

CHAPTER 216  
SB 173 – FINAL VERSION

03/21/13 0851s

2013 SESSION

13-0871  
05/01

SENATE BILL **173**

AN ACT relative to criminal background checks for individuals volunteering or applying for employment at licensed child care facilities.

SPONSORS: Sen. Stiles, Dist 24; Sen. Lasky, Dist 13; Sen. Fuller Clark, Dist 21; Sen. Reagan, Dist 17; Sen. Bradley, Dist 3; Rep. Lovejoy, Rock 36; Rep. Gargas, Hills 27; Rep. Copeland, Rock 19; Rep. Gile, Merr 27

COMMITTEE: Health, Education and Human Services

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AMENDED ANALYSIS

This bill requires child care institutions and child care agencies to conduct criminal background checks of prospective employees.

The bill is a request of the department of health and human services.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT relative to criminal background checks for individuals volunteering or applying for employment at licensed child care facilities.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 216:1 Residential Care and Child-Placing Agencies; State Registry and Criminal Records Check.

2 Amend the section heading of RSA 170-E:29 and RSA 170-E:29, I to read as follows:

3 170-E:29 State Registry and Criminal Records Check **for Foster Family Homes, Institutions,**  
4 **and Child-Placing Agencies.**

5 I. [~~Licensed child care agencies,~~] **Foster family homes,** institutions, and child-placing  
6 agencies[.] shall, within 30 days of adding new staff members responsible for care of or in regular  
7 contact with children, submit the names, birth dates, and addresses of such staff members to the  
8 department.

9 216:2 New Section; State Registry and Criminal Records Check for Child Care Institutions and  
10 Child Care Agencies. Amend RSA 170-E by inserting after section 29 the following new section:

11 170-E:29-a State Registry and Criminal Records Check for Child Care Institutions and Child  
12 Care Agencies.

13 I. Child care institutions and child care agencies, with the exception of foster family homes,  
14 that are required to be licensed according to the provisions of this chapter shall, prior to making a  
15 final offer of employment to a person who will be responsible for the care of, or who will have regular  
16 contact with children, and upon adding a new household member, a current household member who  
17 turns 17 years of age, or other persons who will have regular contact with children, submit to the  
18 department, the names, birth names, birth dates, and addresses of such persons and other  
19 information required by the department as prescribed by rules adopted by the commissioner under  
20 RSA 541-A. The persons described in this paragraph shall submit directly to the department of  
21 safety a notarized criminal history records release form, as provided by the New Hampshire division  
22 of state police, which authorizes the release of the person's criminal records, if any, to the  
23 department. The person shall submit with the release form a complete set of fingerprints taken by a  
24 qualified law enforcement agency or an authorized employee of the department of safety. The  
25 department of safety shall complete the criminal history records check and forward such record, if  
26 any, to the department. In the event that the first set of fingerprints is invalid due to insufficient  
27 pattern, a second set of fingerprints shall be necessary to complete the criminal history records  
28 check. If, after 2 attempts, a set of fingerprints is invalid due to insufficient pattern, the department  
29 may, in lieu of the criminal history records check, accept police clearances from every city, town, or

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1 county where the person has lived during the past 5 years.

2 II.(a) The department shall, for every name submitted on an application and for each person  
3 for whom information is required to be submitted pursuant to paragraph I, review the names, birth  
4 names, birth dates, and current and previous addresses of such persons against the state registry of  
5 founded abuse and neglect reports.

6 (b) The department of safety shall submit the criminal history records release form to  
7 the New Hampshire division of state police, which shall conduct a criminal history records check  
8 through its records and through the Federal Bureau of Investigation. Upon completion of the  
9 background investigation, the division of state police shall release copies of the criminal conviction  
10 records to the department. The department shall maintain the confidentiality of all criminal history  
11 records information received pursuant to this paragraph.

12 (c) The costs of criminal history record checks shall be borne by the licensee; provided,  
13 that the licensee may require an applicant to pay the actual costs of the criminal history check of the  
14 employee.

15 III. Notwithstanding paragraph I, a licensee may make a final offer of employment and  
16 allow a person to begin working in the program while the results of the state and national criminal  
17 background check is pending provided that, prior to beginning employment, the applicant completes  
18 a sworn statement signed by a notary public or justice of the peace stating that he or she:

19 (a) Does not have any felony conviction in this or any other state.

20 (b) Has not been convicted of a sexual assault, assault including simple assault, any  
21 other violent crime, abuse, neglect, or any other crime that shows that they may pose a threat to  
22 well-being of children, such as a violent crime or a sexually-related crime against an adult.

23 (c) Has not had a finding by the department or any administrative agency in this or any  
24 other state for abuse, neglect or exploitation of children.

25 IV. The results of the federal criminal background check shall be valid for 3 years. Prior to  
26 the expiration of that 3-year period, a person required to undergo a criminal background check  
27 pursuant to this section shall submit a new set of fingerprints and undergo a subsequent federal  
28 criminal background check. If a person who is or has been employed or volunteered at a child care  
29 institution or child care agency is offered employment or volunteers at another child care institution  
30 or child care agency or a child day care agency, the person shall, before entering employment or  
31 volunteering with the new agency, undergo a New Hampshire state criminal records check through  
32 the department of safety and shall complete a sworn statement as set forth in paragraph III.

33 V. If any person whose name has been submitted for a check under this section has been  
34 convicted of a violent or sexually-related crime against a child, or of a crime which shows that the  
35 person might be reasonably expected to pose a threat to a child, such as a violent crime or a sexually-  
36 related crime against an adult, the department shall:

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1 (a) If the person is the applicant or owner, revoke or deny the license.

2 (b) If the person is a board member, household member, or child care institution or child  
3 care agency personnel, or any other person having regular contact with the enrolled children:

4 (1) Inform the child care institution or child care agency that the person poses a  
5 threat to children and give the program an opportunity to take immediate corrective action to  
6 remove the person from the program, and, in conjunction with the department, to develop a  
7 corrective action plan, approved by the department, which shall ensure that the person will not be on  
8 the premises of the child care institution or child care agency and shall have no contact with children  
9 enrolled in the child care institution or child care agency; and/or

10 (2) Suspend, deny, or revoke the license or permit if the child care institution or child  
11 care agency refuses to take corrective action as indicated in subparagraph (b)(1), or subsequently  
12 fails to comply with the corrective action plan approved by the department.

13 VI. If any person whose name has been submitted for this check has been convicted of a  
14 felony offense or violent crime deemed directly or indirectly harmful to children in child residential  
15 care, crimes against minors or adults, except crimes as provided in paragraph V, or is the subject of a  
16 founded complaint of child abuse or neglect, the department may deny, revoke, or suspend a license,  
17 permit, or registration pending the development and implementation of a corrective action plan  
18 approved by the department. The department shall conduct an investigation in accordance with  
19 rules adopted under this subdivision to determine whether the person poses a present threat to the  
20 safety of children. The investigation shall include an opportunity for the person to present evidence  
21 on his or her behalf to show that the person does not pose a threat to the safety of children.

22 VII. At the time the licensee is next due to renew the license, the licensee shall submit a  
23 notarized criminal conviction record release authorization form and a set of fingerprints to the  
24 department of safety for any existing employee or household member who is 17 years of age or older  
25 and who has not undergone a national criminal background check as of the effective date of this  
26 section. Upon receiving the results of the state and national criminal records check, if the licensee  
27 learns that a current employee has been convicted of any felony, a sexual assault, any other violent  
28 crime, assault including simple assault, abuse, neglect or any other crime that shows that they may  
29 pose a threat to well-being of children, such as a violent crime or a sexually-related crime against an  
30 adult, or has a founded allegation of abuse, neglect or exploitation against children, the licensee shall  
31 either terminate the employee or suspend the employee and promptly request a waiver from the  
32 department allowing the employee to resume working in the program. Upon receiving the results of  
33 the state and national criminal records check, if the licensee learns that a current household member  
34 has been convicted of any felony, a sexual assault, any other violent crime, assault including simple  
35 assault, abuse, neglect or any other crime that shows that the person may pose a threat to well-being  
36 of children, such as a violent crime or a sexually-related crime against an adult, or has a founded

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1 allegation of abuse, neglect or exploitation against children, the licensee shall take immediate  
2 corrective action to remove the person from the child care institution or child care agency, and, in  
3 conjunction with the department, develop a corrective action plan, approved by the department,  
4 which shall ensure that the person will not be on the premises of the child care institution or child  
5 care agency and shall have no contact with children residing in the child care institution or agency.  
6 If the licensee fails to take such corrective action, the department shall suspend the license until  
7 such time as the licensee does implement the corrective action, or it shall revoke the license.

8 VIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to the  
9 confidentiality of information collected under this section and to the release, if any, of such  
10 information.

11 216:3 Effective Date. This act shall take effect 60 days after its passage.

12  
13 Approved: July 10, 2013

14 Effective Date: September 8, 2013