

BOARD OF REGENTS BRIEFING PAPER

Agenda Item Title: Criminal Background Checks of Childcare Workers

BACKGROUND & POLICY CONTEXT OF ISSUE:

At the CDS December Committee meeting, the Committee expressed concern regarding the thoroughness and consistency of institution policies regarding criminal background checks of childcare workers. NSHE staff was tasked to gather additional information and bring back policy recommendations for the Committee's consideration. A status report was made to the Committee in January 2007, and based on suggestions of the Committee, a proposed policy has been written.

State law requires all employees, 18 years and older, of a child care facility to submit, within three days of hire, an application to the Division of Child and Family Services, which includes the submission of fingerprints for the purposes of a criminal background check. This application also includes questions regarding prior convictions. The fingerprints are forwarded by the Division of Child and Family Services to the Central Repository for Nevada Records of Criminal History for submission to the FBI for a criminal history report. This form of background check is generally considered to be the most thorough background check available, but it can take 60-90 days for completion. See Ref. A (state law).

Nevada law and Board of Regents policies do not address employment application requirements, nor are there laws or policies that concern work performed by an employee prior to completion of the background check.

Based on additional information gathered from the six institutions that have childcare programs (NSC and DRI do not), it is apparent that all of the institutions have some form of application, but the applications varied in the extent to which the applications required full employment history, references, and disclosure of criminal convictions. None of the applications addressed drug use or arrests. In addition, the institutions appear to vary on whether an individual is allowed to commence work prior to completion of a full background check, and there may also be differences in whether that work is supervised if an employee is allowed to work in the facility pending completion of the background check.

In light of these variations, the Committee may find it advisable to adopt a policy that establishes consistency and increases the safety of children at the childcare facility. A proposed policy is attached. See Ref. B.

SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

Adopt a policy to provide rules establishing requirements for application, background checks and commencing work prior to completion of the state required background check.

IMPETUS (WHY NOW?):

Serious incidents involving workers at other facilities have highlighted concerns regarding background checks.

BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- A policy will provide consistency and may increase child safety.
- Additional background information will assist the institutions in making initial employment decisions and in terminating employees that fail to disclose information in their application.

POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

The policy may be unnecessary as state law already provides rules for background check requirements. The policy may also add time and expense to the hiring process.

ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

The Committee may choose to adopt variations of a policy or may decide that no policy is necessary/

COMPLIANCE WITH BOARD POLICY:

Consistent With Current Board Policy: Title # _____ Chapter # _____ Section # _____
Amends Current Board Policy: Adds a New Title 4, Chapter 3, Section 40.

Other: _____

Fiscal Impact: Yes X No _____
Explain: There may be some fiscal impact associated with requiring preliminary background checks, applications and/or supervision.

NRS 432A.170 Investigation by Bureau: information concerning criminal convictions of applicant, licensee, employee and certain residents; cost of investigation.

1. The Bureau may, upon receipt of an application for a license to operate a child care facility, conduct an investigation into the:

- (a) Buildings or premises of the facility and, if the application is for an outdoor youth program, the area of operation of the program;
- (b) Qualifications and background of the applicant or his employees;
- (c) Method of operation for the facility; and
- (d) Policies and purposes of the applicant.

2. The Bureau shall secure from appropriate law enforcement agencies information on the background and personal history of every applicant, licensee or employee of an applicant or licensee, or every resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older, to determine whether he has been convicted of:

- (a) Murder, voluntary manslaughter or mayhem;**
- (b) Any other felony involving the use of a firearm or other deadly weapon;**
- (c) Assault with intent to kill or to commit sexual assault or mayhem;**
- (d) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;**
- (e) Abuse or neglect of a child or contributory delinquency; or**
- (f) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in [chapter 454](#) of NRS.**

3. The Bureau may charge each person investigated pursuant to this section for the reasonable cost of that investigation.

(Added to NRS by 1979, 886; A 1985, 1473; 1987, 1551; 1991, 2309)

NRS 432A.175 Investigation by Bureau; information concerning criminal convictions of applicant, licensee, employee and certain residents or participants.

1. Every applicant, licensee and employee of an applicant or licensee, and every resident of a child care facility or participant in an outdoor youth program who is 18 years of age or older, shall submit to the Bureau, or to the person or agency designated by the Bureau, a:

- (a) Complete set of fingerprints and a written authorization for the Bureau or its designee to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report; and**
- (b) Written statement detailing any prior criminal convictions, to enable the Bureau to conduct an investigation pursuant to [NRS 432A.170](#).**

2. If an employee of an applicant or licensee, or such a resident or participant, has been convicted of any crime listed in subsection 2 of [NRS 432A.170](#), the Bureau shall immediately notify the applicant or licensee.

(Added to NRS by 1985, 1471; A 1991, 2309; 1995, 753)

NAC 432A.200 License to operate facility: Application; investigation; issuance; return. (NRS 432A.077, 432A.141, 432A.170, 432A.175)

1. An application for an initial license to operate a facility must be:
 - (a) Submitted to the Bureau on a form supplied by the Bureau; and
 - (b) Accompanied by the following appropriate fee:

- 2. After receiving a completed application and payment of the appropriate fee, the Bureau will:**
 - (a) Conduct an investigation into the qualifications and background of every applicant and his employees, and every resident of the facility who is 18 years of age or older;**
 - (b) Inspect the buildings of the facility; and**
 - (c) Examine the plans for care of the children and management of the facility.**

- 3. Documentation of completed and current investigations must be kept on file at the facility for all persons required to be investigated, for the period of their presence at the facility.**

- 4. Fingerprints must be taken and applications for investigations must be made by:**
 - (a) An employee or a resident of the facility within 3 working days after the date of hiring or his presence in the facility, and every 6 years thereafter.**
 - (b) An applicant at the time of an application for initial license.**
 - (c) A licensee every 6 years after the date his license is originally issued.**

5. The Bureau will immediately notify the applicant or licensee if the investigation indicates that he or an employee or resident of the facility has been convicted of any offense listed in subsection 2 of NRS 432A.170.

6. The license must not be issued until the Chief of the Bureau is satisfied that the proposed facility will be in compliance with the applicable codes concerning safety of human life, environmental health, and building and zoning, as established respectively by the State Fire Marshal, the State Board of Health and the appropriate local government. A report of inspection by the State Fire Marshal or the State Health Officer, finding satisfactory conditions, may be accepted by the Chief as proof of compliance with the applicable regulations.

7. A licensee who has a license to operate a family home or a group home may not obtain a license to operate any other family home, group home or other child care facility.

8. An applicant must, before a license is issued to him, submit to the Bureau a certificate stating that he holds a policy of insurance for protection against liability to third persons which will meet the requirement set forth in subsection 2 of NAC 432A.290. Any government, governmental agency or political subdivision of a government which operates a child care facility and is self-insured is not required to furnish a certificate of insurance to the Bureau.

9. If the applicant and the proposed facility are in compliance with the provisions of this chapter, as shown by his application and related material and the investigation, a license will be issued to him within 30 days after completion of the investigation.

10. A licensee shall return to the Bureau his license if he ceases to operate a facility, if the license has been suspended or revoked or if his annual license is placed on a provisional basis.

[Bd. for Child Care, Child Care Facilities Reg. § 3.2, eff. 2-28-80]—(NAC A 6-5-84; 11-19-85; 12-17-87; 9-5-89; 5-14-90; R203-03, 7-1-2004)

POLICY PROPOSAL
TITLE 4, CHAPTER 3, *new* SECTION 40
Background Checks

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 40. Background Checks of Childcare Workers and Volunteers.

1. Required Background Check

- a. Each institution with a childcare facility shall comply with all licensing and background check requirements **established in state law**. To the extent the Board of Regents policy conflicts with any state law requirements, or if applicable, any local licensing requirements, the provisions of state law or applicable local licensing requirements control.*
- b. An employee **who** has submitted the necessary application to **the** state (or where permitted by law, a local licensing authority) may commence work in a childcare facility prior to completion of the background check if the employee is: **1) not left alone with children (meaning another employee is always present); or 2) has successfully completed an initial background check of criminal history by obtaining a current sheriff/police card through the County/City, or by means of an investigation of criminal history by a national criminal background check firm.***
- c. Any individual, whether volunteer or part-time, not requiring a background check under state law must: **1) not be left alone with children (meaning another employee is always present) or 2) complete a criminal background check by obtaining a sheriff/police work card through the County/City, or by means of an investigation of criminal history by a national criminal background check firm.***

2. Application Requirements

- a. Any prospective volunteer or employee in a childcare facility must complete an application for **the consideration of** employment or volunteer activities. The applicant must disclose **1) any prior convictions, whether or not expunged or based on a no contest plea, except for minor traffic/parking offenses; 2) current use of illegal drugs; 3) any arrest involving offenses related to child abuse or exploitation, child pornography, sexual assault or rape, sexual misconduct of any type involving a minor, assault, battery, murder, attempted murder or manslaughter; 4) prior employment history for the last ten years (recognizing that some individuals may not have been working for that time period); and 5) references. References and employment history must be verified prior to commencing employment or beginning volunteer activities.***
- b. The facility shall evaluate all information received in the application in determining whether employment should be offered or volunteer activities permitted. Incomplete applications **for employment or volunteer activities** may not be considered. Any employment offer or commencement of volunteer activities is contingent upon successful completion of a **criminal** background check where required under state law*

or any applicable local licensing requirements, as well as other restrictions noted in this section.

3. Definition of Volunteer

For the purposes of this section, the term “volunteer” does not include a parent or guardian of a child who is enrolled in the childcare facility, nor does it include students participating in an educational program. Parents, guardians and students should, however, be supervised during visits to the childcare facility.

4. Applicability to Classified Employees

This policy is not generally applicable to the employment of classified employees, as such employment is governed by state personnel rules, except that classified employees may not commence work at a childcare facility prior to completion of any background check required by state law, or any applicable local licensing requirements, unless 1) the employee has submitted an application to the state (or if permitted by law, a local licensing authority) and 2) the employee is not left alone with children (meaning another employee is always present).