

CHAPTER 186

AN ACT requiring criminal history record background and child abuse record information checks for staff in residential child care facilities 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.30:4C-27.16 Definitions relative to background checks for residential child care staff.

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

"Department" means the Department of Human Services.

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

"Residential child care facility" or "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. The term shall include: residential facilities operated by or under contract or agreement with the division to serve 13 or more children with emotional or behavioral problems as defined pursuant to section 2 of P.L.1951, c.138 (C.30:4C-2); group homes, treatment homes, teaching family homes, alternative care homes and supervised transitional living homes operated by or under contract or agreement with the division to serve 12 or fewer children with emotional or behavioral problems as defined pursuant to N.J.A.C.10:128-1.2; and shelter care facilities and homes, including shelters serving children in juvenile-family crisis and in need of temporary shelter care, as defined pursuant to section 3 of P.L.1982, c.77 (C.2A:4A-22).

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

C.30:4C-27.17 Background checks required for securing, maintaining certificate of approval.

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

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

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

C.30:4C-27.18 Facilities established after effective date; procedures.

3. a. In the case of a facility established after the effective date of this act, the administrator of the facility, prior to the facility's opening, shall ensure that a request for a criminal history record background check on each staff member is sent to the department 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 facility until the staff member's criminal history record background has been reviewed by the department pursuant to this act.

b. In the case of a facility granted a certificate of approval prior to the effective date of this act, the administrator of the facility, at the time of the facility's first renewal of its certificate of approval, shall ensure that a request for a criminal history record background check on 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 facility, the administrator of the facility shall ensure that a request for a criminal history record background check on the new staff member 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 facility

until the staff member's criminal history record background has been reviewed by the department pursuant to this act.

C.30:4C-27.19 Criteria for permanent disqualification.

4. Except as provided in subsection d. of this section, a current staff member or an applicant for employment shall be permanently disqualified from employment at or administering a facility if the criminal history record background check of the staff member or applicant 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 section 1 of P.L.1992, c.209 (C.2C:12-10);

(7) kidnaping 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 N.J.S.2C:13-5 and section 1 of P.L.1993, c.291 (C.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) aggravated assault, which would constitute a crime of the second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

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

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

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

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

(14) an attempt or conspiracy to commit any of the crimes or offenses listed in paragraphs (1) through (13) 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 at or administering a facility under this act on the basis of any conviction disclosed by a criminal history record background check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record pursuant to the provisions of section 7 of this act.

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

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

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

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

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

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

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

C.30:4C-27.20 Eligibility for employment for certain rehabilitated offenders; determination.

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

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

(1) the nature and responsibility of the position at the facility that the convicted individual 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 individual when the offense was committed;

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

(7) any social conditions that 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 individual under their supervision.

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

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

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

C.30:4C-27.21 Immunity from liability on use of background information.

6. a. A facility 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 of that applicant or staff member to another facility seeking to employ that individual if the facility has:

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

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

b. A facility that 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 facility acted with actual malice toward the individual who is the subject of the information.

C.53:1-20.9d Exchange of fingerprint data, criminal history record information on residential child care staff.

7. a. The Commissioner of Human Services is authorized to exchange fingerprint data with, and to receive criminal history record 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 residential child care facility from the Federal Bureau of Investigation and the Division of State Police, the Department of Human Services shall notify the applicant or staff member, as

applicable, and the residential child care facility, in writing, of the applicant's or staff member's qualification or disqualification for employment or service under section 4 or 5 of P.L.2003, c.186 (C.30:4C-27.19 or C.30:4C-27.20). 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 department shall notify the facility that the applicant or staff member has been disqualified from employment.

b. The Division of State Police shall promptly notify the Department of Human 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 department shall make a determination regarding the employment of the applicant or staff member.

C.30:4C-27.22 Child abuse record information check required for securing, maintaining certificate of approval.

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

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

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

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

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

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

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

C.30:4C-27.23 Facility established after effective date, request for staff background checks.

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

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

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

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

A new staff member shall not be left alone as the only adult caring for a child at the facility

until the results of the staff member's child abuse record information check have been received by the administrator of the facility.

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

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

C.30:4C-27.24 Regulations relative to out-of-State facility serving State residents.

10. In the case of a facility located outside the State serving children who are residents of the State, the administrator of the facility shall ensure that an applicant or staff member meets 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. In the event that criminal history record background and child abuse record information checks are not mandated, the administrator of the facility shall require that the applicant or staff member make a voluntary disclosure of any criminal conviction. The results of the disclosure shall be made available to the department, 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.

C.30:4C-27.25 Responsibility for costs, funding of background checks.

11. The department shall be responsible for the cost of processing and funding all criminal history record background and child abuse record information checks required pursuant to this act. 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.

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

Approved September 26, 2003.