



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC WELFARE
OFFICE OF CHILDREN, YOUTH AND FAMILIES
P.O. BOX 2675
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AUG 12 2004

Dear Colleague:

The Commonwealth Court of Pennsylvania recently declared unconstitutional Section 6344(c) of the Child Protective Services Law, 23 Pa. C.S. § 6344(c), which bans for life persons convicted of certain crimes from employment in child care services. Warren County Human Services v. State Civil Service Commission, 376 C.D. 2003 (March 8, 2004). The Court noted; however, that less-than-lifetime bans for certain crimes may be constitutionally permissible. Id. at n.9.

Accordingly, until new regulations or statutes are enacted, the Department of Public Welfare (DPW) will enforce the requirements of the Child Protective Services Law (CPSL) on child care services as follows:

1. An employer is still required to obtain background checks for prospective child care personnel.
2. The Pennsylvania State Police will continue to process applications for state criminal history reports and provide such information to the entity requesting the criminal history report.
3. DPW will continue to process FBI criminal history reports for prospective child care personnel who are not Pennsylvania residents and for Pennsylvania residents pursuant to the Volunteers for Children's Act. Letters from DPW will continue to indicate whether no record exists for the individual or whether the individual was convicted of a crime enumerated in the CPSL.
4. Effective March 9, 2004, DPW will not cite an agency or facility for regulatory violations if the agency or facility hires or continues to employ an individual who would have been barred from employment by the CPSL as long as the agency or facility reasonably determines that the individual has demonstrated rehabilitation. In order to demonstrate rehabilitation, the individual must meet the following requirements:
 - (a) The individual must have a minimum five-year aggregate work history in care-dependent services since conviction of the crime or release from incarceration, whichever is later. The individual is responsible for providing official verification of such dates. Care-dependent services include

healthcare, eldercare, child care, mental health services, mental retardation services, or care of the disabled.

- (b) The individual's work history in care-dependent services may not include any incidents of misconduct by the individual.

An agency or facility must reasonably investigate the character of an individual with a previously disqualifying criminal offense by conducting interviews, obtaining references and obtaining documentation of work history. An agency or facility that hires such an individual is required to obtain specific employer-provided documentation of that individual's employment in care-dependent services and retain it in the individual's personnel file.

5. The Court's ruling in no way prohibits an agency or facility from refusing to employ an individual based on information obtained in a criminal history report, even when that individual has verified completion of all the steps listed in number 4, above. Pennsylvania law, 18 Pa. C.S. § 9125, provides that an employer may consider criminal history felonies and misdemeanors, to the extent they relate to the applicant's suitability for employment in the position sought. The employer is required to notify the applicant, in writing, if the decision not to hire the applicant is based, in whole or in part, on the applicant's criminal history.
6. An agency or facility is still prohibited from hiring an individual who is named as the perpetrator in a founded report of child abuse within the last five years. See 23 Pa. C.S. § 6344(c)(1).
7. An agency or facility is still prohibited from hiring an individual who has been convicted of a felony drug offense within the last five years. See 23 Pa. C.S. § 6344(c).

Prospective foster and adoptive parent applicants are still required to submit criminal and child abuse history information. See 23 Pa. C.S. § 6344(d). The prohibition on the approval of a prospective foster or adoptive parent who has been convicted on any crime listed in section 6344 also remains in effect. See 55 Pa. Code §3490.123(d)(2).

If you have any questions, please contact your DPW licensing representative.

Sincerely,



Marilyn L. Eckley
Acting Deputy Secretary for Children,
Youth and Families