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H.P. 139

House of Representatives, January 20, 2023

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

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services suggested and ordered printed.

Robert B. Hunt
ROBERT B. HUNT
Clerk

Presented by Representative MADIGAN of Waterville.

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

2 **Sec. 1. 22 MRSA §4008, sub-§2, ¶L**, as repealed and replaced by PL 2015, c. 494,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

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

7 (1) Child-related activities or employment; or

8 (2) Activities or employment relating to adults with intellectual disabilities,
9 autism, related conditions as set out in 42 Code of Federal Regulations, Section
10 435.1010 or acquired brain injury; and

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

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

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

18 **§8110. Criminal history record checks for employees of children's residential care**
19 **facilities, emergency children's shelters, shelters for homeless children and**
20 **~~any group home that provides care for children~~ transitional living programs**

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

23 A. "Federal Bureau of Investigation" means the United States Department of Justice,
24 Federal Bureau of Investigation.

25 B. "State Police" means the Department of Public Safety, Bureau of State Police.

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

1 who does not have unsupervised access to children at the facility; or shelter or group home
2 in the transitional living program.

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

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

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

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

29 **7. Person's access to information obtained.** A person subject to a criminal history
30 record check pursuant to subsection 3 must be notified each time a criminal history record
31 check is performed on the person. A person subject to a criminal history record check
32 under subsection 3 may inspect and review the criminal history record information pursuant
33 to Title 16, section 709 and obtain federal information obtained pursuant to the criminal
34 history record check by following the procedures outlined in 28 Code of Federal
35 Regulations, Sections 16.32 and 16.33.

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

40 SUMMARY

41 This bill:

42 1. Clarifies that a person may request a background screening of an individual who is
43 or may be engaged in activities or employment relating to children or adults with

1 intellectual disabilities, autism or related conditions regardless of whether the individual
2 subject to the background screening is an employee; and
3 2. Replaces the term "group home" with "transitional living program" in order to clarify
4 that staff members of these providers are subject to the fingerprint-based background check
5 requirements.