

CHAPTER 114

AN ACT concerning certain adoption agencies, supplementing P.L.1977, c.367, (C.9:3-37 et seq.), and amending P.L.2003, c.186.

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

C.9:3-40.2 Definitions relative to adoption agencies.

1. As used in this act:

“Approved agency” or “agency” shall have the same meaning as provided in section 2 of P.L.1977, c.367 (C.9:3-38);

“Department” means the Department of Children and Families;

“Staff member” means a person 18 years of age or older who is an administrator of an agency, or who works in an agency on a regularly scheduled basis during the agency's operating hours. Staff member includes full-time, part-time, voluntary, contract, consulting, and substitute staff, whether compensated or not.

C.9:3-40.3 Criminal history record background check for staff members of adoption agency.

2. a. As a condition of securing or maintaining approval by the Department of Children and Families as an adoption agency, the administrator of an agency shall ensure that a criminal history record background check is conducted on each staff member of the agency.

b. If the administrator of an agency 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 agency's approval as an adoption agency, as appropriate.

c. If a staff member of an agency, 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 agency.

d. The cost of a criminal history record background check conducted pursuant to this act shall be paid by the agency.

C.9:3-40.4 Request for criminal history record background check by agency.

3. a. In the case of an adoption agency established after the effective date of this act, the administrator of the agency, prior to the agency'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 accompanying a child until the staff member's criminal history record background check has been reviewed by the department pursuant to this act.

b. In the case of an adoption agency approved prior to the effective date of this act, the administrator of the agency shall ensure that a request for a criminal history record background check on each staff member is submitted to the department within 60 days of the effective date of this act 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 an approved agency, the administrator of the agency shall ensure that a request for a criminal history record background check on the new staff member is submitted 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 accompanying a child until the staff member's criminal history record background check has been reviewed by the department pursuant to this act.

C.9:3-40.5 Disqualification of staff member for employment.

4. Except as provided in subsection d. of this section, a current staff member, or an applicant for employment, shall be disqualified from employment at an approved agency 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;

(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) 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 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 al.);

(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, a staff member shall not be disqualified from employment at an approved agency 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 P.L.2003, c.186 (C.53:1-20.9d).

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

(1) the department determines that the crime does not relate adversely to the position the staff member 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 agency documents that the staff member's employment at the agency 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 agency shall identify restrictions regarding the staff member's contact with, care, or supervision of children;

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

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

C.9:3-40.6 Convincing evidence of rehabilitation.

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

b. In determining whether a staff member has affirmatively demonstrated rehabilitation, the following factors shall be considered:

(1) the nature and responsibility of the position at the agency that the convicted staff member 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 staff member 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 staff member under their supervision.

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

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

e. If an administrator has knowledge that a staff member has criminal charges pending against the staff member, the administrator shall promptly notify the department to determine whether any action concerning the staff member is necessary.

C.9:3-40.7 Immunity from liability relative to disclosure of information by agency.

6. a. An approved agency 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 agency seeking to employ that staff member if the agency has:

(1) received notice from the department, that the applicant or staff member has been determined by the department to be disqualified from employment pursuant to this act; or

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

b. An approved agency 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 agency acted with actual malice toward the staff member who is the subject of the information.

C.9:3-40.8 Child abuse record information check by agency.

7. a. In addition to the requirement for a criminal history record background check pursuant to section 2 of this act, the administrator of an agency shall request that the department conduct 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 agency.

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

c. Each staff member of an agency or applicant for employment at the agency shall provide prior written consent for the department to conduct a child abuse record information check.

d. If the administrator of the agency refuses to consent to, or cooperate in, the securing of a child abuse record information check, the department shall suspend, deny, revoke or refuse to renew the agency's approval as an adoption agency, as appropriate.

e. If a staff member of an agency refuses to consent to, or cooperate in, the securing of a child abuse record information check, the individual shall be immediately terminated from employment at the agency.

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

C.9:3-40.9 Agency established after effective date, request for child abuse record information check for all staff members.

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

The department shall not issue an approval to an adoption agency until the agency has requested that the department conduct a child abuse record information check on each staff member employed at the agency.

b. In the case of an adoption agency approved prior to the effective date of this act, the administrator of the agency shall submit a request to the department within 60 days of the effective date of this act for a child abuse record information check on each staff member.

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

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

d. If the department determines that an incident of child abuse or neglect by a staff member has been substantiated, the department shall advise the administrator of the agency of the results, and the agency shall immediately terminate the staff member from employment at the agency.

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 staff member poses a risk of harm to children in an agency. In cases involving incidents substantiated prior to June 29, 1995, in which the department determined that the individual posed such a risk, the department shall offer the staff member an opportunity for a hearing to contest the substantiation.

C.9:3-40.10 Adoption agencies located out-of-State.

9. In the case of an adoption agency located outside the State, the administrator of the agency shall ensure that all applicants or staff members 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. In the event that criminal history record background and child abuse record information checks are not required, the administrator of the agency shall require that the applicant or staff member make a voluntary disclosure of any criminal conviction or substantiation for child abuse or neglect. The results of the disclosure shall be made available to the department, so the department can determine the suitability of the staff member or applicant for employment.

10. Section 7 of P.L. 2003, c.186 (C.53:1-20.9d) is amended to read as follows:

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

7. a. The Commissioner of Children and Families 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 or approved adoption agency from the Federal Bureau of Investigation and the Division of State Police, the Department of Children and Families shall notify the applicant or staff member, as applicable, and the residential child care facility or approved adoption agency, as applicable, 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) or section 4 or 5 of P.L.2008, c.114 (C.9:3-40.5 or C.9:3-40.6). 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 or agency, as applicable, that the applicant or staff member has been disqualified from employment.

b. The Division of State Police shall promptly notify the Department of Children and Families 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.

11. The Commissioner of Children and Families shall adopt regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to carry out the purposes of this act.

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

Approved December 15, 2008.