

[Second Reprint]  
**SENATE, No. 651**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

**Sponsored by:**

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**District 15 (Hunterdon and Mercer)**

**Senator JOSEPH PENNACCHIO**

**District 26 (Essex, Morris and Passaic)**

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**Senators A.R.Bucco, Van Drew, Addiego, Beach, Ruiz, Assemblywomen  
Pintor Marin, Mosquera and Downey**

**SYNOPSIS**

Requires family day care providers and certain household members to undergo criminal history record background checks.

**CURRENT VERSION OF TEXT**

As reported by the Assembly Women and Children Committee on January 19, 2017, with amendments.

(Sponsorship Updated As Of: 3/24/2017)

1 AN ACT concerning family day care homes <sup>1</sup>**[and]**, <sup>1</sup> supplementing  
2 chapter 5B of Title 30 of the Revised Statutes <sup>1</sup>, and amending  
3 P.L.2000, c.77<sup>1</sup>.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. <sup>2</sup>(New section)<sup>2</sup> As used in this act:

9 "Certificate of registration" means a certificate of registration as  
10 defined in section 3 of P.L.1987, c.27 (C.30:5B-18).

11 "Family day care home" means a family day care home as  
12 defined in section 3 of P.L.1987, c.27 (C.30:5B-18).

13 "Family day care provider" means a family day care provider as  
14 defined in section 3 of P.L.1987, c.27 (C.30:5B-18).

15 "Family day care sponsoring organization" means a family day  
16 care sponsoring organization as defined in section 3 of  
17 P.L.1987, c.27 (C.30:5B-18).

18 "Household member" means a person 18 years of age or older  
19 who resides in a family day care home.  
20

21 2. <sup>2</sup>(New section)<sup>2</sup> a. <sup>1</sup>**[As]** By October 1, 2017, and as<sup>1</sup>  
22 condition of issuance or renewal of a certificate of registration  
23 thereafter<sup>1</sup>, the Department of Children and Families shall  
24 **[ensure that]** require the following persons to undergo<sup>1</sup> a State and  
25 federal criminal history record background check <sup>1</sup>**[is conducted on**  
26 **a]**, in accordance with the provisions of section 3 of P.L. \_\_\_\_\_,  
27 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill): (1) any<sup>1</sup>  
28 person <sup>1</sup>**[registering as]** who is<sup>1</sup> a prospective or current family day  
29 care provider <sup>1</sup>**[, an]**; (2) any<sup>1</sup> assistant provider, substitute  
30 provider, or alternate provider of the prospective or current family  
31 day care provider <sup>1</sup>**[, or]**; and (3)<sup>1</sup> any household member of the  
32 prospective or current family day care provider. The background  
33 check shall be conducted by the Division of State Police in the  
34 Department of Law and Public Safety <sup>1,1</sup> and shall include an  
35 examination of <sup>1</sup>**[its own]** State<sup>1</sup> files and the obtaining of a similar  
36 examination <sup>1</sup>of federal files<sup>1</sup> by federal authorities.

37 b. <sup>1</sup>**[If a prospective or current family day care provider, an**  
38 assistant provider, substitute provider, or alternate provider of the  
39 prospective or current family day care provider, or any household  
40 member of the family day care provider refuses to consent to, or  
41 cooperate in, the securing of a criminal history record background  
42 check, a family day care sponsoring organization shall deny the

**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.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Senate SHH committee amendments adopted November 3, 2016.

<sup>2</sup>Assembly AWC committee amendments adopted January 19, 2017.

1 prospective or current family day care provider's application for a  
2 certificate or renewal of registration

3 c. <sup>1</sup> If <sup>1</sup> [a prospective or current family day care provider, an  
4 assistant provider, substitute provider, or alternate provider of the  
5 prospective or current family day care provider, or any household  
6 member of the family day care provider] a criminal history record  
7 background check reveals that a person identified in subsection a.  
8 of this section<sup>1</sup> has a record of <sup>1</sup> [criminal history] disqualifying  
9 convictions<sup>1</sup>, the department shall advise the sponsoring  
10 organization <sup>1</sup>, in accordance with the provisions of section 4 of  
11 P.L. , c. (C. ) (pending before the Legislature as this bill),<sup>1</sup>  
12 of the results of the criminal history record background check <sup>1</sup>,<sup>1</sup>  
13 within a time period to be determined by the department.

14  
15 3. <sup>2</sup>(New section)<sup>2</sup> a. The department shall not issue a  
16 certificate or renewal of registration to a prospective or current  
17 family day care provider <sup>1</sup>, and shall revoke the existing registration  
18 held by a current family day care provider, as the case may be,<sup>1</sup> if  
19 <sup>1</sup> [a criminal history record background check of a] the provider, or  
20 any other relevant<sup>1</sup> person <sup>1</sup> [registering as a prospective or current  
21 family day care provider, an assistant provider, substitute provider,  
22 or alternate provider of the prospective or current family day care  
23 provider, or any household member of the prospective or current  
24 family day care provider, reveals] listed in subsection a. of section  
25 2 of P.L. c. (C. ) (pending before the Legislature as this bill:

26 (1) refuses to consent to, or cooperate in, the securing of a  
27 criminal history record background check;

28 (2) knowingly makes a materially false statement in connection  
29 with a criminal history record background check;

30 (3) is registered, or is required to be registered, on a State sex  
31 offender registry or repository, or on the National Sex Offender  
32 Registry established under the "Adam Walsh Child Protection and  
33 Safety Act of 2006," 42 U.S.C. 16901 et seq.; or

34 (4) is found by a criminal history record background check to  
35 have<sup>1</sup> a record of conviction for any of the following crimes and  
36 offenses:

37 <sup>1</sup> [(1) In New Jersey, any crime or disorderly persons offense as  
38 follows:]<sup>1</sup>

39 (a) a crime against a child, including endangering the welfare of  
40 a child and child pornography pursuant to N.J.S.2C:24-4, and child  
41 molestation as set forth in N.J.S.2C:14-1 et seq.;

42 (b) abuse, abandonment or neglect of a child pursuant to R.S.9:6-  
43 3;

44 (c) endangering the welfare of an incompetent person pursuant to  
45 N.J.S.2C:24-7;

- 1 (d) sexual assault, criminal sexual contact or lewdness pursuant  
2 to N.J.S.2C:14-2 through N.J.S.2C:14-4;
- 3 (e) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant  
4 to N.J.S.2C:11-4;
- 5 (f) stalking pursuant to P.L.1992, c.209 (C.2C:12-10);
- 6 (g) kidnapping and related offenses including criminal restraint;  
7 false imprisonment; interference with custody; criminal coercion; or  
8 enticing a child into a motor vehicle, structure, or isolated area  
9 pursuant to N.J.S.2C:13-1 through 2C:13-6;
- 10 (h) arson pursuant to N.J.S.2C:17-1, or causing or risking  
11 widespread injury or damage, which would constitute a crime of the  
12 second degree pursuant to N.J.S.2C:17-2;
- 13 (i) terroristic threats pursuant to N.J.S.2C:12-3;
- 14 (j) aggravated assault, which would constitute a crime of the  
15 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;
- 16 (k) robbery, which would constitute a crime of the first degree  
17 pursuant to N.J.S.2C:15-1;
- 18 (l) burglary, which would constitute a crime of the second degree  
19 pursuant to N.J.S.2C:18-2;
- 20 (m) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17  
21 et seq.); <sup>1</sup>**[or]**<sup>1</sup>
- 22 (n) <sup>1</sup>any drug related offense committed within the preceding  
23 five year period; or
- 24 (o)<sup>1</sup> an attempt or conspiracy to commit any of the crimes or  
25 offenses listed in paragraphs (a) through <sup>1</sup>**[(m)] (n)<sup>1</sup> of this**  
26 subsection.
- 27 <sup>1</sup>**[(2) In] b. For the purposes of this section, a person shall be**  
28 deemed to have a disqualifying record of conviction if the person  
29 has been convicted in New Jersey of any of the crimes listed in  
30 subsection a. of this section, or if the person has been convicted in<sup>1</sup>  
31 any other state or jurisdiction, of conduct which, if committed in  
32 New Jersey, would constitute any of the crimes or disorderly  
33 persons offenses described in <sup>1</sup>**[paragraph (1) of this] that<sup>1</sup>**  
34 subsection.
- 35 <sup>1</sup>**[b. Notwithstanding the provisions of subsection a. of this**  
36 **section to the contrary, a certificate of registration or renewal of a**  
37 **certificate of registration shall not be denied on the basis of any**  
38 **conviction disclosed by a criminal history record check performed**  
39 **pursuant to this act, if the individual has affirmatively demonstrated**  
40 **to the Commissioner of Children and Families clear and convincing**  
41 **evidence of rehabilitation. In determining whether an individual**  
42 **has affirmatively demonstrated rehabilitation, the following factors**  
43 **shall be considered:**
- 44 (1) the nature and responsibility of the position which the  
45 convicted individual would hold;
- 46 (2) the nature and seriousness of the offense;
- 47 (3) the circumstances under which the offense occurred;

- 1 (4) the date of the offense;
- 2 (5) the age of the individual when the offense was committed;
- 3 (6) whether the offense was an isolated or repeated incident;
- 4 (7) any social conditions which may have contributed to the
- 5 offense; and
- 6 (8) any evidence of rehabilitation, including good conduct in
- 7 prison or in the community, counseling or psychiatric treatment
- 8 received, acquisition of additional academic or vocational
- 9 schooling, successful participation in correctional work-release
- 10 programs, or the recommendation of those who have had the
- 11 individual under their supervision.】<sup>1</sup>

12 c. Notwithstanding the provisions of this section to the contrary,  
13 a prospective or current provider's application for a certificate or  
14 renewal of registration shall not be denied under this act on the  
15 basis of any conviction disclosed by a criminal history record  
16 background check performed pursuant to this act without an  
17 opportunity to challenge the accuracy of the disqualifying criminal  
18 history record pursuant to <sup>1</sup>subsection c. of<sup>1</sup> section 5 of P.L. ,  
19 c. (C. ) (pending before the Legislature as this bill).

20

21 4. <sup>2</sup>(New section)<sup>2</sup> The Commissioner of <sup>2</sup>【Children and  
22 Families】 Human Services<sup>2</sup> shall <sup>1</sup>【require that the】 pay the<sup>1</sup> cost  
23 of the criminal history record background checks conducted  
24 pursuant to <sup>1</sup>【this act shall be paid by】 P.L. , c. (C. )  
25 (pending before the Legislature as this bill)<sup>1</sup> <sup>2</sup>【from the federal  
26 Child Care and Development Block Grant,】<sup>2</sup> <sup>1</sup>on behalf of<sup>1</sup> the  
27 prospective or current family day care providers, as applicable.

28

29 5. <sup>2</sup>(New section)<sup>2</sup> a. The Commissioner of Children and  
30 Families is authorized to exchange fingerprint data with, and to  
31 receive information from, the Division of State Police in the  
32 Department of Law and Public Safety and the Federal Bureau of  
33 Investigation.

34 <sup>1</sup>b.<sup>1</sup> Upon receipt of <sup>1</sup>【the】<sup>1</sup> criminal history record information  
35 <sup>1</sup>【for a person registering as a prospective or current family day  
36 care provider, an assistant provider, substitute provider, or alternate  
37 provider of the family day care provider, or any household member  
38 of the family day care provider】<sup>1</sup> from the Federal Bureau of  
39 Investigation and the Division of State Police, <sup>1</sup>for each of the  
40 parties identified in subsection a. of section 2 of P.L. ,  
41 c. (C. ) (pending before the Legislature as this bill),<sup>1</sup> the  
42 Department of Children and Families shall notify the family day  
43 care provider, in writing, of the department's decision to approve or  
44 deny the family day care provider's application for a certificate or  
45 renewal of registration <sup>1</sup>, or its decision to revoke the family day  
46 care provider's existing registration, as the case may be. The  
47 department shall also advise the family day care provider, the

1 family day care sponsoring organization, and any person, other than  
2 the provider, who was the subject of the criminal history record  
3 background check, within a reasonable timeframe, of the results of  
4 any criminal history record background check that is conducted<sup>1</sup>  
5 under section 3 of P.L. , c. (C. ) (pending before the  
6 Legislature as this bill).

7 <sup>1</sup>c. If the <sup>1</sup>department denies an<sup>1</sup> application for a certificate or  
8 renewal of registration <sup>1</sup>["is denied"] , or revokes an existing  
9 registration, because the family day care provider, or other relevant  
10 party listed in subsection a. of section 2 of P.L. , c. (C. )  
11 (pending before the Legislature as this bill), has been determined to  
12 have a disqualifying record of convictions, as provided by section 3  
13 of P.L. , c. (C. ) (pending before the Legislature as this  
14 bill)<sup>1</sup>, the convictions that constitute the basis for <sup>1</sup>["the"] <sup>1</sup>such<sup>1</sup>  
15 denial <sup>1</sup>or revocation<sup>1</sup> shall be identified in the written notice <sup>1</sup>["to  
16 the family day care provider. The <sup>1</sup>of disqualifying convictions  
17 that is provided to all parties under subsection b. of this section. In  
18 such a case, the<sup>1</sup> family day care provider <sup>1</sup>or other person who was  
19 the subject of the criminal history record background check<sup>1</sup> shall  
20 have 14 days from the date of the written notice <sup>1</sup>["of denial"]<sup>1</sup> to  
21 challenge the accuracy of the criminal history record information  
22 <sup>1</sup>upon which the denial or revocation was based<sup>1</sup>. If no challenge is  
23 filed <sup>1</sup>,<sup>1</sup> or if <sup>1</sup>["the determination of the accuracy of the criminal  
24 history record information upholds <sup>1</sup>a challenge is filed, but<sup>1</sup> the  
25 denial <sup>1</sup>or revocation is upheld<sup>1</sup>, the department shall notify the  
26 family day care sponsoring organization that the family day care  
27 <sup>1</sup>["provider has been denied a certificate or renewal of"] provider's<sup>1</sup>  
28 registration <sup>1</sup>has been denied or revoked on the basis of  
29 disqualifying criminal history record information<sup>1</sup> .

30 <sup>1</sup>["b."] <sup>1</sup>d. The Division of State Police shall promptly notify the  
31 department <sup>1</sup>["in the event a prospective or current family day care  
32 provider, an assistant provider, substitute provider, or alternate  
33 provider of the prospective or current family day care provider, or  
34 any household member of the family day care provider,"] whenever  
35 a person<sup>1</sup> who was the subject of a criminal history record  
36 background check <sup>1</sup>["conducted pursuant to subsection a. of this  
37 section"] under section 3 of P.L. , c. (C. ) (pending before  
38 the Legislature as this bill)<sup>1</sup>, is convicted of a crime or offense in  
39 this State after the date <sup>1</sup>on which<sup>1</sup> the background check was  
40 performed. Upon receipt of such notification, the department shall  
41 <sup>1</sup>["make a determination regarding"] determine whether to revoke<sup>1</sup>  
42 the family day care provider's certificate of registration.

43

44 6. Section 5 of P.L.2000, c.77 (C.30:5B-6.14) is amended to  
45 read as follows:

1       5. <sup>1</sup>a.<sup>1</sup> A current staff member and an individual seeking  
2 employment shall be permanently disqualified from employment at,  
3 or ownership or sponsorship of, a child care center if <sup>1</sup>【the criminal  
4 history record background check of】<sup>1</sup> the staff member or  
5 individual <sup>1</sup>【reveals】:

6       (1) refuses to consent to, or cooperate in, the securing of a  
7 criminal history record background check;

8       (2) knowingly makes a materially false statement in connection  
9 with a criminal history record background check;

10       (3) is registered, or is required to be registered, on a State sex  
11 offender registry or repository, or in the National Sex Offender  
12 Registry established under the “Adam Walsh Child Protection and  
13 Safety Act of 2006,” 42 U.S.C. s.16901 et seq.; or

14       (4) is found by a criminal history record background check to  
15 have<sup>1</sup> a record of conviction for any of the following crimes and  
16 offenses:

17       <sup>1</sup>【a. In New Jersey, any crime or disorderly persons offense as  
18 follows:

19       (1) <sup>1</sup>【(a)】<sup>1</sup> a crime against a child, including endangering the  
20 welfare of a child and child pornography pursuant to N.J.S.2C:24-4  
21 <sup>1</sup>【;】<sup>1</sup>, and<sup>1</sup> child molestation as set forth in N.J.S. 2C:14-1 et seq.;

22       <sup>1</sup>【(2)】<sup>1</sup> (b) <sup>1</sup> abuse, abandonment <sup>1</sup>,<sup>1</sup> or neglect of a child  
23 pursuant to R.S.9:6-3;

24       <sup>1</sup>【(3)】<sup>1</sup> (c) <sup>1</sup> endangering the welfare of an incompetent person  
25 pursuant to N.J.S.2C:24-7;

26       <sup>1</sup>【(4)】<sup>1</sup> (d) <sup>1</sup> sexual assault, criminal sexual contact <sup>1</sup>,<sup>1</sup> or  
27 lewdness pursuant to N.J.S.2C:14-2 through N.J.S.2C:14-4;

28       <sup>1</sup>【(5)】<sup>1</sup> (e) <sup>1</sup> murder pursuant to N.J.S.2C:11-3 or manslaughter  
29 pursuant to N.J.S.2C:11-4;

30       <sup>1</sup>【(6)】<sup>1</sup> (f) <sup>1</sup> stalking pursuant to P.L.1992, c.209 (C.2C:12-10);

31       <sup>1</sup>【(7)】<sup>1</sup> (g) <sup>1</sup> kidnapping and related offenses including criminal  
32 restraint; false imprisonment; interference with custody; criminal  
33 coercion; or enticing a child into a motor vehicle, structure <sup>1</sup>,<sup>1</sup> or  
34 isolated area pursuant to N.J.S.2C:13-1 through 2C:13-6;

35       <sup>1</sup>【(8)】<sup>1</sup> (h) <sup>1</sup> arson pursuant to N.J.S.2C:17-1, or causing or  
36 risking widespread injury or damage which would constitute a  
37 crime of the second degree pursuant to N.J.S.2C:17-2;

38       <sup>1</sup>【(9)】<sup>1</sup> (i) <sup>1</sup> terroristic threats pursuant to N.J.S.2C:12-3; <sup>1</sup>【and

39       (10) <sup>1</sup>【(j) aggravated assault, which would constitute a crime of  
40 the second or third degree pursuant to subsection b. of N.J.S.2C:12-  
41 1;

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

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

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

3       (n) any drug related offense committed within the preceding five  
4 year period; or

5       (o)<sup>1</sup> an attempt or conspiracy to commit any of the crimes or  
6 offenses listed in <sup>1</sup> [paragraphs (1)] subparagraphs (a)<sup>1</sup> through  
7 <sup>1</sup> [(9)] (n)<sup>1</sup> of this subsection.

8       b. <sup>1</sup> [In] For the purposes of this section, a person shall be  
9 deemed to have a disqualifying record of conviction if the person  
10 has been convicted in New Jersey of any of the crimes listed in  
11 subsection a. of this section, or if the person has been convicted in<sup>1</sup>  
12 any other state or jurisdiction, of conduct which, if committed in  
13 New Jersey, would constitute any of the crimes or disorderly  
14 persons offenses described in <sup>1</sup> that<sup>1</sup> subsection <sup>1</sup> [a. of this  
15 section]<sup>1</sup>.

16       c. Notwithstanding the provisions of this section to the  
17 contrary, an individual shall not be disqualified from employment  
18 or ownership or sponsorship under P.L.2000, c.77 (C.30:5B-6.10 et  
19 al.) on the basis of any conviction disclosed by a criminal history  
20 record background check performed pursuant to P.L.2000, c.77  
21 (C.30:5B-6.10 et al.) without an opportunity to challenge the  
22 accuracy of the disqualifying criminal history record pursuant to the  
23 provisions of section 8 of P.L.2000, c.77 (C.53:1-20.9b).  
24 (cf: P.L.2000, c.77, s.5)

25  
26       <sup>1</sup>7.<sup>1</sup> <sup>2</sup>(New section)<sup>2</sup> <sup>1</sup> [6. The Commissioner of Children and  
27 Families shall, in accordance with] Notwithstanding the provisions  
28 of<sup>1</sup> the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
29 1 et seq.), <sup>1</sup> the Commissioner of Children and Families shall,  
30 immediately upon filing proper notice with the Office of  
31 Administrative Law,<sup>1</sup> adopt <sup>1</sup> [any]<sup>1</sup> rules and regulations as the  
32 commissioner deems necessary to <sup>1</sup> [carry out] implement<sup>1</sup> the  
33 provisions of <sup>1</sup> [this act] P.L. , c. (C. ) (pending before the  
34 Legislature as this bill). Such rules and regulations shall remain in  
35 effect for a period not to exceed 12 months, and shall, thereafter, be  
36 amended, adopted, or readopted by the commissioner in accordance  
37 with the requirements of the "Administrative Procedure Act,"  
38 P.L.1968, c.410 (C.52:14B-1 et seq.)<sup>1</sup>.

39  
40       <sup>1</sup> [7.] 8.<sup>1</sup> This act shall take effect on <sup>1</sup> [the first day of the  
41 seventh month next following enactment] July 1, 2017<sup>1</sup>, except the  
42 Commissioner of Children and Families may take such anticipatory  
43 administrative action in advance thereof as shall be necessary for  
44 the implementation of this act.