

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 139 - L.D. 218

An Act to Clarify Maine Law Regarding Background Checks for the Office of Child and Family Services

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §4008, sub-§2, ¶L, as repealed and replaced by PL 2015, c. 494, Pt. A, §22, is amended to read:

L. A person, ~~organization, employer or agency~~ for the purpose of carrying out background ~~or employment-related~~ screening of an individual who is or may be engaged in:

- (1) Child-related activities or employment; or
- (2) Activities or employment relating to adults with intellectual disabilities, autism, related conditions as set out in 42 Code of Federal Regulations, Section 435.1010 or acquired brain injury; and

Sec. 2. 22 MRSA §8101, sub-§6 is enacted to read:

6. Transitional living program. "Transitional living program" means a children's home that provides board and care for up to 10 children and may provide one or more services described in section 4099-E. For the purposes of this subsection, "children" means persons under 21 years of age.

Sec. 3. 22 MRSA §8110, as amended by PL 2021, c. 42, §§1 to 3, is further amended to read:

§8110. Criminal history record checks for employees of children's residential care facilities, emergency children's shelters, shelters for homeless children and ~~any group home that provides care for children~~ transitional living programs

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

- A. "Federal Bureau of Investigation" means the United States Department of Justice, Federal Bureau of Investigation.
- B. "State Police" means the Department of Public Safety, Bureau of State Police.

2. Criminal history; information about criminal records and data obtained. The department shall obtain, in print or electronic format, criminal history record information containing a record of public criminal history record information as defined in Title 16, section 703, subsection 8, from the Maine Criminal Justice Information System, established pursuant to Title 16, section 631, and the Federal Bureau of Investigation, for any staff member of a children's residential care facility, an emergency children's shelter, a shelter for homeless children or ~~any group home that provides care for children~~ a transitional living program in order to comply with the federal Family First Prevention Services Act. For purposes of this section, "staff member" means an individual who is employed by, or has applied for and may be offered employment at, a children's residential care facility, an emergency children's shelter, or a shelter for homeless children or ~~any group home that provides care for children~~ with a transitional living program, including a contract employee or self-employed individual, whether or not the individual has direct contact with children. "Staff member" does not include a contractor performing maintenance or repairs at the children's residential care facility, emergency children's shelter, or shelter for homeless children or ~~group home that provides care for children~~ for a transitional living program who does not have unsupervised access to children at the facility, or shelter or ~~group home~~ in the transitional living program.

3. Fingerprint-based criminal history obtained. A staff member shall consent to and have the staff member's fingerprints taken. The State Police shall take or cause to be taken the fingerprints of a staff member who has consented under this subsection and shall forward the fingerprints to the Department of Public Safety so that the Department of Public Safety may conduct a state and national criminal history record check on the person. The Department of Public Safety shall forward the results obtained to the department. The State Police shall assess a fee set annually by the Department of Public Safety to be paid by the children's residential care facility, emergency children's shelter, shelter for homeless children or ~~group home that provides care for children~~ transitional living program or the staff member for each criminal history record check required to be performed under this section. Except for the portion of the payment that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police under this subsection must be paid to the Treasurer of State, who shall apply the money to the expenses of administration of this section by the Department of Public Safety.

4. Updates to information. The department may request a subsequent criminal history record check under subsection 3 on a staff member as the department determines appropriate, including continuous notifications of updated criminal history record information if a service providing notifications of updated criminal history record information becomes available.

5. Confidentiality. Information obtained pursuant to this section is confidential and may not be disseminated for purposes other than as provided in subsections 6 and 7.

6. Use of information obtained. Criminal history record information obtained pursuant to this section may be used by the department for employment purposes to screen a staff member. The subject of any criminal history record check under subsection 3 may contest any negative decision made by the department based upon the information received pursuant to the criminal history record check.

7. Person's access to information obtained. A person subject to a criminal history record check pursuant to subsection 3 must be notified each time a criminal history record

check is performed on the person. A person subject to a criminal history record check under subsection 3 may inspect and review the criminal history record information pursuant to Title 16, section 709 and obtain federal information obtained pursuant to the criminal history record check by following the procedures outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33.

8. Right of subject to remove fingerprints from record. Upon request from a person subject to a criminal history record check pursuant to subsection 3, the Department of Public Safety shall remove the person's fingerprints from the Department of Public Safety's records and provide written confirmation of the removal to the person.