



# GUIDELINES

## FOR THE SCREENING OF PERSONS WORKING WITH CHILDREN, THE ELDERLY, AND INDIVIDUALS WITH DISABILITIES IN NEED OF SUPPORT

# Office of Juvenile Justice and Delinquency Prevention

The Office of Juvenile Justice and Delinquency Prevention (OJJDP) was established by the President and Congress through the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, Public Law 93–415, as amended. Located within the Office of Justice Programs of the U.S. Department of Justice, OJJDP’s goal is to provide national leadership in addressing the issues of juvenile delinquency and improving juvenile justice.

OJJDP sponsors a broad array of research, program, and training initiatives to improve the juvenile justice system as a whole, as well as to benefit individual youth-serving agencies. These initiatives are carried out by seven components within OJJDP, described below.

**Research and Program Development Division** develops knowledge on national trends in juvenile delinquency; supports a program for data collection and information sharing that incorporates elements of statistical and systems development; identifies how delinquency develops and the best methods for its prevention, intervention, and treatment; and analyzes practices and trends in the juvenile justice system.

**Training and Technical Assistance Division** provides juvenile justice training and technical assistance to Federal, State, and local governments; law enforcement, judiciary, and corrections personnel; and private agencies, educational institutions, and community organizations.

**Special Emphasis Division** provides discretionary funds to public and private agencies, organizations, and individuals to replicate tested approaches to delinquency prevention, treatment, and control in such pertinent areas as chronic juvenile offenders, community-based sanctions, and the disproportionate representation of minorities in the juvenile justice system.

**State Relations and Assistance Division** supports collaborative efforts by States to carry out the mandates of the JJDP Act by providing formula grant funds to States; furnishing technical assistance to States, local governments, and private agencies; and monitoring State compliance with the JJDP Act.

**Information Dissemination Unit** informs individuals and organizations of OJJDP initiatives; disseminates information on juvenile justice, delinquency prevention, and missing children; and coordinates program planning efforts within OJJDP. The unit’s activities include publishing research and statistical reports, bulletins, and other documents, as well as overseeing the operations of the Juvenile Justice Clearinghouse.

**Concentration of Federal Efforts Program** promotes interagency cooperation and coordination among Federal agencies with responsibilities in the area of juvenile justice. The program primarily carries out this responsibility through the Coordinating Council on Juvenile Justice and Delinquency Prevention, an independent body within the executive branch that was established by Congress through the JJDP Act.

**Missing and Exploited Children’s Program** seeks to promote effective policies and procedures for addressing the problem of missing and exploited children. Established by the Missing Children’s Assistance Act of 1984, the program provides funds for a variety of activities to support and coordinate a network of resources such as the National Center for Missing and Exploited Children; training and technical assistance to a network of 47 State clearinghouses, nonprofit organizations, law enforcement personnel, and attorneys; and research and demonstration programs.

The mission of OJJDP is to provide national leadership, coordination, and resources to prevent juvenile victimization and respond appropriately to juvenile delinquency. This is accomplished through developing and implementing prevention programs and a juvenile justice system that protects the public safety, holds juvenile offenders accountable, and provides treatment and rehabilitative services based on the needs of each individual juvenile.

# Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support

## **Summary**

---

**Noy S. Davis, Esq., Project Director**

**Kathi L. Grasso, Esq.**

**American Bar Association Center on Children and the Law**

**with**

**Kimberly Dennis, M.P.H.**

**Susan J. Wells, Ph.D.**

**Marsha B. Liss, Esq.**

**Shay Bilchik, Administrator**

**Office of Juvenile Justice and Delinquency Prevention**

**April 1998**

---

# Foreword

All too frequently, we read stories in our daily newspapers, see on the nightly news, or hear about yet another individual who is the victim of abuse at the hands of a care provider—a care provider with a criminal history of similar abuses or who is otherwise not fit to care for vulnerable individuals. The victim may be a child in a preschool program, an elderly person who needs assisted living care, or a disabled individual who requires institutional care.

Today nearly 35 million adults come into contact with more than 70 million children in educational institutions, day care facilities, foster care homes, youth development organizations, social service agencies' medical facilities, recreation centers, religious-based programs, and juvenile detention, correctional, and law enforcement facilities. More than 5 million of the estimated 33.9 million Americans older than 65 years need some form of assisted care and an additional 2.3 million of the 36 million Americans with a disability require residential treatment. The total number of Americans in need of some care is estimated at more than 77.3 million.

When Congress introduced and passed the National Child Protection Act in 1993, it addressed concerns we all share: concerns about the qualifications of those who care for the members of our society most susceptible to abuse. The Violent Crime and Law Enforcement Act of 1994 amended the National Child Protection Act and directed the Attorney General to “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.” With the release of these guidelines, we are taking a step forward in providing this vulnerable population with additional protection from abuse by those responsible for their care. These guidelines present a logical decision model to guide the screening decisions of individuals and organizations who hire employees or recruit volunteers to work with and provide care to children, the elderly, or the disabled.

The guidelines do not mandate criminal record checks for all care providers but do present advice on establishing a policy that provides an appropriate level of screening based upon specific situations. The suggested screening mechanisms may include the Federal Bureau of Investigation's fingerprint-based criminal records check, where warranted. The first step presented in this decision model includes an assessment of “triggers” that pertain to the setting in which the care is provided, the employee's or volunteer's level of contact with the individual receiving care, and the vulnerability of the care receiver. The next step is weighing the availability of information, the costs of the screening, and the human resources needed to carry out the screening process. The third step is the analysis and selection of appropriate screening practices that would be used in addition to “Basic Screening,” which includes reference checks, interviews, and a written application. These three steps lead employers and volunteer

---

organizations through a thoughtful process of evaluating the circumstances and establishing appropriate screening measures for each care provider.

The guidelines were developed to help reduce the incidence of abuse by care providers. However, the guidelines alone will not eliminate the problem. We, as the relative or friend of an individual receiving care, must remain aware of the potential for abuse. Screening of care providers does not remove our responsibility to talk to our children and family about what is and is not acceptable behavior from care and service providers. Similarly, service organizations and employers providing care have an ongoing responsibility to monitor those in contact with vulnerable populations. While the use of these Guidelines is a necessary first step to ensure their safety, we must remain vigilant at all times to ensure proper care.



**Janet Reno**  
*Attorney General*  
U.S. Department of Justice

---

# Acknowledgments

The Department of Justice is proud to present *Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support*. We want to recognize and thank those who made these guidelines possible.

These guidelines are based on work of the American Bar Association (ABA) Center on Children and the Law under the project *Effective Screening of Child Care and Youth Service Workers*, for which Westat, Inc., and the Center for Child Protection and Family Support provided considerable expertise and assistance. A subsequent project also managed by the ABA developed recommendations for guidelines for screening to prevent abuse. The projects reflected collaborative efforts by an interdisciplinary staff with informed and active advisory boards.

The advisory boards, which provided sound advice and at times spirited comments and discussion, comprised a broad mix of service providers, experts, and advocates concerned with screening workers to prevent the abuse of children, the elderly, and individuals with disabilities. Many, many thanks to those who participated on one or both project boards: Nancy Coleman and Lori Stiegel, ABA Commission on the Legal Problems of the Elderly; James Gardner, Accreditation Council on Services to People with Disabilities; Elinor Ginzler, Elder Abuse Project Coordinator, Prince Georges County Department of Family Services; Greg Giuliano, National Association of Adult Protective Services; Gwendolyn Gregory, National School Boards Association; Gerald Hotaling, Family Research Lab; Michael Kennedy, Syracuse University Center on Human Policy; Kathryn McCarty and John Parry, ABA Commission on Mental and Physical Disability Law; Thomas McKenna, Big Brothers Big Sisters of America; Tibby Milne, National McGruff House Network; Mindy Morrell, Maryland Developmental Disabilities Council; Lawrence Potts, Boy Scouts of America; Gordon Raley, National Collaboration for Youth; Andrea Sedlak, Westat, Inc.; Toshio Tatara, American Public Welfare Association; Joyce Thomas, Center for Child Protection and Family Support; Rud Turnball, University of Kansas Beach Center; Clarice Walker, former commissioner of Social Services, Department of Human Services of the District of Columbia; Robert Wettstein, Western Psychiatric Institute; Barbara Willer, National Association for the Education of Young Children; and Rosalie Wolf, National Committee to Prevent Elder Abuse—Institute on Aging.

A number of Federal employees participated in meetings or discussions during one or both projects: Michael Medaris, Office of Juvenile Justice and Delinquency Prevention (OJJDP), and Carol Kaplan and Dave Murphy, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice (DOJ); Kevin Avery, Office of Legislative Affairs, Kimberly Lesnak, Executive Office of U.S. Attorneys; James Gray and Beth Haley, Access Integrity Unit, Criminal Justice Information Services Division, Federal Bureau of Investigation; Marsha

---

B. Liss and Judith D. Schretter, Child Exploitation and Obscenity Section, DOJ; and James X. Dempsey, former staff to the Subcommittee on Civil and Constitutional Rights of the House Committee on the Judiciary.

The original project was directed by Susan J. Wells, Ph.D., with assistance from Noy S. Davis, Esq. Kimberly Dennis, M.P.A., formerly with the ABA Center on Children and the Law, had the monumental task of surveying approximately 3,800 child-serving organizations and drafting large portions of the final report to the project. Marsha Liss, Esq., formerly a consultant with the ABA Center on Children and the Law, was instrumental in the development of the screening model. Robert Chipman and Claire Sandt provided invaluable assistance on the Department of Defense and Registry surveys (respectively). Cheryl Hinton and Jennifer Gilligan Twombly assisted with production.

The subsequent project was led by Noy S. Davis, Esq., with considerable advice and assistance from Kathi Grasso, Esq. Many thanks to Susan J. Wells, Ph.D., formerly with the ABA Center on Children and the Law and now with the Children and Families Research Center, University of Illinois School of Social Work, and Howard Davidson, Director of the ABA Center on Children and the Law, who provided thoughtful and much appreciated comments. Interns Claudia Schoeffel and Tina Shanahan provided invaluable assistance.

Finally, the project monitor, Jeffrey Slowikowski, OJJDP, provided expertise and assistance in all phases of this endeavor.

---

# Table of Contents

<b>Foreword</b> .....	iii
<b>Acknowledgments</b> .....	v
<b>Overview</b> .....	1
Background .....	1
Purpose: Protection of children, the elderly, and individuals with disabilities .....	3
Screening practices .....	4
The universe of persons having contact with children, the elderly, and individuals with disabilities in need of support .....	6
The legal framework .....	6
Federal laws .....	7
State laws .....	8
<b>State Policies and Legislation</b> .....	10
Basic principles of screening .....	10
Criminal record repositories .....	11
State central abuse and neglect registries .....	11
State sex offender registration .....	12
Information, interstate communication, and coordination .....	12
Special considerations .....	13
<b>Guidelines for Organizations Developing Screening Policies</b> .....	14
Levels of screening .....	14
Results of screening .....	15
<b>Decisionmaking Model</b> .....	16
Preparation steps before using the model .....	17
Review tasks and positions .....	17
Review harms .....	17
The model .....	17
Step 1: Assessment of triggers .....	17
Step 2: Evaluation of intervenors to decisionmaking .....	19
Step 3: Analysis and selection of screening practices .....	20
An example using the decisionmaking model .....	20
Step 1: Assessment of triggers .....	21
Step 2: Evaluation of intervenors .....	22
Step 3: Analysis and selection of screening practices .....	22



---

<b>Conclusion</b> .....	22
<b>Appendix A: The National Child Protection Act of 1993, Pub. L. 103-209—Dec. 20, 1993, and the Amendment of the National Child Protection Act</b> .....	25
<b>Appendix B: Criminal Justice Information Services (CJIS) Information Letter 95-3</b> .....	33
<b>Appendix C: Some Suggestions for Implementing Screening in the Organization</b> .....	43
<b>Appendix D: Sample Forms</b> .....	45
<b>Appendix E: Posthiring Practices</b> .....	51

**U.S. Department of Justice  
Office of Justice Programs  
Office of Juvenile Justice and Delinquency Prevention**  
810 Seventh Street NW.  
Washington, DC 20531

**Janet Reno**  
*Attorney General*  
U.S. Department of Justice

**Raymond C. Fisher**  
*Associate Attorney General*

**Laurie Robinson**  
*Assistant Attorney General*

**Shay Bilchik**  
*Administrator*  
Office of Juvenile Justice and Delinquency Prevention

This document was prepared under cooperative agreement number 92–MC–CX–0013 from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), U.S. Department of Justice.

Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of OJJDP or the U.S. Department of Justice.

The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association. Nothing contained in this book is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. This book and any forms and agreements herein are intended for educational and informational purposes only.

The Office of Juvenile Justice and Delinquency Prevention is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the National Institute of Justice, and the Office for Victims of Crime.

---


## Overview

### Background

More than 87 million children are involved in activities provided by child and youth service organizations and agencies each year. Millions more adults, both the elderly and individuals with disabilities<sup>1</sup> who are in need of support, are served by many more organizations and agencies. These encounters run the gamut from relatively brief interactions with healthcare or recreation providers, to surrogate family relationships in foster care, to intensive dependent adult care services in or out of the home. The vast majority of these encounters are not harmful or abusive, but instead result in the provision of much needed services—sometimes by volunteers, often by persons who are not among society’s better paid employees.

Abuses do, however, occur. Although studies are sketchy and do not provide a complete picture, one study indicated that 12.8 percent of the estimated 2 million incidents of elder abuse occurring in the home were perpetrated by service providers.<sup>2</sup> A survey of 600 nursing home staff members suggested that elder abuse is a fact of institutional life: Of the staff surveyed, 10 percent admitted to physically abusing patients and 40 percent admitted to personally committing at least one psychologically abusive act in the preceding year.<sup>3</sup> As for children, estimates of the incidence of child sexual abuse in daycare centers, foster care homes, and schools range from 1 to 7 percent.<sup>4</sup> Although the incidence of abuse may be relatively small, abuse traumatizes the victims and shakes public trust in care providers and organizations serving these vulnerable populations.

Congress has acted to address concerns about this type of abuse. In 1993, the National Child Protection Act, Pub. L. No. 103–209, was passed (see appendix A). Section 3 of the Act set forth a framework through which States could authorize criminal record checks of childcare providers by the Federal Bureau of Investigation (FBI). In 1994, the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103–222, amended the 1993 act so that States could also authorize FBI criminal record checks of those working with individuals with disabilities or the elderly. In addition, the Attorney General was directed to



**A**lthough the incidence of abuse may be relatively small, abuse traumatizes the victims and shakes public trust in care providers and organizations serving these vulnerable populations.

---

<sup>1</sup>For purposes of this project, we have used the definition of individuals with disabilities set forth in section 320928 of the Violent Crime Control and Law Enforcement Act of 1994: “[T]he term ‘individuals with disabilities’ means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.”

<sup>2</sup>Summaries of National Elder Abuse Data: An Exploratory Study of State Statistics, Washington, DC: National Aging Resource Center on Elder Abuse, 1990.

<sup>3</sup>American Association of Retired Persons (AARP) Public Policy Institute, *Fact Sheet: Elder Abuse and Neglect*, April 1993.

<sup>4</sup>See American Bar Association (ABA) Center on Children and the Law, *Effective Screening of Child Care and Youth Service Workers*, 1995 (citing D. Finkelhor and L.M. Williams, *Nursery Crimes: Sexual Abuse in Day Care*, Newbury Park, CA: Sage Publications, 1988); L. Baas, *Background Checks on School Personnel*, Washington, DC: U.S. Department of Education, ED 324767, 1990; D. Daro and K. McCurdy, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1991 Annual 50 State Survey*, Chicago, IL: National Center on Child Abuse Prevention Research, National Committee for Prevention of Child Abuse, 1992; L. Margolin, “Child sexual abuse by nonrelated caregivers,” *Child Abuse and Neglect* 15:213, 1991.

**A**lthough screening to weed out potentially abusive individuals is important, it should supplement, not substitute for, an evaluation of skill development or competency.

---

“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.” In developing these guidelines, the Attorney General was further directed to “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.”

These guidelines supplement and incorporate those issued on July 17, 1995 (see Criminal Justice Information Services (CJIS) Information Letter 95-3, appendix B). They assist those faced with screening decisions by suggesting a decision-making model to use for an analysis of screening issues. The guidelines’ main virtue lies in presenting a framework for making decisions about whom to screen and how. Examples are provided to illustrate how the model can be utilized in making screening decisions.

The decisionmaking model begins with factors that trigger the need for screening, such as the level of direct worker-consumer contact,<sup>5</sup> the characteristics of the consumer served, and the amount of worker supervision present. These triggering factors set the stage for determining the type(s) and extent of screening to perform. The next step is to consider the intervening factors that may limit the ability to perform certain kinds of screening, including cost, access, and time constraints. In providing an opportunity to consider intervening factors, the model recognizes that the most optimal screening approaches may not, in fact, be realistic options for all settings. By considering both triggering and intervening factors, the best possible screening approach can be selected.

The model assumes that all organizations undertake at least basic screening (interview, verified application, reference checks), even in those situations requiring the most cursory review. Thus, although some might suggest that no screening is necessary for situations in which the prospective volunteer or employee is known to the organization or agency, such an informal approach to screening is not advisable. A formal review and reference process, such as that recommended with the basic screening practices, should be undertaken. Further, with respect to basic screening, organizations and professional associations are encouraged to develop model screening procedures and interview questions as part of their hiring or volunteer placement procedures (see appendixes C and D for suggestions for implementing screening and for sample screening forms, respectively).

Two caveats must be given. First, although screening to weed out potentially abusive individuals is important, it should supplement, not substitute for, an evaluation of skill development or competency. Second, all screening practices have limitations. Their use cannot guarantee that individuals who pass through the screening will not abuse children, the elderly, or individuals with disabilities

---

<sup>5</sup>Whenever possible, words needing no special definition have been employed in these guidelines. For clarity, the term “workers” refers to persons serving children, the elderly, or individuals with disabilities, including employees and volunteers.

---

in need of support. Thus, continuing to protect against abuse using posthiring screening and prevention procedures is warranted.<sup>6</sup>

Before examining the specific guidelines, organizations should understand the purpose of screening and the scope of specific practices that can be used to screen individuals. In addition, because some practices include access to information held by the government (e.g., criminal records), an overview of the legal framework is also included. This document reviews the purpose and specific types of screening practices and the legal framework for those practices and sets forth specific screening guidelines and a decisionmaking model. The appendixes include appendix A, The National Child Protection Act of 1993, Pub. L. 103–209—Dec. 20, 1993, and Extracts from the Amendment of the National Child Protection Act; appendix B, Criminal Justice Information Services (CJIS) Information Letter 95–3; appendix C, Some Suggestions for Implementing Screening in the Organization; appendix D, Sample Forms; and appendix E, Posthiring Practices.

## **Purpose: Protection of children, the elderly, and individuals with disabilities**


The underlying reason for screening prospective workers who may come into contact with children, the elderly, or individuals with disabilities in need of support is the same—to identify potentially abusive individuals. When an individual entrusted with the care of someone abuses that person and then is found to have abused others previously, questions arise. How could such a person be in a position of caring for children or other vulnerable individuals? How can this be prevented from happening again?

Efforts by States, coalitions, and individual organizations to answer these questions have led to a number of additional inquiries: How much screening should be done and who should decide? Should all who may or do come into contact with these vulnerable populations be screened? Volunteers versus employees? Individual service providers or group and institutional providers? What kind of screening should be done? Federal and State criminal checks? State central child abuse registry checks? In which States? Who should have access to these information data bases? What kinds of limitations should be placed on access to this information? Should these decisions be made at the Federal, State, or local level? What determinations should be left to individual organizations? Should a worker be “on the job” in a paid or volunteer capacity pending the results of screening? Who should bear the cost of the various screening practices?

These guidelines provide background information and a structure for analysis of these and other screening issues. The materials are intended to give those in a position to decide screening matters a solid base from which to make their decisions.

---

<sup>6</sup>Although a detailed description of these continuing activities is outside the scope of this document, some activities are noted in appendix E, Posthiring Practices.



**W**hen an individual entrusted with the care of someone abuses that person and then is found to have abused others previously, questions arise. How could such a person be in a position of caring for children or other vulnerable individuals?

**T**ypically, when background “screening” is discussed, the focus is on the use of information from criminal history records (e.g., FBI fingerprint checks). It is important to recognize, however, that many other practices can weed out potentially abusive workers and volunteers.

## Screening practices

Typically, when background “screening” is discussed, the focus is on the use of information from criminal history records (e.g., FBI fingerprint checks). It is important to recognize, however, that many other practices can weed out potentially abusive workers and volunteers. These range from standard interviewing and reference checking to more complex and controversial procedures such as screening against child abuse, reviewing dependent adult abuse and sex offender registries, psychological testing, drug testing, and home visits. (Not all of these practices can be undertaken in all States, however. The discussion of the legal framework below provides additional information on these practices.)

Consideration of the following screening methods is incorporated into the guidelines, particularly in discussion of the decisionmaking model: (1) practices

### Some Types of Background Screening Mechanisms

#### *Basic Screening Practices*

- Employment reference checks.
- Personal reference checks.
- Personal interviews.
- Confirmation of education.
- Written application.
- On-the-job observation.

#### *Frequently Used Practices*

- Local criminal record check.
- State criminal record check.
- FBI criminal record check.
- State central child/dependent adult abuse registry check.
- State sex offender registry check.
- Nurse’s aide registry record check.
- Motor vehicle record check.
- Professional disciplinary board background check.

#### *Infrequently Used Practices*

- Alcohol/drug testing.
- Psychological testing.
- Mental illness/psychiatric history check.
- Home visits.

---


that can be considered basic screening, (2) more extensive background checks that are frequently used (e.g., criminal history checks), and (3) special methods that are used infrequently or for special types of workers only. Information about the practices currently being used is primarily limited to those used by organizations and agencies serving children and youth. A study funded by the Office of Juvenile Justice and Delinquency Prevention (OJJDP), *Effective Screening of Child Care and Youth Service Workers*,<sup>7</sup> surveyed approximately 3,800 child- and youth-serving organizations and agencies nationwide on the screening mechanisms they used (the study explored cost, timeliness of information, quality, and perceived effectiveness). The study's findings indicated some differences in the practices used to screen employees and those used to screen volunteers:

■ **For potential employees:**

- Almost all conducted what can be called basic screening of potential employees: personal interviews (98 percent); reference checks with past employers (93 percent); personal reference checks (86 percent); confirmation of educational status (80 percent); and observation of the applicant in the job position (70 percent).
- Overall, 60 percent conducted at least one type of criminal record check on employee applicants; State and local checks were used more often than FBI checks. This figure reflects a range—almost all juvenile detention/corrections facilities (94 percent) conducted criminal record checks on employees, compared with only 43 percent of private schools and 50 percent of youth development organizations.
- Fewer than 10 percent used psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or State sex offender registry checks on employees. (However, 86 percent of foster care agencies reported conducting home visits of prospective foster care and adoptive homes.)

■ **For potential volunteers:**

- To screen volunteers, 76 percent of the respondents used personal interviews and 54 percent used personal reference checks.
- More than one-third (35 percent) conducted at least one type of criminal record check on volunteer applicants; State and local checks were used more often than FBI checks. Again, this figure reflects a range. Most juvenile detention/corrections facilities (83 percent) conducted criminal record checks on volunteers, compared with only 12 percent of private schools, 23 percent of public school districts, and 28 percent of hospitals.
- No more than 6 percent used psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or State sex offender registry checks to screen volunteers.



A study funded by OJJDP indicated some differences in the practices used to screen employees and those used to screen volunteers.

---

<sup>7</sup>ABA Center on Children and the Law, Washington, DC, 1995 (study funded by the Office of Juvenile Justice and Delinquency Prevention, U.S. Department of Justice, 92-MC-CX-0013).

Attempts to determine who should be screened rapidly reveal the multitude of settings in which abuse might be perpetrated.

## The universe of persons having contact with children, the elderly, and individuals with disabilities in need of support

Attempts to determine who should be screened rapidly reveal the multitude of settings in which abuse might be perpetrated. A partial list of settings in which individuals come into contact with children, the elderly, and individuals with disabilities gives a sense of the enormity of the contact points:

- **Daycare:** childcare, senior citizen centers, and community day programs for adults.
- **Health/mental health care:** hospitals, nursing homes/facilities, intermediate care, congregate care, board and care, group homes, psychiatric hospitals, residential treatment facilities, and “in-home” healthcare.
- **Foster care:** placements for adults in need of support services or for children under the care of the State as a result of abuse or neglect or as a consequence of delinquency.
- **Other out-of-home settings:** assisted living units/community living programs and semi-independent and independent living programs.
- **Schools:** public and private, including preschool and nursery school.
- **Shelters:** homeless or domestic violence shelters.
- **Youth development:** community or volunteer organizations serving youth (e.g., Court Appointed Special Advocates (CASA), Boy Scouts of America, Girl Scouts USA, Big Brothers Big Sisters).
- **Volunteer programs (for the elderly or individuals with disabilities):** Social Security representative payee, American Association of Retired Persons bill payer and representative payee money management, Meals on Wheels, and other community/volunteer programs.

Considering that these and other settings can encompass services provided in or out of the home by volunteers or employees, the number of instances in which screening may be considered is extensive. State efforts to coordinate screening are strongly encouraged.

## The legal framework<sup>8</sup>

State social welfare and licensing agencies have increasingly required that certain practices be used to screen at least some types of prospective employees, and in a number of States, statutes require that certain screening practices be used for some types of workers. Some of the screening methods involve the use of information that is held by government entities and that may require legislative or administrative action before it can be accessed. Specifically, checks of criminal records and State central abuse registries (which maintain information on “founded” or “substantiated” reports of abuse or neglect) involve such

<sup>8</sup>Most of the research outlined in this section was concluded in 1995.



---


governmental compilations of information. Similarly, sex offender registries (stemming from statutes requiring convicted sex offenders to register with law enforcement agencies where they reside, e.g., Megan’s Law) often require legislative or administrative action to authorize their use for screening.

With a few rare exceptions, the information systems mentioned above were originally established for purposes other than the screening of workers. Criminal recordkeeping was developed to assist law enforcement or criminal justice entities in tracking crime and criminals; central child abuse registries were established to assist State agencies responsible for child welfare in tracking children about whom allegations of child abuse or neglect may have been made; and sex offender registration requirements were designed to aid law enforcement in investigating sex crimes by tracking persons convicted of sexual offenses.<sup>9</sup>

As a result of the different purposes for which these information sources were developed, their use to identify potentially abusive individuals has raised questions, spawning the development of procedures that attempt to provide information in a fair manner. Moreover, developing legislation on the appropriate uses of these information compilations raises sometimes conflicting public policies—the protection of children, the elderly, and individuals with disabilities from potentially abusive individuals, the rehabilitation of offenders, “due process” issues, and privacy interests. Given these conflicting policy goals, it is no surprise that State laws and regulations vary widely in the type and scope of screening required.

## Federal laws

Screening, at least with respect to childcare workers, has been a topic of Federal legislation for some time.<sup>10</sup> Recent Federal action has focused on criminal records and sex offender registration. The National Child Protection Act of 1993,<sup>11</sup> which was amended by the Violent Crime Control and Law Enforcement Act of 1994,<sup>12</sup> addressed national criminal record checks. The National Child Protection Act, as amended, enhanced the existing national criminal check process through which States may authorize national criminal checks on persons providing care to children, the elderly, or individuals with disabilities. This act, as amended, did not itself permit or require that any such checks be done, but



**S**creening, at least with respect to childcare workers, has been a topic of Federal legislation for some time. Recent Federal action has focused on criminal records and sex offender registration.

---

<sup>9</sup>See the discussion of each type of registry discussed herein. See generally SEARCH Group, *Criminal Justice Information Policy: Original Records of Entry*, NCJ–125626, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, November 1990 (criminal records); SEARCH Group, *Criminal Justice Information Policy: Privacy and the Private Employer*, Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, 1981 (criminal records); and National Center for State Courts, *Central Registries for Child Abuse and Neglect: National Review of Records Management, Due Process Safeguards and Data Utilization*, Washington, DC: U.S. Department of Health and Human Services, National Center on Child Abuse and Neglect, 1988 (central child abuse registries).

<sup>10</sup>See Pub. L. No. 98–473, tit. IV, § 401(c)(2)(A), 1984 U.S.C.C.A.N. (to get title XX funds, States must have background check procedures for childcare facility employees) and the Crime Control Act of 1990, Pub. L. No. 101–647 (criminal checks required of employees at federally operated and contracted childcare facilities).

<sup>11</sup>National Child Protection Act of 1993, 42 U.S.C. § 5119a, Pub. L. No. 103–209, 107 Stat. 2490 (1993) (also known as the “Oprah Bill”).

<sup>12</sup>For the text of the National Child Protection Act, as amended by the Violent Crime Control and Law Enforcement Act of 1994, see appendix A.

**L**egislation regarding the screening of persons working with children, the elderly, and individuals with disabilities has not been passed in all States.

---

maintained respect for State policymaking in this area while encouraging States to consider screening legislation. Whether *national* checks are required or permitted continues to depend on whether there is a *State* statute, approved by the Attorney General, that specifically authorizes national (fingerprint) checks.<sup>13</sup> Appendix B (CJIS Information Letter 95–3) answers many questions about the National Child Protection Act.

Sex offender registration was the focus of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, passed as part of the Violent Crime Control and Law Enforcement Act of 1994. This act mandated that the Attorney General establish guidelines for State programs requiring registration of sex offenders. Among other requirements, offender registration information is to be forwarded to a designated State law enforcement agency, which in turn is to transmit the conviction data and fingerprints to the FBI. The information collected is to be treated as private data but can be disclosed to government agencies conducting confidential background checks.<sup>14</sup>

In addition, criminal checks for home health aides were recently added to the Medicare requirements for home health agencies.<sup>15</sup>

### State laws

Legislation regarding the screening of persons working with children, the elderly, and individuals with disabilities has not been passed in all States. To the extent they exist, State screening laws may be found in licensing laws, laws governing State social welfare agencies, and laws regarding specific information systems (e.g., criminal record repositories, child or elder abuse registries, or sex offender registries).

Screening laws vary in the types of workers covered and the types of checks required. Licensing laws are obviously limited to the individuals or entities licensed. States have made differing determinations as to whom to license. Statutes that charge the human services department (or similar State agencies) with child welfare and protection responsibilities often only reach those who participate in the child protection system or serve residential and health organizations. Typically, they may include licensed social workers, foster or adoptive parents, and persons who may work with or care for children, the elderly, or individuals with disabilities in other settings such as group homes or residential institutions.

Among the licensing and social welfare laws in effect, there is considerable variety in the type of check to be conducted. For example, some States require checks of the State central abuse and neglect registry or criminal history records. A few licensing statutes may be more detailed and require licensees to contact previous employers.

---

<sup>13</sup>See National Child Protection Act of 1993, Pub. L. No. 103–209, 107 Stat. 2490, § 3(b)(5) and Pub. L. No. 92–544, 86 Stat. 1109 (authorized national checks for noncriminal justice purposes if pursuant to State statute and through a State agency).

<sup>14</sup>Subpart (d) also permits disclosure to law enforcement for law enforcement purposes, and the designated State law enforcement agency and any local law enforcement agency authorized by the State agency may release relevant information (other than the victim’s identity) that is necessary to protect the public concerning a specific person required to register.

<sup>15</sup>See Proposed Rule, 62 Fed. Reg. 11004–05, 62 Fed. Reg. 11035 (Mar. 10, 1997).

---

State laws also vary in specifying the types of workers to be screened. Some laws requiring criminal checks of home health aides and attendants only cover employees. Other laws may include those providing direct care and substitute caregivers. In addition, mandated settings vary. For example, many States require criminal record checks for daycare centers, some cover schools, some include licensed home healthcare facilities, and some cover any setting in which people have supervisory or disciplinary authority over a child. Specific exceptions, however, often exist. With respect to services for children, exceptions have included:

- School-based childcare.
- Youth recreation groups such as Scouting or camping organizations.
- Childcare affiliated with a religious group.
- Youth programs operated in adult facilities.
- Babysitting arrangements.
- Single-family “nanny” situations.
- Daycare situations in which fewer than a specified number of children—often three, four, or five—are cared for.

Because licensing may not always be an appropriate mechanism to encourage screening, a number of States have passed separate statutes authorizing certain screening practices. These generally include checks of State criminal records or the central child abuse and neglect registry.<sup>16</sup> Most States do not maintain registries of persons who are being investigated for or who have committed abuse against the elderly or dependent adults.<sup>17</sup>


More than half the States have laws authorizing national criminal history checks for some type of person working with children, the elderly, or individuals with disabilities. A number of States also authorize State criminal history checks (either in lieu of or in addition to the national check). At least 12 States have enacted statutes mandating criminal background checks of nurse’s aides; several additional States have proposed legislation.<sup>18</sup> The statutes do vary in that several require a more comprehensive background check than others. Some States set forth a more expansive listing of crimes prohibiting employment, while others broaden their scope beyond the hiring of nurse’s aides to all staff who have access to children and adults in need of supportive services—including, in certain circumstances, volunteers.

---

<sup>16</sup>See, e.g., ALASKA STAT. § 12.62.035 (Michie 1990) (authorizing “an interested person” to request a criminal record check—for felonies, contributing to the delinquency of a minor, and sex crimes—on a “person who holds or applies for a position of employment in which the person has or would have supervisory or disciplinary power over a minor or dependent adult”).

<sup>17</sup>All States have statutes providing for the investigation of elderly or dependent adult abuse, and an estimated 42 have some form of mandatory reporting. See L. Stiegel, “Appendix C: Chart compilations on Adult Protective Services and related statutes,” in *Recommended Guidelines for State Courts Handling Cases Involving Elder Abuse*, Washington, DC: American Bar Association (written under a grant from the State Justice Institute), 1995.

<sup>18</sup>Information obtained from the National Coalition for Nursing Home Reform and Long-Term Ombudsmen programs revealed that the following States had enacted background checks for nurse’s aides (some cover other caregivers as well): California, Florida, Kentucky, Louisiana, Minnesota, Nevada, Oklahoma, Rhode Island, Texas, Vermont, Virginia, and Washington.



**B**ecause licensing may not always be an appropriate mechanism to encourage screening, a number of States have passed separate statutes authorizing certain screening practices.

---

**A**t a minimum, States are encouraged to require basic screening practices, consider the adoption of statutes authorizing criminal record checks, and encourage abuse prevention education and training.

---

## State Policies and Legislation

### Basic principles of screening

To prevent abuse and to reduce the corresponding fiscal burdens of investigations, prosecutions, and treatments for the victims and their families, it is in the interest of States to analyze their screening laws and to pass new or amended legislation, as appropriate. The decisionmaking model outlined in these guidelines can assist legislators and others in such an analysis. At a minimum, however, States are encouraged to require basic screening practices, consider the adoption of statutes authorizing criminal record checks, and encourage abuse prevention education and training.

- States are encouraged to have statutes and regulations requiring the use of basic screening practices such as appropriately developed applications, personal interviews, and reference checks for all workers, including volunteers. Depending on the circumstances, additional screening practices may be warranted for specific types of workers in certain settings. As outlined in the decisionmaking model, confirmation of education status may also be an appropriate screening practice.

Methods to encourage screening could include incentive programs that provide funds and/or recognition for the use of model screening practices. Screening practices could also be included in certification or licensing requirements, with penalties for noncompliance. Generally, these statutes and regulations should apply to all workers, including volunteers.

- In keeping with the spirit of the National Child Protection Act of 1993, States should consider the adoption of statutes and regulations authorizing the use of national and/or State criminal record checks, as appropriate. The decisionmaking model provides a mechanism to assist States in determining when legislation authorizing such checks might be appropriate.
- In authorizing screening practices, States are encouraged to prescribe appeal and review procedures that meet constitutional muster, which may include written notification to applicants concerning any records that will be searched and may provide the applicant an opportunity to refute the information found, as appropriate.

Moreover, notification that records will be searched may act as a deterrent to unsuitable applicants. (If the process conveys a sense of respect for the applicant while explaining the need for screening, it need not alienate prospective workers.)

- States are urged to consider enacting and implementing statutes and regulations that encourage abuse prevention training for all workers (including employees and volunteers) at service agencies, organizations, and facilities for children and dependent adults.

---

## Criminal record repositories



An accurate and complete criminal record repository with records that can be efficiently accessed is the goal. Toward this end, States are encouraged to consider:

- Passing or revising statutes and regulations on the appropriate use of criminal history information and developing specific criteria for using these records to screen persons working with children, the elderly, and individuals with disabilities. States should review the National Child Protection Act, as amended (see appendix A), for limitations on the use/disclosure of FBI criminal record checks and the requirements to complete records lacking disposition data.
- Passing laws allowing access to State criminal record information to permit broad screening of persons who work with children, the elderly, and individuals with disabilities. Such laws are warranted because the current national criminal record system does not include all records in all States (many States have limited computerized records).
- Reducing the financial burden of conducting background checks. This could be done by incorporating at-cost fees and providing discounts for both volunteers at nonprofit organizations and workers at daycare centers in poverty areas and by providing volume discounts to employers. For States requiring checks, the cost to those seeking the checks should be minimal and subsidized by the State, to the extent feasible.

## State central abuse and neglect registries

Almost all States currently have central child abuse and neglect registries. In addition, although most States do not maintain elder or dependent adult abuse registries, all have statutes providing for the investigation of elder or dependent adult abuse and almost all have some form of mandatory reporting of abuse. States are encouraged to consider:

- Creating and maintaining registries where they do not exist.
- Establishing clear policies for abuse, licensing, and certification registries for purposes of screening. These policies should include definitions and specific guidelines consistent with due process in regard to the use of registries for screening and guidelines on retention of information, including methods for purging names and cases and methods for accurately reflecting the results of dispositions, hearings, and appeals by those listed in the registries.
- Separating the employment or volunteer screening function from the use of civil abuse and neglect registries as a tool for research, diagnosis, and risk assessment.
- Collaborating with other jurisdictions to create standardized definitions of abuse. This would make registries more consistent and ease the exchange of information among jurisdictions. A national network of abuse registry directors or other interstate panels could facilitate the development of these standardized definitions.



**A**n accurate and complete criminal record repository with records that can be efficiently accessed is the goal.

**A**ll States currently have laws requiring sex offenders released from custody to register with State or local law enforcement agencies where they reside.

- Defining “abuse” in registries of dependent adult abuse to include fiduciary abuse or exploitation and mental harm.
- Ensuring that abuse registries are indexed by perpetrator, nature of offense, and locale to ease access to information; enacting statutes or implementing policies and procedures enabling cross-referencing between child and adult abuse registries.

## State sex offender registration

All States currently have laws requiring sex offenders released from custody to register with State or local law enforcement agencies where they reside. The Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (Wetterling Act), 42 U.S.C. 14071, sets forth Federal law requirements for these registries. States are encouraged to consider:

- Permitting access to organizations serving children and dependent adults for screening purposes.
- Developing a flagging system for those sex offenses in which the victim was a child or dependent adult.
- Compiling an automated, up-to-date, statewide listing of registered sex offenders to facilitate screening.
- Implementing procedures that ensure offender compliance with registration requirements. One method of ensuring compliance would be to increase awareness among local jurisdictions and offenders regarding registration requirements immediately after every move. One possibility would be not only to require the individual offender to register, but also to require the institution from which he or she was released or the legal entity that rendered the offender guilty of a sex crime to forward the information. Another compliance measure is the address verification process found in the Wetterling Act.
- Increasing the sharing of information among criminal justice agencies, particularly from the local to the State level, to enable screening to be conducted.

## Information, interstate communication, and coordination

In conjunction with Federal guidelines, States have the power to enhance communication both within their own State agencies and with other States. In order for interstate information to be accessed effectively through registries, criminal record repositories, and other data banks used in screening, States are encouraged to consider:

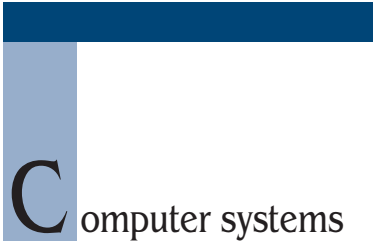
- Establishing a mechanism to develop appropriate, common statutory definitions of abuse and neglect and to clarify the rights and responsibilities of all parties.

- 
- Increasing communication, coordination, and cooperation between the various repositories, other law enforcement/criminal justice entities, State regulatory/licensing bodies, and community agencies.
  - Working with interstate organizations representing State interests (e.g., National Governors Association) toward the development of uniform offense codes, reporting procedures, and standardized training for personnel who enter and document data in criminal record repositories and other information registries.
  - Modifying current criminal history information systems so that all records containing crimes involving children, the elderly, and individuals with disabilities are flagged for easy and immediate identification during background screening.
  - Developing computer systems that efficiently and quickly transmit screening information and that may ultimately help decrease the cost of accessing this information. In the 1990's, the number and extent of online computer systems has increased significantly. Facilitating access to specialized computer networks would be one means of increasing the number of organizations able to use this information. Some States are experimenting with assisting agencies in accessing computer networks and could continue this trend by creating specialized user lists for organizational access to certain information in the registries.

## Special considerations

In addition to directly encouraging or requiring screening by agencies serving children and youth, States regulate a wide range of activities that also impact screening. States may wish to consider using these other regulatory powers further to systematize identification of unsuitable workers:

- Increase the role of State licensing agencies. Many aspects of services provided to children, the elderly, or individuals with disabilities are subject to licensing regulations and professional certification. The following efforts could be useful:
  - Establish clear procedures for timely disposition of abuse cases.
  - Implement a system for sharing reported complaints of abuse among social services and agencies. This system should include appropriate due process safeguards, a clear statement of investigative responsibilities, and a checklist of the duties to notify other agencies regarding those committing relevant crimes.
  - Adopt clearly written policies on information sharing between agencies.
  - Develop and implement mechanisms within and between States to track convicted offenders and prevent their continued work with children, the elderly, and individuals with disabilities.
  - Develop licensing/registration laws and regulations that include minimum staff qualifications, professional and personal reference checks, training (includes abuse-awareness instruction), clearly defined



**C**omputer systems that efficiently and quickly transmit screening information may ultimately help decrease the cost of accessing this information.

**S**tate regulations encouraging insurance coverage of employers may promote careful review of agency screening mechanisms and consequences of screening in order to maintain coverage.

requirements for adequate supervision, a written application with a signed affidavit verifying the truthfulness and accuracy of the information in the application coupled with a clear statement that untruthfulness is a basis for suspension or termination of employees/volunteers, and authorization of the licensing agency to impose fiscal penalties and/or revocation of the license.

In revising licensing/registration laws, particular consideration should be given to reviewing existing exemption or exception clauses so that licensing/registration provisions will encompass entities providing services to children, the elderly, and individuals with disabilities, as appropriate. In addition, agencies should be equipped with sufficient staff to monitor compliance with laws and regulations.

- Consider developing incentives for insurance companies to expand their role in providing coverage to entities providing services to children, the elderly, and individuals with disabilities. State regulations encouraging insurance coverage of employers may promote careful review of agency screening mechanisms and consequences of screening in order to maintain coverage. The insurance industry could take the lead in addressing concerns regarding the suitability of persons to work with or around vulnerable populations.
- Consider statutory amendments that would require employers to report employee or volunteer terminations from employment due to inappropriate conduct toward a consumer.

## **Guidelines for Organizations Developing Screening Policies**

### **Levels of screening**

Organizations providing care or services to children, the elderly, and individuals with disabilities should adopt a screening policy. The three-part decisionmaking model discussed later in this report is a useful guide for organizations in developing such a policy.

Issues appropriate for a screening policy include:

- Statements on minimum required screening standards.
- Guidelines on when more extensive screening practices should be used.
- Provisional hiring policies.
- Guidelines on how to assess background screening information once it is received.
- Maintenance and dissemination of background screening records.
- Standards for working with vulnerable populations.



---

Applicants should be advised of the organization’s screening policy. Reviewing this policy annually—and as new information on available mechanisms arises—is also appropriate.

All applicants who are seeking a position to work or volunteer with children, the elderly, or individuals with disabilities should be screened at a basic level. Basic screening includes:

- A comprehensive application form with a signed statement.
- A thorough personal interview that examines an applicant’s past employment or volunteer experience and explores other indicators of potential problem behavior.
- Reference checks with past employers (or appropriate reference checks for volunteers and young adults) and personal contacts.

Each applicant’s references should be checked completely. In addition, a confirmation of education status may be appropriate.


Additional screening practices may also be warranted. Thorough consideration of all relevant factors will assist an organization in determining whether additional screening is warranted for some or all of its workers. The decisionmaking model (see page 18) can guide organizations in making this determination. Organizations using additional screening mechanisms (e.g., personality or psychological testing, criminal records checks) are advised to do so in conjunction with basic screening practices and with a full understanding of the limitations of each of the screening practices used.

## Results of screening

Once screening information is received, it is important to have strategies for dealing with the information, especially when the screening process has yielded questions about the applicant. An organization’s strategies for dealing with screening results should be set forth clearly in written policies.

To the extent possible, the hiring or placement of an applicant should be delayed until the screening process is completed. If this is not possible, the applicant, pending completion of the screening process, should be restricted to supervised situations or situations in which one other worker is present. The applicant should never be alone with vulnerable individuals. In addition, the organization is advised to retain the right to terminate the worker or volunteer if the screening yields adverse information or reveals that incorrect information was provided by the applicant. As a minimum standard, automatic disqualification of a potential worker or volunteer is appropriate when the screening results indicate that the individual, as an adult, perpetrated any crime involving a child or a dependent adult, regardless of how long ago the incident occurred, or any violent crime within the past 10 years.

It is recommended that disqualification for all other crimes and/or questionable behavior be discretionary, with incidents evaluated on the basis of consultation with appropriate professionals and the following factors:



**A**utomatic disqualification of a potential worker or volunteer is appropriate when screening indicates that the individual, as an adult, perpetrated any crime involving a child and/or a dependent adult, regardless of how long ago the incident occurred, and/or any violent crime within the past 10 years.

---

**T**he decisionmaking model is designed to facilitate a serious, careful examination focusing on opportunities for harm. This model is not the only set of steps that could be developed.

- The relationship between the incident and the type of employment or service that the applicant will provide.
- The applicant's employment or volunteer history before and after the incident.
- The applicant's efforts and success at rehabilitation.
- The likelihood that the incident would prevent the applicant from performing his or her responsibilities in a manner consistent with the safety and welfare of the consumers served by the agency.
- The circumstances and/or factors indicating the incident is likely to be repeated.
- The nature, severity, number, and consequences of the incidents disclosed.
- The circumstances surrounding each incident, including contributing societal or environmental conditions.
- The age of the individual at the time of the incident.
- The amount of time elapsed since the incident occurred.

## Decisionmaking Model

The number of persons who may have contact with children and vulnerable adults is extensive. Countless different professions and types of organizations serve these populations. Given the need to protect children and vulnerable adults from abuse in a variety of settings and the significant differences in organizational purpose, staffing needs, and available resources, these guidelines present a decisionmaking model rather than a list of screening practices to be used in every circumstance. The model poses questions to ask when deciding which background screening practices to utilize. The model assumes that screening for any position will include at least a written application with a signed statement, professional and personal reference checks, and an interview. Supplemental screening measures may also be warranted.

The decisionmaking model provides a framework for analyzing when to conduct supplemental screening practices. As a framework to assist States, organizations, and others in developing screening policies, the model reflects the desire of Congress to encourage screening practices while maintaining deference to the States on this issue.<sup>19</sup> The decisionmaking model is designed to facilitate a serious, careful examination focusing on opportunities for harm. This model is not the only set of steps that could be developed. States, coalitions, associations, and organizations are encouraged to develop screening practices for use in particular settings. Screening for specific settings and types of workers (employees or volunteers) could also incorporate evaluations of competence for particular tasks; however, this model does not directly address competence goals.

---

<sup>19</sup>Although this decisionmaking model was drafted for States, organizations, and others, some language may pertain to organizations only.

---

Further, screening must be placed in context. It is one tool aimed at preventing harm. Others include education (of staff and volunteers, parents and guardians, children and vulnerable adults) and abuse prevention policies (discouraging opportunities for abuse and encouraging children and vulnerable adults to voice concerns about inappropriate behavior). Appendix C, Some Suggestions for Implementing Screening in the Organization, and appendix E, Posthiring Practices, present additional information that may be useful. These are suggestions for consideration; there may be many other ways to implement screening.

## Preparation steps before using the model

### Review tasks and positions

Reviewing the types of positions in the organization and the general tasks and characteristics of each is useful before beginning to assess the screening required for a particular type of position. Screening to prevent harm should supplement selection procedures aimed at evaluating the qualifications of an applicant for a particular task or job. This decisionmaking model focuses on the former.

### Review harms

Before beginning to use the model, it is also useful to ask: What are the harms that are being screened against? Physical, sexual, and emotional abuse? Theft and other property offenses? Arson, assault, or murder? A clear understanding of the specific potential for harm associated with particular positions will help to focus the discussion of screening issues. For example, concerns about theft may be especially important for certain programs serving the elderly.

## The model

### Step 1: Assessment of triggers

The screening decisionmaking model includes three major steps. The first step requires an assessment of the presence and degree of screening “triggers.” These triggers can be divided into three categories—those involving the setting, those pertaining to the worker’s contact with the adult or child, and special considerations.

#### Setting considerations:

- Will others (adults or children) be present during the contact (the opportunity for abuse is increased if no one else is present)?
- Who are those other people (the opportunity for abuse may still be exceptionally high if young children or certain vulnerable adults are the only others present)?
- Will the worker be closely monitored and supervised?
- What is the precise nature of the worker’s involvement with the organization and with the client population (whether the worker is an employee or volunteer may be part of this assessment)?



**A** clear understanding of the specific potential for harm associated with particular positions will help to focus the discussion of screening issues.

# Decisionmaking Model in Continuum Form

## Step 1: Assess Presence and Degree of Screening Triggers

	Setting	Worker/ Consumer Contact	Special Considerations
<b>Screening Triggers</b>	<ul style="list-style-type: none"> <li>■ Supervision.</li> <li>■ Number of people present.</li> <li>■ Staff turnover.</li> <li>■ Type of staff (employee/volunteer).</li> </ul>	<ul style="list-style-type: none"> <li>■ Duration.</li> <li>■ Frequency.</li> <li>■ Contact type.</li> </ul>	<ul style="list-style-type: none"> <li>■ Consumer vulnerabilities.</li> <li>■ Age, mental, or developmental disability.</li> <li>■ State requirements.</li> <li>■ Other screening agencies (State licensing/certification).</li> </ul>

## Step 2: Evaluate Impact of Intervenors

<b>Intervenors to Decisionmaking</b>	<ul style="list-style-type: none"> <li>■ Availability/accessibility of information.</li> <li>■ Financial/human resources.</li> <li>■ Immediate need for staff (timing).</li> <li>■ Liability concerns.</li> <li>■ Worker characteristics (e.g., residency status, prior experience, number of moves).</li> <li>■ Prior incidents of abuse perpetrated by staff.</li> <li>■ Presence of other risk-reduction measures (e.g., written policies, periodic evaluation, degree of supervision).</li> </ul>
--------------------------------------	---

## Step 3: Select Screening To Be Used

	Basic Screening (Required Minimum Standard)		
<b>Screening Options</b>	<ul style="list-style-type: none"> <li>■ Written application with signed statement.</li> <li>■ Reference checks with telephone contact.</li> <li>■ Comprehensive personal interviews.</li> </ul>		
	<p style="text-align: center;"><b>Supplemental Measures To Be Used as Needed*</b></p> <table border="1"> <tbody> <tr> <td> <ul style="list-style-type: none"> <li>■ Confirm educational status.</li> <li>■ Confirm licensing/certification status.</li> <li>■ Check motor vehicle records.</li> <li>■ Check criminal records:                             <ul style="list-style-type: none"> <li>■ Local.</li> <li>■ State.</li> <li>■ FBI.</li> </ul> </li> <li>■ Check other registries:                             <ul style="list-style-type: none"> <li>■ Central child abuse.</li> <li>■ Adult/elder abuse.</li> <li>■ Nurse and home health aide.</li> <li>■ Sex offender.</li> <li>■ Professional disciplinary board.</li> <li>■ Other specialized checks.</li> </ul> </li> </ul> </td> <td> <ul style="list-style-type: none"> <li>■ Conduct observations:                             <ul style="list-style-type: none"> <li>■ On-the-job supervision.</li> <li>■ Probation.</li> <li>■ Home visits.</li> <li>■ Initial and periodic training.</li> <li>■ Advocate access to consumer.</li> </ul> </li> <li>■ Other:                             <ul style="list-style-type: none"> <li>■ Psychiatric history check.</li> <li>■ Alcohol/drug testing.</li> <li>■ Psychological testing.</li> </ul> </li> </ul> </td> </tr> </tbody> </table>	<ul style="list-style-type: none"> <li>■ Confirm educational status.</li> <li>■ Confirm licensing/certification status.</li> <li>■ Check motor vehicle records.</li> <li>■ Check criminal records:                             <ul style="list-style-type: none"> <li>■ Local.</li> <li>■ State.</li> <li>■ FBI.</li> </ul> </li> <li>■ Check other registries:                             <ul style="list-style-type: none"> <li>■ Central child abuse.</li> <li>■ Adult/elder abuse.</li> <li>■ Nurse and home health aide.</li> <li>■ Sex offender.</li> <li>■ Professional disciplinary board.</li> <li>■ Other specialized checks.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ Conduct observations:                             <ul style="list-style-type: none"> <li>■ On-the-job supervision.</li> <li>■ Probation.</li> <li>■ Home visits.</li> <li>■ Initial and periodic training.</li> <li>■ Advocate access to consumer.</li> </ul> </li> <li>■ Other:                             <ul style="list-style-type: none"> <li>■ Psychiatric history check.</li> <li>■ Alcohol/drug testing.</li> <li>■ Psychological testing.</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>■ Confirm educational status.</li> <li>■ Confirm licensing/certification status.</li> <li>■ Check motor vehicle records.</li> <li>■ Check criminal records:                             <ul style="list-style-type: none"> <li>■ Local.</li> <li>■ State.</li> <li>■ FBI.</li> </ul> </li> <li>■ Check other registries:                             <ul style="list-style-type: none"> <li>■ Central child abuse.</li> <li>■ Adult/elder abuse.</li> <li>■ Nurse and home health aide.</li> <li>■ Sex offender.</li> <li>■ Professional disciplinary board.</li> <li>■ Other specialized checks.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>■ Conduct observations:                             <ul style="list-style-type: none"> <li>■ On-the-job supervision.</li> <li>■ Probation.</li> <li>■ Home visits.</li> <li>■ Initial and periodic training.</li> <li>■ Advocate access to consumer.</li> </ul> </li> <li>■ Other:                             <ul style="list-style-type: none"> <li>■ Psychiatric history check.</li> <li>■ Alcohol/drug testing.</li> <li>■ Psychological testing.</li> </ul> </li> </ul>		

\*Selection of supplemental screening will vary according to circumstances and presence of triggers and intervenors.

- 
- What is the physical location of the contact (e.g., in a classroom, a camp, anywhere—care should be taken in considering all activities and their different physical locations, including transportation to and from events)?

**Contact considerations:**

- The duration of the contact (how much time is spent with the client per occasion).
- The frequency of the contact and the length of the relationship (e.g., one-time only, once a week for a year).
- The type of contact (e.g., does the worker have direct contact with children or vulnerable adults or does he or she have administrative or other duties that support the activities of the organization? With the latter, is there in fact one-on-one contact?).

**Special considerations.** Are there special circumstances that should be factored into the screening decision? At this point, an examination of the vulnerability of the individuals served is important. Those whose ability to communicate is impaired because of age, infirmity, life history, or other reasons may be exceptionally vulnerable to abuse. For example, children with certain learning disabilities or those with a history of abuse or neglect may fall into this category.

There may also be State laws or regulations that require certain screening practices to be used, triggering the use of a certain screening method. For example, States may require that State or Federal criminal record checks be done. If a State license or certification is required, statutory or regulatory requirements may also be in place.

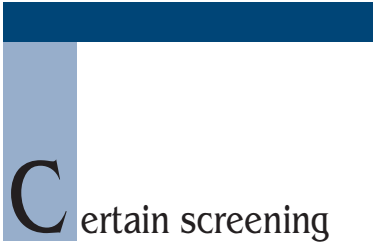
## Step 2: Evaluation of intervenors to decisionmaking

With the triggers in mind, consideration moves to the second step of evaluating “intervenors,” or items that may limit or affect the screening decision:

- **Unavailable or inaccessible information.** Certain screening mechanisms may not be available. For example, a number of States simply do not authorize criminal record checks for a number of types of persons serving children, the elderly, or individuals with disabilities.
- **Unexpected absences or departures.** An immediate need for staff may also “intervene” in the screening decisionmaking process.<sup>20</sup>
- **Liability concerns.** The risk of liability may affect screening decisions. Federal, State, or local laws may give applicants and employees certain legal rights. For example, certain questions may not be asked during an interview/application process, and generally all inquiries must be relevant to the task or position at hand. Liability concerns could also stem from negligent hiring torts; organizations have been sued when a client was injured by an employee or volunteer they selected.

---

<sup>20</sup>To reduce the utilization of unscreened individuals in emergency situations, childcare centers and others that frequently have unexpected personnel departures may form relationships with umbrella organizations or private groups to maintain a roster of screened individuals who can provide personnel support. A screened staff person may also be designated as a “floater” to fill in as needed.



Certain screening mechanisms may not be available. A number of States simply do not authorize criminal record checks for a number of types of persons serving children, the elderly, or individuals with disabilities.

**C**ircumstances in which repeated one-on-one contact occurs between one worker and one child or dependent adult, often in very private surroundings, will merit supplemental screening practices.

- **Presence of other risk-reduction measures.** A consideration of other risk-reduction measures in place is helpful in evaluating the need for specific screening practices. However, risk-reduction measures as intervenors do not necessarily obviate the need for supplemental screening. Rather, their presence is a pragmatic consideration in evaluating the screening practices used. Risk-reduction measures may include training programs or levels of supervision.
- **Financial or human resources.** The practical impact that financial and human resources may have on screening is also a factor to be considered.

### Step 3: Analysis and selection of screening practices

The third step puts information gleaned from steps 1 and 2 together with various screening options. The model assumes that, based on this information, supplemental screening practices may be warranted. The advantages and disadvantages of each screening practice should be reviewed at this time.

As the extent and number of triggers increase, supplemental screening measures are appropriate. For example, circumstances in which repeated one-on-one contact occurs between one worker and one child or dependent adult, often in very private surroundings, will merit supplemental screening practices.<sup>21</sup> Supplemental screening practices might include the following:

- Confirmation of a person's educational status (this may be particularly appropriate for young workers for whom a professional reference may not be available or for situations in which the educational degree is relevant to the task to be performed by the applicant).
- Motor vehicle record check.
- Local, State, or FBI criminal record check.
- Check of the central child or dependent adult abuse registries.
- Sex offender registry check.
- Home visits.
- Psychological testing.
- Alcohol or drug testing.
- Psychiatric history check.

### An example using the decisionmaking model

A mentoring program in which mentors are matched with children offers a good illustration of the use of the decisionmaking model. The goal is to foster one-on-one relationships between children and supportive nonfamilial persons to build the children's self-esteem and expand their view of the world. This

<sup>21</sup>Some local chapters of Big Brothers Big Sisters have developed extensive screening procedures. For example, Big Brothers Big Sisters of Greater Lowell, Massachusetts, has developed a comprehensive interview screening tool (see appendix D). Further, where authorized by law to do so, Big Brothers Big Sisters generally obtains criminal record checks on their volunteers and staff.

---

example assumes that the mentoring program is an offshoot of another organization and is limited to one city in one State. The program has an extremely limited budget with very few paid staff (mostly a percentage of the time of three individuals who have other duties as well). All of the mentors are volunteers.

## Step 1: Assessment of triggers

### Setting considerations:

- Will others be present during the contacts? Although mentor programs vary widely, assume that in this case, the contacts are set up directly by the mentor and child—perhaps the first Saturday afternoon of the month for outings. Although the organization encourages educational or sports activities (e.g., visits to the library, museum, bowling) in which other adults or children are generally present, these “public” activities need not take place. The mentor and child might choose to go hiking or sit in a park and play cards.
- Who else might be present? Under this scenario, it could be anyone or no one.
- Will the mentor be closely monitored and supervised? In this case, assume that the initial meeting between a mentor and child takes place with someone from the sponsoring organization. After that, the mentor will check in with someone at the organization, at least by telephone, to report on how the visits with the child are going. Every few months, the mentor meets with this “monitor.” In addition, the mentor and child attend group events that may be sponsored by the organization. For example, a picnic takes place during the summer. These events occur once or twice a year. Further, the mentor picks the child up for each visit and drops the child off afterward and may briefly see the child’s guardian at those pickup and dropoff times. More often at first, and then every few months, someone at the sponsoring organization calls the child and his or her parent or guardian to see how the visits are going.
- How will the mentor be involved with the organization? In this case, the mentor will be a volunteer who spends at least several hours once a month with a child. Some additional time will be spent conversing with staff at the sponsoring organization about how the visits are going and how best to work with a child of that age.
- Where will the visits take place? Because the mentor picks up and drops off the child, the visits will include several different physical locations: the child’s residence; the mentor’s vehicle (or a bus or cab); and a variety of other locations such as a restaurant, sports facility, park, hiking trail, zoo, museum, or movie theater. The visits could, in fact, take place at the mentor’s home (for example, the mentor and child decide they want to learn to make pizza).

### Contact considerations:

- How much time will the mentor spend with the child on each visit or outing? Under this scenario, anywhere from 1 to 6 hours.



A mentoring program in which mentors are matched with children offers a good illustration of the use of the decisionmaking model.

**S**everal factors would trigger supplemental screening practices: repeated, direct, one-on-one contact over a period of a year; limited ability of the organization to monitor the visits; and children who may be particularly vulnerable to abuse.

- What will the scope and frequency of the contacts be? At least once a month for a period of a year.
- What type of contact will the mentor have? Each mentor will have direct, one-on-one contact with a single child.

**Special considerations.** In this scenario, the children are preteen youth. Generally, they have experienced some neglect or abuse and have been referred to the sponsoring organization for matching with an adult through social service workers, foster parents, and school counselors. Their personal histories may make them particularly vulnerable to abuse.

**Summary of step 1: Assessing the presence and degree of screening triggers.** In reviewing the answers to the series of questions that constitute the first step, it becomes clear that in this case, several factors would trigger supplemental screening practices: repeated, direct, one-on-one contact over a period of a year; limited ability of the organization to monitor the visits; and children who may be particularly vulnerable to abuse.

## Step 2: Evaluation of intervenors

The second step is to examine the factors that may “intervene” and affect the ability to screen. This scenario assumes that certain information—State central child abuse registry and sex offender registry information—is not available. Likewise, it assumes that State criminal record checks (done by name, not fingerprint) are not required but are available for a fee of \$5 per name. In this example, Federal (fingerprint) checks are not authorized by State statute.

## Step 3: Analysis and selection of screening practices

The basic screening practices should be utilized. In addition, under the scenario outlined above, supplemental screening is warranted. The repeated one-on-one contact, which may take place anywhere at various times of the day, presents risks. Because there is limited ability to monitor the mentor and the fee assessed for a State criminal check is relatively modest, use of this check would appear to be warranted. A check with the Department of Motor Vehicles (if the information is available in the State) may also be appropriate.

A different set of facts might lead to a different decision. For example, if the applicants were high school students (generally age 15 to 17 at the time they applied), some evaluators might find that criminal checks were not warranted. Others would view the cost as being minimal (and able to be passed on to the applicant without causing the loss of volunteers) and would proceed with the criminal check.

## Conclusion


Screening those who work with children, the elderly, and individuals with disabilities is an important component in the prevention of abuse. Such practices, from basic screening methods (written applications, interviews, and reference checks) to other, more extensive or specialized practices (checks of criminal



---

records, abuse registries, or sex offender registries), send a clear message that society values children, the elderly, and individuals with disabilities and will not tolerate their abuse.

These guidelines highlight the importance of screening practices and, through the decisionmaking model, provide a useful tool that States, organizations, and others can use when developing their own screening policies and practices. Because screening is not a guarantee that abuse will not occur, it is critical for all concerned to incorporate screening as a part of broader abuse prevention policies and practices (see appendix E, Posthiring Practices).



**B**ecause screening is not a guarantee that abuse will not occur, it is critical for all concerned to incorporate screening as a part of broader abuse prevention policies and practices.

---

# Appendix A: The National Child Protection Act of 1993, Pub. L. 103–209—Dec. 20, 1993, and the Amendment of the National Child Protection Act

107 STAT. 2490 PUBLIC LAW 103–209—DEC. 20, 1993

PUBLIC LAW 103–209  
103d Congress

## An Act

To establish procedures for national criminal background checks for child care providers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

### SECTION 1. SHORT TITLE.

This Act may be cited as the “National Child Protection Act of 1993”.

### SEC. 2. 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.

(b) **PROVISION OF STATE CHILD ABUSE CRIME RECORDS THROUGH THE NATIONAL CRIMINAL HISTORY BACKGROUND CHECK SYSTEM.**—(1) Not later than 180 days after the date of enactment of this Act, 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 Act; 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 3 years after the date of enactment of this Act, 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;

Dec. 20, 1993  
(H.R. 1237)

National Child Protection Act of 1993.  
Intergovernmental relations.  
42 USC 5101 note.  
42 USC 5119.

(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 the date of enactment of this Act, 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.

Reports.

(2) Not later than 1 year after the date of enactment of this Act, 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).

42 USC 5119a.

### SEC. 3. 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 provider has been convicted of a crime that bears upon an individual’s fitness to have responsibility for the safety and well-being of children.

(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.

(b) GUIDELINES.—The procedures established under subsection (a) shall require—

---

(1) that no qualified entity may request a background check of a provider under subsection (a) unless the provider 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, United States Code) of the provider;

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

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

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

(E) notifies the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to a child to whom the qualified entity provides child care;

(2) that each provider who is the subject of a background check is entitled—

(A) to obtain a copy of any background check report; and

(B) to challenge the accuracy and completeness of any information contained in any such report and obtain a prompt determination as to the validity of such challenge before a final determination is made by the authorized agency;

(3) that 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;

(4) that the authorized agency shall make a determination whether the provider has been convicted of, or is under pending indictment for, a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children and shall convey that determination to the qualified entity; and

(5) that any background check under subsection (a) and the results thereof shall be handled in accordance with the requirements of Public Law 92-544.

(c) REGULATIONS.—(1) The Attorney General may by regulation prescribe such other measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping.

(2) The Attorney General shall, to the maximum extent possible, encourage the use of the best technology available in conducting background checks.

(d) LIABILITY.—A qualified entity shall not be liable in an action for damages solely for failure to conduct a criminal background check on a provider, nor shall a State or political subdivision thereof nor any agency, officer or employee thereof, be liable in an action for damages for the failure of a qualified entity to take action adverse to a provider who was the subject of a background check.

(e) FEES.—In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act conducted with

fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed the actual cost of the background check conducted with fingerprints. The States shall establish fee systems that insure that fees to non-profit entities for background checks do not discourage volunteers from participating in child care programs.

42 USC 5119b.

#### **SEC. 4. FUNDING FOR IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.**

(a) **USE OF FORMULA GRANTS FOR IMPROVEMENTS IN STATE RECORDS AND SYSTEMS.**—Section 509(b) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3759(b)) is amended—

- (1) in paragraph (2) by striking “and” after the semicolon;
- (2) in paragraph (3) by striking the period and inserting “; and”; and
- (3) by adding at the end the following new paragraph:

“(4) the improvement of State record systems and the sharing of all of the records described in paragraphs (1), (2), and (3) and the child abuse crime records required under the National Child Protection Act of 1993 with the Attorney General for the purpose of implementing the National Child Protection Act of 1993.”.

(b) **ADDITIONAL FUNDING GRANTS FOR THE IMPROVEMENT OF CHILD ABUSE CRIME INFORMATION.**—(1) The Attorney General shall, subject to appropriations and with preference to States that, as of the date of enactment of this Act, have in computerized criminal history files the lowest percentages of charges and dispositions of identifiable child abuse cases, make a grant to each State to be used—

- (A) for the computerization of criminal history files for the purposes of this Act;
- (B) for the improvement of existing computerized criminal history files for the purposes of this Act;
- (C) to improve accessibility to the national criminal history background check system for the purposes of this Act; and
- (D) to assist the State in the transmittal of criminal records to, or the indexing of criminal history record in, the national criminal history background check system for the purposes of this Act.

(2) There are authorized to be appropriated for grants under paragraph (1) a total of \$20,000,000 for fiscal years 1994, 1995, 1996, and 1997.

(c) **WITHHOLDING STATE FUNDS.**—Effective 1 year after the date of enactment of this Act, the Attorney General may reduce, by up to 10 percent, the allocation to a State for a fiscal year under title I of the Omnibus Crime Control and Safe Streets Act of 1968 that is not in compliance with the requirements of this Act.

Appropriation authorization.

42 USC 5119c.

#### **SEC. 5. DEFINITIONS.**

For the purposes of this Act—

- (1) the term “authorized agency” means a division or office of a State designated by a State to report, receive, or disseminate information under this Act;
- (2) the term “child” means a person who is a child for purposes of the criminal child abuse law of a State;

---

(3) the term “child abuse crime” means a crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person;

(4) the term “child abuse crime information” means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information that the Attorney General determines may be useful in identifying persons arrested for, or convicted of, a child abuse crime;

(5) the term “child care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child;

(6) the term “national criminal history background check system” means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification;

(7) the term “provider” means—

(A) a person who—

- (i) is employed by or volunteers with a qualified entity;
- (ii) who owns or operates a qualified entity; or
- (iii) who has or may have unsupervised access to a child to whom the qualified entity provides child care; and

(B) a person who—

- (i) seeks to be employed by or volunteer with a qualified entity;
- (ii) seeks to own or operate a qualified entity; or
- (iii) seeks to have or may have unsupervised access to a child to whom the qualified entity provides child care;

(8) the term “qualified entity” means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides child care or child care placement services, including a business or organization that licenses or certifies others to provide child care or child care placement services; and

(9) the term “State” means a State, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territories of the Pacific.

Approved December 20, 1993

LEGISLATIVE HISTORY—H.R. 1237.

HOUSE REPORTS: No. 103–393 (Comm. on the Judiciary)

CONGRESSIONAL RECORD. Vol. 139 (1993):

Nov. 20. considered and passed House and Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS. Vol. 29 (1993):

Dec. 20. Presidential remarks.

---

**Sec. 320928. AMENDMENT OF THE NATIONAL CHILD PROTECTION ACT OF 1993.**

(a) PROTECTION OF THE ELDERLY AND INDIVIDUALS WITH DISABILITIES.—

(1) BACKGROUND CHECKS.—Section 3(a)(1) of the National Child Protection Act of 1993 (42 U.S.C. 5119a) is amended by striking “an individual’s fitness to have responsibility for the safety and well-being of children” and inserting “the provider’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities”.

(2) GUIDELINES.—Section 3(b) of the National Child Protection Act of 1993 (42 U.S.C. 5119b(b)) is amended—

(A) in paragraph (1)(E)—

(i) by striking “child” the first place it appears and inserting “person”; and

(ii) by striking “child” the second place it appears; and

(B) in paragraph (4) by striking “an individual’s fitness to have responsibility for the safety and well-being of children” and inserting “the provider’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities”.

(3) DEFINITION OF CARE.—Section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c(5)) is amended—

(A) by amending paragraph (5) to read as follows:

“(5) the term ‘care’ means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities;”;

(B) in paragraph (8) by striking “child care” each place it appears and inserting “care”.

(b) INFORMATION REQUIRED TO BE REPORTED.—Section 2(a) of the National Child Protection Act of 1993 (42 U.S.C. 5119(a)) is amended by adding at the end “A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.”.

(c) CLARIFICATION OF IMMUNITY PROVISION.—Section 3(d) of the National Child Protection Act of 1993 (42 U.S.C. 5119a(d)) is amended by inserting “(other than itself)” after “failure of a qualified entity”.

(d) DEFRAYMENT OF COSTS TO VOLUNTEERS OF CONDUCTING BACKGROUND CHECKS.—Section 4(b) of the National Child Protection Act of 1993 (42 U.S.C. 5119b(b)) is amended—

(1) by striking “and” at the end of subparagraph (C);

(2) by striking the period at the end of subparagraph (D) and inserting “; and”;

(3) by adding at the end the following new subparagraph:

“(E) to assist the State in paying all or part of the cost to the State of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.”.

---

(e) FEES.—Section 3(e) of the National Child Protection Act of 1993 is amended by striking “the actual cost” and inserting “eighteen dollars, respectively, or the actual cost, whichever is less,”.

(f) COSTS OF THE FBI.—Funds authorized to be appropriated to the Federal Bureau of Investigation under section 190001(c) of this Act may be used to pay all or part of the cost to the Federal Bureau of Investigation of carrying out the National Child Protection Act of 1993, including the cost of conducting background checks on persons who are employed by or volunteer with a public, not-for-profit, or voluntary qualified entity to reduce the amount of fees charged for such background checks.

(g) GUIDELINES.—

(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.

(h) CHANGE OF REPORT DEADLINE.—Section 2(f)(2) of the National Child Protection Act of 1993 (42 U.S.C. 5119(f)(2)) is amended by striking “1 year” and inserting “2 years”.

(i) CHANGE OF IMPLEMENTATION DEADLINE.—Section 2(b)(2)(A) of the National Child Protection Act of 1993 (42 U.S.C. 5119(b)(2)(A)) is amended by striking “3 years” and inserting “5 years”.

(j) DEFINITION OF CHILD ABUSE CASES AND INDIVIDUALS WITH DISABILITIES.—Section 5 of the National Child Protection Act of 1993 (42 U.S.C. 5119c) is amended—

(1) by redesigning paragraph (6), (7), (8), and (9) as paragraph (8), (9), (10), and (11), respectively; and

(2) by inserting after paragraph (5) the following new paragraphs:

“(6) the terms ‘identifiable child abuse crime case’ means a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record;

“(7) the term ‘individuals with disabilities’ means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks;”.



---

## Appendix B: Criminal Justice Information Services (CJIS) Information Letter 95-3



U.S. Department of Justice  
Federal Bureau of Investigation  
*Criminal Justice Information Services (CJIS) Division*  
*Identification Services*

### Letter to All Fingerprint Contributors

July 17, 1995

#### RE: National Child Protection Act of 1993

Attached to this letter are guidelines for implementing the National Child Protection Act (NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act). The guidelines address the child abuse crime reporting requirements of the NCPA. The NCPA also encourages states to effect national background check procedures that will enable employers to learn beforehand an individual applicant's fitness to care for the safety and well-being of children, the elderly, or individuals with disabilities. Information is set forth in the guidelines relating to the implementation of such background checks of care providers.

The Crime Control Act requires the Attorney General to disseminate guidelines for protecting children, the elderly, or individuals with disabilities from abuse to state and local officials and to public and private care providers. The FBI strongly recommends that recipients make copies of the guidelines widely available to any "authorized agency," "qualified entity," or "provider" as those terms are defined near the end of the guidelines. Section III of the guidelines is set apart from other sections so it can be easily reproduced and disseminated to private entities interested in conducting care provider background checks.

C. David Evans  
Acting Assistant Director  
Criminal Justice Information  
Services Division

*CJIS Information Letter 95-3*

---

**GUIDELINES FOR IMPLEMENTING THE  
NATIONAL CHILD PROTECTION  
ACT OF 1993  
(P.L. 103-209)  
AS AMENDED BY THE  
VIOLENT CRIME CONTROL AND  
LAW ENFORCEMENT ACT OF 1994  
(P.L. 103-322)**

**I. CHILD ABUSE CRIMES REPORTING REQUIREMENTS BY  
CRIMINAL JUSTICE AGENCIES**

**A. Agencies That Must Report Or Index Child Abuse Crimes**

Section 2(a) of the National Child Protection Act (NCPA) of 1993 requires that an “authorized criminal justice agency” of the state shall report or index child abuse crime information in the national criminal history background check system. The authorized criminal justice agency is the state identification bureau (SIB) in those states where the arresting agencies are required to forward all criminal fingerprint cards and related document submissions (e.g., final dispositions, expungements, and death notices) to the SIB for transmittal to the FBI. Such states are generally referred to as “single-source” states. As of July 1, 1995, the following 42 states met this criteria:

Alabama	Maryland	Oklahoma
Alaska	Michigan	*Oregon
Arizona	Minnesota	Pennsylvania
Arkansas	Missouri	South Carolina
California	Montana	South Dakota
Colorado	Nebraska	Tennessee
Connecticut	Nevada	Texas
Delaware	New Hampshire	Utah
*Florida	New Jersey	Vermont
Georgia	New Mexico	Virginia
Idaho	New York	Washington
Illinois	*North Carolina	West Virginia
Iowa	North Dakota	Wisconsin
Kansas	Ohio	Wyoming

\* States under the National Fingerprint File Program that “index” rather than report child abuse crime information.

In the nonsingle-source states of Hawaii, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Mississippi, and Rhode Island, and in the District of Columbia and Puerto Rico, each local and state law enforcement agency is the authorized criminal justice agency.

---

## **B. Child Abuse Crime Information That Must Be Reported**

Section 2(a) of the NCPA of 1993 was amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act) to include the following clarification, “A criminal justice agency may satisfy the requirement of this subsection by reporting or indexing all felony and serious misdemeanor arrests and dispositions.” Therefore, those states that are submitting all felony and serious misdemeanor arrest and disposition data to the FBI need not be concerned about submitting crimes against children independently. However, those states not submitting all such data to the FBI are reminded that the reporting or indexing of child abuse crime information in the national criminal history background check system is mandated by the NCPA. As defined in the NCPA, a “child abuse crime” is: “A crime committed under any law of a State that involves the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by any person.” The NCPA defines an “identifiable child abuse crime case” as “a case that can be identified by the authorized criminal justice agency of the State as involving a child abuse crime by reference to the statutory citation or descriptive label of the crime as it appears in the criminal history record.” These definitions are consistent with criminal justice information gathering methodologies in use and contain widely accepted terminology.

## **C. Method For Reporting Child Abuse Crimes**

The reporting of child abuse crimes will be accomplished by the submission of criminal fingerprint cards and disposition report forms, both of which are used nationally to report offender-specific crime information, including demographic data, details of charges, and fingerprint impressions. The contents on the criminal fingerprint card and disposition report form must include the following information: the arrestee’s full name, originating agency identifier (ORI), date of birth, literal terms describing the child abuse crime or charge for which the person has been arrested or has been convicted, and a complete set of fingerprint impressions on the card with any amputations noted. The following data should be included on the fingerprint card and/or the final disposition report form to the extent possible: any known aliases, race, sex, height, weight, eye color, hair color, social security number, scars, marks, tattoos, the signature of the person fingerprinted, statute citation, and the disposition of the charge when known. States may report or index any other information that they believe would be useful in identifying persons arrested for, or convicted of, a child abuse crime in the appropriate information blocks provided on the criminal fingerprint card and disposition report form. An alternate method of submitting final disposition information to the FBI is by magnetic tape. The vast majority of final disposition data from the states is provided to the FBI via magnetic tape submissions.

## **II. COMPLETENESS OF RECORDS**

Section 2(b) of the NCPA mandates that the Attorney General, subject to the availability of appropriations, investigate the criminal history record system of each state and determine for each state a timetable by which the state should be able to provide child abuse crime records including final dispositions on an

---

on-line basis through the national criminal history background check system. As amended by the Crime Control Act, Subsection (2) requires that as a part of each timetable the state:

- A. by not later than the date that is five years after the date of enactment of the NCPA, 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 five 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 five 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.

The Bureau of Justice Statistics (BJS) within the Office of Justice Programs (OJP) of the Department of Justice is administering these requirements. In this capacity, BJS conducted a survey of criminal history information systems in each state, and on the basis of the findings in the survey, developed a timetable for each state to meet the goals set by the NCPA. In June 1994, the Attorney General advised each Governor of the timetable applicable to his or her state.

Section 4(b) of the NCPA establishes a grant purpose to help states improve the quality and availability of criminal records. Although the act authorized \$20 million, to date no funds have been appropriate for this purpose.

However, funds available under the National Criminal History Improvement Program (NCHIP), another program administered by the BJS, can be used to meet the goals of the NCPA. Under the NCHIP, funds will be made available to each state to help improve its criminal history information and to support the establishment of the National Instant Criminal Background Check System. NCHIP awards will be made to the state agency designated by the Governor to administer NCHIP funds. Funds awarded under the NCHIP may not be used to cover costs associated with conducting background checks pursuant to the NCPA. For further information about the NCHIP or for information relating to state timetables, contact BJS at (202) 307-0759.

### **III. CARE PROVIDER BACKGROUND CHECKS**

#### **A. General Provisions**

Under the National Child Protection Act (NCPA) as amended by the Violent Crime Control and Law Enforcement Act of 1994 (Crime Control Act), a state is encouraged to have in effect national background check procedures that enable a qualified entity to determine whether an individual applicant is fit to care for the safety and well-being of children, the elderly, or individuals with disabilities. The procedures would permit a “qualified entity” to ask an authorized state agency to request a nationwide background check on an applicant provider. 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 an inquiry within 15 business days. The NCPA was enacted to, among other things, encourage states to require nationwide background checks to determine the suitability of a potential child care provider. Section 3(a)(1) of the NCPA was amended by the Crime Control Act to include care providers for the elderly and individuals with disabilities.

## **B. Background Check Guidelines**

1. The procedures established by a state must require that no qualified entity may request a background check of a provider unless the provider first furnishes a complete set of fingerprints and completes and signs a statement that:
  - a. contains name, address, and date of birth appearing on a valid identification document issued by a governmental entity;
  - b. the provider has not been convicted of a crime, or if so, furnishes a description of the crime and the particulars of the conviction;
  - c. notifies the provider:
    - i. that the qualified entity may request a background check;
    - ii. of the provider's rights (see paragraph 2 below); and
    - iii. that prior to the completion of the background check, the qualified entity may choose to deny the provider unsupervised access to a person to whom the qualified entity provides care.
2. Each provider who is subject to a background check is entitled to:
  - a. obtain a copy of any background check report; and
  - b. challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made by the authorized agency.
3. An authorized agency shall:
  - a. upon receipt of a background check report lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data; and
  - b. make a determination whether the provider has been convicted of or is under pending indictment for a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities, and convey that determination to the qualified entity.

---

4. Any nationwide background check and its results shall be handled in accordance with the requirement of Public Law (Pub. L.) 92–544.

### **C. Public Law 92–544 Requirements**

The authority for the FBI to conduct a criminal record check for a non-criminal justice licensing or employment purpose is based upon Pub. L. 92–544. Pursuant to Pub. L. 92–544, the FBI is empowered to exchange identification records with officials or state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General’s authority to approve the statute is delegated to the FBI by Title 28, Code of Federal Regulations, Section 0.85(j). The standards employed by the FBI in approving Pub. L. 92–544 authorizations have been established by a series of memoranda issued by the Office of Legal Counsel, Department of Justice. The standards are:

1. The authorization must exist as the result of legislative enactment (or its functional equivalent);
2. The authorization must require fingerprinting of the applicant;
3. The authorization must, expressly or by implication, authorize use of FBI records for screening of the applicant;
4. The authorization must not be against public policy;
5. The authorization must not be overly broad in its scope; it must identify the specific category of applicants/licensees.

Fingerprint card submissions to the FBI under Pub. L. 92–544 must be forwarded through the SIB. The state must also designate an authorized governmental agency to be responsible for receiving and screening the results of the record check to determine an applicant’s suitability for employment or licensing.

### **D. Regulations**

Section 3(c) of the NCPA states that the Attorney General may by regulation prescribe measures as may be required to carry out the purposes of the NCPA, including measures relating to the security, confidentiality, accuracy, use, misuse and dissemination of information, and audits and recordkeeping. Since NCPA background checks are to be handled in accordance with the requirements of Pub. L. 92–544, which was enacted in 1972, the FBI is of the view that the regulations implemented pursuant to Pub. L. 92–544 give adequate guidance. The standards used to approve state statutes for access to criminal history record information (CHRI) under Pub. L. 92–544 and the regulations set out below demonstrate a concern for the proper use, security, confidentiality, etc. of such information. Both Pub. L. 92–544 and Title 28, Code of Federal Regulations (CFR), Section 20.33 provide that dissemination of FBI CHRI outside the receiving governmental department or related agency is prohibited. Further, the exchange of CHRI is subject to cancellation if such unauthorized dissemination is made. Regulations found at Section 50.12 of Title 28 contain

---

additional requirements regarding the use and dissemination of CHRI. Section 50.12 provides, among other things, that:

The CHRI may be used only for the purpose requested. Officials authorized to submit fingerprints and receive CHRI must notify the individual fingerprinted that the fingerprints will be used to check the criminal history records maintained by the FBI. Officials making the determination of suitability for employment or licensing must provide the applicant the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials should not deny employment or the license based on information in the record until the applicant has been afforded a reasonable time to correct or complete the information, or has declined to do so. If the applicant wishes to challenge the accuracy or completeness of the record, the official must advise the applicant that the procedures to change, correct, or update the record are set forth in Title 28, CFR, Section 16.34.

A caveat incorporating the above use and dissemination restrictions and challenge requirements is placed on each FBI identification record disseminated for employment and licensing purposes. Further, because updates to the records are made on a continuous basis, an authorized agency should obtain a current background check any time the individual applies for a new job.

#### **E. Fees For Processing Background Checks**

The FBI routinely charges \$24 (\$22 for billing states) for processing each fingerprint card submission under Pub. L. 92–544. Payment is made either by direct payment or billed to the SIB, depending on arrangements made between the FBI and each SIB, such as the execution of a Memorandum of Understanding for billing. With respect to the user fee for processing the fingerprints of a “volunteer” care provider, Section 3(e) of the NCPA has been amended by the Crime Control Act to read, “In the case of a background check pursuant to a State requirement adopted after the date of the enactment of this Act conducted with fingerprints on a person who volunteers with a qualified entity, the fees collected by authorized State agencies and the Federal Bureau of Investigation may not exceed eighteen dollars, respectively, or the actual cost, whichever is less.” (underlining added for emphasis) The FBI has interpreted this language to allow both the FBI and the states to charge the \$18 or the actual cost, whichever is less. Based on a recommendation from the Department of Justice and for purposes of uniformity and consistency in administering this provision of the NCPA, the FBI has decided to also apply the \$18 fee to a volunteer care provider’s fingerprints processed under the authority of a state statute adopted before the date of enactment of the NCPA.

**Therefore, it is incumbent upon each SIB to notify in writing the Access Integrity Unit, Programs Support Section, Criminal Justice Information Services (CJIS) Division, if previously approved or future Pub. L. 92–544 statutes relating to individuals applying to provide care to children, the elderly, or disabled persons include “volunteers.” If so, that information will be added to our list of approved Pub. L. 92–544 statutes so that the reduced fee for processing the fingerprints of volunteer care providers can be implemented as required by the NCPA.**

---

It is the contributor's responsibility to ensure that the reason the applicant is being fingerprinted, the state statute citation, and if appropriate, the word "volunteer" are clearly indicated in the "Reason Fingerprinted" block of the card. The CJIS Division's automated system is in the process of being reprogrammed to allow for billing only \$18 (\$16 for billing states) for "volunteer" care provider submissions. Until the programming is completed, billing statements will be adjusted accordingly. If the contributor of a card fails to indicate that the applicant is a "volunteer," our regular user fee of \$24 will be charged for processing the card. **The above procedures and fee structure will become effective for fingerprint cards received at the FBI on or after the first day of our next billing period. A new billing period always begins on the first day of each month.**

#### F. Definitions

For the purposes of the NCPA—

1. The term "authorized agency" means a division or office of a state designated by a state to report, receive, or disseminate information under this Act.
2. The term "care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.
3. The term "individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.
4. The term "national criminal history background check system" means the criminal history record system maintained by the Federal Bureau of Investigation based on fingerprint identification or any other method of positive identification.
5. The term "provider" means:
  - a. a person who is employed by or volunteers with a qualified entity, owns or operates a qualified entity, or has or may have unsupervised access to children, the elderly, or individuals with disabilities; and
  - b. a person who seeks to be employed by or volunteer with a qualified entity, seeks to own or operate a qualified entity or seeks to have or may have unsupervised access to children, the elderly, or individuals with disabilities to whom the qualified entity provides care.
6. The term "qualified entity" means a business or organization, whether public, private, for profit, not-for-profit, or voluntary, that provides care or placement services for children, the elderly, or individuals with disabilities, including a business or organization that licenses or certifies others to provide care or placement services.



---

## **G. Current Status**

There are currently 38 states that have approved child care statutes; 8 states have approved statutes relating to care of the elderly; and 13 states have approved statutes relating to the care of disabled persons. Each SIB may expect to receive inquiries from various care providers, qualified entities, and others with questions concerning the NCPA. The CJIS staff believes that the information in these guidelines will answer most questions. Therefore, any assistance that recipients may provide in making copies of the guidelines available to affected care providers and qualified entities would be appreciated. It may also be helpful if each SIB would make available to interested parties a list of the categories of care providers and corresponding employment and licensing statutes which have been approved by the FBI as meeting the requirements of Pub. L. 92-544.

---

## Appendix C: Some Suggestions for Implementing Screening in the Organization

Although it may seem simple to endorse the concept of performing careful worker screening prior to hiring the worker, in practice there are many details to consider. This section sets forth a series of steps for an organization to consider in implementing screening practices. This does not establish a standard of practice, nor is it the only set of steps for screening that can be developed. Rather, these suggestions are intended to further the dialog on screening in a concrete and practical way. Thus, organizations are encouraged to consider these (and other) ideas in developing screening practices and comprehensive abuse prevention measures. In addition, States, coalitions, and associations whose members serve the many discrete types of persons working (or volunteering) with vulnerable populations are encouraged to develop screening practices or policies aimed at those particular settings.

- Designate a person(s) within the organization who is responsible for receiving, reviewing, and acting on background screening information. Typically, an individual in the human resources or personnel department has responsibility for receipt and review of background screening information. This person should thoroughly understand all staff positions and roles so as to adequately assess the relevance of background information obtained. This person would also be responsible for developing and adhering to a screening/hiring policy based on the three-step decisionmaking model discussed in the body of this report. Making one person responsible for overseeing the process ensures that a consistent approach is taken, the screening policy is used appropriately, and the confidentiality of employee/volunteer records is maintained. In smaller settings, the director or assistant director should assume the centralized role of “keeper” of confidential worker information.
- Develop a comprehensive written application form that informs applicants of the organization’s screening policies and facilitates the ensuing background screening process. Matters to consider in the initial application process include:
  - An explanation of the hiring/selection process, including a written release giving consent to verify the information provided on the application (signed by the applicant) and to search criminal history and registry records (and conduct other checks), if appropriate.
  - An application form that includes a signed statement verifying the applicant’s understanding that falsifying information is grounds for dismissal and/or other action.
- Conduct personal interviews that probe for more indepth information that may not be available through other screening mechanisms. Interview questions should be tailored to the needs of the setting and the role of the worker or volunteer.

---

A standardized interview process would promote consistency among applicant interviews and help eliminate subjectivity associated with using multiple interviewers. Training on effective interview techniques, especially when delving into sensitive topic areas, would be of assistance. If possible, use of a team approach would increase objectivity, obtain different perspectives, and promote adequate documentation. Followup interviews may be needed as information surfaces through other background screening practices.

- Conduct reference checks (and, if appropriate, educational status checks).
  - When asking applicants for references, a verbal or written statement that references will be checked may deter unsuitable applicants and reduce fabrication.
  - Centralizing the reference-checking process and providing training would permit responsible staff to become persistent and deft in their inquiries. Fear of defamation or other lawsuits may limit the amount or detail of information a reference is initially willing to supply. Obtaining an applicant's written consent allowing for the release of information by previous employers may make for more effective reference checks. Some agencies ask references whether they know of any reason why the person should not be hired to work with the particular consumer population.
- Draft organizational policies on the appropriate use of criminal history information or other registry information to the extent this information is available, and develop specific criteria for using this information for screening purposes.

---

## Appendix D: Sample Forms

These forms are based on those developed by the Missing and Exploited Children Comprehensive Action Program and the National School Safety Center under a grant from the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice (see *Hiring the Right People, Guidelines for the Selection and Screening of Youth-Serving Professionals and Volunteers*, 1994). They are included as a starting point for the development of forms by States, agencies, associations, organizations, coalitions, or individuals serving children, the elderly, and individuals with disabilities in need of support.

[Insert agency name/logo/address]

### AUTHORIZATION TO RELEASE INFORMATION

#### REGARDING:

Applicant's name: \_\_\_\_\_

Applicant's current address: \_\_\_\_\_

Applicant's social security number: \_\_\_\_\_

Agency contact person: \_\_\_\_\_

Authorization expiration date: \_\_\_\_\_

I, the undersigned, authorized and consent to any person, firm, organization, or corporation provided a copy (including photocopy or facsimile copy) of this **Authorization to Release Information** by the above-stated agency to release and disclose to such agency any and all information or records requested regarding me, including, but not necessarily limited to, my employment records, volunteer experience, military records, criminal information records (if any), and background. I have authorized this information to be released, either in writing or via telephone, in connection with my application for employment or to be a volunteer at the agency.

Any person, firm, organization, or corporation providing information or records in accordance with this authorization is released from any and all claims or liability for compliance. Such information will be held in confidence in accordance with agency guidelines.

This authorization expires on the date stated above.

\_\_\_\_\_  
*Signature of Prospective Employee*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Witness to Signature*

\_\_\_\_\_  
*Date*

[Insert agency name/logo/address]

**APPLICANT DISCLOSURE AFFIDAVIT**

*(Please read carefully)*

Our agency screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm to the children and youth it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by applicants for positions in order to be considered. Any falsification, misrepresentation, or incompleteness in this disclosure alone is grounds for disqualification or termination.

APPLICANT: \_\_\_\_\_

*Please print complete name and social security number.*

The undersigned applicant affirms that **I HAVE NOT** at **ANY TIME** (whether as an adult or juvenile):

**Yes**   **No**   *(Initial answer under “yes” or “no” and provide brief explanation for a “yes” answer below.)*

- \_\_\_   \_\_\_   Been convicted of;
- \_\_\_   \_\_\_   Pleaded guilty to (whether or not resulting in a conviction);
- \_\_\_   \_\_\_   Pleaded nolo contendere or no contest to;
- \_\_\_   \_\_\_   Admitted;
- \_\_\_   \_\_\_   Had any judgment or order rendered against me (whether by default or otherwise);
- \_\_\_   \_\_\_   Entered into any settlement of an action or claim of;
- \_\_\_   \_\_\_   Had any license, certificate, or employment suspended, revoked, terminated, or adversely affected because of;
- \_\_\_   \_\_\_   Been diagnosed as having or been treated for any mental or emotional condition arising from; or
- \_\_\_   \_\_\_   Resigned under threat of termination of employment or volunteer work for;

Any allegation, any conduct, matter, or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

**Yes**   **No**   *(Initial answer under “yes” or “no” and provide brief explanation for a “yes” answer below.)*

- \_\_\_   \_\_\_   Any felony.
- \_\_\_   \_\_\_   Rape or other sexual assault.
- \_\_\_   \_\_\_   Drug- or alcohol-related offenses.
- \_\_\_   \_\_\_   Abuse of a minor or child, whether physical or sexual.
- \_\_\_   \_\_\_   Incest.
- \_\_\_   \_\_\_   Kidnaping, false imprisonment, or abduction.
- \_\_\_   \_\_\_   Sexual harassment.
- \_\_\_   \_\_\_   Sexual exploitation of a minor.

- 
- Sexual conduct with a minor.
  - Annoying/molesting a child.
  - Lewdness and/or indecent exposure.
  - Lewd and lascivious behavior.
  - Obscene literature.
  - Assault, battery, or other offense involving a minor.
  - Endangerment of a child.
  - Any misdemeanor or other offense classification involving a minor or to which a minor was a witness.
  - Unfitness as a parent or custodian.
  - Removing children from a State or concealing children in violation of a law or court order.
  - Restrictions or limitations on contact or visitation with children or minors.
  - Similar or related conduct, matters, or things.
  - Accusation of any of the above.

**Explanations:**

*(If you answered "yes" to any of the above, please explain. If none, write "none.")*

Description

Dates

---



---



---

The above statements are true and complete to the best of my knowledge.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Applicant's signature*

Date: \_\_\_\_\_

\_\_\_\_\_  
*Witness to signature*

---

[Insert agency name/logo/address]

**REQUEST FOR INFORMATION**

TO:  
APPLICANT:

Name: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Dates of Employment: \_\_\_\_\_ Immediate Supervisor: \_\_\_\_\_

Our agency [insert name], is requesting information regarding the above-mentioned applicant who is seeking a position. This agency serves children and youth and, accordingly, undertakes background investigations to determine whether the individual poses a risk of harm to those who would be served.

We are interested in receiving any information or records that would reflect on the applicant's fitness to work with children and youth. Please complete the attached EMPLOYER DISCLOSURE AFFIDAVIT and return it to our agency at your earliest convenience. Although any information you wish to provide is welcome, we are especially interested in any conduct, matter, or things that involve an established or reasonable basis for suspecting physical, psychological, or sexual misconduct with respect to children or youth.

You may receive a separate written or telephone request from our agency for an employment reference regarding the applicant. Please respond to each request independently.

With this request is an authorization executed by the applicant. This releases you from any liability for your reply, either in writing or via telephone.

Thank you for your assistance.

Very truly yours,

---

*Failure by your agency or organization to provide information requested may result in automatic disqualification of the applicant.*

---

[Insert agency name/logo/address]

**EMPLOYER DISCLOSURE AFFIDAVIT**

*(Please read carefully)*

Our agency screens prospective employees and volunteers to evaluate whether an applicant poses a risk of harm to the children and youth it serves. Information obtained is not an automatic bar to employment or volunteer work, but is considered in view of all relevant circumstances. This disclosure is required to be completed by former employers in order for the applicant to be considered.

APPLICANT: \_\_\_\_\_

*Please print complete name and social security number.*

As an agent of the former employer of the undersigned applicant, I affirm to the best of my knowledge that the undersigned applicant HAS NOT at ANY TIME:

**Yes No** *(Initial answer under “yes” or “no” and provide brief explanation for a “yes” answer below.)*

- \_\_\_ \_\_\_ Been convicted of;
- \_\_\_ \_\_\_ Pleaded guilty to (whether or not resulting in a conviction);
- \_\_\_ \_\_\_ Pleaded nolo contendere or no contest to;
- \_\_\_ \_\_\_ Admitted;
- \_\_\_ \_\_\_ Had any judgment or order rendered against him or her (whether by default or otherwise);
- \_\_\_ \_\_\_ Entered into any settlement of an action or claim of;
- \_\_\_ \_\_\_ Had any license, certificate, or employment suspended, revoked, terminated, or adversely affected because of;
- \_\_\_ \_\_\_ Been diagnosed as having or been treated for any mental or emotional condition arising from; or
- \_\_\_ \_\_\_ Resigned under threat of termination of employment or volunteer work for;

Any allegation, any conduct, matter, or thing (irrespective of the formal name thereof) constituting or involving (whether under criminal or civil law of any jurisdiction):

**Yes No** *(Initial answer under “yes” or “no” and provide brief explanation for a “yes” answer below.)*

- \_\_\_ \_\_\_ Any felony.
- \_\_\_ \_\_\_ Rape or other sexual assault.
- \_\_\_ \_\_\_ Drug- or alcohol-related offenses.
- \_\_\_ \_\_\_ Abuse of a minor or child, whether physical or sexual.
- \_\_\_ \_\_\_ Incest.
- \_\_\_ \_\_\_ Kidnaping, false imprisonment, or abduction.
- \_\_\_ \_\_\_ Sexual harassment.
- \_\_\_ \_\_\_ Sexual exploitation of a minor.
- \_\_\_ \_\_\_ Sexual conduct with a minor.
- \_\_\_ \_\_\_ Annoying/molesting a child.
- \_\_\_ \_\_\_ Lewdness and/or indecent exposure.



- Lewd and lascivious behavior.
- Obscene literature.
- Assault, battery, or other offense involving a minor.
- Endangerment of a child.
- Any misdemeanor or other offense classification involving a minor or to which a minor was a witness.
- Unfitness as a parent or custodian.
- Removing children from a State or concealing children in violation of a law or court order.
- Restrictions or limitations on contact or visitation with children or minors.
- Similar or related conduct, matters, or things.
- Accusation of any of the above.

**Explanations:**

*(If you answered "yes" to any of the above, please explain. If none, write "none.")*

<u>Description</u>	<u>Dates</u>
_____	_____
_____	_____
_____	_____

The above statements are true and complete to the best of my knowledge.

Date: \_\_\_\_\_ \_\_\_\_\_  
*Applicant's signature*

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Company: \_\_\_\_\_ Address: \_\_\_\_\_  
 City/State/ZIP: \_\_\_\_\_ Phone: \_\_\_\_\_

---


## Appendix E: Posthiring Practices

Preemployment screening is only one aspect of identifying unsuitable workers and protecting vulnerable populations. Some individuals, such as first-time offenders, may not have a history of abuse. Effective child abuse prevention should also include ongoing prevention practices and continued screening efforts after the worker is hired. Some posthiring practices to consider include the following:

- **Best practices and management guides for each organization based on organizational needs or on policies developed for similar groups.** These guides may take the form of written policies that include (1) a code of conduct for staff relating to their behavior with the vulnerable client population(s); (2) policies on reporting suspected abuse; (3) policies on investigating staff or applicants concerning abuse; and (4) policies on hiring staff previously accused of or found guilty of abuse.
- **Written organizational policies regarding abuse by staff.** These policies would require employees and volunteers to attend an orientation and sign a statement that they have read and understood the agency's written policies regarding appropriate treatment of the vulnerable clients served (e.g., management of difficult behavior) and the State's reporting laws. A clear and concise policy that sets the parameters for provision of care should be included in the organizational guides. It should also inform employees and volunteers that the agency will cooperate with local officials (child protective services, adult protective services, and law enforcement) in investigation of cases.
- **Staff (or volunteer) training.** Risk-reduction strategies engender confidence among individuals who use and depend on the services to children and vulnerable adults. These strategies include staff education and training. Ongoing personnel training topics might include the facility's crisis management techniques, identification and reporting of suspected abuse by employees and volunteers, effective communication techniques, and diversity issues. In addition, education and training on specific issues associated with working with a particular client population may be appropriate.

For those providing services to the elderly and individuals with disabilities, educational programs may encompass information on the nature of the illness or disability, so that the care provider is better able to respond to the individual's needs.

- **On-the-job supervision and monitoring.** Ongoing staff supervision should be implemented to supplement preemployment background screening.
- **Procedures for periodic updating and review of workers.** Abuse and other relevant information revealed through screening should be updated with periodic checks for new information. This information can be obtained through traditional registries (e.g., child abuse and neglect and criminal record registries) and, if available, alternative (occupation-specific)



---

registries. In the future, this information may be available through flagging systems.

- **Efforts to increase parental, relative, and advocate involvement and communication.** For example, some organizations may adopt an open-door policy for these individuals to make unannounced visits to the facility at any time.

# Publications From OJJDP

OJJDP produces a variety of publications that range from Fact Sheets and Bulletins to Summaries, Reports, and the *Juvenile Justice* journal along with videotapes, including broadcasts from the juvenile justice telecommunications initiative. The documents and videotapes are available through a variety of means, including hard copy and online through OJJDP's Web site and the Juvenile Justice Clearinghouse (JJC). Fact Sheets and Bulletins are also available through Fax-on-Demand. To ensure timely notice of new publications, subscribe to JUVJUST, OJJDP's electronic mailing list. Contact information for the OJJDP Web site, JJC, and instructions for subscribing to JUVJUST are noted below. In addition, JJC, through the National Criminal Justice Reference Service (NCJRS), is the repository for tens of thousands of criminal and juvenile justice publications and resources from around the world. They are abstracted and made available through a data base, which is searchable online ([www.ncjrs.org/database.htm](http://www.ncjrs.org/database.htm)). You are also welcome to submit materials to JJC for inclusion in the data base.

The following list highlights popular and recently published OJJDP documents and videotapes, grouped by topical area.

## Corrections and Detention

*Beyond the Walls: Improving Conditions of Confinement for Youth in Custody.* 1998, NCJ 164727 (116 pp.).

*Boot Camps for Juvenile Offenders.* 1997, NCJ 164258 (42 pp.).

*Conditions of Confinement Teleconference (Video).* 1993, NCJ 147531 (90 min.), \$14.00.

*Effective Programs for Serious, Violent and Chronic Juvenile Offenders Teleconference (Video).* 1996, NCJ 160947 (120 min.), \$17.00.

*Juvenile Arrests 1996.* 1997, NCJ 167578 (12 pp.).

*Juvenile Boot Camps Teleconference (Video).* 1996, NCJ 160949 (120 min.), \$17.00.

## Courts

*Has the Juvenile Court Outlived Its Usefulness? Teleconference (Video).* 1996, NCJ 163929 (120 min.), \$17.00.

*Offenders in Juvenile Court, 1995.* 1997, NCJ 167885 (12 pp.).

*RESTTA National Directory of Restitution and Community Service Programs.* 1998, NCJ 166365 (500 pp.), \$33.50.

## Delinquency Prevention

*1996 Report to Congress: Title V Incentive Grants for Local Delinquency Prevention Programs.* 1997, NCJ 165694 (100 pp.).

*Allegheny County, PA: Mobilizing To Reduce Juvenile Crime.* 1997, NCJ 165693 (12 pp.).

*Combating Violence and Delinquency: The National Juvenile Justice Action Plan (Report).* 1996, NCJ 157106 (200 pp.).

*Combating Violence and Delinquency: The National Juvenile Justice Action Plan (Summary).* 1996, NCJ 157105 (36 pp.).

*Communities Working Together Teleconference (Video).* 1996, NCJ 160946 (120 min.), \$17.00.

*Keeping Young People in School: Community Programs That Work.* 1997, NCJ 162783 (12 pp.).

*Mentoring—A Proven Delinquency Prevention Strategy.* 1997, NCJ 164834 (8 pp.).

*Mentoring for Youth in Schools and Communities Teleconference (Video).* 1997, NCJ 166376 (120 min.), \$17.00.

*Mobilizing Communities To Prevent Juvenile Crime.* 1997, NCJ 165928 (8 pp.).

*Reaching Out to Youth Out of the Education Mainstream.* 1997, NCJ 163920 (12 pp.).

*Serious and Violent Juvenile Offenders.* 1998, NCJ 170027 (8 pp.).

*Treating Serious Anti-Social Behavior in Youth: The MST Approach.* 1997, NCJ 165151 (8 pp.).

*Youth Out of the Education Mainstream Teleconference (Video).* 1996, NCJ 163386 (120 min.), \$17.00.

*Youth-Oriented Community Policing Teleconference (Video).* 1996, NCJ 160947 (120 min.), \$17.00.

## Gangs

*1995 National Youth Gang Survey.* 1997, NCJ 164728 (41 pp.).

*Gang Members and Delinquent Behavior.* 1997, NCJ 165154 (6 pp.).

*Youth Gangs in America Teleconference (Video).* 1997, NCJ 164937 (120 min.), \$17.00.

## General Juvenile Justice

*Comprehensive Juvenile Justice in State Legislatures Teleconference (Video).* 1998, NCJ 169593 (120 min.), \$17.00.

*Guidelines for the Screening of Persons Working With Children, the Elderly, and Individuals With Disabilities in Need of Support.* 1998, NCJ 167248 (52 pp.).

*Juvenile Justice, Volume III, Number 2.* 1997, NCJ 165925 (32 pp.).

*Juvenile Justice, Volume IV, Number 2.* 1997, NCJ 166823 (28 pp.).

*Juvenile Justice, Volume V, Number 1.* 1998, NCJ 170025 (32 pp.).

*Juvenile Justice Reform Initiatives in the States 1994–1996.* 1997, NCJ 165697 (81 pp.).

*A Juvenile Justice System for the 21st Century.* 1998, NCJ 169726 (8 pp.).

*Juvenile Offenders and Victims: 1997 Update on Violence.* 1997, NCJ 165703 (32 pp.).

*Juvenile Offenders and Victims: A National Report.* 1995, NCJ 153569 (188 pp.).

*Sharing Information: A Guide to the Family Educational Rights and Privacy Act and Participation in Juvenile Justice Programs.* 1997, NCJ 163705 (52 pp.).

## Missing and Exploited Children

*Court Appointed Special Advocates: A Voice for Abused and Neglected Children in Court.* 1997, NCJ 164512 (4 pp.).

*Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies.* 1997, NCJ 168962 (156 pp.).

*In the Wake of Childhood Maltreatment.* 1997, NCJ 165257 (16 pp.).

*Portable Guides to Investigating Child Abuse: An Overview.* 1997, NCJ 165153 (8 pp.).

*When Your Child Is Missing: A Family Survival Guide.* 1998, NCJ 170022 (96 pp.).

## Status Offenders

*Curfew: An Answer to Juvenile Delinquency and Victimization?* 1996, NCJ 159533 (12 pp.).

*Truancy: First Step to a Lifetime of Problems.* 1996, NCJ 161958 (8 pp.).

## Substance Abuse

*Beyond the Bench: How Judges Can Help Reduce Juvenile DUI and Alcohol and Other Drug*

*Violations (Video and discussion guide).* 1996, NCJ 162357 (16 min.), \$17.00.

*Capacity Building for Juvenile Substance Abuse Treatment.* 1997, NCJ 167251 (12 pp.).

*Drug Identification and Testing in the Juvenile Justice System.* 1998, NCJ 167889 (92 pp.).

*Juvenile Offenders and Drug Treatment: Promising Approaches Teleconference (Video).* 1997, NCJ 168617 (120 min.), \$17.00.

*Preventing Drug Abuse Among Youth Teleconference (Video).* 1997, NCJ 165583 (120 min.), \$17.00.

## Violence and Victimization

*Child Development—Community Policing: Partnership in a Climate of Violence.* 1997, NCJ 164380 (8 pp.).

*Combating Fear and Restoring Safety in Schools.* 1998, NCJ 167888 (16 pp.).

*Conflict Resolution Education: A Guide to Implementing Programs in Schools, Youth-Serving Organizations, and Community and Juvenile Justice Settings.* 1996, NCJ 160935 (134 pp.).

*Conflict Resolution for Youth Teleconference (Video).* 1996, NCJ 161416 (150 min.), \$17.00.

*Developmental Pathways in Boys' Disruptive and Delinquent Behavior.* 1997, NCJ 165692 (20 pp.).

*Epidemiology of Serious Violence.* 1997, NCJ 165152 (12 pp.).

*Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders.* 1995, NCJ 153571 (6 pp.).

*Reducing Youth Gun Violence Teleconference (Video).* 1996, NCJ 162421 (120 min.), \$17.00.

## Youth in Action

*Planning a Successful Crime Prevention Project.* 1998, NCJ 170024 (28 pp.).

The *Office of Juvenile Justice and Delinquency Prevention Brochure* (1996, NCJ 144527 (23 pp.)) offers more information about the agency.

The *OJJDP Publications List* (BC000115) offers a complete list of OJJDP publications and is also available online.

Through OJJDP's Clearinghouse, these publications and other information and resources are as close as your phone, fax, computer, or mailbox.

### Phone:

800-638-8736  
(Monday–Friday, 8:30 a.m.–7:00 p.m. ET)

### Fax:

301-519-5212

### Fax-on-Demand:

800-638-8736, select option 1, select option 2, and listen for instructions

### Online:

#### OJJDP Home Page:

[www.ncjrs.org/oijhome.htm](http://www.ncjrs.org/oijhome.htm)

#### E-Mail:

[askncjrs@ncjrs.org](mailto:askncjrs@ncjrs.org)  
JUVJUST Mailing List:  
e-mail to [listproc@ncjrs.org](mailto:listproc@ncjrs.org)  
leave the subject line blank  
type *subscribe juvjust your name*

#### Mail:

Juvenile Justice Clearinghouse/NCJRS,  
P.O. Box 6000, Rockville, MD 20849-6000

**U.S. Department of Justice**

Office of Justice Programs

*Office of Juvenile Justice and Delinquency Prevention*

*Washington, DC 20531*

Official Business

Penalty for Private Use \$300

BULK RATE  
U.S. POSTAGE PAID  
DOJ/OJJDP  
Permit No. G-91

