

ASSEMBLY, No. 2750

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED MAY 19, 2008

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Assemblywoman CLEOPATRA G. TUCKER

District 28 (Essex)

Co-Sponsored by:

Assemblymen Munoz, Conaway and Assemblywoman Pou

SYNOPSIS

Requires staff members of adoption agencies to undergo criminal history record background and child abuse record information checks.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/18/2008)

A2750 VAINIERI HUTTLE, CRUZ-PEREZ

2

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

4

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

7

8 1. (New section) As used in this act:

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

11 “Department” means the Department of Children and Families;

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

17

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

23 b. If the administrator of an agency refuses to consent to, or
24 cooperate in, the securing of a criminal history record background
25 check, the department shall suspend, deny, revoke or refuse to
26 renew the agency's approval as an adoption agency, as appropriate.

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

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

33

34 3. (New Section) a. In the case of an adoption agency
35 established after the effective date of this act, the administrator of
36 the agency, prior to the agency's opening, shall ensure that a request
37 for a criminal history record background check on each staff
38 member is sent to the department for processing by the Division of
39 State Police in the Department of Law and Public Safety and the
40 Federal Bureau of Investigation.

41 A staff member shall not be left alone as the only adult
42 accompanying a child until the staff member's criminal history
43 record background check has been reviewed by the department
44 pursuant to this act.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 b. In the case of an adoption agency approved prior to the
2 effective date of this act, the administrator of the agency shall
3 ensure that a request for a criminal history record background check
4 on each staff member is submitted to the department within 60 days
5 of the effective date of this act for processing by the Division of
6 State Police and the Federal Bureau of Investigation.

7 c. Within two weeks after a new staff member begins
8 employment at an approved agency, the administrator of the agency
9 shall ensure that a request for a criminal history record background
10 check on the new staff member is submitted to the department for
11 processing by the Division of State Police and the Federal Bureau
12 of Investigation.

13 A new staff member shall not be left alone as the only adult
14 accompanying a child until the staff member's criminal history
15 record background check has been reviewed by the department
16 pursuant to this act.

17

18 4. (New Section) Except as provided in subsection d. of this
19 section, a current staff member, or an applicant for employment,
20 shall be disqualified from employment at an approved agency if the
21 criminal history record background check of the staff member or
22 applicant reveals a record of conviction for any of the following
23 crimes and offenses:

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

26 (1) a crime against a child, including endangering the welfare of
27 a child and child pornography pursuant to N.J.S.2C:24-4;

28 (2) abuse, abandonment or neglect of a child pursuant to R.S.9:6-
29 3;

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

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

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

36 (6) stalking pursuant to section 1 of P.L.1992, c.209 (C.2C:12-
37 10);

38 (7) kidnapping and related offenses including criminal restraint,
39 false imprisonment, interference with custody, criminal coercion, or
40 enticing a child into a motor vehicle, structure or isolated area
41 pursuant to N.J.S.2C:13-1 through N.J.S.2C:13-5 and section 1 of
42 P.L.1993, c.291 (C.2C:13-6);

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

46 (9) aggravated assault, which would constitute a crime of the
47 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

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

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

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

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

8 (14) an attempt or conspiracy to commit any of the crimes or
9 offenses listed in paragraphs (1) through (13) of this subsection.

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

14 c. Notwithstanding the provisions of this section to the contrary,
15 a staff member shall not be disqualified from employment at an
16 approved agency under this act on the basis of any conviction
17 disclosed by a criminal history record background check performed
18 pursuant to this act without an opportunity to challenge the
19 accuracy of the disqualifying criminal history record pursuant to the
20 provisions of section 7 of P.L.2003, c.186 (C.53:1-20.9d).

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

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

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

31 (3) the agency documents that the staff member's employment at
32 the agency does not create a risk to the safety or well-being of
33 children due to the nature and requirements of the position; as
34 necessary, the agency shall identify restrictions regarding the staff
35 member's contact with, care, or supervision of children;

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

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

42

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

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

4 (1) the nature and responsibility of the position at the agency that
5 the convicted staff member would hold, has held or currently holds,
6 as the case may be;

7 (2) the nature and seriousness of the offense;

8 (3) the circumstances under which the offense occurred;

9 (4) the date of the offense;

10 (5) the age of the staff member when the offense was committed;

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

12 (7) any social conditions that may have contributed to the
13 offense; and

14 (8) any evidence of rehabilitation, including good conduct in
15 prison or in the community, counseling or psychiatric treatment
16 received, acquisition of additional academic or vocational
17 schooling, successful participation in correctional work-release
18 programs, or the recommendation of those who have had the staff
19 member under their supervision.

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

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

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

30

31 6. (New Section) a. An approved agency that has received an
32 employment application from an individual, or currently employs a
33 staff member, shall be immune from liability for acting upon or
34 disclosing information about the disqualification or termination of
35 that applicant or staff member to another agency seeking to employ
36 that staff member if the agency has:

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

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

44 b. An approved agency that acts upon or discloses information
45 pursuant to subsection a. of this section shall be presumed to be
46 acting in good faith unless it is shown by clear and convincing
47 evidence that the agency acted with actual malice toward the staff
48 member who is the subject of the information.

1 7. (New Section) a. In addition to the requirement for a
2 criminal history record background check pursuant to section 2 of
3 this act, the administrator of an agency shall request that the
4 department conduct a child abuse record information check of its
5 child abuse records to determine if an incident of child abuse or
6 neglect has been substantiated, pursuant to section 4 of P.L.1971,
7 c.437 (C.9:6-8.11), against any staff member of the agency.

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

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

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

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

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

26

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

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

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

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

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

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

6 e. The department shall consider, for the purposes of this act,
7 any incidents of child abuse or neglect that were substantiated on or
8 after June 29, 1995, to ensure that perpetrators have had an
9 opportunity to appeal a substantiated finding of abuse or neglect;
10 except that the department may consider substantiated incidents
11 prior to that date, if the department, in its judgment, determines that
12 the staff member poses a risk of harm to children in a agency. In
13 cases involving incidents substantiated prior to June 29, 1995, in
14 which the department determined that the individual posed such a
15 risk, the department shall offer the staff member an opportunity for
16 a hearing to contest the substantiation.

17
18 9. (New Section) In the case of an adoption agency located
19 outside the State, the administrator of the agency shall ensure that
20 all applicants or staff members meet all applicable laws and
21 regulations in that state governing criminal history record
22 background and child abuse record information checks that may be
23 required as a condition of employment. In the event that criminal
24 history record background and child abuse record information
25 checks are not required, the administrator of the agency shall
26 require that the applicant or staff member make a voluntary
27 disclosure of any criminal conviction or substantiation for child
28 abuse or neglect. The results of the disclosure shall be made
29 available to the department, so the department can determine the
30 suitability of the staff member or applicant for employment.

31
32 10. Section 7 of P.L. 2003, c.186 (C.53:1-20.9d) is amended to
33 read as follows:

34 7. a. The Commissioner of Children and Families is authorized
35 to exchange fingerprint data with, and to receive criminal history
36 record information from, the Division of State Police in the
37 Department of Law and Public Safety and the Federal Bureau of
38 Investigation.

39 Upon receipt of the criminal history record information for an
40 applicant or staff member of a residential child care facility or
41 approved adoption agency from the Federal Bureau of Investigation
42 and the Division of State Police, the Department of Children and
43 Families shall notify the applicant or staff member, as applicable,
44 and the residential child care facility or approved adoption agency,
45 as applicable, in writing, of the applicant's or staff member's
46 qualification or disqualification for employment or service under
47 section 4 or 5 of P.L.2003, c.186 (C.30:4C-27.19 or C.30:4C-27.20)
48 or section 4 or 5 of P.L. , c. (C.) (pending before the Legislature

1 as this bill). If the applicant or staff member is disqualified, the
2 convictions that constitute the basis for the disqualification shall be
3 identified in the written notice to the applicant or staff member.
4 The applicant or staff member shall have 14 days from the date of
5 the written notice of disqualification to challenge the accuracy of
6 the criminal history record information. If no challenge is filed or if
7 the determination of the accuracy of the criminal history record
8 information upholds the disqualification, the department shall notify
9 the facility or agency, as applicable, that the applicant or staff
10 member has been disqualified from employment.

11 b. The Division of State Police shall promptly notify the
12 Department of Children and Families in the event an applicant or
13 staff member, who was the subject of a criminal history record
14 background check conducted pursuant to subsection a. of this
15 section, is convicted of a crime or offense in this State after the date
16 the background check was performed. Upon receipt of such
17 notification, the department shall make a determination regarding
18 the employment of the applicant or staff member.

19 (cf: P.L.2006, c.47, s.202)

20

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

25

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

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28

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STATEMENT

30

31 This bill requires that every employee of an adoption agency
32 approved by the Department of Children and Families undergo
33 criminal history record background and Division of Youth and
34 Family Services (DYFS) child abuse record checks.

35 Specifically, the bill requires that as a condition of securing or
36 maintaining approval by the Department of Children and Families
37 as an adoption agency, the administrator of an agency shall ensure
38 that both a criminal history record background check, and a DYFS
39 child abuse record information check to determine if an incident of
40 child abuse or neglect has been substantiated, is conducted on each
41 staff member of the agency. The bill defines "staff member" to
42 mean a person 18 years of age or older who is an administrator of
43 an agency, or who works in an agency on a regularly scheduled
44 basis during the agency's operating hours. Staff member includes
45 full-time, part-time, voluntary, contract, consulting, and substitute
46 staff, whether compensated or not.

47 The bill provides as follows:

- 1 • If the administrator of an agency refuses to consent to, or
2 cooperate in, the securing of a criminal history record background
3 check or a DYFS child abuse record information check, the
4 department shall suspend, deny, revoke or refuse to renew the
5 agency's approval as an adoption agency, as appropriate.
- 6 • If a staff member of an agency, other than the administrator,
7 refuses to consent to, or cooperate in, the securing of a criminal
8 history record background check or a DYFS child abuse record
9 information check, the individual shall be immediately terminated
10 from employment at the agency.
- 11 • The cost of a criminal history record background check conducted
12 pursuant to this bill shall be paid by the agency.
- 13 • In the case of an adoption agency established after the effective
14 date of the bill, the administrator of the agency, prior to the
15 agency's opening, shall ensure that a request for a criminal history
16 record background check on each staff member is sent to the
17 department for processing. The bill provides that a staff member
18 shall not be left alone as the only adult accompanying a child
19 until the staff member's criminal history record background check
20 has been reviewed by the department.
- 21 • In the case of an adoption agency approved prior to the effective
22 date of the bill, the administrator of the agency shall ensure that a
23 request for a criminal history record background check on each
24 staff member is submitted to the department within 60 days of the
25 effective date of this bill for processing.
- 26 • Within two weeks after a new staff member begins employment
27 at an approved agency, the administrator of the agency shall
28 ensure that a request for a criminal history record background
29 check on the new staff member is submitted to the department for
30 processing. The bill provides that a new staff member shall not be
31 left alone as the only adult accompanying a child until the staff
32 member's criminal history record background check has been
33 reviewed by the department.
- 34 • A current staff member, or an applicant for employment, shall be
35 disqualified from employment at an approved agency if the
36 criminal history record background check of the staff member or
37 applicant reveals a record of conviction for any of the following
38 crimes and offenses:
- 39 (1) In New Jersey, any crime or disorderly persons offense as
40 follows:
- 41 -- a crime against a child, including endangering the welfare of a
42 child and child pornography pursuant to N.J.S.2C:24-4;
- 43 -- abuse, abandonment or neglect of a child pursuant to R.S.9:6-3;
- 44 -- endangering the welfare of an incompetent person pursuant to
45 N.J.S.2C:24-7;
- 46 -- sexual assault, criminal sexual contact or lewdness pursuant to
47 N.J.S.2C:14-2 through N.J.S.2C:14-4;

- 1 -- murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to
2 N.J.S.2C:11-4;
- 3 -- stalking pursuant to section 1 of P.L.1992, c.209 (C.2C:12-10);
4 -- kidnapping and related offenses including criminal restraint,
5 false imprisonment, interference with custody, criminal coercion,
6 or enticing a child into a motor vehicle, structure or isolated area
7 pursuant to N.J.S.2C:13-1 through N.J.S.2C:13-5 and section 1 of
8 P.L.1993, c.291 (C.2C:13-6);
- 9 -- arson pursuant to N.J.S.2C:17-1, or causing or risking
10 widespread injury or damage, which would constitute a crime of
11 the second degree pursuant to N.J.S.2C:17-2;
- 12 -- aggravated assault, which would constitute a crime of the
13 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;
- 14 -- robbery, which would constitute a crime of the first degree
15 pursuant to N.J.S.2C:15-1;
- 16 -- burglary, which would constitute a crime of the second degree
17 pursuant to N.J.S.2C:18-2;
- 18 -- domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et
19 seq.);
- 20 -- terroristic threats pursuant to N.J.S.2C:12-3; or
- 21 -- an attempt or conspiracy to commit any of the crimes or
22 offenses listed in paragraphs (1) through (13) of this subsection.
- 23 (2) In any other state or jurisdiction, of conduct which, if
24 committed in New Jersey, would constitute any of the crimes or
25 disorderly persons offenses described above.
- 26 • A staff member shall not be disqualified from employment on the
27 basis of the criminal history record background check without an
28 opportunity to challenge the accuracy of the disqualifying
29 criminal history record.
 - 30 • If a staff member is convicted of a crime specified above, the
31 staff member shall be terminated from employment at the agency,
32 except that the department may approve the staff member's
33 employment at the agency if certain specified conditions are met.
 - 34 • For crimes and offenses other than those cited above, a staff
35 member may be eligible for employment at an approved agency if
36 the staff member has affirmatively demonstrated to the
37 department clear and convincing evidence of rehabilitation, as
38 specified in the bill.
 - 39 • The bill provides immunity from liability for approved agencies
40 that act upon or disclose information about the disqualification or
41 termination of an applicant or staff member to another agency
42 seeking to employ that staff member if the agency meets
43 conditions specified in the bill.
 - 44 • With respect to DYFS child abuse record information checks, if
45 the department determines that an incident of child abuse or
46 neglect by a staff member has been substantiated, the department
47 shall advise the administrator of the agency of the results, and the

- 1 agency shall immediately terminate the staff member from
2 employment at the agency.
- 3 • In the case of an agency located outside the State, the
4 administrator of the agency shall ensure that all applicants or staff
5 members meet all applicable laws and regulations in that state
6 governing criminal history record background and child abuse
7 record information checks that may be required as a condition of
8 employment. If criminal history record background and child
9 abuse record information checks are not required, the
10 administrator of the agency shall require that the applicant or staff
11 member make a voluntary disclosure of any criminal conviction
12 or substantiation for child abuse or neglect. The results of the
13 disclosure shall be made available to the department, so the
14 department can determine the suitability of the staff member or
15 applicant for employment.
 - 16 • The bill amends section 7 of P.L. 2003, c.186 (C.53:1-20.9d),
17 which sets forth the authority and procedures for the conduct of
18 criminal history record background checks for residential child
19 care facilities, to include adoption agencies, as well.
 - 20 • The bill takes effect on the 180th day after enactment.