

CHAPTER 77

AN ACT requiring criminal history record background checks for child care center staff, and supplementing Titles 30 and 53 of the Revised Statutes.

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

C.30:5B-6.10 Definitions relative to criminal history record background checks for child care center staff.

1. As used in sections 1 through 7 and 9 through 12 of P.L.2000, c.77 (C.30:5B-6.10 et seq.):

"Child care center" or "center" means any facility which is maintained for the care, development or supervision of six or more children under 13 years of age who attend the facility for less than 24 hours a day, and which is subject to State licensure or life-safety approval pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.).

"Department" means the Department of Human Services.

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

"Staff member" means a person 18 years of age or older who owns, sponsors, or directs a child care center, or who is employed by or works in a child care center on a regularly scheduled basis during the center's operating hours, including full-time, part-time, voluntary, contract, consulting, and substitute staff, whether compensated or not.

C.30:5B-6.11 Criminal history record background check required for licensure.

2. As a condition of securing or maintaining a license or life-safety approval, a child care center owner or sponsor shall ensure that a criminal history record background check is conducted on all staff members of the center.

C.30:5B-6.12 Noncompliance; penalties.

3. a. If the owner or sponsor of the child care center refuses to consent to, or cooperate in, the securing of a criminal history record background check, the division shall suspend, deny, revoke or refuse to renew the center's license or life-safety approval, as appropriate.

b. If a staff member of a child care center, other than the owner or sponsor, refuses to consent to, or cooperate in, the securing of a criminal history record background check, the person shall be immediately terminated from employment at the center.

C.30:5B-6.13 Request for criminal history record background check, time limits, restrictions upon employees.

4. a. In the case of a child care center established after the effective date of P.L.2000, c.77 (C.30:5B-6.10 et al.), the owner or sponsor of the center, prior to the center's opening, shall ensure that a request for a criminal history record background check on each staff member is sent to the Department of Human Services for processing by the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation.

A staff member shall not be left alone as the only adult caring for a child at the center until the criminal history record background has been reviewed by the division pursuant to P.L.2000, c.77 (C.30:5B-6.10 et al.).

b. In the case of a child care center licensed or granted life-safety approval prior to the effective date of P.L.2000, c.77 (C.30:5B-6.10 et al.), the owner or sponsor of the center, at the time of the center's first renewal of license or life-safety approval next following that effective date, shall ensure that a request for a criminal history record background check for each staff member is sent to the department for processing by the Division of State Police and the Federal Bureau of Investigation.

c. Within two weeks after a new staff member begins employment at a child care center, the owner or sponsor of the center shall ensure that a request for a criminal history record background check is sent to the department for processing by the Division of State Police and the Federal Bureau of Investigation.

A new staff member shall not be left alone as the only adult caring for a child at the center until the criminal history record background has been reviewed by the division pursuant to P.L.2000, c.77 (C.30:5B-6.10 et al.).

d. In the case of child care centers under contract to implement early childhood education programs in the Abbott districts as defined in P.L.1996, c.138 (C.18A:7F-3) and in other school districts, the division shall ensure that a criminal history record background check is conducted on all current staff members as soon as practicable, but no later than six months after the effective date of P.L.2000, c.77 (C.30:5B-6.10 et al.).

C.30:5B-6.14 Record of conviction for certain offenses, disqualification from employment; challenge.

5. A current staff member and an individual seeking employment shall be permanently disqualified from employment at, or ownership or sponsorship of, a child care center if the criminal history record background check of the staff member or individual reveals a record of conviction for any of the following crimes and offenses:

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

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

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

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

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

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

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

(7) kidnapping and related offenses including criminal restraint; false imprisonment; interference with custody; criminal coercion; or enticing a child into a motor vehicle, structure or isolated area pursuant to N.J.S.2C:13-1 through 2C:13-6;

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

(9) terroristic threats pursuant to N.J.S.2C:12-3; and

(10) an attempt or conspiracy to commit any of the crimes or offenses listed in paragraphs (1) through (9) of this subsection.

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

c. Notwithstanding the provisions of this section to the contrary, an individual shall not be disqualified from employment or ownership or sponsorship under P.L.2000, c.77 (C.30:5B-6.10 et al.) on the basis of any conviction disclosed by a criminal history record background check performed pursuant to P.L.2000, c.77 (C.30:5B-6.10 et al.) without an opportunity to challenge the accuracy of the disqualifying criminal history record pursuant to the provisions of section 8 of P.L.2000, c.77 (C.53:1-20.9b).

C.30:5B-6.15 Termination of current staff member; exceptions.

6. a. If a staff member of a child care center is convicted of a crime specified in section 5 of P.L.2000, c.77 (C.30:5B-6.14) after the effective date of P.L.2000, c.77 (C.30:5B-6.10 et al.), the staff member shall be terminated from employment at, or ownership or sponsorship of, a child care center.

b. For crimes and offenses other than those cited in section 5 of P.L.2000, c.77 (C.30:5B-6.14), an applicant or staff member may be eligible for employment at, or ownership or sponsorship of, a child care center if the division determines that the person has affirmatively demonstrated to the division clear and convincing evidence of the person's rehabilitation pursuant to subsection c. of this section.

c. In determining whether a person has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position at the child care center which the convicted person would hold, has held or currently holds, as the case may be;

(2) the nature and seriousness of the offense;

(3) the circumstances under which the offense occurred;

- (4) the date of the offense;
- (5) the age of the person when the offense was committed;
- (6) whether the offense was an isolated or repeated incident;
- (7) any social conditions which may have contributed to the offense; and
- (8) any evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful participation in correctional work-release programs, or the recommendation of those who have had the person under their supervision.

d. The division shall make the final determination regarding the employment of an applicant or staff member with a criminal conviction.

C.30:5B-6.16 Pending criminal charges, notification.

7. If a child care center owner or sponsor has knowledge that a staff member has criminal charges pending against the staff member, the owner or sponsor shall promptly notify the division to determine whether any action concerning the staff member is necessary in order to ensure the safety of the children who attend the center.

C.53:1-20.9b Exchange of fingerprint data, information; determination; challenge.

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

Upon receipt of the criminal history record information for an applicant or staff member of a child care center from the Federal Bureau of Investigation and the Division of State Police, the Division of Youth and Family Services shall notify the applicant or staff member, as applicable, and the child care center, in writing, of the applicant's or staff member's qualification or disqualification for employment or service under P.L.2000, c.77 (C.30:5B-6.10 et al.). If the applicant or staff member is disqualified, the convictions that constitute the basis for the disqualification shall be identified in the written notice to the applicant or staff member. The applicant or staff member shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the criminal history record information. If no challenge is filed or if the determination of the accuracy of the criminal history record information upholds the disqualification, the Division of Youth and Family Services shall notify the center that the applicant or staff member has been disqualified from employment.

b. The Division of State Police shall promptly notify the Division of Youth and Family Services in the event an applicant or staff member who was the subject of a criminal history record background check conducted pursuant to subsection a. of this section, is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of such notification, the Division of Youth and Family Services shall make a determination regarding the employment of the applicant or staff member.

C.30:5B-6.17 Immunity from liability for child care center.

9. a. A child care center that has received an employment application from an individual or currently employs a staff member shall be immune from liability for acting upon or disclosing information about the disqualification or termination to another center seeking to employ that person if the center has:

- (1) received notice from the division that the applicant or staff member, as applicable, has been determined by the division to be disqualified from employment in a child care center pursuant to section 5 or 6 of P.L.2000, c.77 (C.30:5B-6.14 or C.30:5B-6.15); or
- (2) terminated the employment of a staff member because the person was disqualified from employment at the center on the basis of a conviction of a crime pursuant to section 5 or 6 of P.L.2000, c.77 (C.30:5B-6.14 or C.30:5B-6.15) after commencing employment at the center.

b. A child care center which acts upon or discloses information pursuant to subsection a. of this section shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the center acted with actual malice toward the person who is the subject of the information.

C.30:5B-6.18 Inapplicability for C.18A:6-7.1 et seq.

10. Notwithstanding the provisions of any other law to the contrary, the provisions of P.L.1986, c.116 (C.18A:6-7.1 et seq.) shall not apply to employees of a child care center licensed or life-safety approved by the Department of Human Services pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.) if the center contracts with a school district, including, but not limited to, an Abbott district as defined in P.L.1996, c.138 (C.18A:7F-3), to implement an early childhood education program.

C.30:5B-6.19 Report to Governor, Legislature.

11. The commissioner shall report to the Governor and Legislature no later than three years after the effective date of P.L.2000, c.77 (C.30:5B-6.10 et al.) on the effectiveness of the criminal history record background checks in screening applicants and staff members of child care centers. The commissioner shall include in the report recommendations for modifying the provisions of P.L.2000, c.77 (C.30:5B-6.10 et al.) that the commissioner deems to be necessary and appropriate.

C.30:5B-6.20 Responsibilities of department.

12. The department shall be responsible for the cost of processing and funding all criminal history record background checks required pursuant to P.L.2000, c.77 (C.30:5B-6.10 et al.). The department shall also be responsible for paying the cost of obtaining the fingerprints or other identifier authorized by the Division of State Police, unless that service is available at no cost to the employee or individual seeking employment.

C.30:5B-6.21 Rules, regulations.

13. The commissioner shall adopt rules and regulations necessary to implement the provisions of this act in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

14. This act shall take effect on the 180th day after enactment.

Approved July 26, 2000.