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— Laura Oliver

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Editor: Robert Horowitz

Associate Editors:

Robert Lancour

Sally Small Inada

Address subscription

inquiries to:

William S. Hein & Co., Inc.

1285 Main Street

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Address editorial inquiries to:

Editors

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ABA Center on Children and the Law

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Effective Screening of Child Care and Youth Service Workers

by Noy Davis and Susan Wells*

Headline news stories, Congressional legislation, and advocacy organizations have all focused recent attention on incidents of child abuse, abduction, and exploitation. Some notable cases have involved child care and youth centers, day care programs and schools. Parents and the public in general have questioned how these 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) contracted with the American Bar Association Center on Children and the Law to examine the screening practices currently used nationwide in child and youth service settings, and outline what is known about the effectiveness of these practices.

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 article presents the findings of the study regarding the use and effectiveness of a variety of screening mechanisms. It also offers a screening model 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 recom-

mendations in this article are applicable to federal and state legislators and officials as well as administrators of national and local organizations serving children and youth.

National Survey. The National Survey conducted as part of this study collected data from child and youth-serving agencies on the screening mechanisms they use (including costs, timeliness of information, quality and perceived effectiveness). Second, the respondents were 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. The survey questioned agencies about their experiences with screening procedures including: reference checks, applications, interviews, criminal record checks, child abuse registries, testing (drug/alcohol, psychological), and observations (job, home visits). A few highlights are outlined below.

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 educa-

* Noy Davis is a staff attorney at the ABA Center on Children and the Law, Washington, DC. Susan Wells, Ph.D., is a researcher with Research Triangle Institute, Chapel Hill, NC.

tional 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) will 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 picked 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 one-fourth of respondents (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" screening 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 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.

- Using liberal estimates, 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 identify individuals undergoing checks primarily by current name (84 percent) and social security number (72 percent); about half as many identify individuals by fingerprints (41 percent) and aliases (37 percent).
- 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.

Reports of Valid Abuse Involving Staff

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

Recommendations to Increase Effectiveness of Background Screening and Usefulness of a National Registry of Child Abusers for Screening

- 58 percent of responding organizations recommended the development of a national registry of child abusers for screening purposes, making it the most frequently selected recommendation; training and education on available background screening, and how to identify potentially abusive staff were the number two and three recommendations.
- 46 percent of all respondents said that if a national registry were developed, it would be *very useful* for their screening needs, while 30 percent thought it would be only *somewhat useful*; schools were the least likely to see the merits of such a registry.
- If a national registry were developed, almost all (93 percent) would like it to contain confirmed/substantiated CPS reports; 84 percent would like information on individuals who were terminated from their job due to abuse-related incidents; 79 percent opted for the inclusion of convictions, guilty pleas and/or "no contest" pleas in abuse-related incidents; and 74 percent wanted inclusion of revocation/denial of certification or licensure due to abuse-related incidents.

Legal and Regulatory Analysis. The purpose of the 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.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. 103-322. Although the DeConcini-Specter Amendment tied 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 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.

There are a variety of state statutes and regulations for screening purposes. This variety is particularly evident in those state regulations drafted to implement a statute with a wide range of screening practices required across and within the state. 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 De-Concini-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. A

Central registries. 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" or "good person" 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 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.

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. National agency checks, employee reference checks, and personal interviews were rated among the top three by surveyed programs for effectiveness. Remaining A

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
- easibility
- 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 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.

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 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 at the present time, and possibly never. 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) is a supplement to, and not a replacement for, the basic screening procedures.

The following recommendations and steps 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.

- States should develop regulations encouraging the use of state criminal record checks as appropriate and consistent with the framework outlined in the decision-making model.
- National leadership and assistance is needed to ensure coordination and cooperation by states regarding criminal record checks.
- Technical assistance is needed for those developing 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 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 warrant further attention for the development of effective, efficient, and comprehensive screening of child care and youth service workers. These issues 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.
- The very nature of juvenile offender information requires that it not be available to the public for screening.
- 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 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 overreaching 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.

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.

ADOPTION AND FOSTER CARE ANALYSIS AND REPORTING SYSTEM AFCARS

The Adoption and Foster Care Analysis and Reporting System (AFCARS) is the first mandated nationwide initiative by the Federal government to collect data on children in foster care and children adopted. AFCARS is the result of the addition of Section 479 to the Social Security Act. The regulation implementing AFCARS is at 45 CFR 1355.40. States were required to submit data beginning in FFY 1995. Semiannual submissions are required in May and November of each year.

AFCARS is a compilation of detailed automated case-level data that allows for more in-depth analyses of the relationships among variables associated with children that have been removed from their homes and of children adopted under the auspices of the public child welfare agency. The foster care data set includes 67 elements, including information about the circumstances associated with removal, the characteristics of the child, foster parent characteristics, number of removals, and the number and type of placement settings during a removal episode.

A penalty structure is in place as an incentive to collect accurate and timely data. The first six reporting periods (3 years) are penalty free, year 4 is at half penalty, and year 5 and each year thereafter are at full penalty. In the event that a State/jurisdiction incurs a penalty, it is calculated on the basis of its 1993 Title IV-B incentive funds and that amount is withheld from the Title IV-E administrative funds for the period to which the penalty is attributed. A penalty can occur due to the following reasons: no submittal of data; late submission; incomplete submission, and for foster care data only, lack of timely entry of data into the State's information system.

The Department of Health and Human Services (DHHS) uses this information to respond to Congressional requests for current data on children in foster care or who have been adopted, and to respond to questions and requests from other Departments and agencies, including the General Accounting Office, the Office of Management and Budget (OMB), the DHHS Office of Inspector General, national advocacy organizations, States and other interested organizations.

The AFCARS data are not appropriate for use in conducting background checks. The data submitted includes a unique identifier for each child, and the identifiers are encrypted by the States prior to submission of the data. This is to protect the confidentiality of the children represented in the data. No other identifying information, such as name, address, etc. is collected. Preserving the confidentiality of the case-specific data is a statutory requirement.

STATEWIDE AUTOMATED CHILD WELFARE INFORMATION SYSTEMS (SACWIS)

The Omnibus Budget Reconciliation Act of 1993 provided enhanced funding at the 75 percent Federal matching rate to States for the development and implementation of Statewide Automated Child Welfare Systems (SACWIS). Since very little automation existed in the child welfare programs prior to that legislation, SACWIS has provided a unique opportunity for States to improve the operation of their programs through an investment in effective and efficient automation.

SACWIS will provide caseworkers with critical and immediate access to essential information, allowing prompt intervention in situations where children may be experiencing or are at risk of neglect or abuse. These automated systems should reduce the amount of paperwork and manual record-keeping which currently limits the ability of social workers to interact with families in need of their services, and to take timely actions to preserve the health and well-being of children. Additionally, since these systems are designed to be case worker tools and not simply report generators, the reliability of the information reported by the systems will be increased significantly.

The enhanced funding ended September 30, 1997, Federal funding has reverted to a 50 percent match rate. SACWIS has very specific functional requirements which are defined in 45 CFR 1355.50 - 1355.57. To be eligible for enhanced funding a State had to develop a statewide child welfare information system which met the following broad functional requirements set forth in the legislation:

- o Meet the AFCARS reporting requirements;
- o Provide for an interface, to the extent practicable, with the State data collection system for child abuse and neglect;
- o Provide for an interface with and retrieval of information, to the extent practicable, from the State automated information system relating to AFDC eligibility; and,
- o Provide for more efficient, economical, and effective administration of programs carried out under a State plan approved under Title IV-E and Title IV-B.

45 States and the District of Columbia have committed to the development of a SACWIS, and are in various phases of planning, design, development and implementation. When completed, SACWIS will represent a joint Federal and State investment of over \$1 billion.

There are 10 States that have an operational or partially operational SACWIS. Approximately 19 additional States were scheduled to have an operational SACWIS by FFY 1998.

NATIONAL CHILD ABUSE AND NEGLECT DATA SYSTEM (NCANDS)

The National Child Abuse and Neglect Data System (NCANDS) is the primary source of national information on cases of child abuse and neglect known to State child protective services agencies. The NCANDS was developed in response to the Child Abuse Prevention and Treatment Act (CAPTA), as amended [42 USC 5104], which requires the Department of Health and Human Services to establish a national data collection and analysis system on child maltreatment. Participation by the States in providing data is voluntary.

The NCANDS consists of two parts:

The Summary Data Component (SDC) -- a compilation of key aggregate indicators of State child abuse and neglect statistics. All States now provide data to this component and the results are published annually. The SDC provides information on the number of reports received by child protective services agencies, the number of children reported, the sources of reports, the number of child victims of substantiated or indicated maltreatment, basic demographic characteristics of victims, the relationship of the perpetrator to the child victim, and the number of victims who were referred for court action or other services.

The Detailed Case Data Component (DCDC) -- a compilation of detailed automated case-level data that allows for more in-depth analyses of the relationships among variables associated with reports and victims of child abuse and neglect. The DCDC includes 117 data elements, including information about the report, the characteristics of the child, types of maltreatment substantiated, family characteristics and risk factors, services provided to the family, and perpetrator characteristics. The DCDC has begun a phased-in implementation, with 15 States currently providing data.

The NCANDS data are used to analyze national and State-level trends in the numbers, characteristics and outcomes of cases referred to child protective services agencies. **These data are not appropriate for use in conducting background checks.** The data submitted to the SDC is in aggregated form only (i.e. only counts of specific data items are provided). The case-level data in the DCDC include unique alphanumeric identifiers for children and perpetrators, but these identifiers are encrypted by the States prior to submission of the data, to protect the confidentiality of all individuals represented in the data. No other identifying information, such as name, address, etc. is collected. Preserving the confidentiality of the case-specific data is a statutory requirement.

CENTRAL REGISTRIES

As of December 1996, 40 States and the District of Columbia had statutes authorizing the establishment of a "central registry" for child abuse and neglect. A central registry is a statewide computerized database of information relating to children who have been reported to child protective services agencies for abuse and neglect. (It should be noted that other States that do not have laws establishing a "central registry," do make use of automated information systems to support the operation of their child protective services systems.) The scope of information maintained on central registries, and the allowable uses of that information, vary considerably from State to State.

—> In general, central registries maintain identifying information about children who are the subjects of reports of abuse and neglect, the type of maltreatment they experienced and other relevant information about the report and its disposition. Usually, information is also maintained on the persons who are the alleged or substantiated perpetrators of maltreatment. However, it is important to note that the main purpose of central registries is to maintain information about **children** who are the subjects of reports of abuse and neglect, rather than on the adults who are identified as perpetrators of maltreatment.

The information contained in central registries is confidential and may only be released to certain individuals or agencies for specific purposes, as detailed in State statute. (If the State receives funds under the Basic State Grant of the Child Abuse Prevention and Treatment Act (CAPTA), the State's law must comply with Federal requirements relating to confidentiality and disclosure.) Typically, information on the registry is accessible by child protective services, police officers, courts and, in some cases, physicians or others involved in the treatment of child abuse and neglect, if the information is necessary to help them carry out their respective functions in protecting children. In general, the information stored on the central registry is used to support case management, assist in risk assessment in future cases, assess performance of the child protective services system, and generate statistics on the numbers and characteristics of children and families served by CPS agencies.

—> In some States, the data may be used to conduct background checks for foster or adoptive parents, child care workers, teachers, or other individuals who work with children, as specified in State statute. Particularly, when the data are used for purposes of background and employment checks, issues arise around the extent to which data on unsubstantiated cases may be maintained and on the due process rights of adults identified on the registry as perpetrators associated with child abuse and neglect.

As of December 1996, 21 States and the District of Columbia had laws specifying requirements for expungement (or removal) of records from central registries. The time specified for the expungement of unfounded, unsubstantiated or undetermined reports ranges from "immediately" upon determination to five years. For substantiated, founded or indicated reports, the time specified for the expungement of reports ranges from 5 to 10 years, or when the child reaches the age of majority.¹

Many States also have provisions allowing the subject (i.e. alleged perpetrator) of a report to challenge the findings. If the challenge is successful, the subject's name is removed from the registry.² A few States do not permit unfounded reports to be placed on the registry at all.

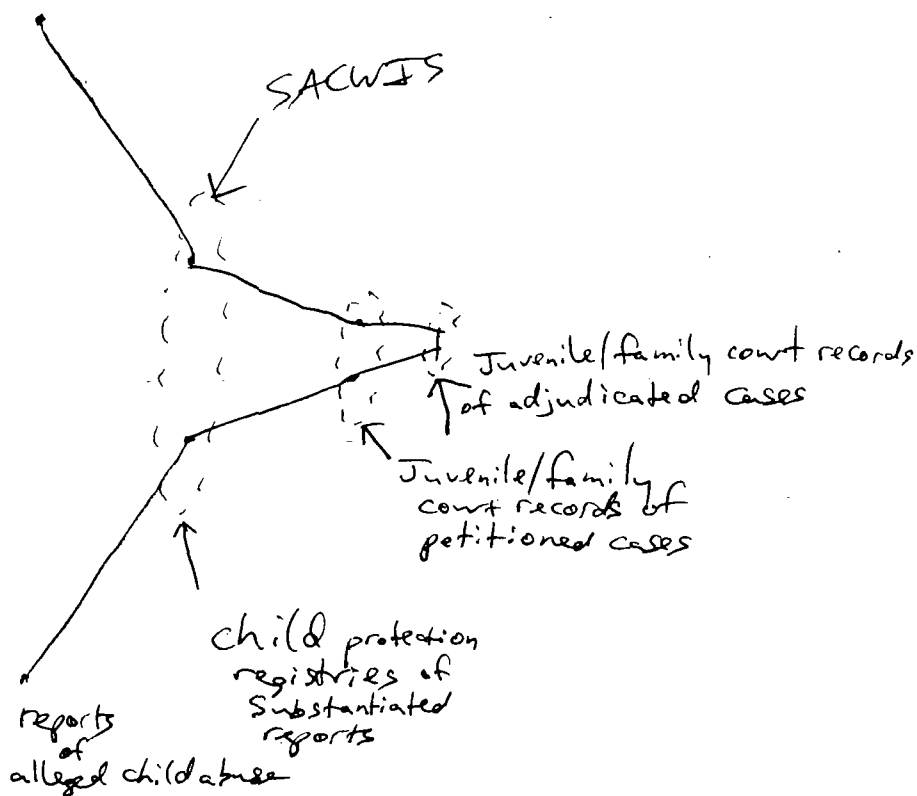
Traditionally, many States maintained separate automated systems for child abuse and neglect (often called central registries) and for ongoing child welfare cases. As many States develop new Statewide Automated Child Welfare Information Systems (SACWIS), the functions of the child abuse and neglect and child welfare systems will be integrated into a single automated system that can follow the history of a child from the point of referral to the agency through any subsequent services provided to the child or family (including foster care or adoption). Therefore, it is possible that in many States, the current central registry may be replaced by or incorporated into the new SACWIS.

¹ In the 1996 reauthorization of CAPTA, a new State grant eligibility requirement was added that requires the State to assure that they have, "provisions requiring, and procedures in place that facilitate the prompt expungement of any records that are accessible to the general public or are used for purposes of employment or other background checks in cases determined to be unsubstantiated or false, except that nothing in this section shall prevent State child protective services agencies from keeping information on unsubstantiated reports in their casework files to assist in future risk and safety assessment...." Therefore, the number of States adopting expungement statutes may increase.

² This is another area in which the 1996 CAPTA amendments have added a Federal requirement. Within two years after the date of enactment of the CAPTA amendments (i.e. by October 1998) States must have provisions, procedures, and mechanisms by which individuals who disagree with an official finding of abuse or neglect can appeal such finding.

Civil Registries

1. Child protection registries
maintained by state child protective services agency
identifying info only if "substantiated"
funded primarily by sts w/ fed funds under
 - 1) Child Abuse Prevention & Treatment Act
 - 2) State Automated Child Welfare Info Sys (SACWIS)
2. SACWIS - case management purposes
75% match by feds under SSA IV-E
3. State judicial records juvenile/family court
maintained by local/county (maybe state) level court
access limited to those authorized by statute or court order
funded by states (DoJ? funds)



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.

**Child Care Background Checks:
Policy Options**
Report of White House Sub-Group
September 12, 1997

RATIONALE

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.

STATUS OF CURRENT BACKGROUND CHECKS

There are:

- no national standards
- no standard definition of applicability or scope
- no single repository of information
- numerous information systems with different purposes

Current laws have limited impact:

- Crime Control Act of 1990 -- applies to Federally operated/contracted programs only
- National Child Protection Act of 1993 - authorizes national checks only if state law requires them

Other considerations:

- cost
- right to privacy
- checks are only one element of screening

COMPONENTS OF BACKGROUND CHECKS

There are three components of background checks:

- A. General Background and suitability
- B. Check of civil (child abuse registries)
- C. Check of criminal records

A. General Background And Suitability:

1. Personal face to face interview
2. References from previous employment
3. Verification of education
4. References from neighbors/acquaintances

Pros:

- Can be done by provider or parent
- Little/no cost to provider or parent

Cons:

- References may withhold relevant damaging information
- Not required by states for licensing child care

B. Check for Substantiated Cases of Child Abuse:

1. Family/juvenile court records to identify civilly adjudicated child abuse cases
2. State child protective services agency case registry

Pros:

- Identifies child abuse, especially by women, more than criminal records
- May be fairer - allegations were officially investigated

Cons:

- Few state laws require either for licensing child care
- State child abuse records privacy laws would need amendment
- No capability or planned capability for interstate check of child abuse registries
- Increases cost to provider (and/or state if cost to be subsidized)
- Privacy concerns (cases not proved beyond a reasonable doubt)

C. Check of Criminal Records:

1. State check of adult records
2. FBI fingerprint check

Pros:

- Identifies most serious misbehavior
- Certainty of fingerprint identification
- Some interstate capability (and improving)

Cons:

- No national standards for criterion (relevant) offenses
- Under-inclusive
 - most child abuse cases are not prosecuted in criminal court
 - records do not include juvenile delinquency records
- Increases cost to provider (and/or state) for FBI fingerprint check
- Delays licensure - fingerprint check can take months

FOR BROADEST COVERAGE
& FEASIBLE UNDER CURRENT SYSTEM

- No/low cost - general background and suitability check
- Higher cost - State check of adult criminal records and FBI fingerprint check adequate screening
- Combination of general check and criminal check

Pros:

- adequate screening
- minimal privacy concerns

Cons:

- some processing delay

WOULD REQUIRE ADDITIONAL FUNDS AND/OR LEGISLATION

- General background and suitability check
- Centralized national database of relevant public agency records
- Adult criminal records accessed through FBI fingerprint check
- Juvenile delinquency records
- Child abuse registries
- Combination of above

Pros:

- most comprehensive screening
- national coverage

Cons:

- not technically feasible for at least 5 years
- increased cost
- some processing delay

POLICY OPTIONS

OPTION 1 - Presidential exhortation:

1. Encourage States to require general background and suitability checks
- 2. Seek Congressional support for legislation authorizing FBI participation in interstate compact on exchanging criminal records information
3. Seek governors' ratification of interstate compact

Pros:

- Low cost - politically feasible
- Respects federalism
- Increases visibility for interstate compact legislation
- Least invasive of privacy
- Alerts parents to need for screening providers

Cons:

- May raise level of fear in parents who cannot change arrangements or system
- Interstate compact process is slow and will have less than national scope

OPTION 2 - Amend Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to require background and suitability checks as condition of eligibility for Child Care block grants:

1. Specify scope of general background and suitability checks
2. Specify scope of applicability of checks:
 - Licensed child care only
 - Current providers exempt
 - Volunteers

Pros:

- Low cost - politically feasible
- Respects federalism
- Non-invasive of privacy

Cons:

- Amending SSA may have political risks during welfare reform process
- Less reliable references may withhold relevant damaging information

→ OPTION 3 - Amend legislation authorizing FBI participation in interstate compact on exchanging criminal records information to add fiscal incentives from Dept. of Justice for state ratification of compact, and Option 2

Pros:

- Increases likelihood of screening capability and uniformity of system

Cons:

- Cost is less politically feasible due to budget agreement

OPTION 4 - Amend Title IV-E of Social Security Act:

- To extend 75% federal match to FY 1999 to assist States in developing State Automated Child Welfare Information System (SACWIS):
- Provide 50% match for interstate linkage of SACWIS, require
- completion by FY 2000

Amend Title IV-B of Social Security Act to require checks of State SACWIS, and Option 2 (above) as condition of eligibility for HHS block grants

➔ **Amend Child Abuse Prevention & Treatment Act to require states to record federal child abuse reports in state registries as condition of eligibility for grants**

Pros:

- Increase screening capability and uniformity of system

Cons:

- Cost is less politically feasible due to budget agreement
- Increases privacy concerns since standard of proof for a civil child abuse case is less than that for a criminal conviction

OPTION 5 - Authorize and fund a centralized national database of (1) Adult criminal records and (2) SACWIS, and Options 2-4 (above).

Pros:

- Increases screening capability and uniformity of system

Cons:

- Cost is less politically feasible due to budget agreement
- Increases perception of "Big Brother" watching citizens

OPTION 6 - Amend Juvenile Justice Delinquency & Prevention Act to require automated interstate linkage of records by FY2003; provide 50% federal match, and include in Options 1-5 (above)

Pros:

- Increases screening capability and uniformity of system

Cons:

- Cost is less politically feasible due to budget agreement
- Increases perception of "Big Brother" watching citizens
- May increase privacy concerns regarding juvenile rehabilitation

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

Authors:

Susan Wells
Noy Davis
Kimberly Dennis
Robert Chipman
Claire Sandt
Marsha Liss

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Project # 92-MC-CX-0013

Jeffrey W. J. Slowikowski, Program Monitor

ABA Center on Children and the Law

Susan J. Wells, Ph.D.	Project Director
Noy Davis, J.D.	Project Manager Legal Analysis and National Regulatory Survey
Kimberly Dennis, M.P.A.	Research Associate Population Estimates, National Survey and Analysis, and Department of Defense Survey
Robert Chipman	Research Associate Department of Defense Survey
Claire Sandt	Research Assistant Case Registry Survey
Marsha Liss, Ph.D., J.D.	Project Consultant Screening Model, Summary and Recommendations
Cheryl Hinton	Administrative Secretary

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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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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.

- 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) A national survey 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) development of a set of criteria to determine the effectiveness of current screening practices; and 3) development of 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. The knowledge derived from these tasks enabled Project staff to make recommendations regarding national, state and organizational approaches to screening.

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.

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(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-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, DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, CRIMINAL JUSTICE INFORMATION POLICY, ORIGINAL RECORDS OF ENTRY (1990) (criminal records); U.S. DEP'T 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.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 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 Intervenor

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.