



OFFICE OF CHILDREN, YOUTH AND FAMILIES BULLETIN
COMMONWEALTH OF PENNSYLVANIA * DEPARTMENT OF PUBLIC WELFARE

NUMBER:

ISSUE DATE:

EFFECTIVE DATE:

January 1, 2008/
July 1, 2008

SUBJECT:

Implementation of Act 73 of 2007 Amending the Child Protective Services Law

BY:

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Deputy Secretary for Children, Youth and Families

SCOPE:

COUNTY CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
COUNTY CHILDREN AND YOUTH ADVISORY COMMITTEES
PRIVATE CHILDREN AND YOUTH SOCIAL SERVICE AGENCIES
HUMAN SERVICES DIRECTORS
COUNTY COMMISSIONERS
PENNSYLVANIA CHILDREN AND YOUTH ADMINISTRATORS ASSOCIATION
PENNSYLVANIA COUNCIL OF CHILDREN, YOUTH AND FAMILY SERVICES
PENNSYLVANIA COMMUNITY PROVIDERS ASSOCIATION
OTHER INTERESTED PARTIES

PURPOSE:

The purpose of this bulletin is to transmit new requirements for fingerprint based Federal Bureau of Investigation (FBI) clearances related to Act 73 of 2007, which amended 23 Pa. C.S., Chapter 63 (relating to the Child Protective Services Law).

BACKGROUND:

On December 18, 2007, Pennsylvania Governor Edward G. Rendell signed House Bill 1961, Printer's Number 2832 into law. This amendment to the Child Protective Services Law (CPSL), known as Act 73 of 2007, was effective January 1, 2008 for prospective foster and adoptive parents and adult persons living in

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

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those homes, and July 1, 2008 for prospective child care service employees and self-employed family day care providers. Act 73 of 2007 brings Pennsylvania into compliance with Federal legislation, the Adam Walsh Child Protection and Safety Act of 2006.

This federal legislation requires additional criminal and child abuse registry record checks on certain individuals. The federal legislation was signed into law on July 27, 2006 and was effective October 1, 2006. Pennsylvania was permitted delayed implementation as state statutory amendments were necessary to comply with the requirements of the Federal Act.

DISCUSSION:

By enacting Act 73 of 2007, the Child Protective Services Law is strengthened to provide for an increased ability to protect Pennsylvania's children through enhanced screening requirements for individuals entrusted with the care of children. Prospective foster and adoptive parents, as well as their adult household members are now required to complete a fingerprint-based federal criminal record check through the Federal Bureau of Investigation (FBI). These individuals are also required to submit for child abuse history record checks from other states in which they resided within the previous five year period. These new requirements are in addition to current practices related to requirements regarding child abuse and Pennsylvania State Police (PSP) criminal record checks.

Pennsylvania has taken even further steps to ensure the safety of children by also requiring FBI fingerprint based criminal record checks for prospective child care service employees, individuals applying for employment with a significant likelihood of contact with children and self-employed family day care providers.

POLICY:

Requirements for Prospective Foster and Adoptive Parents and Adult Household Members:

Prospective foster and adoptive parents, along with any individual over the age of 18 residing in the home at least 30 calendar days per year, are currently required by the CPSL at § 6344 (d) (relating to prospective adoptive or foster parents) and Act 160 of 2004, to submit for child abuse record checks through the Department of Public Welfare (DPW) and for state criminal record checks through the Pennsylvania State Police (PSP). In addition, as of January 1, 2008, these prospective foster and adoptive parents and adult household members are now required to submit a fingerprint-based federal criminal record check through the FBI. These individuals are also required to resubmit their federal criminal record checks every 24 months, pursuant to § 6344 (d) (3) of the CPSL and Act 160 of 2004 which sets forth the schedule for resubmitting clearances. In accordance with Act 160, when a household member in an already approved home turns 18 years of age, this individual must submit their clearances within 30 days of turning 18 years of age to the approving agency. These clearances would now include an FBI fingerprint-based criminal record check.

In addition to the federal criminal record checks, if a prospective foster or adoptive parent or any individual over 18 years of age residing in the home has resided outside of Pennsylvania at any time within the previous five-year period, they must request certification from the Statewide central registry or its equivalent in each state in which the person has resided within the previous five-year period as to whether they are named as a perpetrator of child abuse. This requirement would include any individual who lives in the house for a period of 30 days in a calendar year, but may reside for a period of time in another state. An example of this would be a college student who attends college in another state, but returns home over breaks.

The requirements for submission of a child abuse record check from another state is also required within 30 days when any individual over 18 years of age, who has resided outside of Pennsylvania within the past five years, begins residing in the home of an approved foster family. If it is determined that the individual is named as a perpetrator of child abuse within the previous five year period and it meets the equivalent of a founded report of child abuse in Pennsylvania and they do not immediately cease residing in the home, the foster child or children shall immediately be removed from the home without a hearing.

Foster families approved prior to January 1, 2008 must resubmit their clearances in accordance with § 6344 (d) (3) of the CPSL and Act 160 of 2004 which states that clearances must be resubmitted every 24 months following approval for review by the foster family care agency. These resubmitted clearances would now include an FBI fingerprint-based criminal record check.

Families who were approved specifically for foster care prior to January 1, 2008, and subsequently seek approval as adoptive parents, must submit their FBI clearance as part of their new home study being completed in order to become approved as adoptive parents.

If a foster or adoptive home was not fully approved prior to January 1, 2008, all three clearances, the FBI, PSP and ChildLine must be submitted as a condition of approval. The only exception is for those individuals approved as emergency caregivers in accordance with OCYF Bulletin Number 3140-04-05/3490-04-01 entitled Child Placements with Emergency Caregivers. If the placement occurred and the emergency clearances were performed prior to January 1, 2008, these individuals would not be required to obtain an FBI criminal record check as a condition of final approval. They would, however; be required to submit their FBI fingerprint-based criminal record check at the 24 month resubmission in accordance with Act 160.

Adoptive families are currently required to update their clearances prior to the finalization of their adoption. If the adoptive home was approved prior to January 1, 2008 and the family's clearances, specifically the PSP and ChildLine clearance, are less than one year old, they are not required to obtain their FBI fingerprint-based criminal record check prior to finalization. If the family's clearances, specifically the PSP and ChildLine clearance, are more than a year old, they must resubmit all three, PSP, FBI and ChildLine, clearances prior to finalization.

Families who are adopting internationally are required to obtain FBI

fingerprint-based criminal history record checks as part of the home study approval process. The FBI fingerprinting requirement for the United States Citizenship and Immigration Services (USCIS) is in addition to the FBI fingerprint-based criminal record check completed during the home study process.

Requirements for Child Care Service Employees:

As of July 1, 2008, prospective child care service employees will be required to submit for a federal criminal record check through the FBI as a condition of employment. Prospective employees are currently required to submit for child abuse record checks through DPW and for state criminal record checks through the PSP.

Child care service is defined in § 6303 of the CPSL as “child-day care centers, group and family day-care homes, foster homes, adoptive parents, boarding homes for children, juvenile detention center services or programs for delinquent or dependent children; mental health, mental retardation, early intervention and drug and alcohol services for children; and other child-care services which are provided by or subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with these departments or a county social services agency. The term does not include such services or programs which may be offered by public or private schools, intermediate units or area vocational-technical schools.” The fingerprinting process for prospective child care service employees is as described under the Federal Fingerprint-Based Criminal Record Checks in the procedure section of this bulletin.

Current employees of a child care service are not required to obtain FBI clearances as a condition of continued employment. Employees may transfer to another child care service within the same organization without having to obtain FBI clearances as a condition of transferring. This follows the same procedures already in law for child abuse and record checks in Pennsylvania and can be found in the Child Protective Services Law at § 6344 (k) (relating to existing or transferred employees). For example, if a county children and youth worker transfers to a different position within the county children and youth agency, they would not be required to submit their clearances as a condition of transfer. If a county children and youth worker however, transfers to the county juvenile probation office, these two offices are not within the same organization and the worker would be required to submit their clearances as a condition of beginning employment in the juvenile probation office. If a current employee holds a position within the agency that does not require them to have their PSP, FBI or ChildLine clearances because it does not involve coming into contact with children and they transfer to another position within the agency that will involve working with children, they must obtain all three clearances as a condition of securing that new position.

New employees are allowed to be hired on a provisional basis before the results of their clearances are returned. The conditions that must be met for a provisional hire can be found in the CPSL at § 6344 (m) (relating to provisional employees for limited periods). This provision is already in existence with regards to child abuse record checks and state criminal record checks and will now also include the federal criminal record checks.

For the purposes of seeking new employment or new approval as a foster or adoptive parent through a different agency, the Pennsylvania child abuse record check, the PSP criminal record check and the FBI criminal record check are valid for one year following verification, therefore if an individual's clearances are more than one year old, new clearances will have to be obtained.

Requirements for Other Persons Having Contact with Children:

Act 179 of 2006 amended §6344.2 of the CPSL to state that prospective employees applying to engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training must obtain clearances as a condition of employment. These individuals, including but not limited to social service workers, hospital personnel, counselors, librarians and doctors, will be required as of July 1, 2008 to obtain an FBI clearance along with their PSP criminal history record check and Pennsylvania child abuse record check as a condition of employment.

Requirements for Self-Employed Family Day Care Providers:

Self-employed family day care providers are currently required by the CPSL at § 6344 to submit for child abuse record checks through DPW and for state criminal record checks through the PSP. As of July 1, 2008, these individuals will be required to submit for a federal criminal record check through the FBI.

Criminal Offenses Which Prohibit Hire/Approval:

The CPSL at § 6344 (c) (2) and (3) (relating to grounds for denying employment) contains a list of crimes that, if the applicant's criminal history record information indicated they had been convicted of one or more of the crimes, would prohibit an administrator from hiring them. Any equivalent crime under Federal law or the law of another state would also prohibit hire or approval. This provision relates to all individuals that have been discussed in this Bulletin.

The Commonwealth Court of Pennsylvania ruled in *Warren County Human Services v. State Civil Service Commission*, 376 C.D. 2003, that it is unconstitutional to prohibit employees convicted of the crimes listed in § 6344 (c) (2) from ever working in a child care service. The Department of Public Welfare issued a letter on August 12, 2004 outlining the requirements agencies are to follow when considering hiring an individual who has committed one of these crimes. Agencies or facilities are permitted to employ an individual as long as it is reasonably determined that the individual has demonstrated rehabilitation. In order to demonstrate rehabilitation, the individual must meet the following requirements:

- The individual has a minimum five year aggregate work history in care dependent services since conviction of the crime or release from prison, whichever is later. Care dependent services include healthcare, elder care, child care, mental health services, mental retardation services, or care of the disabled.
- The individual's work history in care dependent services may not include any incidents of misconduct.

An agency or facility must reasonably investigate the character of an individual with a previously disqualifying criminal offense by conducting interviews, obtaining references and obtaining documentation of work history. An agency or facility that hires such an individual is required to obtain specific employer provided documentation of that individual's employment in care dependent services and retain it in the individual's personnel file.

An agency is still prohibited from hiring an individual who has been named as the perpetrator of a founded report of child abuse within the last five years, as well as those that have been convicted of a felony drug offense within the last five years.

This court ruling does not apply to prospective foster and adoptive parent applicants. Agencies with questions regarding these requirements should contact their Program Representative from their respective regional office.

Impact on Volunteers for Children Act Program (VCA):

The Volunteers for Children Act (VCA), Pub. L. 105-251 (Sections 221 and 222) amended the National Child Protection Act of 1993 (NCPA), Pub. L. 103-209, by allowing States, in the absence of State statute or regulation, to access national criminal history record information to determine an individual's fitness to have responsibility for the safety and well-being of children. Pennsylvania implemented the VCA Program in March 2003.

As of January 1, 2008, agencies that were approved as qualified entities to utilize VCA for the purposes of conducting federal criminal record checks completed on their prospective employees and volunteers, including foster and adoptive parent applicants, will no longer be able to process their foster and adoptive parent applicants through this program. As of July 1, 2008, when FBI clearances are required for prospective child care service employees, VCA will only be able to be used for the purposes of processing FBI clearances for volunteers.

Agencies requesting continued approval as a qualified entity in order to process FBI clearances for volunteers will be required to submit a new program application along with their agency's policy regarding the submission of FBI clearance requests. Any questions regarding VCA should be directed to ChildLine at 717-783-6211.

PROCEDURE:

Child Abuse and Neglect Registry Checks From Another State:

Prospective foster and adoptive parents, as well as adult household members are required to obtain certification from the Statewide central registries from any state in which they have resided within the previous five year period. DPW will be posting contact information and downloadable clearance forms for the other States on the Department's website at www.dpw.state.pa.us. This information can also be obtained by contacting ChildLine at (717) 783-6211.

The applicants and adult household members must obtain and complete the appropriate form(s) and forward the form(s) and any additionally required documentation or payment as required by the specific state(s) to ChildLine along with their submission for their Pennsylvania Child Abuse History Clearances. If the application is incomplete, it will be returned to the applicant for completion. ChildLine will then submit the completed applications to any additional state(s).

In order to establish consistent interpretation of the results, the child abuse registry checks from the other states will be returned to ChildLine where a determination will be made regarding whether the individual's status is equivalent to a founded report of child abuse in Pennsylvania. ChildLine will then forward a letter specifying the results to the requesting applicant and/or agency.

If DPW determines that the individual is named as the equivalent of a perpetrator of a founded report of child abuse in another state within the previous five year period, then the foster or adoptive home is prohibited from being approved.

Please be advised that the requirement to check a state maintained child abuse registry only applies to a "State" as defined in 45 CFR 1355.20 as the 50 States, District of Columbia, Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam and American Samoa. It does **not** apply to any other country in which they have resided within the previous five year period.

As per OCYF Policy Clarification Number 3490-08-02, it is strongly recommended that individuals who move into a foster or adoptive home, whether prospective or already approved, secure documentation from the U.S. Embassy in their country of origin to the effect that the issuance of their visas was dependent on the absence of any child abuse or criminal history. It is the practice of the U.S Embassy that such records are requested prior to issuing visas.

Federal Fingerprint-Based Criminal Record Checks:

DPW will be utilizing Cogent Systems (Cogent) to process fingerprint-based FBI record checks. DPW's website www.pa.cogentid.com/dpw, will allow individuals seeking employment in a child care service or approval as a foster or adoptive parent to apply online, as well as provide detailed information regarding the application process as outlined below.

The fingerprint based background check is a multiple step process. The applicant must first register with Cogent either through Cogent's website directly at www.cogentsystems.com, through the DPW website, www.pa.cogentid.com/dpw, or by calling 1-888-439-2486. While telephone registration is permitted, electronic registration

via the web is preferred. If registering through Cogent's direct website, www.cogentsystems.com, select Applicant Fingerprinting on the right side of the page and select Department of Public Welfare. Only those individuals required to obtain FBI clearances under Act 114 of 2006 will select Pennsylvania Department of Education. The applicant will pay a \$40 fee for the fingerprint service and to secure their criminal history record. Consistent with what is already in place for Pennsylvania child abuse and criminal record checks, no cash transactions or personal checks are allowed. Applicants can make their payment online using a debit or credit card or can pay using a money order or business check onsite when they have their fingerprinting completed. If payment is being made at an onsite location, arrangements must be made for this when registering. Applicants will not be permitted to have fingerprinting scanned without fully completing the registration process. If the agency is paying for the clearance, they must have an agency pay agreement established with Cogent. Agencies may obtain additional information on establishing an agency pay agreement on the website by selecting Agency Billing Agreement under Agency Use.

Following completion of the registration process, the applicant then proceeds to a fingerprint site that is convenient for them. Locations and hours for these sites can be found on the website by selecting Print Locations and Hours under Print Site Locations. The applicant will need to present an approved type of photo identification. Approved types of identification include a current, valid and unexpired picture identification document. As a primary form of picture identification, a state-issued driver's license may be presented by an applicant when being fingerprinted.

For those applicants without a driver's license, a state issued identification card may be presented if the state's identification card standards are the same as for the driver's license.

However, in the absence of a valid driver's license or state issued identification card, applicants may provide one of the following documents as proof of identification used:

- US Passport;
- Certificate of Citizenship (N560); or
- Certificate of Naturalization (N550).

In the absence of any of the above mentioned acceptable forms of identification, secondary documentation must include at least two of the following:

- State Government Issued Certificate of Birth;
- US Active Duty/Retiree/Reservist Military ID Card (000 10-2);
- Social Security Card;
- USCIS I-551 Resident Alien Card Issued Since 1997;
- USCIS I-688 Temporary Resident Identification Card;
- USCIS I-688B, I-766 Employment Authorization Card;
- Utility Bill (Address);
- Voter Registration Card;
- Vehicle Registration Card/Title;
- Paycheck Stub with Name/Address;

- Cancelled Check or Bank Statement;
- School Identification Card with Picture;
- School Records;
- Employer Identification Card; or
- Valid PA Learner's Permit.

After the process is complete, the applicant's scanned fingerprints will be electronically transmitted to the PSP, who in turn submit the fingerprints and demographic information to the FBI. The PSP will also compare the fingerprints to their latent database which contains fingerprints taken from unsolved crime scenes, as well as their "wanted persons" database.

DPW will receive the completed federal criminal history record check from the FBI and will interpret the results to determine if the individual has been convicted of a crime that is the equivalent to a prohibitive hire as outlined in § 6344 of the CPSL. ChildLine will then forward a letter with the results to the applicant. If the Agency paid for the clearance and the agency information section was completed on the initial application, the results will be sent directly back to the agency. A copy of the results will also be sent to the applicant upon request. If the results were returned directly to the applicant, they are responsible for providing the results letter to their prospective employer or foster care/adoption agency.

The fingerprints are retained by Cogent until it is determined that the process has been successfully completed and the applicant or appropriate prospective employer of foster care/adoption agency has the results.

It is possible that the fingerprints may be rejected by the FBI. Poor fingerprint detail may be caused by age, occupation, or some other environmental/physical condition. In the case of a fingerprint rejection by the FBI, applicants will be requested by the FBI to submit a second set of fingerprints, at no charge to the applicant. This second submission must occur before alternative means of conducting a federal background can be initiated. If an applicant receives an FBI rejection letter they must be fingerprinted a second time if they wish to complete their applicant background check. Individuals should take their rejection letter and proper identification to the nearest Pennsylvania Fingerprint location. A second fingerprint submittal will be conducted at no charge. Individuals **do not** need to re-register for their second fingerprinting session if they received an FBI rejection letter. If an individual's fingerprints are rejected a second time by the FBI, notification will be forwarded to ChildLine by the FBI. ChildLine will then conduct a name based check through the FBI based on the demographic information on the initial application. Results of the FBI name based record check will be forwarded by the FBI to ChildLine for interpretation.

The result record will be printed on standard 8.5" X 11" paper with the Commonwealth Seal imbedded on the paper and will be signed and dated in blue ink by the verifier at ChildLine, as well as their supervisor. **This document constitutes an official Record.** If an applicant presents their Federal Criminal History Record and the Commonwealth Seal is not embedded on the paper, it should be considered as invalid and not an official Record. Complete processing of the FBI Criminal History Record

should take no longer than 4-6 weeks. If the applicant does not receive their results from DPW within this time frame, they should call (717) 783-6211. Applicants will be permitted to receive one additional results letter, free of charge, from ChildLine within one year immediately following verification. Applicants should maintain their original results letter and allow their employers to make copies as necessary for personnel files.

For the purposes of seeking new employment or new approval as a foster or adoptive parent through a different agency, FBI criminal record checks are valid for one year following verification; therefore if an individual's clearance is more than one year old, a new FBI clearance will have to be obtained.

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