

Crime Control Act of 1990 - Public Law 101-647

Section 226. CHILD ABUSE REPORTING

- (a) **IN GENERAL** – A person who, while engaged in a professional capacity or activity described in subsection (b) on federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the agency designated under subsection (d).
- (b) **COVERED PROFESSIONALS** – persons engaged in the following professions and activities are subject to the requirements of subsection (a):
- 1) Physicians, dentists, medical residents or interns, hospital personnel and administrators, nurses, health care practitioners, chiropractors, osteopaths, pharmacists, optometrists, podiatrists, emergency medical technicians, ambulance drivers, undertakers, coroners, medical examiners, alcohol or drug treatment personnel, and person performing a healing role or practicing the healing arts.
 - 2) Psychologists, psychiatrists, and mental health professionals.
 - 3) Social workers, licensed or unlicensed marriage, family, and individual counselors.
 - 4) Teachers, teacher's aides or assistants, school counselors and guidance personnel, school officials, and school administrators.
 - 5) Child care workers and administrators.
 - 6) Law enforcement and juvenile rehabilitation or detention facility employees.
 - 7) Foster parents.
 - 8) Commercial film and photo processors.
- (c) **DEFINITIONS** – for the purposes of this section –
- 1) The term 'child abuse' means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;
 - 2) The term 'physical injury' includes but is not limited to lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;
 - 3) The term 'mental injury' means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response or cognition;
 - 4) The term 'sexual abuse' includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;
 - 5) The term 'sexually explicit conduct' means actual or simulated –

- a) Sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner-thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;
 - b) Bestiality;
 - c) Masturbation;
 - d) Lascivious exhibition of the genitals or pubic area of a person or animal; or
 - e) Sadistic or masochistic abuse;
- 6) The term 'exploitation' means child pornography or child prostitution;
 - 7) The term 'negligent treatment' means the failure to provide, or reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and,
 - 8) The term 'child abuse' shall not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.
- (d) **AGENCY DESIGNATED TO RECEIVE REPORT AND ACTION TO BE TAKEN** – For all federal lands and all federally operated (or contracted) facilities in which children are cared for or reside, the Attorney General shall designate an agency to receive and investigate the reports described in subsection (a). By formal written agreement, the designated agency may be a non-federal agency. When such reports are received by social services or health care agencies, and involve allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, there shall be an immediate referral of the report to a law enforcement agency with authority to take emergency action to protect the child. All reports received shall be promptly investigated, and whenever appropriate, investigations shall be conducted jointly by social services and law enforcement personnel, with a view toward avoiding unnecessary multiple interviews with the child.
- (e) **REPORTING FORM** – In every federally operated (or contracted) facility, and on all federal lands, a standard written reporting form, with instructions, shall be disseminated to all mandated reporter groups. Use of the form shall be encouraged, but its use shall not take the place of the immediate making of oral reports, telephonically or otherwise, when circumstances dictate.
- (f) **IMMUNITY FOR GOOD FAITH REPORTING AND ASSOCIATED ACTIONS** – All persons who, acting in good faith, make a report by

subsection (a), or otherwise provide information or assistance in connection with a report, investigation, or legal intervention pursuant to a report, shall be immune from civil and criminal liability arising out of such actions. There shall be a presumption that any such persons acted in good faith. If a person is sued because of the person's performance of one of the abuse functions, and the defendant prevails in the litigation, the court may order that the plaintiff pay the defendant's legal expenses. Immunity shall not be accorded to persons acting in bad faith.

- (g) **CRIMINAL PENALTY FOR FAILURE TO REPORT** – (1) Chapter 110 of title 18, United States Code, is amended by adding at the end thereof the following new section:

Sec. 2258. Failure to Report Child Abuse

'A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be guilty of a Class B misdemeanor.'

Section 2251.

- (h) **TRAINING OF PROSPECTIVE REPORTERS** – All individuals in the occupations listed in subsection (b)(1) who work on federal lands, or are employed in federally operated (or contracted) facilities, shall receive periodic training in the obligation to report, as well as in the identification of abused and neglected children.

Subtitle E – Child Care Worker Employee Background Checks

SEC. 231. REQUIREMENT FOR BACKGROUND CHECKS

- (a) **IN GENERAL** – (1) Each agency of the federal government, and every facility operated by the federal government (or operated under contract with the federal government), that hires (or contracts for hire) individuals involved with the provision to children under the age of 18 of child care services shall assure that all existing and newly-hired employees undergo a criminal background check. All existing staff shall receive such checks not later than 6 months after the date of enactment of this chapter, and no additional staff shall be hired without a check having been completed. (2) For the purposes of this section, the term 'child care services' means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services.

- (b) **CRIMINAL HISTORY CHECK** – (1) A background check required by subsection (a) shall be –
- a) Based on a set of the employee’s fingerprints obtained by a law enforcement officer and on other identifying information;
 - b) Conducted through the Identification Division of the Federal Bureau of Investigation and through the state criminal history repositories of all states that an employee or prospective employee lists as current and former residences in an employment application; and
 - c) Initiated through the personnel programs of the applicable federal agencies.
- (2) The results of the background check shall be communicated to the employing agency.
- (c) **APPLICABLE CRIMINAL HISTORIES** – Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee in any of the positions listed in subsection (a)(2). In the case of an incident in which an individual has been charged with one of those offenses, when the charge has not yet been disposed of, an employer may suspend an employee from having any contact with children while on the job until the case is resolved. Conviction of a crime other than a sex crime may be considered if it bears on an individual’s fitness to have responsibility for the safety and well-being of children.
- (d) **EMPLOYMENT APPLICATIONS** – (1) Employment applications for individuals who are seeking work for an agency of the federal government, or for a facility or program operated by (or through contract with) the federal government, in any of the positions listed in subsection (a)(1), shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description of the disposition of the arrest or charge. An application shall state that it is being signed under penalty of perjury, with the applicable federal punishment for perjury stated on the application.
- (2) A federal agency seeking a criminal history record check shall first obtain the signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer’s obligation to require a record check as a condition of employment and the employee’s right to obtain a copy of the criminal history report made available to the employing federal agency and the right to challenge the accuracy and completeness of any information contained in the report.
- (e) **ENCOURAGEMENT OF VOLUNTARY CRIMINAL HISTORY CHECKS FOR OTHERS WHO MAY HAVE CONTACT WITH CHILDREN** – Federal agencies and facilities are encouraged to submit identifying information for criminal history checks on volunteers working in any of the positions listed in subsection (a) and on adult household members in places where child care or foster care services are being provided in a home.

