record background check is conducted
36 on each staff member of the facility.

37 b. If the administrator of the facility refuses to consent to, or
38 cooperate in, the securing of a criminal history record background
39 check, the department shall suspend, deny, revoke or refuse to renew
40 the facility's certificate of approval, as appropriate.

41 c. If a staff member of a facility, other than the administrator,
42 refuses to consent to, or cooperate in, the securing of a criminal
43 history record background check, the individual shall be immediately
44 terminated from employment at the facility.

45
46 3. a. In the case of a facility established after the effective date of

1 this act, the administrator of the facility, prior to the facility's opening,
2 shall ensure that a request for a criminal history record background
3 check on each staff member is sent to the department for processing
4 by the Division of State Police in the Department of Law and Public
5 Safety and the Federal Bureau of Investigation.

6 A staff member shall not be left alone as the only adult caring for
7 a child at the facility until the staff member's criminal history record
8 background has been reviewed by the department pursuant to this act.

9 b. In the case of a facility granted a certificate of approval prior to
10 the effective date of this act, the administrator of the facility, at the
11 time of the facility's first renewal of its certificate of approval, shall
12 ensure that a request for a criminal history record background check
13 on each staff member is sent to the department for processing by the
14 Division of State Police and the Federal Bureau of Investigation.

15 c. Within two weeks after a new staff member begins employment
16 at a facility, the administrator of the facility shall ensure that a request
17 for a criminal history record background check on the new staff
18 member is sent to the department for processing by the Division of
19 State Police and the Federal Bureau of Investigation.

20 A new staff member shall not be left alone as the only adult caring
21 for a child at the facility until the staff member's criminal history
22 record background has been reviewed by the department pursuant to
23 this act.

24
25 4. Except as provided in subsection d. of this section, a current
26 staff member or an applicant for employment shall be permanently
27 disqualified from employment at or administering a facility if the
28 criminal history record background check of the staff member or
29 applicant reveals a record of conviction for any of the following crimes
30 and offenses:

31 a. In New Jersey, any crime or disorderly persons offense as
32 follows:

33 (1) a crime against a child, including endangering the welfare of a
34 child and child pornography pursuant to N.J.S.2C:24-4; child
35 molestation as set forth in N.J.S.2C:14-1 et seq.;

36 (2) abuse, abandonment or neglect of a child pursuant to
37 R.S.9:6-3;

38 (3) endangering the welfare of an incompetent person pursuant to
39 N.J.S.2C:24-7;

40 (4) sexual assault, criminal sexual contact or lewdness pursuant to
41 N.J.S.2C:14-2 through N.J.S.2C:14-4;

42 (5) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to
43 N.J.S.2C:11-4;

44 (6) stalking pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10);

45 (7) kidnaping and related offenses including criminal restraint, false
46 imprisonment, interference with custody, criminal coercion, or enticing

1 a child into a motor vehicle, structure or isolated area pursuant to
2 N.J.S.2C:13-1 through N.J.S.2C:13-5 and section 1 of P.L.1993,
3 c.291 (C.2C:13-6);

4 (8) arson pursuant to N.J.S.2C:17-1, or causing or risking
5 widespread injury or damage, which would constitute a crime of the
6 second degree pursuant to N.J.S.2C:17-2;

7 (9) aggravated assault, which would constitute a crime of the
8 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

9 (10) robbery, which would constitute a crime of the first degree
10 pursuant to N.J.S.2C:15-1;

11 (11) burglary, which would constitute a crime of the second degree
12 pursuant to N.J.S.2C:18-2;

13 (12) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17
14 et seq.);

15 (13) terroristic threats pursuant to N.J.S.2C:12-3; or

16 (14) an attempt or conspiracy to commit any of the crimes or
17 offenses listed in paragraphs (1) through (13) of this subsection.

18 b. In any other state or jurisdiction, of conduct which, if committed
19 in New Jersey, would constitute any of the crimes or disorderly
20 persons offenses described in subsection a. of this section.

21 c. Notwithstanding the provisions of this section to the contrary,
22 an individual shall not be disqualified from employment at or
23 administering a facility under this act on the basis of any conviction
24 disclosed by a criminal history record background check performed
25 pursuant to this act without an opportunity to challenge the accuracy
26 of the disqualifying criminal history record pursuant to the provisions
27 of section 7 of this act.

28 d. If a staff member of a facility is convicted of a crime specified
29 in subsection a. of this section, the staff member shall be terminated
30 from employment at or administering a facility, except that the
31 department may approve the individual's employment at, or
32 administration of, the facility if all of the following conditions are met:

33 (1) the department determines that the crime does not relate
34 adversely to the position the individual is employed in pursuant to the
35 provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.);

36 (2) the conviction is not related to a crime committed against a
37 child, as specified in subsection a. of this section;

38 (3) the facility documents that the individual's employment or
39 administration of the facility does not create a risk to the safety or
40 well-being of children due to the nature and requirements of the
41 position; as necessary, the facility shall identify restrictions regarding
42 the individual's contact with, care or supervision of children;

43 (4) the facility documents that the individual is uniquely qualified
44 for the position due to specific skills, qualifications, characteristics or
45 prior employment experiences; and

46 (5) the department determines that the individual has affirmatively

1 demonstrated rehabilitation, pursuant to the factors specified in
2 subsection b. of section 5 of this act.

3

4 5. a. For crimes and offenses other than those cited in subsection
5 a. of section 4 of this act, an applicant or staff member may be eligible
6 for employment at, or to administer, a facility if the individual has
7 affirmatively demonstrated to the department clear and convincing
8 evidence of rehabilitation pursuant to subsection b. of this section.

9 b. In determining whether an individual has affirmatively
10 demonstrated rehabilitation, the following factors shall be considered:

11 (1) the nature and responsibility of the position at the facility that
12 the convicted individual would hold, has held or currently holds, as the
13 case may be;

14 (2) the nature and seriousness of the offense;

15 (3) the circumstances under which the offense occurred;

16 (4) the date of the offense;

17 (5) the age of the individual when the offense was committed;

18 (6) whether the offense was an isolated or repeated incident;

19 (7) any social conditions that may have contributed to the offense;

20 and

21 (8) any evidence of rehabilitation, including good conduct in prison
22 or in the community, counseling or psychiatric treatment received,
23 acquisition of additional academic or vocational schooling, successful
24 participation in correctional work-release programs, or the
25 recommendation of those who have had the individual under their
26 supervision.

27 c. The department shall make the final determination regarding the
28 employment of the administrator of a facility with a criminal conviction
29 specified under this section.

30 d. The administrator of the facility or the facility's board of
31 directors shall make the final determination regarding the employment
32 of a staff member or applicant with a criminal conviction specified
33 under this section.

34 e. If the administrator of a facility has knowledge that a staff
35 member has criminal charges pending against the staff member, the
36 administrator shall promptly notify the department to determine
37 whether or not any action concerning the staff member is necessary in
38 order to ensure the safety of the children who are placed in the facility.
39

40 6. a. A facility that has received an employment application from
41 an individual or currently employs a staff member shall be immune
42 from liability for acting upon or disclosing information about the
43 disqualification or termination of that applicant or staff member to
44 another facility seeking to employ that individual if the facility has:

45 (1) received notice from the department or the facility's board of
46 directors, as applicable, that the applicant or staff member has been

1 determined by the department or the board of directors to be
2 disqualified from employment at a facility pursuant to this act; or

3 (2) terminated the employment of a staff member because the
4 individual was disqualified from employment at the facility on the basis
5 of a conviction of a crime pursuant to section 4 of this act after
6 commencing employment at the facility.

7 b. A facility that acts upon or discloses information pursuant to
8 subsection a. of this section shall be presumed to be acting in good
9 faith unless it is shown by clear and convincing evidence that the
10 facility acted with actual malice toward the individual who is the
11 subject of the information.

12

13 7. a. The Commissioner of Human Services is authorized to
14 exchange fingerprint data with, and to receive information from, the
15 Division of State Police in the Department of Law and Public Safety
16 and the Federal Bureau of Investigation.

17 Upon receipt of the criminal history record information for an
18 applicant or staff member of a residential child care facility from the
19 Federal Bureau of Investigation and the Division of State Police, the
20 Department of Human Services shall notify the applicant or staff
21 member, as applicable, and the residential child care facility, in writing,
22 of the applicant's or staff member's qualification or disqualification for
23 employment or service under sections 4 or 5 of P.L. , c. (C)
24 (pending before the Legislature as this bill). If the applicant or staff
25 member is disqualified, the convictions that constitute the basis for the
26 disqualification shall be identified in the written notice to the applicant
27 or staff member. The applicant or staff member shall have 14 days
28 from the date of the written notice of disqualification to challenge the
29 accuracy of the criminal history record information. If no challenge is
30 filed or if the determination of the accuracy of the criminal history
31 record information upholds the disqualification, the department shall
32 notify the facility that the applicant or staff member has been
33 disqualified from employment.

34 b. The Division of State Police shall promptly notify the
35 Department of Human Services in the event an applicant or staff
36 member, who was the subject of a criminal history record background
37 check conducted pursuant to subsection a. of this section, is convicted
38 of a crime or offense in this State after the date the background check
39 was performed. Upon receipt of such notification, the department
40 shall make a determination regarding the employment of the applicant
41 or staff member.

42

43 8. a. As a condition of securing or maintaining a certificate of
44 approval from the department, the administrator of a facility shall
45 ensure that the division conducts a child abuse record information
46 check of its child abuse records to determine if an incident of child

1 abuse or neglect has been substantiated, pursuant to section 4 of
2 P.L.1971, c.437 (C.9:6-8.11), against any staff member of the facility.

3 b. The department shall not issue a certificate of approval to a
4 facility until the facility has requested that the division conduct a child
5 abuse record information check on each staff member employed by or
6 working at the facility.

7 c. The department shall deny, revoke or refuse to renew the
8 facility's certificate of approval, as appropriate, if the department
9 determines that an incident of child abuse or neglect by an
10 administrator of a facility has been substantiated.

11 d. Each staff member of a facility shall provide prior written
12 consent for the division to conduct a child abuse record information
13 check.

14 e. If the administrator of the facility refuses to consent to, or
15 cooperate in, the securing of a division child abuse record information
16 check, the department shall suspend, deny, revoke or refuse to renew
17 the facility's certificate of approval, as appropriate.

18 f. If a staff member of the facility, other than the administrator,
19 refuses to consent to, or cooperate in, the securing of a division child
20 abuse record information check, the individual shall be immediately
21 terminated from employment at the facility.

22 g. The division shall complete the child abuse record information
23 check within 45 days after receiving the request for the check.

24

25 9. a. In the case of a facility established after the effective date of
26 this act, the administrator of the facility, prior to the facility's opening,
27 shall ensure that a request for a child abuse record information check
28 on each staff member is sent to the division.

29 A staff member shall not be left alone as the only adult caring for
30 a child at the facility until the results of the staff member's child abuse
31 record information check have been received by the administrator of
32 the facility.

33 b. In the case of a facility granted a certificate of approval prior to
34 the effective date of this act, the administrator of the facility, at the
35 time of the facility's first renewal of its certificate of approval, shall
36 ensure that a request for a child abuse record information check on
37 each staff member is sent to the division.

38 c. Within two weeks after a new staff member begins employment
39 at a facility, the administrator of the facility shall ensure that a request
40 for a child abuse record information check on the new staff member is
41 sent to the division.

42 A new staff member shall not be left alone as the only adult caring
43 for a child at the facility until the results of the staff member's child
44 abuse record information check have been received by the
45 administrator of the facility.

46 d. If the division determines that an incident of child abuse or

1 neglect by a staff member has been substantiated, the division shall
2 advise the administrator of the facility of the results of the child abuse
3 record information check and the facility shall immediately terminate
4 the individual from employment at the facility.

5 e. The department shall consider, for the purposes of this act, any
6 incidents of child abuse or neglect that were substantiated on or after
7 June 29, 1995, to ensure that perpetrators have had an opportunity to
8 appeal a substantiated finding of abuse or neglect; except that the
9 department may consider substantiated incidents prior to that date, if
10 the department, in its judgment, determines that the individual poses
11 a risk of harm to children in a facility. In cases involving incidents
12 substantiated prior to June 29, 1995, the department shall offer the
13 individual an opportunity for a hearing to contest its action restricting
14 the individual from employment at a facility.

15
16 10. In the case of a facility located outside the State serving
17 children who are residents of the State, the administrator of the facility
18 shall ensure that an applicant or staff member meets all applicable laws
19 and regulations in that state governing criminal history record
20 background and child abuse record information checks that may be
21 required as a condition of employment. In the event that criminal
22 history record background and child abuse record information checks
23 are not mandated, the administrator of the facility shall require that the
24 applicant or staff member make a voluntary disclosure of any criminal
25 conviction. The results of the disclosure shall be made available to the
26 department, so the department can determine the suitability of the
27 individual for employment at the facility during the time children who
28 are residents of the State are placed in the facility.

29
30 11. The department shall be responsible for the cost of processing
31 and funding all criminal history record background and child abuse
32 record information checks required pursuant to this act. The
33 department shall also be responsible for paying the cost of obtaining
34 the fingerprints or other identifier authorized by the Division of State
35 Police, unless that service is available at no cost to the employee or
36 individual seeking employment.

37
38 12. This act shall take effect take effect 180 days after enactment.

39
40
41 STATEMENT

42
43 This bill requires criminal history record background and child
44 abuse record information checks for existing staff and employment
45 applicants at residential child care facilities in the State.

46 As used in the bill "residential child care facility" means any public

1 or private establishment subject to the regulatory authority of the
2 department that provides room, board, care, shelter or treatment
3 services for children on a 24-hour-a-day basis, including: residential
4 facilities operated by or under contract or agreement with the Division
5 of Youth and Family Services (DYFS); group homes, treatment
6 homes, teaching family homes, alternative care homes and supervised
7 transitional living homes operated by or under contract or agreement
8 with DYFS; and shelter care facilities and homes, including shelters
9 serving children in juvenile-family crisis and in need of temporary
10 shelter care.

11 Specifically, the bill requires that all administrators, staff members
12 and employment applicants undergo criminal history record
13 background checks through the New Jersey Division of State Police
14 and the Federal Bureau of Investigation as a condition of continued or
15 new employment at residential child care facilities in the State. If an
16 administrator of a facility refuses to consent to or cooperate in the
17 background check, the facility's certificate of approval would be
18 subject to suspension, revocation, or non-renewal. If a staff member
19 other than the administrator refuses to consent to or cooperate in the
20 background checks, the staff member would be subject to immediate
21 termination of employment.

22 Staff members and employment applicants with a record of
23 conviction for certain specified crimes enumerated in the bill would be
24 permanently disqualified from employment at or administering a
25 facility, except that the Department of Human Services may approve
26 the employment of the individual at, or the individual's administration
27 of, the facility if certain conditions are met.

28 The bill also provides that in the case of any crime or offense other
29 than those enumerated in the bill, an applicant or staff member may be
30 eligible for employment at or to administer a facility if DYFS
31 determines that the person has affirmatively demonstrated clear and
32 convincing evidence of rehabilitation.

33 The bill provides that the final determination regarding the
34 employment of an administrator of a facility with a criminal conviction
35 shall be made by the department and the final determination of a staff
36 member or applicant with a criminal conviction shall be made by the
37 administrator of the facility or the facility's board of directors.

38 Further, the bill provides that if an administrator of a facility has
39 knowledge of criminal charges pending against a staff member, the
40 administrator shall promptly notify the department to determine
41 whether any action concerning the staff member is necessary in order
42 to ensure the safety of the children who are placed in the facility.

43 The bill provides immunity from liability to a facility for acting upon
44 or disclosing information about the disqualification or termination of
45 an applicant or staff member to another facility seeking to employ that
46 individual under certain conditions.

1 The bill also directs a staff member employed at a facility to
2 undergo a child abuse record information check by DYFS to determine
3 if an incident of child abuse or neglect has been substantiated against
4 the staff member. The department shall not issue a certificate of
5 approval to a facility until the facility has requested that DYFS
6 conduct a check on each staff member employed by or working at the
7 facility. The department shall deny, revoke or refuse to renew the
8 facility's certificate of approval if DYFS determines that an incident of
9 child abuse or neglect by an administrator of a facility has been
10 substantiated, or if the administrator refuses to consent to or
11 cooperate in securing a check. If a staff member, other than the
12 administrator, refuses to consent to or cooperate in securing a check,
13 the individual shall be immediately terminated from employment at the
14 facility.

15 In the case of a facility located outside the State serving children
16 who are residents of the State, the bill directs the administrator of the
17 facility to:

- 18 ! ensure that an applicant or staff member meet all applicable
19 laws and regulations in that state governing criminal history
20 record background and child abuse record information checks
21 that may be required as a condition of employment; and
- 22 ! require that the applicant or staff member make a voluntary
23 disclosure of any criminal conviction (if criminal history record
24 background and child abuse record information checks are not
25 mandated), so the department can determine the suitability of
26 the individual for employment at the facility during the time
27 children who are residents of the State are placed in the
28 facility.

29 Finally, the bill provides that the department shall be responsible for
30 the cost of processing and funding all criminal history record
31 background and child abuse record information checks required under
32 the bill.

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 2695

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 23, 2003

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 2695.

As amended by committee, this bill requires criminal history record background and child abuse record information checks for existing staff and employment applicants at residential child care facilities in the State.

As used in the bill "residential child care facility" means any public or private establishment subject to the regulatory authority of the Department of Human Services that provides room, board, care, shelter or treatment services for children on a 24-hour-a-day basis, including: residential facilities operated by or under contract or agreement with the Division of Youth and Family Services (DYFS); group homes, treatment homes, teaching family homes, alternative care homes and supervised transitional living homes operated by or under contract or agreement with DYFS; and shelter care facilities and homes, including shelters serving children in juvenile-family crisis and in need of temporary shelter care.

Specifically, the bill requires that all administrators, staff members and employment applicants undergo criminal history record background checks through the New Jersey Division of State Police and the Federal Bureau of Investigation as a condition of continued or new employment at residential child care facilities in the State. If an administrator of a facility refuses to consent to or cooperate in the background check, the facility's certificate of approval would be subject to suspension, revocation, or non-renewal. If a staff member other than the administrator refuses to consent to or cooperate in the background checks, the staff member would be subject to immediate termination of employment.

Staff members and employment applicants with a record of conviction for certain specified crimes enumerated in the bill would be permanently disqualified from employment at or administering a facility, except that the department may approve the employment of

the individual at, or the individual's administration of, the facility if certain conditions are met.

The bill also provides that in the case of any crime or offense other than those enumerated in the bill, an applicant or staff member may be eligible for employment at or to administer a facility if the department determines that the person has affirmatively demonstrated clear and convincing evidence of rehabilitation.

The bill provides that the final determination regarding the employment of an administrator of a facility with a criminal conviction shall be made by the department and the final determination of a staff member or applicant with a criminal conviction shall be made by the administrator of the facility or the facility's board of directors.

Further, the bill provides that if an administrator of a facility has knowledge of criminal charges pending against a staff member, the administrator shall promptly notify the department to determine whether any action concerning the staff member is necessary in order to ensure the safety of the children who are placed in the facility.

The bill provides immunity from liability to a facility for acting upon or disclosing information about the disqualification or termination of an applicant or staff member to another facility seeking to employ that individual under certain conditions specified in the bill.

The bill also directs a staff member employed at a facility to undergo a child abuse record information check by DYFS to determine if an incident of child abuse or neglect has been substantiated against the staff member. The department shall not issue a certificate of approval to a facility until the facility has requested that DYFS conduct a check on each staff member employed by or working at the facility. The department shall deny, revoke or refuse to renew the facility's certificate of approval if DYFS determines that an incident of child abuse or neglect by an administrator of a facility has been substantiated, or if the administrator refuses to consent to or cooperate in securing a check. If a staff member, other than the administrator, refuses to consent to or cooperate in securing a check, the individual shall be immediately terminated from employment at the facility.

In the case of a facility located outside the State serving children who are residents of the State, the bill directs the administrator of the facility to:

- * ensure that an applicant or staff member meet all applicable laws and regulations in that state governing criminal history record background and child abuse record information checks that may be required as a condition of employment; and
- * require that the applicant or staff member make a voluntary disclosure of any criminal conviction (if criminal history record background and child abuse record information checks are not mandated), so the department can determine the suitability of

the individual for employment at the facility during the time children who are residents of the State are placed in the facility.

Finally, the bill provides that the department shall be responsible for the cost of processing and funding all criminal history record background and child abuse record information checks required under the bill.

The committee amended the bill to clarify, in section 7 of the bill, that the Commissioner of Human Services is authorized to receive criminal history record information from the Division of State Police.

As amended, this bill is identical to Assembly Bill No. 3827 (Burzichelli/Payne/Cruz Perez), which is pending before the General Assembly.

ASSEMBLY, No. 3827

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED JUNE 16, 2003

Sponsored by:

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman WILLIAM D. PAYNE

District 29 (Essex and Union)

Assemblywoman NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Assemblyman JOHN F. MCKEON

District 27 (Essex)

Co-Sponsored by:

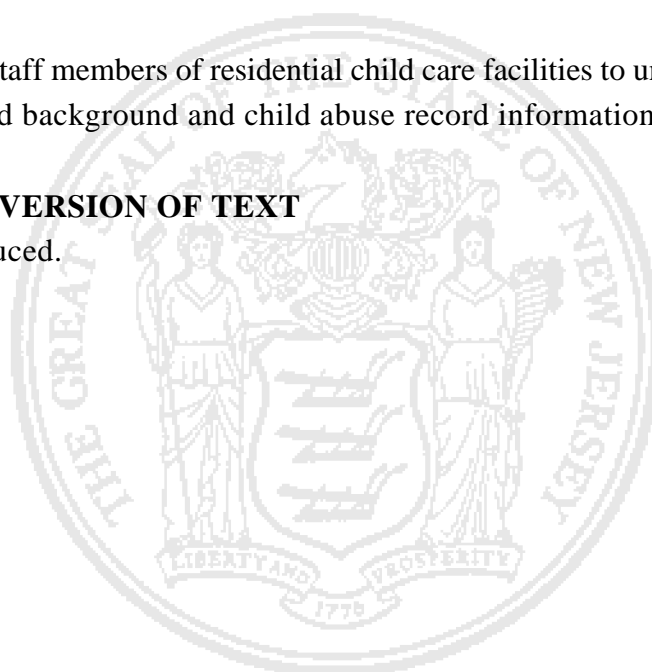
Assemblywoman Heck

SYNOPSIS

Requires staff members of residential child care facilities to undergo criminal history record background and child abuse record information checks.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/20/2003)

1 AN ACT requiring criminal history record background and child abuse
2 record information checks for staff in residential child care facilities
3 and supplementing Titles 30 and 53 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in sections 1 through 6 and 8 through 11 of this act:

9 "Department" means the Department of Human Services.

10 "Division" means the Division of Youth and Family Services in the
11 Department of Human Services.

12 "Residential child care facility" or "facility" means any public or
13 private establishment subject to the regulatory authority of the
14 department that provides room, board, care, shelter or treatment
15 services for children on a 24-hour-a-day basis. The term shall include:
16 residential facilities operated by or under contract or agreement with
17 the division to serve 13 or more children with emotional or behavioral
18 problems as defined pursuant to section 2 of P.L.1951, c.138
19 (C.30:4C-2); group homes, treatment homes, teaching family homes,
20 alternative care homes and supervised transitional living homes
21 operated by or under contract or agreement with the division to serve
22 12 or fewer children with emotional or behavioral problems as defined
23 pursuant to N.J.A.C.10:128-1.2; and shelter care facilities and homes,
24 including shelters serving children in juvenile-family crisis and in need
25 of temporary shelter care, as defined pursuant to section 3 of
26 P.L.1982, c.77 (C.2A:4A-22).

27 "Staff member" means an individual 18 years of age or older who
28 is an administrator of, employed by, or works in a facility on a
29 regularly scheduled basis during the facility's operating hours,
30 including full-time, part-time, voluntary, contract, consulting and
31 substitute staff, whether compensated or not.

32
33 2. a. As a condition of securing or maintaining a certificate of
34 approval from the department, the administrator of a facility shall
35 ensure that a criminal history record background check is conducted
36 on each staff member of the facility.

37 b. If the administrator of the facility refuses to consent to, or
38 cooperate in, the securing of a criminal history record background
39 check, the department shall suspend, deny, revoke or refuse to renew
40 the facility's certificate of approval, as appropriate.

41 c. If a staff member of a facility, other than the administrator,
42 refuses to consent to, or cooperate in, the securing of a criminal
43 history record background check, the individual shall be immediately
44 terminated from employment at the facility.

45
46 3. a. In the case of a facility established after the effective date of

1 this act, the administrator of the facility, prior to the facility's opening,
2 shall ensure that a request for a criminal history record background
3 check on each staff member is sent to the department for processing
4 by the Division of State Police in the Department of Law and Public
5 Safety and the Federal Bureau of Investigation.

6 A staff member shall not be left alone as the only adult caring for
7 a child at the facility until the staff member's criminal history record
8 background has been reviewed by the department pursuant to this act.

9 b. In the case of a facility granted a certificate of approval prior to
10 the effective date of this act, the administrator of the facility, at the
11 time of the facility's first renewal of its certificate of approval, shall
12 ensure that a request for a criminal history record background check
13 on each staff member is sent to the department for processing by the
14 Division of State Police and the Federal Bureau of Investigation.

15 c. Within two weeks after a new staff member begins employment
16 at a facility, the administrator of the facility shall ensure that a request
17 for a criminal history record background check on the new staff
18 member is sent to the department for processing by the Division of
19 State Police and the Federal Bureau of Investigation.

20 A new staff member shall not be left alone as the only adult caring
21 for a child at the facility until the staff member's criminal history
22 record background has been reviewed by the department pursuant to
23 this act.

24
25 4. Except as provided in subsection d. of this section, a current
26 staff member or an applicant for employment shall be permanently
27 disqualified from employment at or administering a facility if the
28 criminal history record background check of the staff member or
29 applicant reveals a record of conviction for any of the following crimes
30 and offenses:

31 a. In New Jersey, any crime or disorderly persons offense as
32 follows:

33 (1) a crime against a child, including endangering the welfare of a
34 child and child pornography pursuant to N.J.S.2C:24-4; child
35 molestation as set forth in N.J.S.2C:14-1 et seq.;

36 (2) abuse, abandonment or neglect of a child pursuant to
37 R.S.9:6-3;

38 (3) endangering the welfare of an incompetent person pursuant to
39 N.J.S.2C:24-7;

40 (4) sexual assault, criminal sexual contact or lewdness pursuant to
41 N.J.S.2C:14-2 through N.J.S.2C:14-4;

42 (5) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to
43 N.J.S.2C:11-4;

44 (6) stalking pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10);

45 (7) kidnaping and related offenses including criminal restraint, false
46 imprisonment, interference with custody, criminal coercion, or enticing

1 a child into a motor vehicle, structure or isolated area pursuant to
2 N.J.S.2C:13-1 through N.J.S.2C:13-5 and section 1 of P.L.1993,
3 c.291 (C.2C:13-6);

4 (8) arson pursuant to N.J.S.2C:17-1, or causing or risking
5 widespread injury or damage, which would constitute a crime of the
6 second degree pursuant to N.J.S.2C:17-2;

7 (9) aggravated assault, which would constitute a crime of the
8 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

9 (10) robbery, which would constitute a crime of the first degree
10 pursuant to N.J.S.2C:15-1;

11 (11) burglary, which would constitute a crime of the second degree
12 pursuant to N.J.S.2C:18-2;

13 (12) domestic violence pursuant to P.L. 1991, c.261 (C.2C:25-17
14 et seq.);

15 (13) terroristic threats pursuant to N.J.S.2C:12-3; or

16 (14) an attempt or conspiracy to commit any of the crimes or
17 offenses listed in paragraphs (1) through (13) of this subsection.

18 b. In any other state or jurisdiction, of conduct which, if committed
19 in New Jersey, would constitute any of the crimes or disorderly
20 persons offenses described in subsection a. of this section.

21 c. Notwithstanding the provisions of this section to the contrary,
22 an individual shall not be disqualified from employment at or
23 administering a facility under this act on the basis of any conviction
24 disclosed by a criminal history record background check performed
25 pursuant to this act without an opportunity to challenge the accuracy
26 of the disqualifying criminal history record pursuant to the provisions
27 of section 7 of this act.

28 d. If a staff member of a facility is convicted of a crime specified
29 in subsection a. of this section, the staff member shall be terminated
30 from employment at or administering a facility, except that the
31 department may approve the individual's employment at, or
32 administration of, the facility if all of the following conditions are met:

33 (1) the department determines that the crime does not relate
34 adversely to the position the individual is employed in pursuant to the
35 provisions of P.L.1968, c.282 (C.2A:168A-1 et seq.);

36 (2) the conviction is not related to a crime committed against a
37 child, as specified in subsection a. of this section;

38 (3) the facility documents that the individual's employment or
39 administration of the facility does not create a risk to the safety or
40 well-being of children due to the nature and requirements of the
41 position; as necessary, the facility shall identify restrictions regarding
42 the individual's contact with, care or supervision of children;

43 (4) the facility documents that the individual is uniquely qualified
44 for the position due to specific skills, qualifications, characteristics or
45 prior employment experiences; and

46 (5) the department determines that the individual has affirmatively

1 demonstrated rehabilitation, pursuant to the factors specified in
2 subsection b. of section 5 of this act.

3

4 5. a. For crimes and offenses other than those cited in subsection
5 a. of section 4 of this act, an applicant or staff member may be eligible
6 for employment at, or to administer, a facility if the individual has
7 affirmatively demonstrated to the department clear and convincing
8 evidence of rehabilitation pursuant to subsection b. of this section.

9 b. In determining whether an individual has affirmatively
10 demonstrated rehabilitation, the following factors shall be considered:

11 (1) the nature and responsibility of the position at the facility that
12 the convicted individual would hold, has held or currently holds, as the
13 case may be;

14 (2) the nature and seriousness of the offense;

15 (3) the circumstances under which the offense occurred;

16 (4) the date of the offense;

17 (5) the age of the individual when the offense was committed;

18 (6) whether the offense was an isolated or repeated incident;

19 (7) any social conditions that may have contributed to the offense;

20 and

21 (8) any evidence of rehabilitation, including good conduct in prison
22 or in the community, counseling or psychiatric treatment received,
23 acquisition of additional academic or vocational schooling, successful
24 participation in correctional work-release programs, or the
25 recommendation of those who have had the individual under their
26 supervision.

27 c. The department shall make the final determination regarding the
28 employment of the administrator of a facility with a criminal conviction
29 specified under this section.

30 d. The administrator of the facility or the facility's board of
31 directors shall make the final determination regarding the employment
32 of a staff member or applicant with a criminal conviction specified
33 under this section.

34 e. If the administrator of a facility has knowledge that a staff
35 member has criminal charges pending against the staff member, the
36 administrator shall promptly notify the department to determine
37 whether or not any action concerning the staff member is necessary in
38 order to ensure the safety of the children who are placed in the facility.
39

40 6. a. A facility that has received an employment application from
41 an individual or currently employs a staff member shall be immune
42 from liability for acting upon or disclosing information about the
43 disqualification or termination of that applicant or staff member to
44 another facility seeking to employ that individual if the facility has:

45 (1) received notice from the department or the facility's board of
46 directors, as applicable, that the applicant or staff member has been

1 determined by the department or the board of directors to be
2 disqualified from employment at a facility pursuant to this act; or

3 (2) terminated the employment of a staff member because the
4 individual was disqualified from employment at the facility on the basis
5 of a conviction of a crime pursuant to section 4 of this act after
6 commencing employment at the facility.

7 b. A facility that acts upon or discloses information pursuant to
8 subsection a. of this section shall be presumed to be acting in good
9 faith unless it is shown by clear and convincing evidence that the
10 facility acted with actual malice toward the individual who is the
11 subject of the information.

12

13 7. a. The Commissioner of Human Services is authorized to
14 exchange fingerprint data with, and to receive information from, the
15 Division of State Police in the Department of Law and Public Safety
16 and the Federal Bureau of Investigation.

17 Upon receipt of the criminal history record information for an
18 applicant or staff member of a residential child care facility from the
19 Federal Bureau of Investigation and the Division of State Police, the
20 Department of Human Services shall notify the applicant or staff
21 member, as applicable, and the residential child care facility, in writing,
22 of the applicant's or staff member's qualification or disqualification for
23 employment or service under sections 4 or 5 of P.L. , c.

24 (C) (pending before the Legislature as this bill) . If the applicant
25 or staff member is disqualified, the convictions that constitute the basis
26 for the disqualification shall be identified in the written notice to the
27 applicant or staff member. The applicant or staff member shall have
28 14 days from the date of the written notice of disqualification to
29 challenge the accuracy of the criminal history record information. If
30 no challenge is filed or if the determination of the accuracy of the
31 criminal history record information upholds the disqualification, the
32 department shall notify the facility that the applicant or staff member
33 has been disqualified from employment.

34 b. The Division of State Police shall promptly notify the
35 Department of Human Services in the event an applicant or staff
36 member, who was the subject of a criminal history record background
37 check conducted pursuant to subsection a. of this section, is convicted
38 of a crime or offense in this State after the date the background check
39 was performed. Upon receipt of such notification, the department shall
40 make a determination regarding the employment of the applicant or
41 staff member.

42

43 8. a. As a condition of securing or maintaining a certificate of
44 approval from the department, the administrator of a facility shall
45 ensure that the division conducts a child abuse record information
46 check of its child abuse records to determine if an incident of child

1 abuse or neglect has been substantiated, pursuant to section 4 of
2 P.L.1971, c.437 (C.9:6-8.11), against any staff member of the facility.

3 b. The department shall not issue a certificate of approval to a
4 facility until the facility has requested that the division conduct a child
5 abuse record information check on each staff member employed by or
6 working at the facility.

7 c. The department shall deny, revoke or refuse to renew the
8 facility's certificate of approval, as appropriate, if the department
9 determines that an incident of child abuse or neglect by an
10 administrator of a facility has been substantiated.

11 d. Each staff member of a facility shall provide prior written
12 consent for the division to conduct a child abuse record information
13 check.

14 e. If the administrator of the facility refuses to consent to, or
15 cooperate in, the securing of a division child abuse record information
16 check, the department shall suspend, deny, revoke or refuse to renew
17 the facility's certificate of approval, as appropriate.

18 f. If a staff member of the facility, other than the administrator,
19 refuses to consent to, or cooperate in, the securing of a division child
20 abuse record information check, the individual shall be immediately
21 terminated from employment at the facility.

22 g. The division shall complete the child abuse record information
23 check within 45 days after receiving the request for the check.

24

25 9. a. In the case of a facility established after the effective date of
26 this act, the administrator of the facility, prior to the facility's opening,
27 shall ensure that a request for a child abuse record information check
28 on each staff member is sent to the division.

29 A staff member shall not be left alone as the only adult caring for
30 a child at the facility until the results of the staff member's child abuse
31 record information check have been received by the administrator of
32 the facility.

33 b. In the case of a facility granted a certificate of approval prior to
34 the effective date of this act, the administrator of the facility, at the
35 time of the facility's first renewal of its certificate of approval, shall
36 ensure that a request for a child abuse record information check on
37 each staff member is sent to the division.

38 c. Within two weeks after a new staff member begins employment
39 at a facility, the administrator of the facility shall ensure that a request
40 for a child abuse record information check on the new staff member is
41 sent to the division.

42 A new staff member shall not be left alone as the only adult caring
43 for a child at the facility until the results of the staff member's child
44 abuse record information check have been received by the
45 administrator of the facility.

46 d. If the division determines that an incident of child abuse or

1 neglect by a staff member has been substantiated, the division shall
2 advise the administrator of the facility of the results of the child abuse
3 record information check and the facility shall immediately terminate
4 the individual from employment at the facility.

5 e. The department shall consider, for the purposes of this act, any
6 incidents of child abuse or neglect that were substantiated on or after
7 June 29, 1995, to ensure that perpetrators have had an opportunity to
8 appeal a substantiated finding of abuse or neglect; except that the
9 department may consider substantiated incidents prior to that date, if
10 the department, in its judgment, determines that the individual poses
11 a risk of harm to children in a facility. In cases involving incidents
12 substantiated prior to June 29, 1995, the department shall offer the
13 individual an opportunity for a hearing to contest its action restricting
14 the individual from employment at a facility.

15
16 10. In the case of a facility located outside the State serving
17 children who are residents of the State, the administrator of the facility
18 shall ensure that an applicant or staff member meets all applicable laws
19 and regulations in that state governing criminal history record
20 background and child abuse record information checks that may be
21 required as a condition of employment. In the event that criminal
22 history record background and child abuse record information checks
23 are not mandated, the administrator of the facility shall require that the
24 applicant or staff member make a voluntary disclosure of any criminal
25 conviction. The results of the disclosure shall be made available to the
26 department, so the department can determine the suitability of the
27 individual for employment at the facility during the time children who
28 are residents of the State are placed in the facility.

29
30 11. The department shall be responsible for the cost of processing
31 and funding all criminal history record background and child abuse
32 record information checks required pursuant to this act. The
33 department shall also be responsible for paying the cost of obtaining
34 the fingerprints or other identifier authorized by the Division of State
35 Police, unless that service is available at no cost to the employee or
36 individual seeking employment.

37
38 12. This act shall take effect take effect 180 days after enactment.

39
40
41 STATEMENT

42
43 This bill requires criminal history record background and child
44 abuse record information checks for existing staff and employment
45 applicants at residential child care facilities in the State.

46 As used in the bill "residential child care facility" means any public

1 or private establishment subject to the regulatory authority of the
2 department that provides room, board, care, shelter or treatment
3 services for children on a 24-hour-a-day basis, including: residential
4 facilities operated by or under contract or agreement with the Division
5 of Youth and Family Services (DYFS); group homes, treatment
6 homes, teaching family homes, alternative care homes and supervised
7 transitional living homes operated by or under contract or agreement
8 with DYFS; and shelter care facilities and homes, including shelters
9 serving children in juvenile-family crisis and in need of temporary
10 shelter care.

11 Specifically, the bill requires that all administrators, staff members
12 and employment applicants undergo criminal history record
13 background checks through the New Jersey Division of State Police
14 and the Federal Bureau of Investigation as a condition of continued or
15 new employment at residential child care facilities in the State. If an
16 administrator of a facility refuses to consent to or cooperate in the
17 background check, the facility's certificate of approval would be
18 subject to suspension, revocation, or non-renewal. If a staff member
19 other than the administrator refuses to consent to or cooperate in the
20 background checks, the staff member would be subject to immediate
21 termination of employment.

22 Staff members and employment applicants with a record of
23 conviction for certain specified crimes enumerated in the bill would be
24 permanently disqualified from employment at or administering a
25 facility, except that the Department of Human Services may approve
26 the employment of the individual at, or the individual's administration
27 of, the facility if certain conditions are met.

28 The bill also provides that in the case of any crime or offense other
29 than those enumerated in the bill, an applicant or staff member may be
30 eligible for employment at, or to administer, a facility if DYFS
31 determines that the person has affirmatively demonstrated clear and
32 convincing evidence of rehabilitation.

33 The bill provides that the final determination regarding the
34 employment of an administrator of a facility with a criminal conviction
35 shall be made by the department and the final determination of a staff
36 member or applicant with a criminal conviction shall be made by the
37 administrator of the facility or the facility's board of directors.

38 Further, the bill provides that if an administrator of a facility has
39 knowledge of criminal charges pending against a staff member, the
40 administrator shall promptly notify the department to determine
41 whether any action concerning the staff member is necessary in order
42 to ensure the safety of the children who are placed in the facility.

43 The bill provides immunity from liability to a facility for acting upon
44 or disclosing information about the disqualification or termination of
45 an applicant or staff member to another facility seeking to employ that
46 individual under certain conditions.

1 The bill also directs a staff member employed at a facility to
2 undergo a child abuse record information check by DYFS to determine
3 if an incident of child abuse or neglect has been substantiated against
4 the staff member. The department shall not issue a certificate of
5 approval to a facility until the facility has requested that DYFS
6 conduct a check on each staff member employed by or working at the
7 facility. The department shall deny, revoke or refuse to renew the
8 facility's certificate of approval if DYFS determines that an incident of
9 child abuse or neglect by an administrator of a facility has been
10 substantiated, or if the administrator refuses to consent to, or
11 cooperate, in securing a check. If a staff member, other than the
12 administrator, refuses to consent to, or cooperate in, securing a check,
13 the individual shall be immediately terminated from employment at the
14 facility.

15 In the case of a facility located outside the State serving children
16 who are residents of the State, the bill directs the administrator of the
17 facility to:

- 18 ! ensure that an applicant or staff member meet all applicable
19 laws and regulations in that state governing criminal history
20 record background and child abuse record information checks
21 that may be required as a condition of employment; and
- 22 ! require that the applicant or staff member make a voluntary
23 disclosure of any criminal conviction (if criminal history record
24 background and child abuse record information checks are not
25 mandated), so the department can determine the suitability of
26 the individual for employment at the facility during the time
27 children who are residents of the State are placed in the
28 facility.

29 Finally, the bill provides that the department shall be responsible for
30 the cost of processing and funding all criminal history record
31 background and child abuse record information checks required under
32 the bill.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3827

STATE OF NEW JERSEY

DATED: JUNE 19, 2003

The Assembly Budget Committee reports favorably Assembly Bill No. 3827.

Assembly Bill No. 3827 requires criminal history record background and child abuse record information checks for existing staff and employment applicants at residential child care centers in the State.

As used in the bill "residential child care facility" means any public or private establishment subject to the regulatory authority of the department that provides room, board, care, shelter or treatment services for children on a 24-hour-a-day basis, including: residential facilities operated by or under contract or agreement with the Division of Youth and Family Services (DYFS); group homes, treatment homes, teaching family homes, alternative care homes and supervised transitional living homes operated by or under contract or agreement with DYFS; and shelter care facilities and homes, including shelters serving children in juvenile-family crisis and in need of temporary shelter care.

Specifically, the bill requires that all administrators, staff members and employment applicants undergo criminal history record background checks through the New Jersey Division of State Police and the Federal Bureau of Investigation as a condition of continued or new employment at residential child care facilities in the State. If an administrator of a facility refuses to consent to or cooperate in the background check, the facility's certificate of approval would be subject to suspension, revocation, or non-renewal. If a staff member other than the administrator refuses to consent to or cooperate in the background checks, the staff member would be subject to immediate termination of employment.

Staff members and employment applicants with a record of conviction for certain specified crimes enumerated in the bill would be permanently disqualified from employment at or administering a facility, except that the Department of Human Services may approve the employment of the individual at, or the individual's administration of, the facility if certain conditions are met.

The bill also provides that in the case of any crime or offense other than those enumerated in the bill, an applicant or staff member may be eligible for employment at or to administer a facility if DYFS

determines that the person has affirmatively demonstrated clear and convincing evidence of rehabilitation.

The bill provides that the final determination regarding the employment of an administrator of a facility with a criminal conviction shall be made by the department and the final determination of a staff member or applicant with a criminal conviction shall be made by the administrator of the facility or the facility's board of directors.

Further, the bill provides that if an administrator of a facility has knowledge of criminal charges pending against a staff member, the administrator shall promptly notify the department to determine whether any action concerning the staff member is necessary in order to ensure the safety of the children who are placed in the facility.

The bill provides immunity from liability to a facility for acting upon or disclosing information about the disqualification or termination of an applicant or staff member to another center seeking to employ that individual under certain conditions.

FISCAL IMPACT:

There are no data available. However, criminal background checks cost approximately \$50 each: \$25 for the State Police and \$25 for the FBI. The number of applicants is not known at this time.

ASSEMBLY FAMILY, WOMEN AND CHILDREN'S SERVICES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3827

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 19, 2003

The Assembly Family, Women and Children's Services Committee reports favorably and with committee amendments Assembly Bill No. 3827.

As amended by the committee, this bill requires criminal history record background and child abuse record information checks for existing staff and employment applicants at residential child care facilities in the State.

As used in the bill "residential child care facility" means any public or private establishment subject to the regulatory authority of the department that provides room, board, care, shelter or treatment services for children on a 24-hour-a-day basis, including: residential facilities operated by or under contract or agreement with the Division of Youth and Family Services (DYFS); group homes, treatment homes, teaching family homes, alternative care homes and supervised transitional living homes operated by or under contract or agreement with DYFS; and shelter care facilities and homes, including shelters serving children in juvenile-family crisis and in need of temporary shelter care.

Specifically, the bill requires that all administrators, staff members and employment applicants undergo criminal history record background checks through the New Jersey Division of State Police and the Federal Bureau of Investigation as a condition of continued or new employment at residential child care facilities in the State. If an administrator of a facility refuses to consent to or cooperate in the background check, the facility's certificate of approval would be subject to suspension, revocation, or non-renewal. If a staff member other than the administrator refuses to consent to or cooperate in the background checks, the staff member would be subject to immediate termination of employment.

Staff members and employment applicants with a record of conviction for certain specified crimes enumerated in the bill would be permanently disqualified from employment at or administering a facility, except that the Department of Human Services may approve

the employment of the individual at, or the individual's administration of, the facility if certain conditions are met.

The bill also provides that in the case of any crime or offense other than those enumerated in the bill, an applicant or staff member may be eligible for employment at or to administer a facility if DYFS determines that the person has affirmatively demonstrated clear and convincing evidence of rehabilitation.

The bill provides that the final determination regarding the employment of an administrator of a facility with a criminal conviction shall be made by the department and the final determination of a staff member or applicant with a criminal conviction shall be made by the administrator of the facility or the facility's board of directors.

Further, the bill provides that if an administrator of a facility has knowledge of criminal charges pending against a staff member, the administrator shall promptly notify the department to determine whether any action concerning the staff member is necessary in order to ensure the safety of the children who are placed in the facility.

The bill provides immunity from liability to a facility for acting upon or disclosing information about the disqualification or termination of an applicant or staff member to another facility seeking to employ that individual under certain conditions.

The bill also directs a staff member employed at a facility to undergo a child abuse record information check by DYFS to determine if an incident of child abuse or neglect has been substantiated against the staff member. The department shall not issue a certificate of approval to a facility until the facility has requested that DYFS conduct a check on each staff member employed by or working at the facility. The department shall deny, revoke or refuse to renew the center's certificate of approval if DYFS determines that an incident of child abuse or neglect by an administrator of a facility has been substantiated, or if the administrator refuses to consent to or cooperate in securing a check. If a staff member, other than the administrator, refuses to consent to or cooperate in securing a check, the individual shall be immediately terminated from employment at the facility.

In the case of a facility located outside the State serving children who are residents of the State, the bill directs the administrator of the facility to:

- ! ensure that an applicant or staff member meet all applicable laws and regulations in that state governing criminal history record background and child abuse record information checks that may be required as a condition of employment; and
- ! require that the applicant or staff member make a voluntary disclosure of any criminal conviction (if criminal history record background and child abuse record information checks are not mandated), so the department can determine the suitability of the individual for employment at the facility during the time children who are residents of the State are placed in the facility.

Finally, the bill provides that the department shall be responsible for the cost of processing and funding all criminal history record background and child abuse record information checks required under the bill.

COMMITTEE AMENDMENTS

The committee amended the bill to clarify that the Department of Human Services is authorized to receive criminal history record information from the Division of State Police.

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Press Releases

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RELEASE: September 26, 2003

[Previous Screen](#)

McGreevey Takes Groundbreaking Step for Child Protection

Creates Office of Child Advocate and Appoints Lifelong Champion of Children's Rights

(NEWARK)— Governor James E. McGreevey today took a significant step in his continuing aggressive effort to reform the state of child welfare in New Jersey and ensure all our children are protected. At Covenant House in Newark, McGreevey signed legislation creating the first-ever Office of the Child Advocate.

“There is no more fundamental obligation of state government than to protect our children,” said McGreevey. “Over the past decade, two separate reports on the state of child welfare in New Jersey called for the creation of an independent entity to protect our children and operate outside the burden of a bureaucracy. But, despite strong economic times and these desperate recommendations, nothing was done. Today we are creating the Office of the Child Advocate, a strong independent watchdog, who will answer only to the needs of the children it serves.”

The new Office of the Child Advocate, created by bill number A3772, will have the broadest scope of powers of any entity since the Public Advocate was eliminated. The Advocate will have subpoena power, the power to demand corrective action and bring litigation, and the power to report publicly. The Child Advocate will investigate, review, monitor or evaluate all State agencies and service providers, ensuring the safety of children, and respond to allegations of child abuse and neglect. They will establish and maintain a 24 hour hotline for complaints regarding the State's child protection system, and will propose methods to improve coordination and collaboration among State agencies, leading to improved child care.

Governor McGreevey appointed Kevin Ryan, a lifelong advocate for children's rights, to be the first Child Advocate. Ryan currently serves as Deputy Chief of Management and Operations in the Administration and played a key role in the settling of the Children's Rights lawsuit earlier this year. Before joining the Administration, Ryan spent many years fighting for the children of New Jersey. He was an advocate for children and youth at Covenant House for over nine years, co-authored the New Jersey Homeless Youth Act in 1999 and in 2000 wrote the law giving health insurance coverage to children aging out of foster care.

"This is an extraordinary opportunity to hold government accountable to our children," said Kevin Ryan. "I thank the Governor for his trust. I plan to get to work quickly to focus on the needs of

our most vulnerable children."

Recognizing that this Administration has an obligation to fix the broken DYFS system, and create a child welfare system that is accountable to the most vulnerable children it serves, Governor McGreevey has already taken aggressive steps this year to meet that obligation:

- Settled the Children's Rights litigation, and, backed by the Annie Casey Foundation, brought together a panel of national child welfare experts to reform DYFS top-to-bottom.
- Increased DYFS funding by \$30 million, to help obtain basic essentials like new computers.
- Conducted comprehensive safety assessments for over 7,000 children in foster care.
- Moved the Institutional Abuse Unit out of DYFS.

In addition to signing the Child Advocate Bill, Governor McGreevey today also signed two bills which will provide for additional protections for our children. S2695 requires background checks for criminal convictions and child abuse for all residential childcare facility current staff administrators and employment applicants at State residential childcare facilities. And S2655 allows for the sharing of child abuse background check information with police, hospitals, doctors and day care centers.

The Governor was joined by Child Advocate bill sponsors, Senator Byron M. Baer, Senator Paul A. Sarlo, Assemblywoman Mary Previte, Assemblywoman Nellie Pou, Assemblyman Herb Conaway, Assemblywoman Linda Greenstein, Assemblyman Gordon Johnson, and Senator Joseph Coniglio, for the bill signings.

"Children are one of society's most valuable assets, and with the signing of this bill into law today, they will have a strong voice for children's issues in Trenton," said Senator Byron M. Baer, D-Bergen, who had first proposed creating the office in a bill he introduced nearly two years ago. "If the tragedies that have recently been revealed in New Jersey's DYFS system have taught us anything, they have taught us that this is necessary to ensure that all of the State's children have a chance at a happy, safe childhood."

"The sad story of Faheem Williams earlier this year, and every report that has come out since about the failings of DYFS are proof-positive that we owe our children more," said Senator Paul A. Sarlo, D-Bergen, Essex and Passaic. "A strong child advocate in our State's capital will remind each and every person involved in government that one of our most important duties is to protect our State's youth."

"We can and must do more to protect young, vulnerable children from danger," said Assemblywoman Mary Previte (D-Camden), chairwoman of the Assembly Family, Women and Children's Services Committee. "By setting up the Office of Child Advocate, we are ensuring that abused and neglected children get the attention they need and deserve."

"It makes sense to have one central agency focus on the problem of child abuse and neglect," said Assemblywoman Nellie Pou (D-Passaic). "Despite tough budget times, there is no money better spent than on protecting young children who cannot help themselves."

"This is a major step forward in transforming our current child protection system into one that truly protects children and provides for their well-being," said Assembly Deputy Speaker Herb Conaway M.D. (D-Burlington). "The new Office of Child Advocate includes proper oversight by the Governor and Legislature, ensuring it really helps the children it's charged with protecting."

"We are delivering on our commitment to fight for better protection of our state's most precious commodity -- our children," said Assembly Assistant Majority Leader Linda Greenstein (D-Middlesex). "We must investigate abuse and neglect thoroughly and develop ways to prevent them in the future."

"The new Office of Child Advocate is a good balance between protecting children and keeping the public informed about findings and investigations," said Assemblyman Gordon Johnson (D-Bergen), an undersheriff in the Bergen County Sheriff's Office. "Precautions will be taken to ensure the office's actions do not compromise the safety of the youngsters."

"If we're ever going to improve the DYFS system, we must introduce accountability into that system," said Senator Joseph Coniglio, D-Bergen, a prime sponsor of the new law which requires criminal background checks at child care facilities. "Laws that establish an office of the child advocate and ensure that those with checkered pasts are not responsible for the welfare of our children are needed to bring real reform to this agency charged with protecting vulnerable youth and make DYFS an agency that New Jersey can be proud of."



State of New Jersey Governor's Office

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