

Subtitle IV—Criminal Records and Information

CHAPTER 401—CHILD ABUSE CRIME INFORMATION AND BACKGROUND CHECKS

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§ 40101. Reporting child abuse crime information

(a) In general

In each State, an authorized criminal justice agency of the State shall report child abuse crime information to, or index child abuse crime information in, the national criminal history background check system. A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.

(b) Provision of State child abuse crime records through national criminal history background check system

(1) Not later than 180 days after December 20, 1993, the Attorney General shall, subject to availability of appropriations—

(A) investigate the criminal history records system of each State and determine for each State a timetable by which the State should be able to provide child abuse crime records on an on-line basis through the national criminal history background check system;

(B) in consultation with State officials, establish guidelines for the reporting or indexing of child abuse crime information, including guidelines relating to the format, content, and accuracy of criminal history records and other procedures for carrying out this chapter; and

(C) notify each State of the determinations made pursuant to subparagraphs (A) and (B).

(2) The Attorney General shall require as a part of each State timetable that the State—

(A) by not later than the date that is 5 years after December 20, 1993, have in a computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years;

(B) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and

(C) take steps to achieve 100 percent disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

(c) Liaison

An authorized agency of a State shall maintain close liaison with the National Center on Child Abuse and Neglect, the National Center for Missing and Exploited Children, and the National Center for the Prosecution of Child Abuse

for the exchange of technical assistance in cases of child abuse.

(d) Annual summary

(1) The Attorney General shall publish an annual statistical summary of child abuse crimes.

(2) The annual statistical summary described in paragraph (1) shall not contain any information that may reveal the identity of any particular victim or alleged violator.

(e) Annual report

The Attorney General shall, subject to the availability of appropriations, publish an annual summary of each State's progress in reporting child abuse crime information to the national criminal history background check system.

(f) Study of child abuse offenders

(1) Not later than 180 days after December 20, 1993, the Administrator of the Office of Juvenile Justice and Delinquency Prevention shall begin a study based on a statistically significant sample of convicted child abuse offenders and other relevant information to determine—

(A) the percentage of convicted child abuse offenders who have more than 1 conviction for an offense involving child abuse;

(B) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than 1 State; and

(C) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes.

(2) Not later than 2 years after December 20, 1993, the Administrator shall submit a report to the Chairman of the Committee on the Judiciary of the Senate and the Chairman of the Committee on the Judiciary of the House of Representatives containing a description of and a summary of the results of the study conducted pursuant to paragraph (1).

(Pub. L. 103-209, §2, Dec. 20, 1993, 107 Stat. 2490; Pub. L. 103-322, title XXXII, §320928(b), (h), (i), Sept. 13, 1994, 108 Stat. 2132, 2133.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 5119 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-322, §320928(b), inserted at end "A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions."

Subsec. (b)(2)(A). Pub. L. 103-322, §320928(i), substituted "5 years after" for "3 years after".

Subsec. (f)(2). Pub. L. 103-322, §320928(h), substituted "2 years" for "1 year".

Statutory Notes and Related Subsidiaries

GUIDELINES FOR ADOPTION OF SAFEGUARDS BY CARE PROVIDERS AND STATES FOR PROTECTING CHILDREN, THE ELDERLY, OR INDIVIDUALS WITH DISABILITIES FROM ABUSE

Pub. L. 103-322, title XXXII, §320928(g), Sept. 13, 1994, 108 Stat. 2132, provided that:

“(1) IN GENERAL.—The Attorney General, in consultation with Federal, State, and local officials, including officials responsible for criminal history record systems, and representatives of public and private care organizations and health, legal, and social welfare organizations, shall develop guidelines for the adoption of appropriate safeguards by care providers and by States for protecting children, the elderly, or individuals with disabilities from abuse.

“(2) MATTERS TO BE ADDRESSED.—In developing guidelines under paragraph (1), the Attorney General shall address the availability, cost, timeliness, and effectiveness of criminal history background checks and recommend measures to ensure that fees for background checks do not discourage volunteers from participating in care programs.

“(3) DISSEMINATION.—The Attorney General shall, subject to the availability of appropriations, disseminate the guidelines to State and local officials and to public and private care providers.”

§ 40102. Background checks

(a) In general

(1) A State may have in effect procedures (established by State statute or regulation) that require qualified entities designated by the State to contact an authorized agency of the State to request a nationwide background check for the purpose of determining whether a covered individual has been convicted of a crime that bears upon the covered individual's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities.

(2) The authorized agency shall access and review State and Federal criminal history records through the national criminal history background check system and shall make reasonable efforts to respond to the inquiry within 15 business days.

(3)(A) The Attorney General shall establish a program, in accordance with this section, to provide qualified entities located in States that do not have in effect procedures described in paragraph (1), or qualified entities located in States that do not prohibit the use of the program established under this paragraph, with access to national criminal history background checks on, and criminal history reviews of, covered individuals. In any case where the use of a Federal national criminal history background check program is required pursuant to Federal law as of the effective date of this subparagraph, the program under this subparagraph may not be used.

(B) A qualified entity described in subparagraph (A) may submit to the appropriate designated entity a request for a national criminal history background check on, and a criminal history review of, a covered individual. Qualified entities making a request under this paragraph shall comply with the guidelines set forth in subsection (b), and with any additional applicable procedures set forth by the Attorney General or by the State in which the entity is located.

(b) Guidelines

The procedures established under subsection (a) shall require—

(1) that no qualified entity may request a background check of a covered individual under subsection (a) unless the covered individual first provides a set of fingerprints and completes and signs a statement that—

(A) contains the name, address, and date of birth appearing on a valid identification document (as defined in section 1028 of title 18) of the covered individual;

(B) the covered individual has not been convicted of a crime and, if the covered individual has been convicted of a crime, contains a description of the crime and the particulars of the conviction;

(C) notifies the covered individual that the entity may request a background check under subsection (a);

(D) notifies the covered individual of the covered individual's rights under paragraph (2); and

(E) notifies the covered individual that prior to the completion of the background check the qualified entity may choose to deny the covered individual access to a person to whom the qualified entity provides care;

(2) that the State, or in a State that does not have in effect procedures described in subsection (a)(1), the designated entity, ensures that—

(A) each covered individual who is the subject of a background check under subsection (a) is entitled to obtain a copy of any background check report;

(B) each covered individual who is the subject of a background check under subsection (a) is provided a process by which the covered individual may appeal the results of the background check to challenge the accuracy or completeness of the information contained in the background report of the covered individual and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(C)(i) each covered individual described in subparagraph (B) is given notice of the opportunity to appeal;

(ii) each covered individual described in subparagraph (B) will receive instructions on how to complete the appeals process if the covered individual wishes to challenge the accuracy or completeness of the information contained in the background report of the covered individual; and¹

(iii) the appeals process is completed in a timely manner for each covered individual described in subparagraph (B);²

(iv) the appeals process is consistent with title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

(D) an authorized agency, upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and local recordkeeping systems are available in order to obtain complete data;

(3) that an authorized agency or designated entity, as applicable,³ upon receipt of a background check report lacking disposition data, shall conduct research in whatever State and

¹ So in original. The word “and” probably should not appear.

² So in original. Probably should be followed by “and”.

³ So in original.