

1 SB360
2 127026-2
3 By Senator Holtzclaw
4 RFD: Children, Youth Affairs, and Human Resources
5 First Read: 06-APR-11

8 SYNOPSIS: Under existing law, the National Criminal
9 History Access and Child Protection Act authorizes
10 organizations providing care for children, the
11 elderly, and the disabled to use national
12 fingerprint criminal history background checks to
13 screen volunteers and prospective and current
14 employees for relevant criminal records.

15 Also under existing law, the Department of
16 Human Resources conducts nationwide criminal
17 history background checks of current licensees,
18 licensed and volunteer applicants, prospective
19 employees, current employees, and volunteers of
20 licensed child placing agencies and child and adult
21 care facilities to ensure that they are suitable
22 for employment, to perform volunteer work, or to
23 hold a license, permit, approval, or certification
24 and have not been convicted of a crime that bears
25 upon their fitness to provide care or have
26 responsibility for the safety or well-being of

1 children, the elderly, or individuals with
2 disabilities.

3 This bill would make clarifying changes to
4 the laws governing these criminal history
5 background checks, and would provide for permissive
6 referrals for prosecution, for termination of
7 employment, or for denial of approval as a foster
8 or adoptive parent as a result of inadvertently
9 providing false information on an application
10 regarding an applicant's criminal history.

11 This bill would clarify which employees of
12 the Department of Human Resources are required to
13 undergo criminal history background checks.

14 This bill would eliminate certain
15 requirements that the Department of Human Resources
16 request certain criminal background information
17 from the Department of Education for individuals
18 who have had a criminal background check through
19 the Department of Education.

20 This bill would provide for: The
21 transmission of criminal history reports from the
22 Department of Public Safety to the Department of
23 Human Resources via a FBI-certified channeler; the
24 transmission of criminal history reports to
25 applicants that have disqualifying crimes; and
26 further clarification of the Department of Public
27 Safety's duties regarding the transmission of

1 arrests or convictions or subsequent arrests or
2 convictions for applicants.

3 This bill would also clarify which types of
4 suitability determinations may be considered for
5 reversal.

6
7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 38-13-2, 38-13-3, 38-13-4, and
12 38-13-7, Code of Alabama 1975, to make clarifying changes to
13 the laws governing the use of criminal background checks for
14 certain individuals providing care for children, the elderly,
15 and the disabled; to provide for permissive prosecution of
16 certain individuals who inadvertently provide false
17 information regarding their criminal history; to clarify which
18 employees of the Department of Human Resources are required to
19 undergo criminal history background checks; to eliminate
20 certain requirements that the Department of Human Resources
21 request certain criminal background information from the
22 Department of Education; to provide for the transmission of
23 criminal history reports from the Department of Public Safety
24 to the Department of Human Resources by certain means; to
25 clarify certain duties of the Department of Public Safety with
26 regard to criminal background checks; and to clarify the types

1 of suitability determinations which may be considered for
2 reversal.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 38-13-2, 38-13-3, 38-13-4,
5 38-13-7, Code of Alabama 1975, are amended to read as follow:

6 "§38-13-2.

7 "When used in this chapter, the following words
8 shall have the following meanings:

9 "(1) ADULT. An individual 19 years of age and older.

10 "(2) ADULT CARE FACILITY. A person or entity holding
11 a Department of Human Resources license or approval or
12 certification to provide care, including foster care, for
13 adults.

14 "(3) APPLICANT. A person or entity who submits an
15 application for license as a child care or adult care facility
16 to the Department of Human Resources or a child placing
17 agency, or an application for employment or for a volunteer
18 position to a Department of Human Resources licensed child
19 care or adult care facility. With regards to child care and
20 adult care facilities in a home setting, the term includes an
21 adult household member whose residence is in the home. The
22 term also includes an individual who submits an application
23 for a volunteer position or for employment with the Department
24 of Human Resources in a position in which the person has
25 unsupervised access to children, adults, or individuals with
26 disabilities as one of the essential functions of the job. The

1 term also includes an applicant for approval as an adoptive
2 parent of a child or as a foster parent of an adult or child.

3 "(4) AUTOMATED SYSTEM. The computerized, automated
4 fingerprint identification system (AFIS) maintained by the
5 Department of Public Safety that allows for a computer search
6 of the in-state database for criminal history background check
7 information maintained by the Alabama Criminal Justice
8 Information Center (ACJIC). The system contains criminal
9 history background information for fingerprint-based and
10 name-based searches.

11 "~~(4)~~ (5) CARE. The provision of care, treatment,
12 education, training, instruction, supervision, or recreation
13 to children, adults, or individuals with disabilities.

14 "~~(5)~~ (6) CARETAKER SETTING. A building, structure, or
15 location, public or private property, or vehicle, utilized for
16 or involved in the providing of care, education, training,
17 instruction, or supervision of children, adults, or
18 individuals with disabilities or transportation in connection
19 with activity provided by a licensed, approved, or certified
20 child or adult care facility.

21 "~~(6)~~ (7) CHIEF EXECUTIVE OFFICER. The Commissioner of
22 the Department of Human Resources, the director of a county
23 department of human resources, or the head of an employer
24 covered by this chapter, but not specifically enumerated.

25 "~~(7)~~ (8) CHILD or CHILDREN. An individual under 19
26 years of age.

1 ~~(8)~~(9) CHILD CARE FACILITY. A person or entity
2 holding a Department of Human Resources license, permit, or
3 approval to provide child care, including foster care, under
4 Chapter 7 of this title. The term excludes exempt child care
5 facilities.

6 "~~(9)~~(10) CHILD PLACING AGENCY. A person or entity
7 licensed by the Department of Human Resources under Chapter 7
8 of this title, issuing approvals to foster family homes and
9 adoptive homes.

10 "~~(10)~~(11) CONVICTION. A determination of guilt as
11 the result of a plea, including a plea of nolo contendere, or
12 a trial.

13 ~~(11)~~(12) CRIMINAL HISTORY BACKGROUND INFORMATION
14 CHECK. The review of any and all records containing any
15 information collected and stored in the criminal record
16 repository of the Federal Bureau of Investigation, the Alabama
17 Criminal Justice Information Center, and the Alabama
18 Department of Public Safety involving an arrest or conviction
19 by a criminal justice agency, including, but not limited to,
20 child abuse crime information as defined by 42 U.S.C. § 5119,
21 the National Child Protection Act of 1993, conviction record
22 information, fingerprint cards, correctional data and release
23 information, and identifiable descriptions and notations of
24 convictions. Criminal history background information shall not
25 include any analytical records or investigative reports that
26 contain intelligence information or criminal investigation
27 information.

1 "~~(12)~~(13) CURRENT. An individual who is presently
2 employed, licensed, or approved, or working as a volunteer on
3 November 1, 2000.

4 "~~(13)~~(14) DAILY LIVING TASKS. Activities of daily
5 living, including walking, working, learning, grooming and
6 hygiene, bathing, dressing, eating, cooking, cleaning,
7 shopping, transportation, managing money, maintaining a
8 residence, writing, and using telephones, computers, and other
9 automated communication devices.

10 "~~(14)~~(15) ELDERLY. An individual 65 years of age or
11 older.

12 "~~(15)~~(16) EMPLOYEE. An individual currently in the
13 service of an employer for compensation, full-time or
14 part-time, and employed by contract or at will, in which the
15 employer has the authority to control the person in the
16 material details of how work shall be performed and when
17 compensation shall be provided.

18 "~~(16)~~(17) EMPLOYER. An individual, person, group of
19 persons, association, partnership, corporation, limited
20 liability company or partnership, business, or other entity
21 which hires employees, has volunteers, or contracts with
22 others to provide personnel to work with or provide care to
23 children, adults, or individuals with disabilities in a
24 caretaker setting.

25 "~~(17)~~(18) ESSENTIAL FUNCTIONS. The fundamental, not
26 merely marginal, job duties of the employment as determined by
27 a written job description or the judgement of the employer.

1 "~~(18)~~ (19) EXEMPT CARE FACILITY. A person or entity
2 exempt by law from licensure by the Department of Human
3 Resources or a child placing agency, including church day
4 care, child centers, or elder centers.

5 "~~(19)~~ (20) INDIVIDUAL. A natural person.

6 "~~(20)~~ (21) INDIVIDUAL WITH DISABILITIES. A person
7 with a mental or physical impairment who requires assistance
8 to perform one or more daily living tasks.

9 "~~(21)~~ (22) LAW ENFORCEMENT. The sheriff's department
10 of a county or the police department of a municipality.

11 "~~(22)~~ (23) LICENSE. A license, permit, certification,
12 approval, registration, or other form of permission required
13 by law by whatever designation for a child care facility,
14 adult care facility, child placing agency, foster parent or
15 foster home, adoptive parent or adoptive home, or any other
16 person or entity in which an individual has unsupervised
17 access to children, the elderly, or individuals with
18 disabilities.

19 "~~(23)~~ (24) LICENSED SOCIAL WORKER. A social worker
20 licensed by the Alabama State Board of Social Work Examiners
21 to conduct family home studies and psychosocial assessments in
22 adoptive or custody cases by court order or for treatment not
23 otherwise required to conduct a criminal history check.

24 "~~(24)~~ (25) LICENSEE. Holder of a license or approval
25 and an adult household member whose residence is in the home
26 in regards to child care and adult care facilities in a home
27 setting.

1 "~~(25)~~ (26) PERSON or ENTITY. A natural person,
2 sometimes referred to as an individual, an owner or operator
3 of any adult care facility, child care facility, child placing
4 agency, exempt child care facility, or licensee, whether an
5 individual, corporation, limited liability company or
6 partnership, partnership, association, or other legal entity
7 or group, and a board member, an officer, member, or partner
8 of an entity who has direct contact with children, the
9 elderly, or individuals with disabilities in care.

10 "~~(26)~~ (27) REASONABLE SUSPICION. Belief by a prudent
11 person that reasonable articulable grounds exist to suspect
12 that the employee's past or present behavior should be
13 reviewed to determine if such behavior or conduct bears upon
14 the individual's fitness to teach or supervise or have
15 responsibility for the safety and well-being of children, the
16 elderly, or persons with disabilities as defined in this
17 chapter.

18 "~~(27)~~ (28) REPORT. A written statement of criminal
19 history background information.

20 "~~(28)~~ (29) RESIDENCE. Place of abode, domicile, or
21 dwelling with intention to remain permanently and continuously
22 or for an indefinite or uncertain length of time.

23 "~~(29)~~ (30) SEX CRIME. Includes the following:

24 "a. Enticing a child to enter a vehicle, room,
25 house, office, or any other place for immoral purposes, as
26 proscribed by Section 13A-6-69.

1 "b. Incest, when the offender is an adult and the
2 victim is a minor, as proscribed by Section 13A-13-3.

3 "c. Kidnapping of a minor, except by a parent, in
4 the first or second degree, as proscribed by Section 13A-6-43
5 or Section 13A-6-44.

6 "d. Promoting prostitution in the first or second
7 degree, as proscribed by Section 13A-12-111 or Section
8 13A-12-112.

9 "e. Rape in the first or second degree, as
10 proscribed by Section 13A-6-61 or Section 13A-6-62.

11 "f. Sexual misconduct, as proscribed by Section
12 13A-6-65.

13 "g. Sexual torture, as proscribed by Section
14 13A-6-65.1.

15 "h. Sexual abuse in the first or second degree, as
16 proscribed by Section 13A-6-66 or Section 13A-6-67.

17 "i. Sodomy in the first or second degree, as
18 proscribed by Section 13A-6-63 or Section 13A-6-64.

19 "j. Soliciting a child by computer for the purposes
20 of committing a sexual act and transmitting obscene material
21 to a child by computer as proscribed by Sections 13A-6-110 and
22 13A-6-111.

23 "k. Violation of the Alabama Child Pornography Act,
24 as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196,
25 or 13A-12-197.

1 "l. Any solicitation, attempt, or conspiracy to
2 commit any of the offenses listed in paragraphs a. to k.,
3 inclusive.

4 "m. A crime listed in the Community Notification
5 Act, Chapter 20 of Title 15.

6 n. Conviction for a violation or attempted violation
7 of an offense committed outside the State of Alabama or under
8 federal law is a sex crime or any other crime if the offense
9 would be a crime in Alabama.

10 "~~(30)~~ (31) SUITABILITY CRITERIA.

11 "a. Convictions for any of the following crimes
12 shall make an individual unsuitable for employment, volunteer
13 work, approval, or licensure:

14 "1. Murder, manslaughter, or criminally negligent
15 homicide.

16 "2. A sex crime.

17 "3. A crime that involves the physical or mental
18 injury or maltreatment of a child, the elderly, or an
19 individual with disabilities.

20 "4. A crime committed against a child.

21 "5. A crime involving the sale or distribution of a
22 controlled substance.

23 "6. Robbery.

24 "7. A crime or offense committed in another state or
25 under federal law which would constitute any of the above
26 crimes in this state.

1 "b. Conviction for any crime listed in the Adoption
2 and Safe Families Act, 42 U.S.C. § 671-~~(g)~~(a) (20) shall
3 disqualify a person from being approved or continuing to be
4 approved as a foster parent or adoptive parent and a convicted
5 person shall be deemed unsuitable for employment, volunteer
6 work, approval, or licensure as a foster parent or adoptive
7 parent.

8 "c. The Department of Human Resources may set other
9 disqualifying convictions by rule under the Administrative
10 Procedure Act, Section 41-22-1, et seq., for Department of
11 Human Resources licensed child or adult care facilities.

12 "~~(31)~~(32) SUITABILITY DETERMINATION. A decision that
13 an individual is or is not suitable for employment, volunteer
14 work, or licensure based upon the existence of a prohibited
15 criminal conviction.

16 "~~(32)~~(33) UNSUPERVISED ACCESS TO A CHILD OR
17 CHILDREN, THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES.
18 Contacts, interviews, questions, examinations, interaction, or
19 communications outside the presence, supervision, and control
20 of someone other than a child or elderly or disabled
21 individual in care during the provision of care, education,
22 training, instruction, supervision, or other employment or
23 license related activities.

24 "~~(33)~~ (34) VOLUNTEER. An individual who provides
25 services without an express or implied promise of
26 compensation, but shall not include the parent, family member,

1 legal custodian, or legal guardian of a child, the elderly, or
2 disabled individual in care.

3 "~~(34)~~ (35) WRITTEN CONSENT. A signed statement by the
4 applicant or employee containing all of the following:

5 "a. The name, address, date of birth, race, gender,
6 and Social Security number appearing on a valid identification
7 document as defined in subsection (d) of 18 U.S.C. § 1028. If
8 the applicant does not have a Social Security number because
9 of sincerely held personal beliefs, the Social Security number
10 shall not be required and the Department of Human Resources
11 and the Department of Public Safety shall provide an
12 alternative means of identification and procedure.

13 "b. Notice to the applicant or employee of the right
14 to obtain a copy of the criminal history background
15 information check report, challenge the accuracy and
16 completeness of any information contained in the report, and
17 to obtain a prompt determination as to the validity of a
18 challenge.

19 "c. Name, address, and telephone number of the
20 employer or licensing entity for which the criminal history
21 background information check report is being sought.

22 "d. Release of the criminal history background
23 information check report to the Department of Human Resources.

24 "§38-13-3.

25 "(a) On November 1, 2000, every employer, child care
26 facility, adult care facility, the Department of Human
27 Resources, and child placing agency shall request the

1 Department of Public Safety to conduct a criminal history
2 background information check for the following:

3 "(1) An employment applicant, employee or volunteer
4 of an employer, child care facility, adult care facility, or
5 child placing agency.

6 "(2) A current foster parent for a child or adult or
7 adult household member of a foster family or applicant and an
8 adult household member of a foster family seeking approval to
9 operate as a foster parent or foster family home for a child
10 placing agency or the Department of Human Resources. Unless
11 otherwise provided in this chapter, No no criminal history
12 background information check shall be conducted ~~under this~~
13 ~~chapter~~ on a current foster parent or household member of a
14 foster family if a Federal Bureau of Investigation and Alabama
15 Department of Public Safety criminal history background
16 information check has already been conducted under other law
17 that meets the suitability criteria as provided in this
18 chapter. Subsequent arrests or convictions of foster parents,
19 or arrests or convictions entered into the automated system
20 subsequent to the initial report, shall be sent by the
21 Department of Public Safety to the Department of Human
22 Resources as provided in this chapter.

23 "(3) An applicant or employee, with the exception of
24 those individuals on employed status on November 1, 2000, in a
25 position in the Department of Human Resources which requires
26 unsupervised access to children, the elderly, or individuals
27 with disabilities as one of the essential functions of the

1 job. ~~No~~ All current employees of the Department of Human
2 Resources shall be subjected to a criminal history background
3 information check ~~except~~ upon reasonable suspicion. Criminal
4 history background information checks shall be required for
5 prospective and current personnel under contract with the
6 Department of Human Resources or working with another entity
7 under contract with the Department of Human Resources,
8 students, mentors, and volunteers in positions requiring
9 unsupervised access to children, the elderly, or persons with
10 disabilities as one of the essential functions of the job. The
11 Department of Human Resources shall pay any fees related to
12 checks required pursuant to this subdivision.

13 "(4) A current licensee or applicant for a license
14 through the Department of Human Resources to operate a child
15 care or adult care facility.

16 "(5) ~~A~~ An adoptive parent applicant for a child
17 adoptive placement through the Department of Human Resources
18 or child placing agency and any Department of Human Resources
19 or child placing agency approved adoptive parent prior to
20 entry of a final decree of adoption. Unless otherwise provided
21 in this chapter, ~~No~~ no criminal history background information
22 check shall be conducted ~~under this chapter~~ on a current
23 adoptive parent or household member of an adoptive family if a
24 Federal Bureau of Investigation and Alabama Department of
25 Public Safety criminal history background information check
26 has already been conducted under other law that meets the
27 suitability criteria as provided in this chapter. Subsequent

1 arrests or convictions of adoptive parents, or arrests or
2 convictions entered into the automated system subsequent to
3 the initial report, shall be sent by the Department of Public
4 Safety to the Department of Human Resources as elsewhere
5 provided in this chapter.

6 "(b) An employer, child care facility, adult care
7 facility, the Department of Human Resources, or a child
8 placing agency may only request a criminal history background
9 information check by its chief executive officer, or his or
10 her designee authorized in writing and notarized, and law
11 enforcement shall render assistance, including assistance in
12 obtaining fingerprints required for submission of a request to
13 the Department of Public Safety.

14 "(c) Every employee, volunteer or applicant, for
15 employment or a volunteer position, licensee, Department of
16 Human Resources adoptive parent applicant or approved adoptive
17 parent, or applicant for a license to the Department of Human
18 Resources to operate a child care or adult care facility shall
19 submit two sets of fingerprints and sign a written consent to
20 obtain the criminal history background information.
21 Fingerprints shall not be required when a disability prevents
22 a person from being fingerprinted. Disabilities preventing
23 fingerprinting include the loss of both hands, severe scarring
24 of all fingers, closed paralytic hands, and similar
25 disabilities. In cases involving disability, a written consent
26 to obtain available criminal history background information by
27 name only shall be obtained. No one who fails or refuses to

1 give written consent or submit fingerprints necessary to
2 obtain criminal history background information may be
3 employed, allowed to perform volunteer or other work, approved
4 or issued a license, or allowed to retain a license or
5 approval by the Department of Human Resources, an employer,
6 child care facility, adult care facility, or child placing
7 agency.

8 "(d) Child care facilities or adult care facilities
9 exempt from Department of Human Resources licensing shall not
10 be required to comply with this chapter, but may voluntarily
11 collect and forward two complete acceptable sets of
12 fingerprints, the written consent, and nonrefundable fee from
13 applicants or employees to the Department of Public Safety to
14 request a criminal history background information check which
15 shall be processed pursuant to this chapter. Licensed social
16 workers conducting home studies may also request a criminal
17 history background check which shall be processed pursuant to
18 this chapter. Provided, however, if a license-exempt child
19 care facility operated as part of a church ministry or
20 religious school does not choose to comply with this chapter
21 on a voluntary basis, then the employee or prospective
22 employee of the child care facility shall request a criminal
23 history background check, and the request shall be processed
24 in the same manner as for other employees or applicants under
25 the provisions of this chapter. The Department of Human
26 Resources shall, prior to the disbursement of any subsidized
27 child care funds, require all employees and applicants of

1 legally operating child care facilities to submit verification
2 of the application for a criminal history background check and
3 the results thereof when obtained. Upon reasonable suspicion
4 that the individual has a criminal conviction or has not had a
5 criminal history background check conducted, the Department of
6 Human Resources shall have the right to require employees of
7 license-exempt facilities to submit each application for a
8 criminal history background check and the results thereof when
9 obtained.

10 "§38-13-4.

11 "(a) Every employer, child care facility, adult care
12 facility, the Department of Human Resources, and child placing
13 agency required to obtain a criminal history background
14 information check pursuant to this chapter shall obtain, prior
15 to or upon the date of employment, or issuance of a license or
16 approval or renewal thereof, and maintain in the agency or
17 personnel file, a request with written consent for the
18 criminal history background information check and a statement
19 signed by the applicant, volunteer, or employee indicating
20 whether he or she has ever been convicted of a crime, and if
21 so, fully disclosing all convictions. The statement shall
22 include a notice and questionnaire the same as or similar to
23 the following:

24 ""MANDATORY CRIMINAL HISTORY CHECK NOTICE: Alabama
25 law requires that a criminal history background information
26 check be conducted on all persons who hold a license or work
27 in a Department of Human Resources licensed child care or

1 adult care facility, a foster or adoptive home approved by the
2 Department of Human Resources, or a licensed child placing
3 agency, including all officers and agents of the entity. You
4 are required to provide full, complete, and accurate
5 information on your criminal conviction history upon
6 application for a license or employment. This information
7 shall be used to determine your suitability to provide care to
8 children, the elderly, or disabled individuals. Unless a
9 criminal history background information check report and
10 suitability determination have previously been obtained, you
11 must complete a written request and consent for a criminal
12 history background information check with fingerprints at the
13 time of application for employment. Refusal to complete these
14 documents or providing false information ~~shall~~ may result in
15 refusal of employment, approval, or licensure. The term
16 conviction includes a determination of guilt by a trial, by a
17 plea of guilty, or a plea of nolo contendere. You are required
18 to notify your employer, licensing agency, or entity where you
19 are performing volunteer work of any criminal conviction
20 occurring subsequent to the date of completion of this notice.
21 Any individual determined to have submitted false information
22 ~~shall~~ may be referred to the district attorney or law
23 enforcement for investigation and possible prosecution. An
24 individual who intentionally falsifies or provides any
25 misleading information on the statement is guilty of a Class A
26 misdemeanor, punishable by a fine of not more than two

1 thousand dollars (\$2,000) and imprisonment for not more than
2 one year.

3 ""Convictions for any of the following crimes shall
4 make an individual unsuitable for employment, volunteer work,
5 approval, or licensure:

6 ""1. Murder, manslaughter, or criminally negligent
7 homicide.

8 ""2. A sex crime.

9 ""3. A crime that involves the physical or mental
10 injury or maltreatment of a child, the elderly, or an
11 individual with disabilities.

12 ""4. A crime committed against a child.

13 ""5. A crime involving the sale or distribution of a
14 controlled substance.

15 ""A sex crime includes the following:

16 ""a. Enticing a child to enter a vehicle, room,
17 house, office, or any other space for immoral purposes, as
18 proscribed by Section 13A-6-69 of the Code of Alabama 1975.

19 ""b. Incest, when the offender is an adult and the
20 victim is a minor, as proscribed by Section 13A-13-3 of the
21 Code of Alabama 1975.

22 ""c. Kidnapping of a minor, except by a parent, in
23 the first or second degree, as proscribed by Section 13A-6-43
24 or Section 13A-6-44 of the Code of Alabama 1975.

25 ""d. Promoting prostitution in the first or second
26 degree, as proscribed by Section 13A-12-111 or Section
27 13A-12-112 of the Code of Alabama 1975.

1 ""e. Rape in the first or second degree, as
2 proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code
3 of Alabama 1975.

4 ""f. Sexual misconduct, as proscribed by Section
5 13A-6-65 of the Code of Alabama 1975.

6 ""g. Sexual torture, as proscribed by Section
7 13A-6-65.1 of the Code of Alabama 1975.

8 ""h. Sexual abuse in the first or second degree, as
9 proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code
10 of Alabama 1975.

11 ""i. Sodomy in the first or second degree, as
12 proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code
13 of Alabama 1975.

14 ""j. Soliciting a child by computer for the purposes
15 of committing a sexual act and transmittal of obscene material
16 to a child by computer as proscribed by Sections 13A-6-110 and
17 13A-6-111 of the Code of Alabama 1975.

18 ""k. Violation of the Alabama Child Pornography Act,
19 as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196,
20 or 13A-12-197 of the Code of Alabama 1975.

21 ""l. Any solicitation, attempt, or conspiracy to
22 commit any of the offenses listed in paragraphs a. to k.,
23 inclusive.

24 ""m. A crime listed in the Community Notification
25 Act, Chapter 20 of Title 15 of the Code of Alabama 1975.

26 ""6. Conviction for a crime listed in the federal
27 Adoption and Safe Families Act as prohibiting a person from

1 being a foster parent or adoptive parent shall be deemed to
2 make the convicted person unsuitable for employment, volunteer
3 work, approval, or licensure as a foster parent or adoptive
4 parent.

5 ""7. Conviction for a violation or attempted
6 violation of an offense committed outside the State of Alabama
7 or under federal law is a sex crime or any other crime listed
8 in this notice if the offense would be a crime listed in this
9 notice in Alabama.

10 ""CRIMINAL HISTORY STATEMENT

11 ""Have you ever had a suitability determination made
12 by the Department of Human Resources in connection with a
13 previous criminal history information background check? Yes
14 (__) No (__).

15 ""Have you ever been convicted of a crime? Yes (__)
16 No (__). If yes, state the date, crime, location, punishment
17 imposed, and whether the victim was a child or an elderly or
18 disabled individual.

19 " _____

20 " _____

21 ""Date _____ Signature _____."

22 "(b) An individual who fails or refuses to provide a
23 statement shall not be employed, allowed to work or volunteer,
24 or issued a license or approval as defined in this chapter.
25 Upon receipt of a signed criminal history statement which does
26 not indicate conviction for a crime prohibiting employment
27 under the suitability criteria, an employer, including the

1 Department of Human Resources, may employ an applicant or
2 allow a volunteer or contract provider to work provisionally
3 pending receipt of a suitability determination from the
4 Department of Human Resources.

5 "(c) No later than the five business days after
6 employment or a reasonable time after completion of
7 application for a license or approval, an employer, the
8 Department of Human Resources, or child placing agency shall
9 mail or deliver a request for a criminal history background
10 information check to the Department of Public Safety
11 accompanied by the following:

12 "(1) Two complete sets of fingerprints, properly
13 executed by a law enforcement agency or an individual properly
14 trained in fingerprinting techniques.

15 "(2) Written consent from the applicant, employee,
16 or volunteer for the release of the criminal history
17 background information to the Department of Human Resources.

18 "(3) The fee.

19 "(d) Upon receipt of a suitability determination
20 from the Department of Human Resources that a person or entity
21 is suitable for employment, volunteer work, licensure, or
22 approval based on the criminal history background information
23 check, an employer, a child care facility, adult care
24 facility, a child placing agency, or the Department of Human
25 Resources may make its own determination of employment,
26 licensure, or approval. This chapter shall not create any
27 right to employment, work, approval, or licensure. Upon

1 receipt of a determination from the Department of Human
2 Resources that an individual is unsuitable for employment,
3 licensure, approval, or volunteer work, an employer, the child
4 care facility, adult care facility, child placing agency, or
5 Department of Human Resources shall terminate the individual
6 from employment or volunteer work or shall not employ or use
7 the individual. Termination of employment may be delayed by
8 the employer to allow the individual to challenge either the
9 accuracy or completeness of the criminal history information
10 background report or the suitability determination made by the
11 Department of Human Resources. The Department of Human
12 Resources or child placing agency shall suspend or revoke a
13 license or approval or deny a license or approval application
14 to an individual receiving an unsuitability determination. As
15 an alternative to termination of employment, the Department of
16 Human Resources may transfer a permanent Merit System employee
17 to an available position for which the employee is qualified
18 where unsupervised access to children, the elderly, or persons
19 with disabilities shall not be an essential function of the
20 job.

21 "(e) If a review of a criminal history background
22 information check or other information received reveals that
23 the person has submitted false information, the employer,
24 child care facility, adult care facility, child placing
25 agency, or Department of Human Resources ~~shall~~ may terminate
26 the employee or volunteer. The Department of Human Resources
27 or child placing agency ~~shall~~ may revoke the approval or

1 license of a person or entity when the person or entity
2 submits false information in a review of criminal history
3 background information check or other information. The
4 Department of Human Resources shall be notified of the false
5 information and ~~shall~~ may refer the case to an appropriate law
6 enforcement agency or district attorney for investigation and
7 prosecution.

8 "(f) Unless otherwise provided in this chapter, Only
9 only one criminal history background information check shall
10 be required on an individual regardless of subsequent changes
11 in employment or licensing or approval status. Subsequent
12 criminal history background information checks may be
13 conducted by the employer or licensing or approval entity. The
14 licensing or approval entity shall pay the cost for subsequent
15 criminal history background information checks. If the
16 statement signed by the applicant or employee states that a
17 criminal history background information check has been
18 performed and suitability determination issued on the
19 individual pursuant to this chapter, the employer or licensing
20 agency may request at the time of application only a
21 suitability determination from the Department of Human
22 Resources on the check previously performed, within five
23 business days of employment, or completion of license or
24 approval application, submitting the same kind of information
25 and consent for the request for suitability determination as
26 required by the written consent for a criminal history
27 background information check.

1 ~~"(g) Upon being notified that an individual has~~
2 ~~already had a criminal history background information check~~
3 ~~performed by the Department of Education pursuant to the~~
4 ~~Alabama Child Protection Act, Chapter 22A of Title 16, the~~
5 ~~Department of Human Resources shall request and the Department~~
6 ~~of Education shall provide criminal history background reports~~
7 ~~and reports on subsequent convictions, or convictions entered~~
8 ~~into the system subsequent to the initial report, to the~~
9 ~~Department of Human Resources without the payment of an~~
10 ~~additional fee, provided there are no violations of federal~~
11 ~~laws.~~

12 "§38-13-7.

13 "(a) Criminal history background information checks
14 shall be performed by the Department of Public Safety upon
15 request by an employer, child care facility, adult care
16 facility, or child placing agency authorized to make a
17 request, or the Department of Human Resources. The Department
18 of Public Safety shall provide a criminal history background
19 check within a reasonable time of the receipt of the request.
20 National criminal history background checks shall be requested
21 by the Department of Public Safety from the Federal Bureau of
22 Investigation within a reasonable time of the request. The
23 Department of Public Safety, upon receipt of the criminal
24 history background report from the Federal Bureau of
25 Investigation, shall forward the report to the Department of
26 Human Resources within a reasonable period.

1 "(b) Criminal history background information reports
2 shall be sent ~~directly~~ from the Department of Public Safety to
3 the Department of Human Resources, directly or through its
4 designated agent, within a reasonable time from the receipt of
5 the report from the Federal Bureau of Investigation. A copy of
6 a criminal history report from the Department of Public Safety
7 and the Federal Bureau of Investigation that contains
8 potentially disqualifying crimes or disqualifying crimes shall
9 be sent by the Department of Human Resources to the applicant
10 or employee by certified mail ~~or personal service~~. The
11 Department of Human Resources shall review the criminal
12 history record information report and other information
13 received and determine whether the applicant, employee, or
14 volunteer meets the suitability criteria for employment or
15 licensure based on the criminal history background information
16 check. The Department of Human Resources shall issue a written
17 suitability determination to the applicant or employee and to
18 the licensing entity or chief executive officer of the child
19 care facility or adult care facility requesting the criminal
20 history background information check. The Department of Public
21 Safety shall notify the Department of Human Resources of ~~a~~
22 ~~subsequent conviction, or~~ arrests or convictions entered into
23 the automated system subsequent to the initial report, for a
24 crime committed ~~on~~ by an individual for whom a criminal
25 history background information report has been ~~sent~~ previously
26 requested, regardless of the existence, or lack thereof, of a
27 criminal history at the time of submission for a criminal

1 history background information check pursuant to this chapter.
2 The Alabama Criminal Justice Information Center shall notify
3 the Department of Public Safety which shall notify the
4 Department of Human Resources of the arrest or conviction
5 information for applicants that receive name-based criminal
6 history background information checks. The Department of Human
7 Resources shall include the ~~conviction~~ arrests or convictions
8 in an amended or subsequent suitability determination.

9 "(c) A person may contest the accuracy or
10 completeness of the Alabama criminal history background
11 information check pertaining to him or her with the Department
12 of Public Safety according to procedures established by that
13 agency. The person or his or her legal counsel may review at
14 the Department of Human Resources a copy of the Alabama
15 criminal history background information report from the
16 Department of Public Safety. If, upon review by the Department
17 of Public Safety, the information is determined to be
18 incorrect or incomplete, the information shall be corrected
19 appropriately, and the Department of Human Resources shall be
20 provided with the corrected information.

21 "(d) The Department of Human Resources shall issue a
22 suitability determination and maintain a confidential file on
23 individuals for whom a criminal history background information
24 report or report updates have been received. The Department of
25 Human Resources may issue a suitability determination based
26 upon the criminal history report on file without the
27 requirement of a new criminal history background information

1 check. If no report or if only an incomplete criminal history
2 report can be located in the files of the Department of Human
3 Resources, the individual shall be required to submit to a new
4 criminal history background information check.

5 "(e) Within 30 days of the date of notification, an
6 individual determined to be unsuitable for approval,
7 licensure, employment, or volunteer work by the Department of
8 Human Resources based upon a disqualifying conviction may
9 request in writing reversal of the determination of
10 unsuitability if the conviction is not for a sex crime or a
11 crime committed against a child, an elderly individual, or an
12 individual with disabilities. An individual with a conviction
13 excluded by federal law from being approved as a foster or
14 adoptive parent, as any other child care or adult care
15 provider, or volunteer may not be considered for
16 reinstatement.

17 "(f) Notwithstanding the provisions in subsection
18 (e), the following shall apply to requests for reversal of the
19 determination of unsuitability:

20 "In the case of a felony conviction, 10 years shall
21 have lapsed since the sentence was served or the probation or
22 parole ended, whichever is later, with no subsequent
23 conviction. In the case of a misdemeanor conviction, five
24 years shall have lapsed since the sentence was served, or the
25 probation or parole ended, whichever is later, with no
26 subsequent conviction. In addition to the foregoing, The the
27 individual shall affirmatively demonstrate to the Department

1 of Human Resources successful rehabilitation by clear and
2 convincing evidence. In determining whether an individual has
3 affirmatively demonstrated successful rehabilitation, all of
4 the following shall be considered:

5 "(1) Nature and responsibility of the position which
6 the convicted person would hold or has held.

7 "(2) Nature and seriousness of the offense
8 committed.

9 "(3) Circumstances under which the offense occurred.

10 "(4) Date of the offense.

11 "(5) Age of the person when the offense was
12 committed.

13 "(6) Whether the offense was an isolated or repeated
14 incident.

15 "(7) Social conditions which may have contributed to
16 the offense.

17 "(8) An available probation or parole record,
18 report, or recommendation.

19 "(9) Evidence of rehabilitation, including good
20 conduct in prison or in the community, counseling or
21 psychiatric treatment received, acquisition of additional
22 academic or vocational schooling, successful business or
23 employment history, and the recommendation of his or her
24 supervisors.

25 "(f) The Department of Human Resources and the
26 Department of Public Safety may adopt rules and regulations to
27 implement the procedures and requirements of this chapter

1 pursuant to the Administrative Procedure Act, Section 41-22-1,
2 et seq."

3 Section 2. This act shall become effective on the
4 first day of the third month following its passage and
5 approval by the Governor, or its otherwise becoming law.