

NLWJC - Kagan

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**Family - Child Care Policy: Criminal
Background Checks**

Family-child care policy -
criminal background
checks.

Child Care Background Checks Policy Options

White House Working Group

September 12, 1997

~~What -
What happened to
these options? Why
did we check them?
D.K.~~

Why?

- State laws require background checks for people who work in banks and at racetracks
- Surely we care about our children as much as we do our money and our horses

Components

- Criminal records
- Child abuse registry
- General background

Criminal records checks

(By cumulative comprehensiveness)

- State check of adult records
- Interstate III check of adult records through NCIC
- FBI fingerprint check
- State juvenile delinquency records
- State juvenile delinquency records

Child abuse registry of substantiated cases

(By cumulative comprehensiveness)

- State child abuse cases adjudicated in family/
juvenile court
- State child abuse cases petitioned in family/
juvenile court
- State check of child abuse registry
- Interstate check of child abuse registries (future)

General background and suitability

- Personal interview
- References from previous employment
- References from education
- References from neighbors/acquaintances

Least comprehensive system

- State check of adult criminal records
- FBI fingerprint check
- State check of child abuse cases adjudicated in family/juvenile court
- Personal interview
- Check of previous employment, education
- Check of personal references

Most comprehensive system

- Centralized national database of relevant public agency records
 - Adult criminal records
 - Juvenile delinquency records
 - Child abuse registries
- FBI fingerprint check
- Personal interview
- Check of previous employment, education
- Check of personal references

Policy options - 1

- Amend Title IV of Social Security Act to require checks as condition of eligibility for HHS block grants
 - Specify scope of general background checks
 - Specify scope of criminal records checks
 - Specify scope of juvenile/family court records & child abuse registry checks
 - Specify scope of applicability of checks

Policy options - 2

- Amend Title IV of Social Security Act provisions on SACWIS
 - extend 75% federal match
 - provide 50% match for interstate linkage, require completion by FY 2003
- Amend Child Abuse Prevention & Treatment Act to require states to record federal child abuse reports in state registries as condition of eligibility for grants

Policy options - 3

- Build fiscal incentives from Dept. of Justice into Interstate Compact on Criminal History Information
- Amend Juvenile Justice Delinquency & Prevention Act to require automated interstate linkage of records by FY2003; provide 50% federal match

Policy option - 4

- Authorize and fund a centralized national database of relevant public agency records
 - Adult criminal records
 - Juvenile delinquency records
 - Child abuse registries

DoD Requirements Criminal History Background Checks

- ◆ Applies to all types of individuals who come in contact with children under 18 (child care, youth personnel, physicians, mental health providers, administrative staff, etc.)
- ◆ Establishes criteria to evaluate adverse information
- ◆ Defines child, child abuse and/or neglect, child sexual abuse, various types of care situations, etc.
- ◆ Requires
 - ◆ FBI fingerprint check
 - ◆ State Criminal History Repository check of each residence listed on employment certification application
 - ◆ Installation Records Check (law enforcement, drug and alcohol programs, family housing, medical facilities, etc.) of all residencies for preceding two years
 - ◆ DoD Central Registry of Child and Spouse Abuse check
 - ◆ Reverification every five years through Installation Records Check (IRC) and Defense Clearance and Investigations Index (DCII)
- ◆ Permits line of sight supervision of employee during background check
- ◆ Requires that each program maintain the records of all individuals hired, certified, or employed under contract for two years following termination of their services
- ◆ Ensures an individual is advised of proposed disciplinary action, decertification, or any disqualifying information

CRITERIA FOR DISQUALIFICATION

Mandatory disqualifying criteria:

- ◆ Any conviction of a sexual offense, a drug felony, a violent crime, or a criminal offense involving a child or children

Discretionary criteria:

- ◆ Acts indicating poor judgment, unreliability, or untrustworthiness in working with children
- ◆ Any behavior, illness, or mental/physical/emotional condition that, in the opinion of a competent medical authority, may cause a defect in judgment or reliability
- ◆ Offenses involving assault, battery, or other abuse
- ◆ Evidence or documentation of substance abuse dependency
- ◆ Sexual acts, conduct, or behavior that may indicate untrustworthiness, unreliability, lack of judgment, or irresponsibility in working with children
- ◆ Arson, homicide, robbery, fraud, or offense involving a firearm
- ◆ Evidence that the individual is a fugitive from justice or an illegal alien
- ◆ A finding of negligence in a mishap causing death or serious injury to a child or dependent person entrusted to their care

Suitability considerations:

- ◆ The position for which the individual is applying
- ◆ The nature and seriousness of the conduct
- ◆ How recent was the conduct
- ◆ The age of the individual at the time of the conduct
- ◆ The circumstances surrounding the conduct
- ◆ Contributing social or environmental conditions
- ◆ The absence or presence of rehabilitation or efforts toward rehabilitation
- ◆ The nexus of the arrests in regard to the job to be performed

Fam-Child care pD - crim background checks

THE WHITE HOUSE
WASHINGTON

ELENA/JEN/NICOLE:

ATTACHED PLEASE FIND A COPY
OF THE MATERIALS DISTRIBUTED
AT THE CHILD CARE BACKGROUND
CHECKS MTG. WE NEED TO
~~BE~~ SCHEDULE A FOLLOW-UP
THIS. YOU HAVE LEANNE
GET TOGETHER W/YOU ON
THIS; SHE WAS AT THE
MEETING, TOO.

Joni

CC: LEANNE

CRIMINAL HISTORY BACKGROUND CHECKS MAJOR ISSUES

- **No national standards**
 - **No standardized requirement**
 - **Federal -- criminal records and fingerprint check**
 - **States -- criminal and civil records and finger print check**
 - **criminal records and finger print check**
 - **criminal records and civil records check**
 - **criminal records check**
 - **No standardized definitions among States**
 - **Applicability**
 - **Full- or part-time employees, volunteers or contractors**
 - **Status – owners, care providers, administrative staff**
 - **Scope of relevant criminal records**
 - **Crimes specifically related to child abuse and neglect**
 - **Other crimes deemed relevant to child care (drugs, sex, violence)**
 - **All crimes**

MAJOR ISSUES (continued)

- **No single repository of information for background checks**
 - Federal and State information systems
 - Decentralized criminal justice records (local law enforcement/courts)
 - Decentralized child protective services records
 - Information gaps (dispositions, juvenile delinquency, mental health)
- **Numerous information systems have different purposes and content**
 - Criminal record and sex offender registration systems assist law enforcement in tracking crimes and criminals
 - Criminal records may not identify child abuse
 - Sex offender registries may not identify child molesters
 - Child abuse registries assist social service agencies in protecting children
- **Current laws have limited impact**
 - Crime Control Act of 1990, as amended, requires fingerprint checks for workers in Federally operated/contracted child care facilities
 - National Child Protection Act of 1993, as amended, authorizes national background checks only if State law requires a national check through a State-designated agency
 - Some States do not require background checks (or even screening)
 - Some States require only a State background check

*Expand -
Other checks
too?*

*Per state
to do a
nat check?
(tie to
spending)*

MAJOR ISSUES (continued)

- **Cost considerations**
 - **Automating information systems**
 - **Linking State and Federal information systems within and across jurisdictions**
 - **Processing charges for record and fingerprint checks**
- **Right to employment and privacy considerations**
 - **Accuracy of information**
 - **Completeness of information**
 - **Retention period of information**
 - **Misuse of information**
- **Background checks are only one element of screening for potential employees and volunteers**

**EFFECTIVE SCREENING OF CHILD CARE
AND YOUTH SERVICE WORKERS**

American Bar Association
Center on Children and the Law
1800 M Street, NW
Washington, DC 20036
A program of the Young Lawyers Division

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Center for Child Protection and Family Support

Joyce Thomas, R.N., M.P.H.	Insurance Industry Survey
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**A Project of the Office of Juvenile Justice and Delinquency Prevention
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U. S. Department of Justice**

TABLE OF CONTENTS

EXECUTIVE SUMMARY

CHAPTER 1 - INTRODUCTION	1
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SECTION I - NATIONAL SURVEY OF SCREENING PRACTICES

CHAPTER 2 - INTRODUCTION TO NATIONAL SURVEY	7
CHAPTER 3 - SCREENING PRACTICES	16
CHAPTER 4 - INFORMATION ON VARIOUS ORGANIZATIONAL POLICIES	51
CHAPTER 5 - IDENTIFICATION OF UNSUITABLE APPLICANTS THROUGH BACKGROUND SCREENING	55
CHAPTER 6 - ALLEGATIONS OF ABUSE INVOLVING EMPLOYEES AND VOLUNTEERS	62
CHAPTER 7 - RESPONDENTS RECOMMENDATIONS FOR MORE EFFECTIVE SCREENING	67
CHAPTER 8 - DISCUSSION OF NATIONAL SURVEY FINDINGS	76

SECTION II - ANALYSIS OF LAW AND REGULATIONS IMPACTING ON THE USE OF CERTAIN SCREENING PRACTICES

CHAPTER 9 - INTRODUCTION AND BACKGROUND TO LEGAL ANALYSIS	84
CHAPTER 10 - CRIMINAL HISTORY INFORMATION	94
CHAPTER 11 - CENTRAL CHILD ABUSE & NEGLECT REGISTRIES	136
CHAPTER 12 - SEX OFFENDER REGISTRATION REQUIREMENTS AND REGISTRIES	142
CHAPTER 13 - DISCUSSION OF LEGAL AND REGULATORY ANALYSIS	164

SECTION III - SUPPLEMENTAL SURVEYS

CHAPTER 14 - REGISTRY STUDY	171
-----------------------------------	-----

CHAPTER 15 - DoD SURVEY	195
SECTION IV - ADVISORY BOARD DISCUSSION, ISSUES AND RESOLUTIONS, AND DECISION-MAKING MODEL	
CHAPTER 16 - ADVISORY BOARD DISCUSSION	241
CHAPTER 17 - ADVISORY BOARD ISSUES AND RESOLUTIONS AND DECISION MAKING MODEL	252
SECTION V - SUMMARY AND RECOMMENDATIONS	
CHAPTER 18 - SUMMARY AND RECOMMENDATIONS	267
APPENDICES	
A DETERMINING THE UNIVERSE OF ADULTS WHO COME INTO CONTACT WITH CHILDREN AND YOUTH	
B SCREENING BY TYPE OF YOUTH SERVING ORGANIZATION	
C NATIONAL SURVEY: ELABORATED TABLES	
D NATIONAL SURVEY: SUMMARY OF SCREENING MECHANISMS	
E BIG BROTHERS/BIG SISTERS SCREENING INTERVIEW	
F NATIONAL SURVEY: COSTS OF SCREENING	
G STATUTORY PROVISIONS	
H INSURANCE INDUSTRY SURVEY	
I REGISTRY SURVEY QUESTIONNAIRE	

The authors of this report are professionals in social science and law. The citation format used in each chapter corresponds with the field each author represents. Where appropriate, either the social science style or the *Bluebook* legal citation format is used.

EXECUTIVE SUMMARY: EFFECTIVE SCREENING OF CHILD CARE AND YOUTH SERVICE WORKERS

Background and Purpose

Headline news stories, Congressional legislation, and advocacy organizations have all focused recent attention on incidents of child abuse, abduction, and exploitation. Some notable child maltreatment cases have involved child care and youth centers, day care programs and schools. Parents and the public in general have questioned how alleged perpetrators could have been hired and employed in positions to care for children.

Previous studies on screening practices have been limited in their representation of worker settings, geographical scope, and consistent methodologies. Recognizing this absence of comprehensive information, in 1992 the Office of Juvenile Justice and Delinquency Prevention (OJJDP), of the U.S. Department of Justice, contracted with the American Bar Association Center on Children and the Law to: (1) examine the screening practices currently used nationwide in child and youth service settings; and (2) outline what is known about the effectiveness of these practices.

This report should be useful to federal, state and local legislators developing statutes, regulations and guidelines for screening child care and youth service workers. It can be helpful to organizations and employers seeking guidance in developing practices for screening employees and volunteers, and to child care and youth service workers themselves. To accomplish these purposes, OJJDP set forth the following goals and objectives for this project in the original program announcement¹:

- To provide a comprehensive picture of what screening practices, including criminal record checks, are being utilized by both the public and private sector and the effectiveness of these practices in protecting children and youths from abduction, abuse and exploitation by adults who prey on children.
- To assess and determine the effectiveness of the different types of criminal records checks and screening tests that are currently in use by public and private youth serving organizations.
- To determine and recommend the steps necessary to develop a national child care and youth service worker screening and background checks program which would be feasible and effective and which could be adopted by public and private organizations, State agencies, and replicated nationwide.
- To list the types of employment and volunteer organizations and professionals that should be encouraged to use records checks and pre-employment screening of all applicants.

¹ See 56 Fed. Reg. 46489, 46490 (1991).

- To estimate from available data the national population of all those involved in the positions identified above.

To accomplish these goals and objectives, OJJDP outlined three tasks: 1) completing a survey of the states to determine the extent of background and employment screening currently being done, an examination of state laws requiring background checks, and a random look into youth-serving agencies to determine the extent of pre-employment screening among several occupations; 2) developing a set of criteria to determine the effectiveness of current screening practices; and 3) developing a comprehensive list of all professions, jobs, agencies, organizations and other related activities that have contact with children and youth and which might be subject to screening mandates.

This report presents the findings of the study regarding the use and effectiveness of a variety of screening mechanisms. It also offers a screening model (detailed in section IV) which, while not prescribing a designated screening practice overall or for any particular organization, outlines the steps and considerations organizations should consider in adopting a system for screening employees. The findings and recommendations in this report are directed to federal and state legislators and officials as well as administrators of national and local organizations serving children and youth.

Project Strategy and Major Findings

A multi-pronged approach to examining screening practices was employed including:

- a national survey of effective screening practices;
- an analysis of laws impacting on screening practices;
- a telephone survey of registry system practices; and
- an in-depth review of screening practices employed by the Department of Defense in response to federal legislation mandating criminal record checks for DoD sites.

National Survey. The National Survey gathered information pertinent to several of OJJDP's objectives. Approximately 3,800 child and youth-serving agencies were surveyed regarding the screening mechanisms they use (including costs, timeliness of information, quality and perceived effectiveness). The respondents were also asked their opinions on the need for specific national child and youth worker screening policies. Finally, organizations were asked whether they had identified any applicants they considered unsuitable to work with or around children, and whether they experienced any valid cases of abuse involving a staff person.

The National Survey involved collection of data from a broad spectrum of agencies classed by primary services: day care, schools, hospitals, juvenile facilities, youth development, and foster care. Findings from the National Survey yielded a large amount of complex data regarding screening types, quality of information received, and perceived effectiveness of screening in identifying unsuitable workers. The survey questioned agencies about their experiences with screening procedures including: references checks, employee and volunteer applications, interviews, criminal record checks, child abuse registries, testing (drug/alcohol, psychological), and observations (job, home visits). A few highlights are outlined below.

(drug/alcohol, psychological), and observations (job, home visits). A few highlights are outlined below.

General Information from Responding Day Care Centers, Juvenile Detention/Corrections Facilities, Public School Districts, Private Schools, Hospitals, Youth Development Organizations, and Foster Care Agencies

- The majority of child and youth-serving organizations surveyed (57 percent) are staffed by both paid employees and volunteers.
- The findings of this study represent over 14 million paid employees and 3.6 million volunteers who worked for these organizations during the year prior to the survey.
- Close to 65 million children were served by these organizations in their last year.

Frequency of Use of Selected Background Screening Mechanisms

For potential employees

- The majority of respondents conduct basic screening of potential employees: 98 percent conduct personal interviews; 93 percent check references with past employers; 86 percent use personal reference checks; and 80 percent confirm an applicant's educational status. In addition, 70 percent observe the applicant in the job position.
- 60 percent of respondents conduct at least one type of criminal record check on employee applicants; state and local checks are used more often than FBI checks.
- Almost all juvenile detention/corrections facilities (94 percent of those surveyed) conduct criminal record checks on employees, compared to only 43 percent of private schools and half of youth development organizations.
- Less than 10 percent of organizations surveyed use psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or state sex offender registry checks on employees.

For potential volunteers

- The most frequently used screening mechanisms for potential volunteers are personal interviews (used by 76 percent of organizations surveyed) and personal reference checks (used by 54 percent).
- Over one-third of respondents (35 percent) conduct at least one type of criminal record check on volunteer applicants; state and local checks are used more often than FBI checks.
- The majority of juvenile detention/corrections facilities surveyed (83 percent) conduct criminal record checks on volunteers, compared to only 12 percent of private schools, 23 percent of public school districts, and 28 percent of hospitals.

- No more than 6 percent of those surveyed use psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or state sex offender registry checks on volunteers.

Overall Quality of Information Received and Perceived Effectiveness of Background Screening

- *Employer reference checks* were most frequently selected as one of the three most effective screening mechanisms by day care centers, hospitals, public school districts and private schools; *personal interviews* were perceived as the more effective practice by youth development organizations and foster care agencies. An equal number of juvenile detention/corrections facilities perceived both employer reference checks and personal interviews to be their most effective practice.
- Just under half (47 percent) of those organizations using state criminal record checks ranked such checks as one of their three most effective screening mechanisms, while about one-third selected FBI checks and only a quarter chose local checks.
- Of those using state central child abuse registries, 58 percent of foster care agencies -- more than any other user group -- ranked such checks as one of the three most effective screening mechanisms.
- Less than a quarter (22 percent) said they identified any unsuitable *employees* during screening; only 8 percent screened out *volunteers* they deemed unsuitable.
- Organizations which, at a minimum, use "basic" screening² but no criminal record checks, were almost equally as likely to identify unsuitable applicants as those that do basic screening and at least one type of criminal record check.

Cost and Timeliness of Selected Background Screening Mechanisms

- Respondents reported an average turnaround time for local criminal record checks of about 9 days, while they said state record checks averaged 26 to 29 days and FBI checks averaged 49 days.
- 72 percent of those organizations which use local criminal record checks, compared to about one-third of those which request criminal records through the state police or state criminal history repository, said they can do the checks for free.
- Turnaround time for central child abuse registry checks closely paralleled that of most state criminal record checks, averaging about 32 days for results, according to our respondents.
- Organizations surveyed said that drug testing and psychological testing were the most expensive of the non-criminal background screening practices, with average fees of \$19 and \$16, respectively.

² "Basic" is defined as using both employer and personal reference checks, personal interviews and confirmation of educational status.

- Using liberal estimates,³ respondents spent a total of some \$53.5 million dollars on criminal record checks and approximately \$27 million on other types of background checks (e.g., child abuse registry checks, motor vehicle record checks, drug testing).

Selected Matters Specific to Criminal Record Checks

- 63 percent of criminal record check users said they conduct checks prior to hiring/placement of staff; only 5 percent use them on staff *both* prior to selection and periodically once hired.
- Organizations base their method on doing criminal record checks primarily by current name (84 percent) and social security number (72 percent); about half as many base their screening of individuals on the use of fingerprints (41 percent) and aliases (37 percent)⁴.
- 52 percent of criminal record check users said they request information from state police; about one-third each receive their information from the local police, state criminal history repository and FBI.
- Over half of respondents (52 percent) reported that information was not provided on a timely basis and 46 percent said that the criminal record screening process was too time consuming, creating delays in hiring.
- 87 percent said that conducting criminal record checks did *not* reduce the number of qualified persons willing to take a position within their agency/organization.

Incidents of Validated Abuse Against Children Involving Staff

- Private schools and day care centers were the least likely to have any validated incidents of child abuse involving staff (1 and 2 percent of respondents, respectively).
- Foster care agencies and hospitals were the most likely to have any validated incidents of child abuse involving staff (42 and 33 percent of the agencies surveyed, respectively)⁵.
- 10 percent of responding organizations which use criminal record checks had valid incidents of staff abuse of children, compared to 5 percent of those which do not check criminal records.

³ Calculations were derived by selecting out those organizations which said they used any type of criminal record check and multiplying the total number of applicants they screened by the average fee. For example, those which said they conducted FBI checks on employees and volunteers reported screening about 1.1 million applicants. It cannot be determined if, in fact, all 1.1 million actually underwent a local check, but for purposes of these estimates, we assumed they did.

⁴ Percentages do not total 100 because more than one method of identification is possible.

⁵ The higher percentage reported by foster care agencies surveyed may be due, in part, to the combining of foster care providers and staff in this analysis. Also, due to the low response rate of hospitals, it may be that only those most sensitive to the issue responded, thereby skewing the results for this group.

Legal and Regulatory Analysis. The purpose of the project's legal analysis was to outline federal and state trends in statutes and regulations for screening programs. Overall, the trend is toward increased accountability by agencies and encouraging increased state regulation in screening practices for child and youth workers.

At the federal level, Congress has over the past decade specifically addressed child care screening in a number of separate pieces of legislation: (1) the DeConcini-Specter Amendment included in the 1985 Fiscal Year Continuing Appropriations Act, P.L. 98-473, Title IV, §401(c)(2)(A), U.S.C.C.A.N. (1984); (2) the Crime Control Act of 1990, P.L. 101-647 (1990); (3) the National Child Protection Act of 1993, P.L. 103-209 (1993); and the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-222. Although the DeConcini-Specter Amendment tied the Social Security Act's Title XX funding to state laws mandating nationwide FBI criminal record screening of employees in "any facility having primary custody of children for 20 hours or more per week" as well as all juvenile detention, correctional and treatment facilities, many states did not enact such laws and the program was not funded beyond fiscal year 1985. The Crime Control Act of 1990 included a section requiring FBI checks to be done for child care workers at federal and federally contracted facilities.

The National Child Protection Act of 1993, amended by the Violent Crime Control and Law Enforcement Act of 1994, encourages states to enact legislation authorizing FBI checks for child care (and other) workers by setting forth certain procedures to be followed if states enact laws authorizing FBI checks. (A number of these procedures were already in place pursuant to other federal legislation and practice.) The Act does not mandate states to enact legislation requiring particular screening mechanisms for designated child and youth service workers. States must, however, report or index child abuse crimes to the FBI. In addition, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act was passed as part of the Violent Crime Control and Law Enforcement Act of 1994. This Act requires the development of guidelines for the registration of persons convicted of crimes against minors at the state level with provisions for reporting this information to the FBI.

This report outlines the variety of state statutes and regulations for screening purposes. Overall, state regulations require agencies to use professional references, application forms and personal interviews more than other screening mechanisms; very few states perform juvenile court record checks or require prospective workers to undergo psychological or alcohol/drug testing. State regulations also require different types of screening for different types of work settings; and for most settings, the regulations differentiated between requirements for employees and volunteers. For example, criminal record checks are required most often for direct and support personnel and youth development workers, but rarely for volunteers in schools or health care settings. States tend to require specific screening practices least often for school settings. In some states, results of required screening practices are a bar to employment for some occupations, while only a factor in other situations.

The legal analysis indicates that constraints have operated in the development of national and state screening policies. In particular, a federal respect for states' rights in policy making in this area has apparently influenced federal legislation so that, for example, the National Child Protection Act of 1993 encourages (as opposed to requires) states to pass

laws authorizing FBI checks. Furthermore, the legal analysis shows that federal efforts to encourage state regulation for screening of workers may have had less impact than intended. For instance, the amount of money appropriated for efforts to encourage screening under the DeConcini-Specter Amendment was relatively low, with some states apparently choosing to forego funds which could have been received rather than changing or adopting laws to comply with the federal legislation. Lastly, some court cases have upheld legal challenges to the use of certain screening procedures. For example, in *Valmonte v. Bane*, 18 F.3d 992 (2d Cir. 1994), the U.S. Court of Appeals for the Second Circuit reversed the lower court's dismissal of a due process challenge to the use of New York's central register of suspected child abusers in screening child care job applicants.

Telephone Registry Survey. A telephone survey of screening systems used to screen prospective child care and youth service workers was performed by the project to determine the screening systems': (1) origin and use; (2) operation, including costs; and (3) overall functioning and effectiveness. Screening systems surveyed included: (1) 10 randomly selected state criminal record repositories; (2) 9 randomly selected state child abuse and neglect central registries; (3) two statewide sex offender registries that permit screening of job applicants and have been in existence for at least one year; (4) four specialized state registries -- the North Dakota Carecheck Registry, California Trustline Registry, Tennessee Abuse Registry, and the Wisconsin Nurse Aide Registry; and (5) two national registries -- the Teacher Identification Clearinghouse, and the National Practitioners Data Bank.

State and federal statutes provided background information about the setup, design and function of these screening systems. This telephone survey provided an opportunity to further examine how well the systems work, the costs involved, the difficulties confronted in operation, and suggestions for improvement. In addition, because this survey included two national registries, it provided information useful to understanding the operation of an information sharing system on a national level. This survey therefore served to meet a specific request of the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for information on the feasibility of establishing a national registry for child care providers.

Several national professional registries focus on maintaining information concerning professionals who have had child abuse incidents or other licensing and certification problems. Inquiries to such registries provide information known about designated professionals. These registries, however, are currently hampered by funding difficulties, communication interfacing problems, and lack of resources. Recently, an increasing number of specialized "positive" registries have been developed listing individuals who have passed certain checks (e.g., records of child abuse and neglect were not found on these individuals). These registries (such as Trustline in California) enable employers (including families) to consult a list of workers already determined to be free of child abuse charges; prospective employees may enroll in the registry as a means of providing employers with a clear record. As with the professional registries and other systems, cost is an issue, as well as the scope of worker roles, the types of checks performed and the geographical area covered.

Supplemental Effectiveness Study of Department of Defense Screening. As part of the objective of developing a national screening policy, OJJDP was concerned with the effectiveness of criminal records checks and other screening mechanisms and the feasibility of mandating criminal record checks nationally. The Department of Defense (DoD) has a long history of providing child and youth services at its facilities worldwide. DoD is

mandated by federal law to perform criminal record checks for all its child and youth service workers. In addition, DoD specifically requires certain types of screening be performed for certain types of child and youth service workers. Other screening mechanisms may be used at the discretion of the employer.

A supplemental study was conducted to examine an organization with broad experience in providing services and conducting criminal record checks. Seventy-five installations were studied worldwide, including all branches of the armed services. Although the nature of DoD's military structure differs from that of other organizations, it provided an initial case example of practices implemented pursuant to legislation mandating screening actions.

Like the National Survey, this study examined the quality of information received through various screening mechanisms, as well as their effectiveness in identifying unsuitable applicants to work with children. With regard to the quality of various mechanisms, those involving direct interaction with applicants were rated the highest: on-the-job observation of applicants (70%); personal interviews (65.6%); and home visits (usually for day care providers) (55.3%).

With regard to the effectiveness of screening mechanisms, the study confirmed the finding of the National Survey that a high quality rating does not necessarily mean a screening mechanism is effective in identifying unsuitable applicants. Child abuse registry checks, employee reference checks, and personal interviews were rated among the top three by surveyed programs for effectiveness. Remaining mechanisms, however, received low ratings, indicating that no single mechanism is effective by itself, but rather should be combined with other mechanisms.

Decision-Making Model

A set of criteria was used to develop a decision-making model that would assist employers and organizations in designing their own screening policies. These criteria include:

- timeliness of information obtained
- cost (financial, human resources)
- cost-benefit and cost-effectiveness
- feasibility
- likelihood of identifying problem employees and volunteers
- legal and political constraints
- cooperation and coordination among systems.

The decision-making model was developed to assist agencies in conceptualizing the screening process. Rather than prescribing a set format for screening every worker in every setting, the model focuses on the vulnerabilities of the children served in the particular settings and the needs of the agencies, and proposes a series of steps to be considered in reaching a choice of screening mechanisms. These steps include: (1) assessing staffing needs and worker roles; (2) assessing worker characteristics; (3) assessing client vulnerabilities; (4) assessing resources available to conduct screening; and (5) assessing liability concerns. As the number of concerns increases, the extensiveness of the screening process also increases.

The decision-making model, as presented in detail in section IV of the report, incorporates these steps in a three-part process for identifying screening measures to be utilized in developing a screening policy. This three part process includes: (1) considerations of "triggers" for screening; (2) consideration of "intervenors" mediating or requiring enhancement of screening; and (3) outlining potential available screening mechanisms. The "trigger" factors include characteristics of the worker's role, the setting, staff needs, and child characteristics. Screening issues will differ depending on the number of triggers present and the extent of the contact will be critical. Intervenors represent pragmatic considerations affecting choices of screening mechanisms such as accessibility, legal requirements, financial considerations and timing issues. In developing a screening policy, the trigger factors and intervenors must be reviewed by agencies and organizations for each type of worker.

Although recognizing that different circumstances will necessitate varying levels of screening, the decision-making model proposes that at least a "basic" screening is necessary for any type of worker. The basic screening components (application with verification statement, personal interview, employment reference) can then be supplemented by additional components as appropriate, based on the trigger factors and intervenors. Consideration of the trigger factors and intervenors includes an emphasis on the amount and type of contact and the presence or absence of other children or adults. The model does not provide for a "no screening" option. Even in informal contact situations where the employer is familiar with the applicant, a personal interview, application and reference checks should be used. As the number of trigger factors increases, the number of additional screening mechanisms to be utilized increases. Under the model, the choice of the additional level of screening to perform is based on a careful assessment of the trigger factors along with the intervenors.

Project Products

The project produced a review of the screening literature and a final report presenting the results from the surveys conducted (legal, national, telephone) which covered national trends within a particular time frame. The report also provides a decision-making model to assist organizations, programs and agencies in developing screening procedures for their own use. In addition, the report contains a series of recommendations for practice, future research, and policy considerations. An appendix to the report summarizes a survey of insurance industry practices and experiences in issuing agency policies providing liability coverage for acts of child abuse. In response to OJJDP's objectives for the study, the appendix also presents sample profiles of children and youth and the extra-familial adults with whom they come into contact, along with a list of categories of organizations and employers, and the corresponding estimated numbers of workers, having contact with children.

Steps for Developing a National Child Care and Youth Services Screening Model

Recommendations for a national policy were based on the survey data, information from the telephone survey on existing registries, legal concerns, Advisory Board comments, and the expertise of the American Bar Association Center on Children and the Law. The consolidated wisdom does not support the establishment of a new National Registry of Child Offenders. Costs, overlapping screening mechanisms, problems surrounding access, and questions regarding the scope of information in such a registry, underlie the skepticism about

establishing a new National Child Abuse Registry. In addition, it must be emphasized that reliance on checks through any type of centralized registry (whether a national child abuse registry or criminal records in general) is a supplement to, and not a replacement for, the basic screening procedures.

The following recommendations are proffered to guide a national policy to address effective and appropriate screening:

- All child and youth-serving organizations should carefully consider factors impacting on screening, such as the level of contact the worker will have with children, the amount of worker supervision present, and the needs of the children served, to determine the types and extent of screening to perform on prospective workers. (These factors are described in greater detail in the discussion of the decision-making model in Section IV.)
- States should develop regulations requiring the use of basic screening practices (e.g., written application with signed verification of information, personal interview, reference checks) and such other screening methods as appropriate and consistent with the framework outlined in the decision-making model (see Section IV).
- National leadership and assistance is needed to ensure coordination and cooperation by states regarding criminal record checks.
- Technical assistance is needed for those developing state statutes and policies, and training is needed to implement screening procedures.
- Technical assistance is needed for states and registries to strengthen and improve existing systems and to ensure the information maintained is accurate and complete.
- The FBI's criminal history records system should be cross-referenced by child and sex offender crimes.
- Ways of reducing costs to users of background information should be developed (e.g., cost containment strategies).

Unresolved and Emerging Questions

In addition to the steps outlined above, several issues were raised in the course of this project. These emerging items warrant further attention for the development of effective, efficient and comprehensive screening of child care and youth service workers.

The project's National and Telephone Registry Survey respondents, along with the Advisory Board members, raised questions which were not within the scope of this project or not answerable at this time. These areas are important for understanding the limitations of screening and for examining the feasibility of implementing new policies and procedures:

- There are no known valid and reliable methods for accurately identifying potential first-time offenders.

- Use of juvenile offender information raises conflicting policy issues, as rehabilitation of the youthful offender may be at odds with screening efforts.
- Those seeking access to family court adjudications for the purpose of obtaining information for screening purposes must be sensitive to privacy interests surrounding such adjudications.
- Registries (or vastly upgraded licensing schemes) maintaining names of persons (wanting to work or volunteer with children) with no criminal records and/or no substantiated histories of child abuse or neglect should continue to be developed and detailed studies of their use and effectiveness in screening prospective workers are needed.
- It is extremely difficult and beyond the scope of this study to test the effectiveness of any particular screening technique used in isolation from all others. Therefore, while we may be able to discuss the association between using criminal records checks and subsequent reporting of abuse, more empirical studies have not yet been conducted.

In order to make screening systems most effective and responsive to public concerns for the protection of children, further attention must be focused on the mechanics and practical problems of implementation of screening practices. Included among such efforts should be the examination of:

- inclusion of allegations and arrests in addition to substantiated reports
- liability issues and their impact on screening
- mandatory disqualifying criteria
- exploration of how decreased turnaround time and costs would affect screening practices employed
- the use of a flagging mechanism which would facilitate information transfers between the FBI and state and local agencies
- post-hiring/placement periodic screening

Lastly, the study found some overarching issues which affect not only screening but other aspects of the field of child protection. These include issues which have been discussed in other contexts and may need periodic review as community needs change:

- further elaboration of definitional constraints in identifying incidents of child abuse; and
- the use of emerging technologies to enhance screening practices.

Conclusion

Efforts must be made to ensure that children in out-of-home care are not mistreated by the many adults with whom they come into contact. Effective screening measures combined with policies aimed at the continuing prevention of abuse and its identification are among the first steps in protecting children and reassuring parents with respect to their children's safety.

This project's activities have provided considerable information on efforts to screen out potentially abusive individuals who work with children. A detailed picture of current screening practices as well as estimates about the numbers of children and adults who have contact with each other in out-of-home care or service settings has been set forth. Much information on the practical and legal limitations associated with the various screening practices has also been provided. Further, recommendations, including the use of a decision-making model to guide organizations in developing their own screening policies, have been presented for future action.

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

1. OVERVIEW

1.1 BACKGROUND

Over 87 million children are involved in activities provided by child and youth service organizations and agencies each year. Millions more adults, both elderly and individuals with disabilities in need of support, are served by many, many more organizations and agencies. These encounters run the gamut from relatively brief interactions with health care or recreation providers to surrogate family relationships in foster care or intensive dependent adult care services in or out of the home. The vast majority of these encounters are not harmful or abusive, but result in much needed services being provided, 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% of the estimated 2 million elder abuse incidents occurring in the home were perpetrated by service providers.¹ A survey of 600 nursing home staff members suggested that elder abuse is a fact of institutional life with 10% admitting to physically abusing patients and 40% admitting to personally committing at least one psychologically abusive act in the preceding year.² As for children, estimates for child sexual abuse in day care centers, foster care homes and schools range from 1 to 7 percent.³ 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, P.L. 103-29, was passed. Section 3 of the Act set forth a framework through which States can authorize FBI criminal record checks for child care providers. In 1994, the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-222, amended the 1993 Act so that States could

¹Summaries of National Elder Abuse Data: An Exploratory Study of State Statistics, National Aging Resource Center on Elder Abuse. Washington, D.C. (1990).

²AARP Public Policy Institute, *Fact Sheet: Elder Abuse and Neglect* (April 1993).

³See *Effective Screening of Child Care and Youth Service Workers*, ABA Center on Children and the Law (1994) (citing Finkelhor & Williams, *NURSERY CRIMES: SEXUAL ABUSE IN DAY CARE*, Newbury Park, CA SAGE Publications (1988); Baas, *Background Checks on School Personnel*, U.S. Dep't of Education, Washington, D.C. (ED 324767 1990); Daro & McCurdy, *Current Trends in Child Abuse Reporting and Fatalities: The Results of the 1991 Annual 50 State Survey*, Chicago, Ill, National Center on Child Abuse Prevention Research, National Committee for Prevention of Child Abuse; Margolin, *Child Sexual Abuse by Nonrelated Caregivers*, 15 *CHILD ABUSE AND NEGLECT* 213 (1991).

also authorize FBI criminal record checks on those working with individuals with disabilities or the elderly. In addition, the Attorney General was directed 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." 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* CJIS Information Letter 95-3 at Appendix B). They will assist those faced with screening decisions by suggesting a decision-making model that can structure an analysis of screening issues. The Guidelines' main virtue lies in presenting a framework for making decisions about who to screen and how to screen.⁴ Examples are provided to illustrate how the model can be utilized in making screening decisions.

The decision-making model begins with factors triggering the need for screening, such as the level of direct worker-consumer contact, characteristics of the consumer served, and the amount of worker supervision present. These triggering factors set the stage for determining the types and extent of screening to perform. The next step presented in the model is to consider the intervening factors that may limit the ability to perform certain kinds of screening. These intervening factors include costs, access, and time constraints. By 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. Following consideration of triggering factors and intervening factors, the best possible screening approach can be selected.

The model contemplates that all organizations undertake at least Basic Screening (interview, verified application, reference checks) for even those situations requiring the most cursory screening. Thus, although some might suggest that no screening may be necessary for situations where the prospective volunteer or employer is known to the organization or agency, such an informal approach to screening is not advisable. Some 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 hiring or volunteer placement procedures.

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

⁴Whenever 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

individuals with disabilities in need of support. Thus, activities to continue to protect against abuse are warranted.⁵

Before turning to an examination of the specific guidelines, an understanding of the purpose of screening practices as well as some understanding of the scope of specific practices that can be used to screen individuals is appropriate. In addition, because some screening practices include access to information held by the government (e.g., criminal records), an overview of the legal framework is also included. Thus, the remainder of part one reviews the purpose and specific types of screening practices and the legal framework for those practices. Part two sets forth specific screening guidelines and the decision-making model. Appendices include the National Child Protection Act, as amended, CJIS Information Letter 95-3, several State statutes to illustrate different approaches to screening legislation, and sample forms to consider in implementing screening in the organization.

1.2 PURPOSE: PROTECTION OF CHILDREN, THE ELDERLY AND PERSONS WITH DISABILITIES

The underlying reason for screening prospective workers who may come into contact with children, the elderly or individuals with disabilities⁶ 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 previously abused others, many questions arise including: 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?

States, coalitions, and individual organizations have sought to answer these questions. Any effort to answer these questions leads 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 has access to these information databases? What kinds of limitations should be placed on access to this information? Should some of 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 bears the costs of the various screening practices?

These guidelines provide background information and a structure for analysis of these and other screening issues. With these materials, those in a position to decide screening matters will have a solid base from which to work and make their decisions.

⁵Although a detailed description of these continuing activities is outside the scope of this document, some activities are noted in Appendix C, "Post-Hiring Practices."

⁶For 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."

1.3 SCREENING PRACTICES

Typically, when background "screening" is discussed, the focus has been on the use of criminal history record information (e.g., FBI fingerprint checks). It is important to recognize, however, that there are a multitude of other practices that can be utilized to 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, dependent adult abuse and sex offender registries, psychological testing, drug testing, and home visits. (Not all of these practices are available in all States, however. The Legal Framework section, *infra*, has additional information on these practices.)

The table below is divided into three columns: 1) practices that can be considered "Basic Screening;" 2) more extensive background checks, e.g., criminal history checks ("Frequently Used"); and 3) methods that may be used infrequently or for special types of workers only ("Special Types"). Consideration of these screening methods is incorporated into the guidelines, particularly in the discussion of the decision-making model outlined in section 2.3.

SOME TYPES OF BACKGROUND SCREENING MECHANISMS

<i>Basic Screening</i>	<i>Frequently Used</i>	<i>Infrequently Used</i>
● Employment Reference Checks	■ Local Criminal Record Check	◆ Alcohol/Drug Testing
● Personal Reference Checks	■ State Criminal Record Check	◆ Psychological Testing
● Personal Interviews	■ FBI Criminal Record Check	◆ Mental Illness/Psychiatric History Check
● Confirmation of Education	■ State Central Child/Dependent Adult Abuse Registry Check	◆ Home Visits
● Written Application	■ State Sex Offender Registry Check	◆ On-the-Job Observation
	■ Nurse Aide Registry Record Check	
	■ Motor Vehicle Record Check	
	■ Prof'l Discipl. Bd Check	

Information about the practices currently being used is primarily limited to those used by organizations and agencies serving children and youth. The Department of Justice-funded study,

Effective Screening of Child Care and Youth Service Workers,⁷ included a national survey of approximately 3,800 child and youth-serving organizations and agencies on the screening mechanisms they use (including costs, 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%); reference checks with past employers (93%); personal reference checks (86%); confirmation of educational status (80%) and observed the applicant in the job position (70%).
- Overall, 60% conducted at least one type of criminal record check on employee applicants; State and local checks were used more often than FBI checks. The 60% figure reflects a range -- almost all juvenile detention/corrections facilities (94%) conducted criminal record checks on employees, compared to only 43% of private schools and half of youth development organizations.
- Less than 10% used psychological testing, home visits, mental illness/psychiatric history checks, alcohol or drug testing, or State sex offender registry checks on employees. (However, 86% of foster care agencies reported conducting home visits on prospective foster care and adoptive homes.)

For potential volunteers

- Volunteers were usually screened using personal interviews (76%) and personal reference checks (54%).
- Over one-third (35%) 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%) conducted criminal record checks on volunteers, compared to only 12% of private schools, 23% of public school districts, and 28% 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 on volunteers.

1.3 THE UNIVERSE OF PERSONS HAVING CONTACT WITH CHILDREN, THE ELDERLY AND PERSONS WITH DISABILITIES IN NEED OF SUPPORT

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

⁷ABA Center on Children and the Law (Washington, D.C. 1995) (study funded by Office of Juvenile Justice and Delinquency Prevention, Department of Justice).

- Day Care: child care, senior citizen centers, 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" health care;
- Foster Care: placements for adults in need of support services or children in the State's care as a result of abuse or neglect, or from delinquency;
- Other Out-of-Home Settings: assisted living units/community living programs and semi- and independent living programs;
- Schools: public and private, including pre-school and nursery school;
- Shelters: homeless or domestic violence;
- Youth Development: community or volunteer organizations serving children and youth (e.g. Court Appointed Special Advocates (CASA), Boy Scouts of America, Girl Scouts USA, Big Brothers/Big Sisters programs);
- Volunteer Programs (for the elderly or individuals with disabilities): Social Security representative payee, AARP 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 instances where screening may be considered is extraordinary. State efforts to coordinate screening are strongly encouraged.

1.4 THE LEGAL FRAMEWORK

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 may require legislative or administrative action before the information can be accessed for screening purposes. Specifically, checks of criminal records and State central abuse registries (which maintain information on "founded" or "substantiated" reports of abuse or neglect) involve governmental compilations of information and may require legislative or administrative action before they may be used for screening. Similarly, sex offender registries (that stem from statutes requiring convicted sex offenders to register with law enforcement agencies where they reside -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 record keeping was developed to assist law enforcement or criminal justice entities in tracking crimes 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; sex offender

registration requirements were designed to aid law enforcement in investigating sex crimes by tracking persons convicted of sexual offenses.⁸

As a result of the different purposes for which these information sources were developed, their use to identify potentially abusive individuals has raised questions and spawned 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 persons 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 the State laws and regulations vary widely in the type and scope of screening required.

1.4.1 FEDERAL LAW

Screening, at least with respect to child care workers, has been a topic of federal legislation for some time.⁹ Recent federal action has focused on criminal records and sex offender registration. The National Child Protection Act of 1993,¹⁰ which was amended in 1994 by the Violent Crime Control and Law Enforcement Act of 1994,¹¹ 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. The Act, as amended, did not itself permit or require that any such checks be done, but maintained respect for State policy-making in this area while encouraging States to consider screening legislation. Whether *national* checks are required or permitted continues to depend upon whether there is a *State* statute, approved by the Attorney General, that specifically authorizes the national (fingerprint) checks.¹² Appendix B (CJIS Information Letter 95-3) answers many questions about the Act. (A copy of the Act, as amended, appears at Appendix A.)

⁸See the discussion, *infra*, of each type of registry. See generally, DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIMINAL JUSTICE INFORMATION POLICY, ORIGINAL RECORDS OF ENTRY (1990) (criminal records); U.S. DEPT OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIMINAL JUSTICE INFORMATION POLICY, PRIVACY AND THE PRIVATE EMPLOYER (1981) (criminal records); NATIONAL CENTER FOR STATE COURTS, CENTRAL REGISTRIES FOR CHILD ABUSE AND NEGLECT: NATIONAL REVIEW OF RECORDS MANAGEMENT, DUE PROCESS SAFEGUARDS AND DATA UTILIZATION (1988) (central child abuse registries).

⁹See P.L. 98-473, Title IV, §401(c)(2)(A), U.S.C.A.N (1984) (to get Title XX funds, States must have background check procedures for child care facility employees); The Crime Control Act of 1990, P.L. 101-647 (criminal checks required of employees at federally operated and contracted child care facilities).

¹⁰National Child Protection Act of 1993, 42 U.S.C. §5119a, 107 STAT. 2490 (1993) (also known as the "Oprah Bill").

¹¹For the text of the National Child Protection Act, as amended by the Violent Crime Control and Law Enforcement Act of 1994, see the appendix.

¹²See National Child Protection Act, P. L. 103-209, 107 STAT. 2490, §3(b)(5) (requirement that any background check and the results thereof shall be handled in accordance with P. L. 92-544); Pub. L. 92-544, 86 Stat. 1109 (authorized national checks for non-criminal justice purposes if pursuant to State statute and through a State agency).

Sex offender registration was the focus of the Jacob Wetterling Crimes Against Children 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 Federal Bureau of Investigation. The information collected is to be treated as private data, but can be disclosed to government agencies conducting confidential background checks¹³

1.5.2 STATE LAWS

Legislation regarding the screening of persons working with children, the elderly and persons 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 agency with child welfare and protection responsibilities) often only reach those who participate in the child protection system. Typically, this may include child welfare workers, foster or adoptive parents, and persons who may work with or care for children 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 may require checks from the State central abuse and neglect registry or criminal history records. A few licensing statutes may be more detailed and require licensees to make efforts to contact previous employers.

The laws also vary in the types of workers to be screened. Some laws requiring criminal checks of home health aides and attendants only cover employees. Laws in other States may include those providing direct care and substitute caregivers. In addition, the settings covered vary. For example, many States require criminal record checks for day care workers, some cover schools, some include licensed home health care facilities, and some cover "those with supervisory or disciplinary authority over a child." Specific exceptions, however, often exist. With respect to services for children, exceptions have included: (1) school-based child care; (2) child or youth recreation groups, such as scouting or camping organizations; (3) child care affiliated with a religious group; (4) youth programs operated in adult facilities; (5) babysitting arrangements; (6) single family "nanny" situations; and (7) day care situations in which less than a specified number of children -- often 3, 4, or 5 -- are cared for.

¹³Subpart (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.

Because licensing may not always be an appropriate mechanism for encouraging 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.¹⁴ Most States do not maintain registries on persons who are being investigated for or have committed abuse against the elderly or dependent adults.¹⁵

More than half of 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 twelve States have enacted statutes mandating criminal background checks of nurse aides with several additional States having proposed legislation.¹⁶ 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 aides to all staff, including volunteers in certain circumstances, having access to children and adults in need of supportive services.

2. SPECIFIC SCREENING GUIDELINES AND DECISION-MAKING MODEL

2.1 State POLICIES/LEGISLATION

Basic Principles of Screening

To prevent the abuse of children, the elderly and individuals with disabilities, 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 decision-making 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, to consider the adoption of statutes authorizing criminal record checks, and to encourage abuse prevention training.

- States are encouraged to have statutes and implementing regulations requiring the use of basic screening practices such as appropriately developed applications, personal

¹⁴See, e.g., ALASKA STAT. §12.62.035 (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").

¹⁵All States do have statutes providing for the investigation of elderly or dependent adult abuse and an estimated forty-two have some form of mandatory reporting. ABA Commission on the Legal Problems of the Elderly, obtained from chart compilations on Adult Protective Services and related statutes to be published.

¹⁶Information 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 aides (some cover other care givers as well): California, Florida, Kentucky, Louisiana, Minnesota, Nevada, Oklahoma, Rhode Island, Texas, Vermont, Virginia, and Washington.

interviews, and reference checks for all workers, including volunteers. Depending upon the circumstances, additional screening practices may be warranted for specific types of workers in certain settings. As outlined in the decision-making 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 and employees.

- 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 decision-making model provides a mechanism that can 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 providing an opportunity to refute the information found is appropriate.

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

- States are urged to consider enacting statutes and implement regulations encouraging abuse prevention training for all workers (including employees and volunteers) at child and dependent adult service agencies, organizations, and facilities.

Criminal Record Repositories

An accurate and complete criminal record repository, whose records 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) for limitations on the use/disclosure of the FBI criminal record checks as well as requirements to complete records lacking disposition data.
- Passing laws allowing access to State criminal record information to broadly permit screening of persons working 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 by incorporating at-cost fees and providing discounts for volunteers of non-profit organizations, for workers at day care 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 Child/Elderly/Dependent Adult Abuse and Neglect Registries

- Create and maintain registries in those States where they do not exist.
- States using abuse, licensing, and certification registries for purposes of screening should establish clear policies for their use and scope.

These policies should include specific guidelines consistent with due process in regard to the use of registries for screening, definitions, policies on retention of information, methods for purging names and cases accurately reflecting the results of dispositions, hearings and appeals by those listed in the registries.

- Consider separating the employment or volunteer screening function from the use of the civil abuse and neglect registries as a research and diagnostic and risk assessment tool.
- Standardize abuse definitions to make registries more consistent among jurisdictions to facilitate the exchange of information among jurisdictions. Standardized definitions could be developed through a national network of abuse registry directors or other interstate panel is advisable.

Ensure dependent adult abuse registries define abuse to include fiduciary abuse or exploitation and mental harm.

- Cross-index abuse registries by perpetrator, nature of offense, and locale to ease access to information; enact statutes or implement policy and procedure 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 where they reside. The Jacob Wetterling Crimes Against Children Act, 42 U.S.C. 14071, sets forth federal law requirements for these registries. States are encouraged to consider:

- Permitting access to child and dependent adult-serving organizations 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 which ensure offender compliance with registration requirements.

One aspect of ensuring compliance would be increasing awareness among local jurisdictions and offenders regarding registration requirements immediately after every move. One possibility would be to not only require the individual offender to register, but also require the institution from which he/she was released or the legal entity which rendered the offender guilty of a sex crime to forward the information. Another compliance measure is the address verification process found in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. 14071.

- Increase information sharing among criminal justice agencies, particularly from the local to the State level, to enable screening to be conducted.

Special Considerations:

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

- Implement a system so that information about individuals currently working in settings requiring licensure or certification who commit violent crimes, sex crimes, or crimes involving children, the elderly or individuals with disabilities is conveyed to the appropriate agencies. Operational details about how such a system might work in a particular State would, of course, have to be developed with the FBI and the appropriate State agencies.

A *flagging system* to obtain information as it arises and ensure that it is passed on to the appropriate sources, e.g., licensing or certification agencies, would be of assistance. Such a system could be modeled after that used by the Federal Aviation Administration (FAA) and the FBI. When the FBI comes across a case involving a pilot, this information is flagged and sent to the FAA. A similar system could be used, with information about abusers forwarded to child and/or adult protective services and/or State licensing agencies.

- 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, with appropriate due process safeguards, a clear Statement of investigative responsibilities, and agencies' duties to notify other agencies regarding those committing relevant crimes;

Adopt clearly written policies on information-sharing among 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; and

Develop licensing/registration laws and regulations to include: minimum staff qualifications; personal and past employment reference-check procedures; abuse awareness and other training; clearly defined requirements of adequate supervision; written application with signed affidavit verifying truthfulness and accuracy of information in application coupled with clear Statement that untruthfulness is a basis for suspension or termination of employees/volunteers; authorization to licensing agency to impose fiscal penalties and/or revocation of license.

In revising licensing/registration laws, particular consideration should be given to reviewing existing exemption or exception clauses so licensing/registration provisions 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.

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 effectively to be accessed through registries, criminal record repositories, and other screening mechanisms, 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) towards the development of uniform offense codes, reporting procedures, and standardized training for personnel entering and documenting 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 transmit screening information efficiently and timely and that may ultimately decrease the costs of accessing this information.

In the 1990's there has been a significant increase in the number and extent of on-line computer systems. 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.

Further Study:

- Consider statutory amendments that would require employers to report employee or volunteer terminations from employment due to their inappropriate conduct toward a consumer.

2.2 ORGANIZATIONS:

Levels of Screening:

- Adoption of a screening policy by organizations providing care or services to children, the elderly and individuals with disabilities is warranted. The three part decision-making model 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; and standards for working with vulnerable populations. Advising applicants of the organization's screening policy is recommended. Reviewing this policy annually and as new information on available mechanisms arises is also appropriate.

- Basic screening of all potential workers is appropriate. (Additional screening, as noted below, may also be in order.)

All applicants who are seeking a position to work or volunteer with children, the elderly, and individuals with disabilities should be screened at a basic level. Basic screening should include 1) a comprehensive *application* form with a signed Statement; 2) a thorough personal *interview* which examines an applicant's past employment or volunteer experience and explores other indicators of potential problem behavior; and 3) *reference checks* with past employers (or appropriate reference checks for volunteers and young adults) and personal contacts. The references should be checked for each individual completely. In addition, a confirmation of education status may be appropriate.

- Screening practices in addition to those identified above as Basic Screening may be warranted.

Thorough consideration of all relevant factors will inform an organization in determining whether additional screening practices are warranted for some or all of its workers. The decision-making model (see section 2.3) can assist 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 other 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.

The following actions will assist an organization in developing such a strategy, which 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 the completion of the screening process, should be restricted to situations where there is supervision or the presence of at least one other worker and the applicant is not alone with vulnerable individuals for any period of time. In addition, the organization is advised to retain the right to terminate the individual if adverse or incorrect information turns up.
- 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 and/or a dependent adult (regardless of how long ago the incident occurred) and/or any violent crime within the last 10 years.

It is recommended that disqualification for all other crimes and/or questionable behavior be discretionary, with incidents evaluated based on consultation with appropriate professionals and attention to:

- the relationship between the incident and the type of employment or service that 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/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 crime is likely to be repeated;
- the nature, severity, number, and consequences of incidents disclosed;
- the circumstances surrounding each incident, including contributing societal or environmental conditions;
- the age of individual at time of incident;
- the amount of time elapsed since incident occurred.

2.3 Decision-Making Model

BACKGROUND

The number of persons who may have contact with children and vulnerable adults is tremendous. 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 tremendous differences in organizational purpose, staffing needs and available resources, these guidelines include a decision making model rather than a list of screening practices to be used in every circumstance. The model poses questions to be asked when deciding what background

screening practices to utilize. The model assumes, assume that screening for any position will include at least a written application with signed Statement, reference checks, and interview. Supplemental screening measures may also well be warranted.

The decision making model provides a framework for analyzing when to conduct supplemental screening practices. As a framework or guide to assist States, organizations, and others in developing screening policies, the model reflects Congress' desire to encourage screening practices, while maintaining deference to the States on this issue.¹⁷ The decision making model contemplates that a serious, careful examination take place focussing 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 suggested screening practices and policies aimed at particular settings. Screening practices for specific settings and types of workers (employees or volunteers) could also incorporate practices aimed at evaluating competence for particular tasks. This model does not directly address these competence goals.

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) as well as 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 D: Post-Hiring Practices also set forth information that may be useful. Notably, these are suggestions for consideration. There may be many other ways to implement screening and other practices.

Preparation Steps Before Using the Model

Review Tasks and Positions. Reviewing the types of positions in the organizations and the general tasks and characteristics of each is useful before beginning to assess the screening that may be 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 decision-making model focuses, however, on the former and not the latter.

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, murder, other offenses? A clear understanding of the specific harms to attempt to avoid in view of the particular positions will help to focus discussion of screening issues. For example, concerns about theft may be especially important in certain programs serving the elderly.

THE MODEL (Diagram of model follows textual discussion.)

¹⁷Although this decision making model was drafted for States, organizations and others, some language may pertain to the organization only.

Step 1: Assessment of Triggers -- A Look at Setting, Worker/Child Contact and Special Considerations

The screening decision-making 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 child, and special considerations.

Setting

The setting considerations include:

- (1) whether others (adults or children) will be present during the contact (the opportunity for abuse on location is increased if no one else is present);
- (2) who the other people are who are present (the opportunity for abuse may still be exceptionally high if other young children or certain vulnerable adults are the only others present);
- (3) whether the worker is closely monitored and supervised;
- (4) 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);
- (5) the physical location of the contact (e.g. in a classroom, a camp, anywhere; care should be taken in considering all of the activities and their different physical locations, including transportation to and from events).

Contact

Considerations as to the contact between the worker (employee or volunteer) and child or vulnerable adult include:

- (1) the duration of the contact (how much time is spent with the client per occasion);
- (2) the frequency of the contact and the length of the relationship (e.g., one-time only, once a week for a year); and
- (3) the type of contact (e.g., does the worker have direct contact with children or vulnerable adults or does the worker 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? An examination of the vulnerability of the persons served is important at this point. Those whose ability to communicate is impaired through age, infirmity, life history or for 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, there may also be statutory or regulatory requirements in place.

Step 2: Evaluation of Intervenors to Decision Making

With the triggers in mind, consideration moves to the second step of evaluating "intervenors" or items that may limit or impact on 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 to be done on 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 decision making process.¹⁸
- **Liability Concerns.** The risk of liability may impact on screening decisions. The law 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/position at hand. Liability concerns may also stem from negligent hiring torts where organizations have found themselves being sued when a client has been injured by an employee or volunteer they selected.
- **Presence of Other Risk Reduction Measures.** A look at other risk reduction measures gives a more complete picture so that an evaluation can be made, with appropriate screening practices selected. The inclusion of risk reduction measures as an intervenor does not, however, suggest that these measures necessarily obviate the need for any supplemental screening. Rather, their presence is appropriate as a pragmatic factor to be considered in an evaluation of the screening practices to be 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 to Be Used

¹⁸To reduce the utilization of "unscreened" individuals in "emergency" situations, child care centers and others that frequently have "unexpected" personnel departures may form relationships with umbrella organizations or private groups to provide personnel support by maintaining a roster of screened individuals. Or a screened staff person may be designated as a "floater" to fill in as needed.

The third step puts together information gleaned from steps 1 & 2 along with various screening options. The advantages and disadvantages of each practice should be reviewed at this time.

The model contemplates that all situations will require at least the "Basic Screening," which includes a written application with a signed Statement, professional and personal reference checks, and personal interviews.

The model also contemplates that *supplemental* screening practices may be warranted based upon the information discerned from steps one and two. As the extent and number of "triggers" increases, supplemental screening measures are appropriate. For example, circumstances where repeated one-on-one contact is had between one worker and one child or dependent adult, often in very private surroundings will merit supplemental screening practices.¹⁹

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 when the educational degree is relevant to the task to be performed by the applicant, if selected); motor vehicle record check; local, State or FBI criminal record check; central child or dependent adult abuse registry check; sex offender register check; home visits; psychological testing; alcohol or drug testing; or psychiatric history check.

An Example Using the Decision-Making Model

To illustrate the use of the decision-making model, take the case of a mentoring program where mentors are matched with children and the goal is fostering one-on-one relationships between children and supportive non-familial persons to build the children's self esteem and expand their views of the world. Assume that the mentor program is an off-shoot of another organization and is limited to one city in one State. The mentor 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. Mentors themselves are strictly volunteers.

The Mentor Example: Step 1

In using the model, the first step requires a look at setting, contact and special considerations.

The Mentor Example: Setting Considerations

¹⁹Some of the local chapters of the Big Brothers/Big Sisters organization have developed extensive screening procedures. For example, the Big Brothers/Big Sisters of Greater Lowell, Massachusetts has developed a comprehensive interview screening tool. See Appendix E for a summary of the interview screening tool. Further, where authorized by law to do so, Big Brothers/Big Sisters generally obtains criminal record checks on their volunteers and staff.

(1) Will others will 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 is set aside for these outings. Although the organization encourages educational or sports activities (e.g., visits to the library, museum, bowling) where other adults or children generally present, these “public” activities need not take place. The mentor and child could choose to go hiking, sit in a park and play cards, etc.

(2) Who else might be present? Under this scenario, it could be anyone or no one.

(3) 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 let them know how the visits with the child are going, and 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 and drops him off for each visit and may briefly see the child’s guardian at those pick up and drop off 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.

(4) How will the mentor be involved with the organization? In this case, the mentor will be volunteers who devote at least several hours once a month in visiting 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 children of that age.

(5) Where will the visits take place? Since 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 bus or cab), and a variety of other locations such as a restaurant, sports facility, park, hiking trail, zoo, museum, movie theater, etc. They could in fact take place at the mentor’s home (for example, the mentor and child decide they want to learn to make pizza).

The Mentor Example: – Contact Considerations

(1) How much time will be spent with the child on each visit/outing? Under our scenario, anywhere from one to six hours.

(2) What will the scope and frequency of the contacts be? At least once a month for a period of a year.

(3) What type of contact will the mentor have? Each mentor will have direct, one-on-one contact with a single child.

The Mentor Example: Special Considerations

In our scenario, the children are preteen youth. Generally, they have some neglect or abuse in their past. They generally are 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.

The Mentor Example: Summary of Step 1 -- Assessing the Presence and Degree of Screening Triggers

In reviewing the answers to the series of questions that comprise the first step, it becomes clear that in this case, there are several factors that 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.

The Mentor Example: Step 2 -- Evaluating Intervenors

The second step is to examine the factors that may “intervene” and impact on the ability to screen. Under our scenario, assume that certain information – State central child abuse registry and sex offender registry information is not available. Likewise, assume that State criminal record checks (done by name, not fingerprint) are not required but are available for a fee of \$5 per name. Assume that federal (fingerprint) checks are not authorized by State statute.

The Mentor Example: Step 3 -- Analyze and Select Screening Practices

Under our scenario, supplemental screening factors are warranted. The repeated one-on-one contact, which may take place anywhere at various times of the day, presents risks. When coupled with the limited ability to monitor the mentor, and the relatively modest fee assessed for a State criminal check, use of this check would appear to be warranted. Some may, however, find that this determination would change given different facts. For example, if the mentors were high school students (generally aged 15-17 at time of beginning to mentor), some may find that running criminal checks is not warranted. Others may view the cost as being minimal (and able to be passed on to the applicant without losing volunteers), and would proceed with the criminal check out of an abundance of caution.

Family - child care policy -
criminal background checks

Leanne A. Shimabukuro 09/11/97 06:53:25 PM

Record Type: Record

To: Elena Kagan/OPD/EOP, Jennifer L. Klein/OPD/EOP, Nicole R. Rabner/WHO/EOP
cc: Jose Cerda III/OPD/EOP
Subject: background checks for child care workers

Jose asked me to pass along the highlights of the meeting we had a couple weeks ago on background checks for day care workers.

While a few federal laws have been passed to either facilitate or encourage such checks, they have had little impact and substantial obstacles remain:

* **No national standards exist for background checks.** "Background checks" can mean either a criminal history name check, a fingerprint check, or a civil records check. Moreover, states vary widely on who they check (part-time/full-time employees) and the scope of crimes they are checking.

* **There is no single database for background checks.** The feds and the states have their own information systems and many criminal justice records remain decentralized at the local level. In addition, these information systems may not collect all of the relevant information relevant for day care workers (e.g., sex offender registry may identify a convicted child molester but not a child abuser).

* **Cost of background checks.** The cost of checks can be substantial. Fingerprint checks are at least three times as expensive as name checks, but are more reliable. Concerns were raised about passing these costs along to the customers, many of whom may already find child care costs prohibitive. Moreover, child care facilities have a high rate of employee turn over.

Since the Supreme Court's decision the Brady Law, there is a heightened sensitivity to imposing mandates on states in this area, particularly without providing additional funding. Our discussion on moving forward was focused on an Interstate Compact bill which the Justice Department is preparing to send to the Hill this month. Under the Compact-- which must first be passed by Congress and then by individual states-- the FBI would maintain an index of all of the state-maintained criminal history records and the ground rules for states to share their information.

This would be a solid first step to expand the availability of criminal history records for "non-criminal justice purposes." The downside is that each state needs to ratify the compact if they want to participate-- which could take a long time.

The next meeting will continue to focus on other options to expand access; privacy concerns; and recommendations.

Family-child care - criminal
background registry

Parent Urges State Registry For Providers Of Home Care

By JOHN T. McQUISTON

MANHASSET, N.Y., July 23. — Peggy Dunne, whose infant son, Kieran, was killed by his nanny four years ago, urged state lawmakers today to establish a state registry for people who provide in-home care to children, the elderly and the infirm.

"We didn't know at the time we hired her that almost everything she told us was a lie," said Mrs. Dunne, the lead witness at the first of a series of public hearings on legislation intended to help families find qualified nannies and other home-care workers.

"She lied about her education, her employment history, and she lied by saying she had never been in trouble with the law," Mrs. Dunne said. "And the doors which contained the truth were closed to us because we were merely private citizens looking for a care-giver for our baby."

The proposed registry would enable families to obtain information before making hiring decisions, said State Senator Suzi Oppenheimer, Democrat of Mamaroneck, whose district includes the Westchester County town of Rye, where the Dunnes lived at the time of the killing.

Mrs. Dunne, who worked as a project manager in the marketing department of The New York Times, now lives in London with her husband, David, an analyst with Bear Stearns, and their three children.

Senator Oppenheimer, who introduced the bill in March, said the measure would be known as "the Kieran Dunne home care-giver registration act." Kieran's 25-year-old nanny, Ann Franklin, was sentenced in 1994 to up to 25 years in prison after admitting that she killed the 10-month-old child.

Senator Oppenheimer said the registry would provide information on a potential home-care employee's education, employment and criminal background. She said participation in the registry would be voluntary.

"It would provide the same kind of information that is routinely provided to people who employ security guards, school bus drivers and oth-

ers who require background checks," Senator Oppenheimer said. State Assemblyman Thomas P. DiNapoli, Democrat of Great Neck on Long Island, a co-sponsor of the measure, said the time had come "for the Legislature to act to provide families with the information they need to protect themselves from harm."

He said educational, medical, driving and credit records and a person's employment history would be made available, and fingerprints would be checked against files at the Federal Bureau of Investigation.

The state would charge home-care workers \$100 for the initial processing and investigation. There would be an annual renewal fee of \$50. The funds would help pay the costs of a fingerprint search by the F.B.I.

Prospective employers would pay \$75 for their first report from the registry and \$25 for each additional inquiry in any calendar year.

Most of the witnesses today agreed that some form of registry was necessary, but some expressed concern about the additional cost to the home-care industry and the impact of singling out a group of workers who were already at the low end of the pay scale.

Lori Talbert, a member of the Household Agencies and Nurses Registries Association, said she supported the concept of a state registry for home-care workers, but with reservations.

"The registry should be mandatory for it to be effective," she said, "otherwise few will subject themselves to the costs, inconvenience and the invasion of privacy."

She said registry fees should be minimal, because the cost might force workers to secure employment elsewhere or through an underground network.

Glen Edwards, president of Care-givers On Call in Lynbrook, Long Island, said that by singling out a group of workers, lawmakers were inferring that they were not trustworthy unless they underwent a security check.

"Why should the 99 percent who are hardworking and honest have to pay for the one bad apple who wants to spoil it for everyone else?" Mr. Edwards asked.

Mrs. Dunne said the the registry was not intended to harm anyone.

"Our intent," she said, "is to protect families from experiencing the pain we have had to live with, a pain that never goes away."

An effort to help
families learn
before they hire.

Family-child care -
criminal background registry

MEMORANDUM

TO: BRUCE REED, ELENA KAGAN

FROM: TOM FREEDMAN, MARY L. SMITH

RE: NATIONAL REGISTRY OF PATIENT CARE WORKERS

DATE: AUGUST 8, 1997

SUMMARY

Senator Kohl (D-WI) has introduced a bill to establish a registry of abusive and criminal patient care workers and to require criminal background checks of patient care workers.

BACKGROUND

- States are already required to maintain a registry of nurse aides, but there have been many instances of workers with criminal backgrounds being listed as eligible nurse aides.
- Current safeguards have not prevented abuse for several reasons, including the following:
 - Many states do not require criminal background checks;
 - The content of each state's registry varies considerably;
 - Abuses are difficult to verify and posting of violators can be excessively delayed;
 - Abusive workers are often dismissed without a report being filed;
 - Workers can evade registries by moving from state to state; and
 - States hesitate to document problem workers because a listing means barring a person from working in a nursing home for life.

HIGHLIGHTS OF PROPOSED LEGISLATION

S.1122 would:

- Create a national registry of abusive workers. HHS would establish and maintain the registry. HHS is currently setting up a health care fraud and abuse data bank pursuant to the Health Insurance Portability and Accountability Act, and this bill would increase the scope of that data bank.
- Expand the contents of current state registries. The contents of the national registry would expand the category of workers covered to include other health care workers and personnel that have direct contact with vulnerable patients from simply nurse aides.

- **Codify HHS regulations that require long-term care facilities to investigate and report abuses for further investigations to the appropriate state agency.**
- **Require mandatory criminal background checks. FBI criminal background checks will be required for those direct patient care workers who have not been subject to a criminal background check under state licensing requirements. States may charge fees to cover the cost of the FBI check. Facilities may split the cost of the fees with the applicant.**
- **Provide penalties for non-compliance. If a provider fails to inquire with the state and hires a known abuser, the provider is subject to a fine of \$2,000 for the first violation and \$5,000 for subsequent violations. For willful violations, the fines increase up to \$10,000.**
- **Create a demonstration project to provide training to prevent abuse.**

Family - child care - crim
background checks

Criminal Checks by State

STATE	CENTER	FAMILY CHILD CARE
AL	none required	none required
AK	criminal check reqd for all	criminal back check required, abuse not
AZ	child abuse not required	criminal back check required, abuse not
AR	child abuse and criminal back required	background checked
CA	child abuse and criminal back required	criminal back check required, abuse not
CO	child abuse and criminal back required	child abuse and criminal back required
CT	criminal back check required, abuse not	criminal back check required, abuse not
DE	criminal back check required, abuse not	criminal back check required, abuse not
DC	none required	none required
FL	criminal back check required, abuse not	child abuse and criminal back required
GA	criminal back check required, abuse not	criminal back check required, abuse not
HI	child abuse and criminal back required	child abuse and criminal back required
ID	child abuse and criminal back required	criminal back check required, abuse not
IL	child abuse and criminal back required	child abuse registry check, no crim check
IN	child abuse and criminal back required	criminal back check required, abuse not
IA	child abuse and criminal back required	child abuse and criminal back required
KS	child abuse and criminal back required	child abuse and criminal back required
KY	child abuse and criminal back required	criminal back check required, abuse not
LA	child abuse and criminal back required	criminal back check required, abuse not
ME	child abuse and criminal back required	criminal back check required, abuse not
MD	criminal back check required, abuse not	child abuse and criminal back required
MA	criminal back check required, abuse not	criminal back check required, abuse not
MI	criminal back check required, abuse not	criminal back check required, abuse not
MN	child abuse and criminal back required	criminal back check required, abuse not
MS	child abuse and criminal back required	criminal back check required, abuse not
MO	ch. abuse reqd not abuse	none required
MT	child abuse and criminal back required	criminal back check required, abuse not
NE	child abuse and criminal back required	some cities have crim back checks
NV	child abuse and criminal back required	criminal back check required, abuse not
NH	child abuse and criminal back required	child abuse and criminal back required
NJ	none required	none required
NM	child abuse and criminal back required	criminal back check required, abuse not
NY	ch. abuse & maltreatment	screen for abuse no crim back check
NC	no ch abuse convic allowed no back ch	crim back check being implemented
ND	child abuse reqd no criminal back check	child abuse & neglect check reqd no crim
OH	criminal back check required, abuse not	criminal back check required, abuse not
OK	criminal back check required, abuse not	criminal back check required, abuse not

OR	child abuse and criminal back required	criminal back check required, abuse not
PA	child abuse and criminal back required	child abuse registry clearance
RI	child abuse and criminal back required	criminal back check required, abuse not
SC	child abuse and criminal back required	criminal back check required, abuse not
SD	child abuse and criminal back required	screen for abuse no crim back check
TN	none required	none required
TX	criminal back check required, abuse not	child abuse and criminal back required
UT	child abuse and criminal back required	child abuse and criminal back required
VT	child abuse and criminal back required	child abuse and criminal back required
VA	criminal back check required, abuse not	criminal back check required, abuse not
WA	child abuse and criminal back required	criminal back check required, abuse not
WV	criminal back check required, abuse not	criminal back check required, abuse not
WI	child abuse and criminal back required	criminal back check required, abuse not
WY	none required	child abuse central registry check done