



OFFICE OF CHILDREN, YOUTH AND FAMILIES BULLETIN

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EFFECTIVE DATE:May 27, 2007
(Act 179 of 2006) and
January 1, 2008/
July 1, 2008
(Act 73 of 2007)**SUBJECT:**Implementation of Act 179 of 2006 and Act 73 of
2007 Amending the Child Protective Services Law**BY:**
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Families**BY:**Kevin T. Casey
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Deputy Secretary for Income Maintenance**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
ADMINISTRATIVE ENTITY ADMINISTRATORS/DIRECTORS
COUNTY MENTAL HEALTH/MENTAL RETARDATION ADMINISTRATORS
SUPPORTS COORDINATION ORGANIZATION DIRECTORS
PROVIDERS OF MENTAL RETARDATION SERVICES
PROVIDERS OF MENTAL HEALTH SERVICES
OTHER INTERESTED PARTIES

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

Office of Children, Youth and Families Regional Directors

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PURPOSE:

The purpose of this bulletin is to explain and clarify new background check requirements related to Act 179 of 2006 (Act 179), as well as Act 73 of 2007 (Act 73), both of which amended the Child Protective Services Law (CPSL), (23 Pa.C.S., Chapter 63). This bulletin will also clarify how these amendments co-exist with the requirements of Act 160 of 2004.

BACKGROUND:

On November 29, 2006, Pennsylvania Governor Edward G. Rendell signed Senate Bill 1054, Printer's Number 2075, into law. This amendment to the CPSL, known as Act 179 of 2006, was effective May 28, 2007. Among several other significant amendments to the CPSL was the expanding of background check requirements for household members, age 14 and older, for the *initial* approval only of resource family applicants, whether foster, kinship or adoptive. In addition, Act 179 expanded background check requirements to include family day care home household members age 18 and older who reside in the family day care home for at least 30 days in a calendar year, as well as Community Rehabilitation Residential (CRR) host home families and respite provider families.

On December 18, 2007, Pennsylvania Governor Edward G. Rendell signed House Bill 1961, Printer's Number 2832 into law. This amendment to the CPSL (CPSL), known as Act 73 of 2007, was effective January 1, 2008 for prospective foster and adoptive parents and adult persons living in those homes, and July 1, 2008 for prospective child care service employees, persons seeking to operate child care services and self-employed family day care providers and family day care home household members age 18 and over. Act 73 of 2007 brings Pennsylvania into compliance with Federal legislation, the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248). This legislation also applies to CRR host home families and respite provider families.

This federal legislation requires additional criminal and child abuse registry background 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:

For any resource family, CRR host home family and respite provider family approved since the effective date of the legislation, May 28, 2007, which has a family member age 14 or older living in the home at the time of their initial approval, the approving agency must obtain child abuse and criminal background checks, if these were not already obtained. As the Office of Children, Youth and Families (OCYF) and the Office of Mental Health and Substance Abuse Services (OMHSAS) did not issue formal guidance regarding this requirement, the OCYF Regional Offices and OMHSAS Regional Offices will not cite agencies during annual licensing inspections for

lack of background checks for this discrete population, as long as, child abuse and criminal history background checks are obtained as soon as possible, but no later than the date of the family's next annual re-evaluation.

The requirement that resource family household members age 14 or older submit requests for child abuse and criminal history background checks will not be applied to those individuals living in resource family homes, CRR host homes and respite provider homes that were fully approved prior to May 28, 2007. Moreover, the requirement for bi-annual re-submission of background checks for household members does not apply to children under the age of 18. Foster children, children placed in a CRR host home and respite provider home are not included as household members requiring background check submission until they turn 18 years of age, and continue living in the household at least 30 calendar days a year. In addition, Federal Bureau of Investigation (FBI) background checks are not required for household members age 14-17, only those ages 18 and over.

By enacting Act 73 of 2007, the CPSL 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, prospective CRR host home members and prospective respite provider home members as well as their adult household members are now required to complete fingerprint-based federal criminal history background checks through the FBI. These individuals are also required to submit child abuse history background 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 history background checks.

Pennsylvania has taken further steps to ensure the safety of children by also requiring FBI fingerprint based criminal history background checks for prospective child care service employees, individuals applying for employment with a significant likelihood of contact with children, persons seeking to operate child care services and self-employed family day care providers and family day care home household members age 18 and over.

POLICY:

Clearance Requirements Related to Act 179 of 2006:

The Department of Public Welfare (DPW) is applying the expanded requirement for child abuse and criminal history background check submissions for household members age 14 and older to new resource family applicants *only*, including foster, formal kinship and adoptive homes, CRR host homes and respite provider homes. Any household member, age 14 or older, who resides in a prospective resource family, CRR host home and respite provider home at least 30 calendar days a year, must submit a criminal history background check from the PSP and a child abuse history clearance to the approving agency. The prospective resource family home, CRR host home and

respite provider home must be disqualified by the approving agency if the background check results on any family household member, age 14-17, reveal that he or she is named as a perpetrator on a founded case of child abuse or student abuse within the 5 years immediately prior to the verification request, or has a conviction on any of the offenses listed in §6344 (c) (2) of the CPSL.

All resource, CRR host homes and respite provider homes approved on or after May 28, 2007, must submit background checks for household members age 14 and older. This requirement extends to homes that were temporarily approved as of that date as well. For any home with temporary approval, which may already have had a placement of a child, the approving agency is not to include that child as a household member. As per OCYF Bulletin 3490-05-01, entitled Implementation of Act 160 of 2004 Amending the Child Protective Services Law, children under the age of 18 in the custody of a county children and youth agency are not to be registered as household members in the Resource Family Registry, and therefore, they are not to be included as household members for purposes of home approval. However, if the child in care turns 18 and continues residing in the home at least 30 calendar days a year, background checks must be obtained within 30 days following their 18th birthday.

Act 179 requirements relating to family day care homes require household members age 18 and over who live in the home for at least 30 days in a calendar year to submit background checks. An individual who is applying to operate a new family day care home must submit along with the application for a registration certificate, background checks for the applicant and each household member.

Family day care providers who are renewing a registration certificate on or after May 28, 2007 must submit background checks for each household member along with the application to renew the registration certificate. Background checks do not have to be updated once submitted as long as the registration certificate is renewed timely.

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 § 6344 (d) (relating to prospective adoptive or foster parents) of the CPSL and Act 160 of 2004, to submit for child abuse background checks through the DPW and for state criminal background checks through the PSP. In addition, as of January 1, 2008, these prospective foster and adoptive parents and adult household members must submit a fingerprint-based federal criminal history background check through the FBI.

Foster parents and their adult household members are also required to resubmit their federal criminal history background checks every 24 months, pursuant to § 6344 (d) (3) of the CPSL and Act 160 of 2004 which sets forth the schedule for resubmitting background checks. In accordance with Act 160, when a household member in an already approved foster home turns 18 years of age, this individual must submit their background checks to the approving agency within 30 days following their 18th birthday.

These background checks would now include an FBI fingerprint-based criminal history record check.

In addition to the federal criminal history background check, 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 home for a period of 30 days in a calendar year, but may reside for a period of time in another state. For example, a college student who attends school in another state but returns home on breaks would have to provide a child abuse clearance for the other state.

The requirements for submission of a child abuse background 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 does not immediately cease residing in the home, the foster child or children shall be removed from the home immediately without a hearing.

Foster families approved prior to January 1, 2008 must resubmit their background checks in accordance with § 6344 (d) (3) of the CPSL and Act 160 of 2004 which states that background checks must be resubmitted every 24 months following approval for review by the foster family care agency. These resubmitted clearances must include an FBI fingerprint-based criminal history background check. If an individual's background check reveals criminal convictions, the foster family care agency must determine the appropriateness of continued approval based on the background check and the best interests of the child(ren) served in the home.

Families who were approved specifically for foster care prior to January 1, 2008, and subsequently seek approval as adoptive parents, must submit their FBI background check 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 background checks, the FBI, PSP and ChildLine, must be submitted as a condition of approval. The only exception is for those foster applicants 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 background checks were performed prior to January 1, 2008, these individuals are not required to obtain an FBI criminal history background check as a condition of final approval. They are, however, required to submit their FBI fingerprint-based criminal history background check at the 24 month resubmission in accordance with Act 160.

Pursuant to § 2530 (a) of the Adoption Act (Title 23, Pa. C.S. Chapters 21-29) adoptive families are currently required to submit a pre-placement report and must update their background checks prior to a child being placed in their home if their background checks are more than a year old.

Families who are adopting internationally are required to obtain FBI fingerprint-based criminal history background 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 history background check completed during the home study process.

Requirements for Child Care Service Employees and Persons Seeking to Operate Child Care Services:

As of July 1, 2008, prospective child care service employees and persons seeking to operate child care services are required to submit a federal criminal history background check through the FBI as a condition of employment and in order to obtain a certificate of compliance. Prospective employees and persons seeking to operate child care services are currently required to submit for child abuse background checks through DPW and for state criminal history background 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 DPW 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 and persons seeking to operate child care services is as described in the Federal Fingerprint-Based Criminal History Background Check in the procedure section of this bulletin.

Persons who operated child care services prior to July 1, 2008 and who currently have certificates of compliance are not required to obtain FBI background checks in order to continue operating a child care service.

Employees of a child care service who were hired prior to July 1, 2008 are not required to obtain FBI background checks as a condition of continued employment and are “grandfathered.” Employees may transfer to another child care service within the same organization without having to obtain FBI background check as a condition of transferring. This follows the same procedures already in law for child abuse and criminal background checks in Pennsylvania and can be found in § 6344 (k) (relating to existing or transferred employees) of the CPSL. 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 background checks as a condition of

transfer. If, however, a county children and youth worker 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 background checks 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 a PSP, FBI or ChildLine background check because it does not involve coming into contact with children and the employee transfers to another position within the agency that will involve working with children, the employee must obtain all three background checks as a condition of securing that new position.

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

For the purposes of seeking new employment or new approval as a foster, adoptive, CRR and/or respite provider parent through a different agency, the Pennsylvania child abuse background check, the PSP criminal history background check and the FBI criminal history background check are valid for one year following verification, therefore if an individual's background checks are more than one year old, new background checks are required.

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 background checks as a condition of employment. These individuals, including but not limited to social service workers, psychiatrists, hospital personnel, counselors and therapists, librarians and doctors, will be required as of July 1, 2008 to obtain an FBI criminal history background check along with their PSP criminal history background check and Pennsylvania child abuse background check as a condition of initial employment. Any additional requirements surrounding provisional hiring periods or licensing implications related to the completion of background checks should be directed to the appropriate licensing entity.

Requirements for Self-Employed Family Day Care Providers and Household Members:

Self-employed family day care providers are currently required by the § 6344 of the CPSL to submit for child abuse background checks through DPW and for state criminal history background checks through the PSP. As of July 1, 2008, individuals who want to open a family day care home for the first time will be required to obtain a federal criminal history background check through the FBI in addition to the current clearance requirements.

Family day care home household members age 18 and over who live in the home for at least 30 days in a calendar year are also required submit child abuse background checks and PSP state criminal history background checks. Effective July 1, 2008, household members must also submit FBI background checks. This requirement impacts applicants for registration certificates as follows:

- Individuals who are applying to operate new family day care homes on or after July 1, 2008 must submit along with the application for a registration certificate, FBI background checks, as well as child abuse and PSP background checks, for themselves and for each household member. Background checks do not have to be updated once submitted as long as the registration certificate is renewed timely.
- Individuals who operated a family day care home prior to July 1, 2008, and who continue to operate after July 1 are not required to submit FBI background checks for themselves. However, family day care providers whose registration certificates expire on or after July 1, 2008, and who wish to renew their registration certificates must submit FBI background checks, as well as child abuse and PSP background checks, for each household member along with the renewal application. Updated background checks are not required for household members once this information is submitted.

For future renewals, family day care providers will have to submit with renewal applications all background checks for persons age 18 and over who move into the family day care home and for household members who turn 18 years of age since the previous application was filed.

Criminal Offenses Which Prohibit Hire/Approval:

Section 6344 (c) (2) and (3) (relating to grounds for denying employment) of the CPSL contains a list of crimes that, if the applicant's criminal history background information indicated they had been convicted of one or more of the crimes, would prohibit hiring or approval. Any equivalent crime under Federal law or the law of another state would also prohibit hiring 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*, 844 A.2d 70 (Pa. Commw. 2004) (See Attachment B), that it is unconstitutional to prohibit employees convicted of the crimes listed in § 6344 (c) (2) from ever working in a child care service. DPW issued a letter, which remains in effect, 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.

The Warren County ruling applies only to prospective child care employees, not 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.

Agencies that were approved previously as qualified entities to utilize VCA for the purposes of conducting federal criminal history background checks completed on foster and adoptive parent applicants, will no longer be able to utilize this process for this purpose. Foster and adoptive parent applicants must have their FBI background checks processed through Cogent Systems (Cogent). As of July 1, 2008, when FBI background checks are required for prospective child care service employees, VCA may be used only to process FBI background checks for volunteers.

Agencies requesting continued approval as a qualified entity in order to process FBI background checks for volunteers must be required to submit a new program application along with their agency's policy regarding the submission of FBI background check 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, adoptive, CRR host home and respite provider 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 DPW 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 ensure 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 whether 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 History Background Checks:

DPW will be using Cogent to process fingerprint-based FBI criminal history background checks. DPW's website www.pa.cogentid.com/dpw, will allow applicants for employment in a child care service or approval as a foster, adoptive, CRR host home and/or respite provider 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 <http://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, select Applicant Fingerprinting on the right side of the page and select Department of Public Welfare. Only those individuals seeking FBI clearances under Act 114 of 2006 should select Pennsylvania Department of Education (PDE). Mistakes made during registration that result in incorrect personal information being contained on the background check, or the results being sent to PDE rather than DPW, are the responsibility of the applicant. If for some reason an applicant needs to be reprinted, they will incur the costs associated with re-printing. The applicant will pay a fee of \$35 for the fingerprint service and to secure their criminal history record. Consistent with what is already in place for Pennsylvania child abuse and criminal background 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 background check, it 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.

Agencies may also register with Cogent to obtain a unique identifier that can be shared with prospective employees for use at registration that will automatically populate the agency information on the registration screen. This will enable an official certification results letter, as described below, to be sent directly back to the prospective employer.

Following completion of the registration process, the applicant must appear in person at a fingerprint site that is convenient for them. Locations and hours for these sites can be found at www.pa.cogentid.com/dpw 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 FBI. DPW will receive the completed federal criminal history background check from the FBI and will interpret the results to determine if the applicant has been convicted of a crime that is the equivalent to a prohibitive hire as outlined in § 6344 (c) of the CPSL. ChildLine will then forward a certification results letter, including a copy of the rap sheet, to the applicant. If there is an agency identified at the time of registration and this information contains a complete address, regardless of whether or not the agency paid for the clearance, a copy of the certification results letter only will be sent directly back to the agency. The applicant is responsible for sharing the information contained in the federal criminal history background check with their employer or foster care/adoption agency.

Cogent will retain an applicant's fingerprints 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. An applicant who receives an FBI rejection letter 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. Applicants **do not** need to re-register for their second fingerprinting session if they received an FBI rejection letter. If an applicant'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 background check will be forwarded by the FBI to ChildLine for interpretation. If an applicant chooses to get re-printed without following the established procedures, they are responsible for paying the fees associated with being re-printed and will not be reimbursed by the DPW or Cogent.

There are limited situations in which applicant's cannot be fingerprinted due to extreme physical or mental disabilities. These situations should be presented to the appropriate OCYF Regional Office in order for a decision to be made regarding alternate means of processing the applicant's FBI background check. The OCYF Regional Office will consult with OCYF Headquarters on how to proceed with each specific situation.

The certification result letter will be printed on standard 8.5" X 11" watermarked paper that when copied will reveal "Void if Copied." This does not prohibit an employer from copying the applicant's results letter, it is solely a means to verify that it is 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 the 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, adoptive, CRR host home or respite provider parent through a different agency, background checks, including the Pennsylvania Child Abuse, PSP and FBI are valid for one year following verification; therefore if an applicant's background checks are more than one year old, new ones must be obtained.

WHO	WHAT BACKGROUND CHECKS ARE REQUIRED	WHEN ARE BACKGROUND CHECKS REQUIRED	WHEN ARE BACKGROUND CHECKS UPDATED	WHAT WILL HAPPEN IF BACKGROUND CHECKS ARE NOT APPROVED OR COMPLETED
Prospective foster parents and household members ages 18+ (§6344 (d) (2))	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI · Out-of-state child abuse (if individual resided in another state within last 5 years) 	Prior to initial approval by foster family care agency	After approval, all three background checks must be updated every 24 months	<ul style="list-style-type: none"> · Home cannot be approved if record prohibits approval under Section 6344 of the CPSL · Home can be approved on an emergency basis provided requirements of OCYF Bulletin 3140-04-05/3490-04-01 are followed.
Prospective adoptive parents and household members ages 18+ (§6344 (d) (1))	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI · Out-of-state child abuse (if individual resided in another state within last 5 years) 	Prior to initial approval by adoption agency	After approval, all three background checks required to be updated before a child is placed in the home if background checks are more than a year old	Home cannot be approved if record prohibits approval under Section 6344 of the CPSL
Household members ages 14-17 residing in a prospective foster or adoptive home (§6344 (a))	<ul style="list-style-type: none"> · PA child abuse · PSP 	Prior to initial approval by foster family care agency or adoption agency	<ul style="list-style-type: none"> · Not required; however, individuals who turn 18 and are in the home more than 30 days of a calendar year must obtain PA child abuse, PSP and FBI background checks within 30 days following 18th birthday 	Home cannot be approved if record prohibits approval under Section 6344 (c) (1) and (2) of the CPSL

WHO	WHAT BACKGROUND CHECKS ARE REQUIRED	WHEN ARE BACKGROUND CHECKS REQUIRED	WHEN ARE BACKGROUND CHECKS UPDATED	WHAT WILL HAPPEN IF BACKGROUND CHECKS ARE NOT APPROVED OR COMPLETED
Foster parents and household members ages 18+ (including foster children over the age of 18 living in the home at least 30 days of a calendar year) of an approved foster home (§6344 (d) (3))	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI · Out-of-state child abuse for individuals age 18+ who begin residing in the home when they had resided in another state in the preceding five years 	<ul style="list-style-type: none"> · PA child abuse, PSP and FBI background checks required to be resubmitted every 24 months · FBI background check required when other record checks are resubmitted · Out-of-state child abuse background check required only once 	All three background checks must be updated every 24 months	Foster family care agency must review the background checks in accordance with Section 6344 (c) and determine continued approval based on the nature of the record checks and the best interest of the child(ren) in the home
Adoptive parents and household members ages 18+ (including foster children living in the home 30 days of a calendar year) when pre-placement report is required pursuant to §2530 (a) of the Adoption Act	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI 	Prior to placement in the home by adoption agency or intermediary if record checks are more than a year old	No update required	<ul style="list-style-type: none"> · Adoption agency or intermediary may not place child in the home. · An interim placement may be permissible only in full compliance with § 2530(c) of the Adoption Act
Prospective Community Rehabilitation Residential (CRR) Host Home parents and household members ages 18+	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI · Out-of-state child abuse (if individual resided in another state within last 5 years) 	Prior to employment	No update required unless employment seeks and background checks are more than a year old	Employment prohibited if record contains prohibitive hires under Section 6344 of the CPSL

WHO	WHAT BACKGROUND CHECKS ARE REQUIRED	WHEN ARE BACKGROUND CHECKS REQUIRED	WHEN ARE BACKGROUND CHECKS UPDATED	WHAT WILL HAPPEN IF BACKGROUND CHECKS ARE NOT APPROVED OR COMPLETED
Household members ages 14-17 residing in a prospective community rehabilitation residential (CRR) host home	<ul style="list-style-type: none"> · PA child abuse · PSP 	Prior to employment	Not required; however, individuals who turn 18 and are in the home more than 30 days of a calendar year must obtain PA child abuse, PSP and FBI background checks within 30 days following 18 th birthday	Home cannot be approved if record prohibits approval under Section 6344 (c) (1) and (2) of the CPSL
Prospective Respite Care Providers and household members ages 18+	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI · Out-of-state child abuse (if individual resided in another state within last 5 years) 	Prior to employment	No update required unless employee seeks employment elsewhere and background checks are more than a year old	Employment prohibited if record contains prohibitive hires under Section 6344 of the CPSL
Household members ages 14-17 residing in a prospective respite care provider home	<ul style="list-style-type: none"> · PA child abuse · PSP 	Prior to employment	<ul style="list-style-type: none"> · Not required; however, individuals who turn 18 and are in the home more than 30 days of a calendar year must obtain PA child abuse, PSP and FBI background checks within 30 days following 18th birthday 	Home cannot be approved if record prohibits approval under Section 6344 (c) (1) and (2) of the CPSL

WHO	WHAT BACKGROUND CHECKS ARE REQUIRED	WHEN ARE BACKGROUND CHECKS REQUIRED	WHEN ARE BACKGROUND CHECKS UPDATED	WHAT WILL HAPPEN IF BACKGROUND CHECKS ARE NOT APPROVED OR COMPLETED
Prospective child care service employees (as defined in Section 6303 of the CPSL) (§6344 (a))	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI 	Prior to employment	No update required unless employee seeks employment elsewhere and background checks are more than a year old	<ul style="list-style-type: none"> · Employment prohibited if record contains prohibitive hires under Section 6344 of the CPSL · Provisional employment is permitted if conditions under Section 6344 (m) are met
Prospective employees of occupations with a significant likelihood of regular contact with children in the form of care, guidance, supervision or training (§6344.2 (b))	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI 	Prior to employment	No update required unless employee seeks employment elsewhere and background checks are more than a year old	Employment prohibited if record contains prohibitive hires under Section 6344 of the CPSL
New self-employed family day care providers and household members 18+ who reside in the home at least 30 days in a calendar year applying for a certificate of registration with the Department (§6344 (e) and §6344.1)	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI 	Prior to Department issuance of Certificate of Registration	Not required for provider or household members who submit background checks if certificate is renewed timely. Required at renewal for: - New person 18+ moving into home since previous application for registration certificate. - Person residing in home who turns 18 since previous application for registration certificate.	Certification is prohibited if record prohibits approval under Section 6344 of the CPSL

WHO	WHAT BACKGROUND CHECKS ARE REQUIRED	WHEN ARE BACKGROUND CHECKS REQUIRED	WHEN ARE BACKGROUND CHECKS UPDATED	WHAT WILL HAPPEN IF BACKGROUND CHECKS ARE NOT APPROVED OR COMPLETED
<p>Family day care homes currently registered and applying for renewal - Household members 18+ who reside in the home at least 30 days in a calendar year (§6344.1)</p>	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI 	<p>Prior to Department Renewal of Registration Certificate</p>	<p>For certificates of registration expiring on or after July 1, 2008, must submit all background checks for each household member 18+ who has not submitted record checks previously.</p>	<p>Certification is prohibited if record prohibits approval under Section 6344 of the CPSL</p>
<p>Persons seeking to operate i.e., applying for a certificate of compliance (license), to operate a child care service (§6344(f)).</p>	<ul style="list-style-type: none"> · PA child abuse · PSP · FBI 	<p>Prior to Department issuance of a certificate of compliance.</p>	<p>No update required if certificate is timely renewed.</p>	<p>Certification is prohibited if record contains prohibitive hires under Section 6344 of the CPSL</p>

Clarification of Prohibiting Approval/Hiring:

Approval of foster and adoptive homes and hiring of employees impacted by Act 73 of 2007 is prohibited when any individual has been:

- Named as a perpetrator of a founded report of child abuse or founded report for a school employee within five years preceding the request for a clearance. A founded report refers to when there has been a judicial adjudication based on a finding that a child who is a subject of a report has been abused. This is different from an indicated report where the county agency or DPW determines the child who is a subject of a report has been abused.
- Convicted of a felony offense under the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-101 et seq., within five years preceding the request for a clearance.
- Convicted of criminal homicide, aggravated assault, stalking, kidnapping, unlawful restraint, rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, indecent assault, indecent exposure, incest, concealing the death of a child, endangering the welfare of children, dealing in infant children, prostitution and related offenses, pornography, corruption of minors and sexual abuse of children. The CPSL states that approval or hiring can not occur if any individuals have been convicted of any of these offenses. However, in 2003, the Commonwealth Court of Pennsylvania ruled in Warren County Human Services v. State Civil Service Commission, 844 A.2d 70 , that it is unconstitutional to prohibit employees convicted of these offenses from ever being hired in a child care service. DPW issued a letter on August 12, 2004 (see attachment) outlining the requirements agencies are to follow when hiring an individual affected by this ruling. This ruling does not apply to prospective foster and adoptive parent applicants. Individuals are permitted to be hired when:
 - 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 health care, 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 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.



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF CHILDREN, YOUTH AND FAMILIES
P.O. BOX 2875
HARRISBURG, PENNSYLVANIA 17105-2875

AUG 12 2004

Dear Colleague:

The Commonwealth Court of Pennsylvania recently declared unconstitutional Section 6344(c) of the Child Protective Services Law, 23 Pa. C.S. § 6344(c), which bans for life persons convicted of certain crimes from employment in child care services. Warren County Human Services v. State Civil Service Commission, 376 C.D. 2003 (March 8, 2004). The Court noted; however, that less-than-lifetime bans for certain crimes may be constitutionally permissible. Id. at n.9.

Accordingly, until new regulations or statutes are enacted, the Department of Public Welfare (DPW) will enforce the requirements of the Child Protective Services Law (CPSL) on child care services as follows:

1. An employer is still required to obtain background checks for prospective child care personnel.
2. The Pennsylvania State Police will continue to process applications for state criminal history reports and provide such information to the entity requesting the criminal history report.
3. DPW will continue to process FBI criminal history reports for prospective child care personnel who are not Pennsylvania residents and for Pennsylvania residents pursuant to the Volunteers for Children's Act. Letters from DPW will continue to indicate whether no record exists for the individual or whether the individual was convicted of a crime enumerated in the CPSL.
4. Effective March 9, 2004, DPW will not cite an agency or facility for regulatory violations if the agency or facility hires or continues to employ an individual who would have been barred from employment by the CPSL as long as the agency or facility reasonably determines that the individual has demonstrated rehabilitation. In order to demonstrate rehabilitation, the individual must meet the following requirements:
 - (a) The individual must have a minimum five-year aggregate work history in care-dependent services since conviction of the crime or release from incarceration, whichever is later. The individual is responsible for providing official verification of such dates. Care-dependent services include

healthcare, eldercare, child care, mental health services, mental retardation services, or care of the disabled.

- (b) The individual's work history in care-dependent services may not include any incidents of misconduct by the individual.

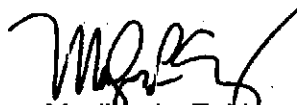
An agency or facility must reasonably investigate the character of an individual with a previously disqualifying criminal offense by conducting interviews, obtaining references and obtaining documentation of work history. An agency or facility that hires such an individual is required to obtain specific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

5. The Court's ruling in no way prohibits an agency or facility from refusing to employ an individual based on information obtained in a criminal history report, even when that individual has verified completion of all the steps listed in number 4, above. Pennsylvania law, 18 Pa. C.S. § 9125, provides that an employer may consider criminal history felonies and misdemeanors, to the extent they relate to the applicant's suitability for employment in the position sought. The employer is required to notify the applicant, in writing, if the decision not to hire the applicant is based, in whole or in part, on the applicant's criminal history.
6. An agency or facility is still prohibited from hiring an individual who is named as the perpetrator in a founded report of child abuse within the last five years. See 23 Pa. C.S. § 6344(c)(1).
7. An agency or facility is still prohibited from hiring an individual who has been convicted of a felony drug offense within the last five years. See 23 Pa. C.S. § 6344(c).

Prospective foster and adoptive parent applicants are still required to submit criminal and child abuse history information. See 23 Pa. C.S. § 6344(d). The prohibition on the approval of a prospective foster or adoptive parent who has been convicted on any crime listed in section 6344 also remains in effect. See 55 Pa. Code §3490.123(d)(2).

If you have any questions, please contact your DPW licensing representative.

Sincerely,



Marilyn L. Eckley
Acting Deputy Secretary for Children,
Youth and Families