SCOPE:

Community Residential Mental Retardation Facility Directors
Intermediate Care Facility for the Mentally Retarded Directors
Early Intervention Program Directors
County Mental Health/Mental Retardation Administrators

PURPOSE:

The purpose of this Bulletin is to distribute information, procedures, and a list of commonly asked questions and responses to those questions to aid in the implementation and monitoring of compliance with the child abuse and criminal history records clearance requirements of Act 33 of 1985 and Act 80 of 1987.

This bulletin amends Office of Mental Retardation Bulletin number 33-87-02 issued on October 9, 1987, titled "Act 33". Amendments have been made to this Bulletin to incorporate the requirements of Act 80 of 1987. Amendments include minor clarification on page 5 item b relating to the types of crimes considered, the addition of the section on "Provisional Hiring" on pages 5 and 6 of this Bulletin, amending the responses to questions #7 and #9 to incorporate the requirements of Act 80 of 1987, adding questions #29 through #43 in response to questions about early intervention and provisional hiring, and amending the section on "Monitoring" on page 17 of this Bulletin to incorporate the provisional hiring allowance.

BACKGROUND:

Act 33 of 1985 was signed into law on July 1, 1985. Act 33 of 1985 requires that prospective employees of child care services obtain child abuse and criminal record clearances prior to employment. Act 33 of 1985 became effective on January 1, 1986.


REGULATION AND LAW INTERPRETATION:

APPLICABILITY

(a) Act 33 of 1985 and Act 80 of 1987 apply to all facilities serving primarily children that are licensed, approved, certified, or registered or provided by the Department of Public Welfare and all programs serving primarily children that are provided through a contract with the Department of Public Welfare or a county social service agency.

(b) For mental retardation facilities and services this means that these Acts apply to the following:

1. Licensed Community Residential MR Facilities and Agencies serving primarily children.
2. Licensed non-state ICFs/MR serving primarily children.
4. Early Intervention Facilities (licensed/approved as Child Day Care Centers).
5. Non-licensed mental retardation children's programs such as recreation programs, camps, transportation, family aid services, family support services, and homebound instruction programs.
6. County mental retardation Program staff who provide direct care, supervision, guidance or control of children.

(c) These Acts do not apply to vocational facilities or adult day care centers that are licensed in accordance with 55 Pa. Code, CH. 2380 and CH. 2390.

RESPONSIBILITY FOR COMPLIANCE

The legal entity and administrator of the child care facilities and children's programs listed under the "Applicability" section of this Bulletin are responsible for compliance with Act 33 of 1985 and Act 80 of 1987. The penalty for non-compliance with these Acts is a civil penalty of up to $2,500.
DEFINITIONS


Child - any person under age 18.

Founded report - a report made pursuant to the Child Protective Services Act if there has been any judicial adjudication based on a finding that a child who is a subject of the report has been abused.

Indicated report - a report made pursuant to the Child Protective Services Act if an investigation by the child protective service determines that substantial evidence of the alleged abuse exists based on (i) available medical evidence (ii) the child protective service investigation or (iii) an admission of the acts of abuse by the child's parent or person responsible for the child's welfare.

INDIVIDUALS REQUIRING CLEARANCES

(a) Act 33 of 1985 requires that certain staff employed in the types of child care facilities and children's programs listed under the "Applicability" section of this Bulletin have both child abuse and criminal history record clearances prior to employment. Only staff who will be providing direct care, supervision, guidance, or control of children are covered by Act 33 of 1985.

(b) Following is a description of which staff require and do not require clearances:

(1) Only staff who will be hired after January 1, 1986 require the clearances.

(2) Staff who will be providing only adult care do not require clearances.

(3) Only paid employees of the facility or agency require clearances; volunteers do not require clearances.

(4) Paid substitute and temporary staff must have clearances.

(5) CWEP workers require clearances.

(6) If a person meets all of the following three criteria, clearances are not required:

- under 21 years of age
- employed for periods of 90 days or less
- part of a job development or job training program funded in whole or in part by public or private sources (other than CWEP).

(7) A new administrator or chief executive officer hired after January 1, 1986 requires clearance only if that person has direct contact with children. If the administrator or chief executive officer requires a clearance, the legal entity must complete the clearances and keep documentation of the checks on file at the agency or facility.
(8) If a new facility or agency opens after January 1, 1986 and the facility or agency has no legal entity (society, partnership, corporation, governing authority), the individual owner/operator of the facility or agency requires clearance prior to licensure and initial operation.

CLEARANCES

(a) Two clearances are required: A criminal records check to investigate past criminal convictions and a child abuse check to determine if there have been any founded or indicated reports of child abuse naming the applicant as perpetrator.

(1) Child Abuse Check

Departmental form #CY113, titled "Application for Child Abuse History", must be used to request child abuse checks. Copies of this form may be obtained by calling ChildLine at (717) 783-6211, or, by writing to:

Childline and Abuse Registry  
P.O. Box 8170  
Lanco Lodge, Second Floor  
Harrisburg, Pennsylvania 17105-8170

In order to request the child abuse check, form #CY113 must be submitted to ChildLine at the above address with a check or money order for $10.00 made payable to the Pennsylvania Department of Public Welfare. If form #CY113 is not used or if the $10.00 fee is not attached, the child abuse record check request will not be processed and ChildLine will return the request to the applicant. CWEP applicants are exempt from payment of the $10.00 fee.

The Department is required to comply with certification requests within 14 days from the date of receipt at ChildLine.

(2) Criminal History Records Check

A separate request must be made to the Pennsylvania State Police in order to obtain a criminal history records check. The facility or agency may contact any Pennsylvania State Police facility to request copies of the criminal records check forms.

The State Police charge $10.00 for the criminal history records check. A personal check, cashier's check or certified check or money order must accompany the request.

The estimated processing time from the date of receipt from the criminal history records check is 21 days.
If the prospective employee resides outside of Pennsylvania, a Federal FBI check is required in addition to the Pennsylvania criminal records check. For out-of-state prospective employees, contact ChildLine for a complete packet that will include an FBI check form. The charge for an FBI report is $14.00.

The Pennsylvania State Police do not maintain criminal information on persons under 18 years of age. However, Act 33 of 1985 requires that criminal history records checks be conducted on all prospective employees, which will include prospective employees under age 18. Therefore, a criminal records check must be requested on individuals under age 18, and a report of "no information available" will be considered compliance with Act 33 of 1985.

Both the child abuse check and the criminal history records check must be obtained by the applicant within one year prior to the application for employment of the prospective employee. If the date of a clearance exceeds one year prior to the application for employment, a new clearance must be obtained.

There is no requirement in the law or regulations that specifies who must pay the fees for the criminal history records check and the child abuse records check.

A prospective employee may not be hired in a child care position (direct care, supervision, guidance, or control of children) if the results of either of the two clearances indicate that:

a. he/she is a perpetrator of a founded report of child abuse within five years prior to the report from DPW regarding the child abuse check, (11 P.S. §2223.1(d)) or,

b. he/she has been convicted of a crime listed in Section 23.1(e) of the Child Protective Service Law (11 P.S. §2223.1(e)), or an equivalent out-of-state crime as determined by the Department, within five years prior to the report of criminal record history information (11 P.S. §2223.1(e)).

PROVISIONAL HIRING

(a) In accordance with Act 80 of 1987, child care administrators are permitted, but not required, to hire staff in a child care position (direct care, supervision, guidance, or control of children) for a single period not to exceed 30 calendar days for Pennsylvania residents, or 90 calendar days for out-of-state residents, if the following conditions are met:

(1) The applicant has mailed the requests for the required clearances to ChildLine, the Pennsylvania State Police, and the FBI (if applicable).
(2) The applicant provides copies of the completed request forms for clearances to the administrator.

(3) The administrator has no knowledge of information which would disqualify the applicant from employment in accordance with 23.1(d), or (e) of the CPSL (11 P.S. §2223.1(d), (e)).

(4) The applicant swears or affirms in writing that he is not disqualified from employment in accordance with 23.1(d) or (e) of the CPSL (11 P.S. §2223.1(d), (e)).

(b) The applicant shall be immediately dismissed from employment if he is disqualified from employment pursuant to 23.1(d) or (e) of the CPSL (11 P.S. §2223.1(d), (e)).

(c) During the 30 or 90 day provisional period, the provisional employee is not permitted to work alone with children and must work in the immediate vicinity of a permanent employee.

1. "Immediate vicinity" means that the provisional employee must work within eyesight of a permanent employee at all times.

2. "Permanent Employee" means:

   (A) a child care worker who has been successfully cleared by ChildLine, Pennsylvania State Police, and FBI, if applicable; or,

   (B) a child care employee who was employed prior to January 1, 1986, and who was not required to submit the requests for clearances.

QUESTIONS AND ANSWERS

(a) Following is a list of commonly asked questions and responses to these questions.

(1) Q. Is a service a child care service whenever a child receives the service, or must the service be primarily for children to fall within the scope of these Acts?

A. The service must be primarily for children. Thus, for example, a vocational facility which occasionally serves a client under 18 would not be covered. Residential programs for the mentally retarded are covered only if they primarily serve children, and not if they have a resident under age 18 from time to time. The reason for this distinction is that a facility which is primarily for adults has no special attraction for persons disposed toward child abuse, and that any children who are present are likely to be in their mid to upper teens, and therefore somewhat less vulnerable than younger children.
(2) Q. Are only regular child care employees covered, or are employees who rotate into child care positions covered as well?

A. Any employee who predictably provides child care services as part of his employment is covered, whether this is five days a week or one day a month.

(3) Q. Do these Acts apply to employees who provide child care coverage on an unpredictable emergency basis only?

A. Persons who might provide care on an unpredictable "emergency" basis only are not covered. Because the attraction to persons disposed toward abuse is slight, the need for emergency care outweighs the small risk of an unscreened person providing it.

(4) Q. Must staff employed prior to January 1, 1986, in a non-child care position who are promoted or transferred to a child care position after January 1, 1986, with the present employer obtain clearances?

A. Yes. A person who is promoted or transferred from a position involving only indirect contact with children to a position involving direct contact must submit the required records checks. The promoted or transferred individual would be deemed a "prospective employee" under the Law.

If, however, an individual is already employed in a child care service in a position which involves direct contact with children and is promoted to a higher level, which still involves direct contact with children or which does not require direct contact with children, such individual is exempt from the screening requirements.

(5) Q. Does Act 33 apply to a person hired on December 31, 1985 (or prior thereto), but who does not begin to work until after January 1, 1986?

A. So long as a written commitment to hire an individual was made prior to January 1, 1986, Act 33's effective date, the individual is not required to submit verifications prior to actual commencement of employment after January 1, 1986.

Once the commitment to employ an individual is made, that individual has been "hired" for purposes of Act 33, which provides that an administrator of a child care service shall not hire an individual who possesses an adverse criminal record or child abuse history.
(6) Q. Must employees, who work for an agency prior to January 1, 1986, and who resign or are furloughed and later reapply with the same agency after January 1, 1986, receive clearances?

A. If the employee is furloughed, the answer will depend upon whether the furloughed employee retains any right to reemployment with the agency. Particularly in the case of a union contract, a furloughed employee may have a property interest in continued employment. Hence, a furloughed employee is considered a "current employee" during the period of the furlough and is not required to submit the verifications. If the furloughed employee is not a union employee or if there is no contract with the employer regarding reemployment rights, then the employee would require screening.

The employee who resigns, however, is different. He retains no property right in reemployment; hence, he would be deemed a prospective employee and require the clearances.

(7) Q. Is an administrator subject to these Acts?

A. Yes, if his or her job duties involve direct contact with children. If an administrator's job duties do not involve direct contact, he is outside the scope of Act 33. In emergency situations, an administrator whose job duties do not involve direct contact with children is not required to be screened.

An administrator may not be hired provisionally under Act 80 of 1987. Refer to question #38.

(8) Q. Are janitors and food service workers who seek employment in a child care service required to seek criminal history and ChildLine clearances?

A. Generally, no. Janitors and food service workers are generally outside the scope of these Acts. Section 23.1(a) of the Child Protective Service Law, governing applicability, provides: "This section shall apply to all prospective employees of child care services, prospective self-employed family day care providers and other persons seeking to provide child care services under contract with a child care facility or program. This section shall not apply to administrative or other support personnel unless their duties will involve direct contact with children." 11 P.S. Section 223.1(a). Child Protective Service regulations define "direct contact with children" as "care, control, supervision or guidance of a child." 55 Pa. Code Section 3490.121. In the ordinary course of his or her employment, a janitor's or food service worker's job duties do not involve "direct contact" with children; hence, the provisions of these Acts do not apply.
However, where, in fact, the janitor's or food service worker's job duties will involve care, control, supervision or guidance of a child, such prospective janitor or food service worker who applies for a job in a child care service is required to submit the necessary verifications required by Act 33. Where, e.g., a prospective food service worker's job duties would involve supervising a child in assisting in the preparation of meals at a juvenile detention facility when no other "direct care" staff person is present, such a food service worker would have to be screened.

(9) Q. Are drivers of buses and vans who take children to and from child care services within the scope of these Acts?

A. If the drivers are employees of the child care agency or service, and there are no other child care services employees in the bus, they are covered. The children would in these circumstances be under the supervision of the driver. If the driver is alone with the children, provisional hiring is not permitted. Where there is another child care employee on the bus or van, and the driver is not in charge of the children, Act 33 is not applicable to the driver. Drivers who are employees of general transportation companies which contract with child care services are not covered, because employment in a general transportation company is not especially attractive to persons with dispositions toward child abuse.

(10) Q. In a family living community residential facility, which family members are required to have clearances?

A. Only the persons applying to be family living providers are covered by these Acts. Other persons, including other adults living in the household, are not covered.

(11) Q. Are medical staff of mental retardation facilities for children who administer medications or other medical or health services to children, but who are not alone with the children, covered under these Acts?

A. Yes, these Acts apply since the medical staff have direct contact, (i.e. care, supervision, guidance, or control) of the children.

(12) Q. Do these Acts apply to consultants employed through contract by a child care service?

A. Yes, these Acts apply if the consultant will be providing direct care, supervision, guidance or control of children.
(13) Q. Are persons seeking employment as substitute staff subject to these Acts?

A. Yes. A person who seeks employment in a child care service, whether on a full-time, part-time or substitute basis is a "prospective employee" for purposes of these Acts. No distinction is drawn among such types of employment.

(14) Q. If a substitute is employed for Agency X and Agency Y, does such substitute need only to be cleared one time?

A. A prospective substitute employee must submit the required clearances with his application for employment to each child care service agency or facility to which he applies. The Act, however, permits prospective employees to submit copies of such verifications with the applications for employment. The original child abuse history clearance form and State Police criminal history clearance form must be presented by the employee to the employer prior to employment.

Therefore, the prospective employee need only obtain one set of clearances, and may submit copies to each child care service where employment is sought. Verifications of child abuse and criminal record histories are valid for one year.

(15) Q. Are volunteers of child care services who are paid expenses only included within the scope of these Acts?

A. No. These Acts cover employees, not volunteers. An individual who volunteers to participate in a child care service who is paid, from whatever source, for expenses only, is outside the scope of these Acts; they remain volunteers. Such an individual is in no way receiving wages or salary or any other compensation for services performed, but is merely paid for expenses incurred for participation in the child care service activities. Act 33 does, however, permit an individual who is not otherwise subject to the Act to seek voluntary certification as a child caretaker.
(16) Q. Do these Acts apply to a prospective employee of a Department of Public Welfare licensed residential facility which has an on-site school licensed by the Department of Education?

A. The answer to this question depends upon whether the individual's job duties will be strictly limited to teaching or whether such individual's job duties include teaching in addition to other functions, such as a houseparent or counselor for children cared for in the facility. If the individual seeking employment in the facility will only perform educational services within the Department of Education-licensed school, then such individual is outside the scope of these Acts. Such individual would, however, be subject to Act 34 of 1985, which governs prospective school employees and requires such prospective employees to submit criminal history record information prior to employment.

If, in fact, such individual will perform functions other than teaching alone, such person would be subject to these Acts and be required to submit both the criminal history record information and the ChildLine checks.

(17) Q. If a facility changes ownership, but operates continuously after 1-1-86, do all current employees at such center require screening?

A. No. The fact that the current employees usually remain in spite of the change in ownership makes such employees more akin to current employees, rather than prospective employees seeking initial employment. Current child care service employees are not required to submit the record clearances as a condition of continued employment.

(18) Q. Is an FBI check required if a person lived in Pennsylvania at one time but now resides in another state?

A. Yes. A person who currently resides outside Pennsylvania is considered an out-of-state resident. Under the Law, a person who is not a resident of this Commonwealth shall submit an FBI report. There is no length of residency requirement. The fact that the prospective employee formerly resided in Pennsylvania is not relevant.

(19) Q. If a prospective employee moved to Pennsylvania the week before application for employment, is an FBI check required for the applicant?

A. No. The person who moves to Pennsylvania is considered a Pennsylvania resident as soon as he takes residence in Pennsylvania. There is no length of residence requirement. Hence, a Pennsylvania resident, regardless of length of residency, is not required to seek FBI clearance.
(20) Q. Are private practitioners of licensed professions, such as child psychiatrists, covered?

A. No. Consideration of the statute as a whole, especially the enforcement provisions, clearly indicate that the private practitioner was not intended to be covered. A psychiatrist who contracts with a psychiatric clinic for children is covered, however, because all persons who contract with child care services whose duties involve direct contact with children are covered. The basis for this distinction is that the client of the private practitioner (or his/her parent) can choose the practitioner. This choice is usually not available in a clinic or other facility setting.

(21) Q. Are private practitioners covered by these Acts if the practitioner is reimbursed by medical assistance?

A. No.

(22) Q. Are summer camps covered by these Acts?

A. Summer camps are covered if, and only if, the program offered is primarily for one of the groups of children specifically identified in the definition of "child care services": delinquent, dependent, mentally retarded, mentally ill, alcohol or drug dependent.

(23) Q. If a county agency contracts with the YWCA for swimming lessons for mentally retarded children, is the "Y" considered a child care service?

A. No. Unless the swimming program is specifically identified as a service for mentally retarded children. The fact that a mentally retarded child is present either in a group of "regular" children who are receiving swimming lessons or a group composed entirely of mentally retarded children receiving swimming lessons does not convert the "Y" into a child care service.

(24) Q. Do County Mental Retardation Casemanagers require clearances?

A. It depends upon the job duties of the casemanagers. If the casemanagers job duties involve "direct contact" with children, the individual who applies to be a casemanager is required to submit criminal history and child abuse history information. The Department's regulations define "direct contact" as "care, control, supervision or guidance" of a child. (55 Pa. Code section 3490.121.).
(25) Q. Are child care service contractors with pre-existing contracts which are renewed on an annual basis required to submit clearances each year?

A. No. These Acts do not provide for any annual checks of employees who were either hired before January 1, 1986, or those prospective employees hired after January 1, 1986. There is no rationale to treat current contractors who renew their contracts on an annual basis without any interruption of service any differently from current employees for purposes of these Acts.

(26) Q. Are new employees of a child care services contractor, who apply for employment after 1-1-86, subject to these Acts?

A. Yes. Such employees would be "prospective employees" for purposes of these Acts.

(27) Q. Who is responsible for the decision that a child care CWEP assignment involves direct contact with children?

A. The project operator is in the best position to certify whether or not direct contact with children will be involved when the project position request is made to the Employment Office in the County Assistance Office.

(28) Q. Do these Acts apply to all facilities/programs serving children?

A. These Acts apply only to facilities/programs serving primarily children. If more than 50% of the population served at any facility or unit within a facility are children, then the facility or unit is considered a child care service for purposes of these Acts. In the context of the preceding statement, "facility" means any building in which child care services are provided. "Unit" means any separate and distinct portion or area of a building, such as an apartment unit, a wing of a building, or a floor of a building in which child care services are provided.

The determination of whether a service is a child care service should be based upon the annual population of children cared for by the facility. In other words, the census of each facility should be examined on an annual basis to determine if more than 50% of the population is under age 18. If so, then the facility is considered a child care service.

(29) Q. Given the changes in Early Intervention services through P.L. 99-457, will existing agencies who now become contracted providers be considered new agencies? Must employees submit new clearances?

A. Existing agencies which become contracted providers are not considered new agencies for purposes of these Acts. Employees who have previously been cleared, or, who were hired in a child care position prior to 1/1/86 are not required to submit new clearances.
(b) The following questions and answers are provided for clarification in the provisional hiring process.

(30) Q. May a person be hired in a child care position conditionally pending receipt of the clearances?

A. Yes, as long as the requirements specified in Act 80 of 1987 and the Child Protective Service Regulations are met.

(31) Q. May a person be hired and placed in a training program prior to receipt of the clearances?

A. Yes, as long as the requirements specified in Act 80 of 1987 and the Child Protective Service Regulations are met.

(32) Q. If the applicant states that he has submitted the necessary requests for clearance, but did not make a copy of those requests for clearance, may the administrators hire the applicant?

A. No. The administrator must retain a copy of those requests as a condition of provisional employment.

(33) Q. May an administrator as a matter of hiring policy decide not to hire on a provisional basis?

A. Yes. Act 80 of 1987 states that "... administrators may employ applicants ... ."

(34) Q. What is the administrator's most prudent action to attempt to assure that the prospective employee would not be disqualified from employment pursuant to §§23.1(d) or (e) of the CPSL (11 P.S. §2223.1(d), (e))?  

A. (a) Ask the applicant whether he will be disqualified pursuant to §§23.1(d) or (e) of the CPSL (11 P.S. §2223.1(d), (e)). Read those sections to the prospective employee.

(b) If the prospective employee answers that he would not be disqualified pursuant to §§23.1(d) or (e) of the CPSL (11 P.S. §2223.1(d), (e)), he is required to affirm/swear to that in writing.

(35) Q. Does Question #33 apply to an out-of-state person applying for employment in Pennsylvania?

A. Yes. In addition, he must swear/affirm that he has not been convicted of an equivalent crime as listed in §23.1(e) of the CPSL (11 P.S. §2223.1(d), (e)) in another state within five years preceding his application for employment.
(36) Q. What is the responsibility of the administrator if the provisional employee does not submit the required clearances to the administrator within 30 calendar days of employment?

A. The administrator has three options:

   a. Dismiss the employee until clearances are received.

   b. Retain and reassign the employee in a position that does not involve direct contact with children. Direct contact with children is defined as care, supervision, guidance or control of children, or,

   c. Furlough/lay off the employee until the clearances are received. (This option is not applicable for Civil Service employees).

(37) Q. May a prospective operator/administrator of a new facility or agency acquire a license pending ChildLine and State Police clearances?

A. No. Section 22.1(o) of the CPSL (11 P.S. §2223.1(o)) does not apply to an operator/administrator seeking a license for a new facility or agency.

(38) Q. May the legal entity of a licensed/operating facility provisionally hire an administrator whose job duties involve direct contact with children?

A. No. Section 23.1(o) of the CPSL (11 P.S. §2223.1(o)) does not permit a legal entity to hire an administrator for the agency/facility pending clearances. Act 80 of 1987 was intended to allow administrators to hire child care staff to assure adequate supervision of children in care.

(39) Q. When does employment begin -- when the job is offered/accepted or the first day of work?

A. Employment begins on the first day of work.

(40) Q. May the administrator call ChildLine to confirm that the request has been received/processed/returned to the prospective employee?

A. Yes. It is suggested that the administrator call between the 20th and 25th day after provisional hire. The number is (717) 783-6211. Staff are on duty Monday through Friday between 8:00 a.m. and 4:30 p.m.

(41) Q. What information about the employee does the administrator need to have when he calls ChildLine?

A. The name, address and social security number of the employee and approximate date when the request was mailed.
(42) Q. What information will ChildLine give the administrator when he calls?

A. ChildLine will confirm whether the request has been received and processed, and the date the response was mailed. ChildLine will not release the results of the clearance.

(43) Q. What should the applicant do if he has not received the clearance within seven days after the date ChildLine confirmed it was mailed?

A. The applicant should call ChildLine at (717) 783-6211 for assistance in resolving the problem.

MONITORING:

(a) Licensed Community Residential MR Facilities and Agencies Serving Children and Non-State Operated Intermediate Care Facilities for the Mentally Retarded Serving Children

The Department of Public Welfare, through the Office of Mental Retardation, will monitor licensed community residential mental retardation facilities and agencies for compliance with these Acts routinely as part of the licensure process. The Department of Health will monitor licensed non-state operated intermediate care facilities for the mentally retarded for compliance with these Acts routinely as part of their licensure process. The following licensing procedures will be followed by both the Office of Mental Retardation's and the Department of Health's licensing inspectors.

During each annual licensing inspection, the licensing inspector will request access to all records of new child care employees hired or transferred to child care during the past 12 months (not to precede January 1, 1986). The licensing inspector will review a minimum of a 25% random sample of the records of new child care employees for each facility. The inspector will review the records for:

1. copy of Form CY113 showing no founded reports of child abuse within five years preceding clearance, or showing a founded report of child abuse not within five years preceding clearance or showing an indicated report of child abuse but giving justification for hiring person in child care position.

2. copy of State Police Criminal History Records form showing no criminal convictions listed in Act 33 of 1985 within five years preceding clearance.
(3) dates of hire in child care position compared to the dates requests for clearances were mailed to ChildLine, the Pennsylvania State Police, and the FBI (if applicable) and the dates clearances were received by the facility or program.

If:

- (a) or (b) are not found in any one record sampled, OR,
- the date of hire in a child care position ever precedes the date both clearances were obtained and the provisional hire requirements of Act 80 of 1987 were not complied with, OR,
- either clearance was obtained prior to one year preceding the date of application for employment,

Then:

the inspector should discuss the possible non-compliance with these Acts with the facility or agency. If evidence of compliance cannot be shown, the inspector should prepare a written report listing the non-compliance. The report should be immediately forwarded to the Deputy Secretary, Office of Mental Retardation.

(b) Mental Retardation Early Intervention Facilities

Early intervention facilities are licensed/approved through the Department's Office of Children, Youth and Families as child day care centers. The Office of Children, Youth and Families will monitor compliance with these Acts for all licensed/approved child day care centers, including mental retardation early intervention facilities, as part of their licensure/approval process.

(c) Non-Licensed Mental Retardation Children's Programs

Non-licensed mental retardation children's programs such as recreation programs, camps, transportation, family aid services, family support services, and homebound instruction programs that are specifically designed for children with mental retardation are covered by these Acts. The Department, however, does not have responsibility for these programs for compliance with these Acts since the programs do not require licensure/approval. Therefore, the Office of Mental Retardation will not routinely monitor such programs if the programs are not licensed/approved by the Department. The County Mental Retardation Program should monitor children's programs provided through a contract with the County Mental Retardation Program for compliance with these Acts on a routine basis. If the County Mental Retardation Program observes non-compliance with these Acts, the County Mental
Retardation Program shall notify the Regional Mental Retardation Program Manager in writing. The Regional Mental Retardation Program Manager shall review the non-compliance and forward a written report to the Deputy Secretary, Office of Mental Retardation.

(d) County Mental Retardation Programs:

County Mental Retardation Programs staff who provide direct care, supervision, guidance, or control of children require child abuse and criminal records clearance. The Office of Mental Retardation will monitor County Mental Retardation Programs to determine compliance with these Acts.

55 PA CODE, CHAPTER 20 REGULATIONS:

In addition to the preceding requirements, the Department's 55 Pa. Code, Ch. 20 regulations titled "Licensure or Approval of Facilities and Agencies" also govern criminal, abuse, and other circumstances which are considered as part of the Department's issuance of certificates of compliance. 55 Pa. Code, CH. 20 subsection 20.71(b) states:

(b) The Department will review and may deny, refuse to renew, or revoke a certificate of compliance if a legal entity, owner, operator, or staff person:

1. Has been convicted of a felony.

2. Has been convicted of a crime involving child abuse, child neglect, moral turpitude, or physical violence.

3. Has serious mental illness which might create a risk to the clients, which shall be determined and documented by a licensed physician or a licensed psychologist.

4. Has evidence drug or alcohol addiction within the past year, which shall be determined and documented by a licensed physician.

5. Has been named as a perpetrator in an indicated or founded report of child abuse in accordance with the Child Protective Services Law (11 P.S. §§2201-2224).

The above CH. 20 requirements apply to all facilities subject to licensure or approval serving children and adults, providing residential and part-day care. It is the responsibility of the agency or facility applying for initial and renewal licensure/approval to comply with 55 Pa. Code, CH. 20.
ADDITIONAL REQUIREMENTS:

Additional requirements for out-of-state applicants, FBI checks, voluntary certification, operators of facilities, etc., are listed in Act 33 of 1985, Act 80 of 1987, and Pa. Code Ch. 3490, titled "Child Protective Services-Child Abuse".

AVAILABLE MATERIALS:

Please contact your appropriate Regional Office of Mental Retardation if you would like a single copy of any of the following:

- Act 33 of 1985 (the Law)
- Act 80 of 1987 (the Law relating to provisional hiring)
- 55 Pa. Code Ch. 3490 - Child Protective Services - Child Abuse Regulations
- Sample Criminal History Records Check Form
- Application Form for Child Abuse History (Form CY113)

OBOSLETE MATERIAL:

Office of Mental Retardation Bulletin No. 33-87-02, issued on October 9, 1987, titled "Act 33".
SB 140

Amending the act of November 26, 1975 (P.L.438, No.124), entitled, as amended, "An act establishing child protective services; providing procedures for reporting and investigating the abuse of children; establishing and providing access to a Statewide central register and pending complaint file on child abuse; investigating such reports; providing for taking protective action including taking a child into protective custody; placing duties on the Department of Public Welfare and county children and youth social service agencies; establishing child protective services in each county children and youth social service agency; and providing penalties," requiring funeral directors to report suspected child abuse; further providing for the confidentiality of records; and providing for the employment of certain persons on a provisional basis.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 4 of the act of November 26, 1975 (P.L.438, No.124), known as the Child Protective Services Law, amended June 10, 1982 (P.L.460, No.126), is amended to read:

(a) Any person who, in the course of their employment, occupation, or practice of their profession come into contact with children shall report or cause a report to be made in accordance with section 6 when they have reason to believe, on the basis of their medical, professional or other training and experience, that a child coming before them in their professional or official capacity is an abused child.

(b) Whenever any person is required to report under subsection (c) in his capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, he shall immediately notify the person in charge of such institution, school, facility or agency, or the designated agent of the person in charge. Upon notification, such person in charge or his designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6. Nothing in this act is intended to require more than one report from any such institution, school or agency.

(c) Persons required to report under subsection (a) include, but are not limited to, any licensed physician, medical examiner, coroner, funeral director, dentist, osteopath, optometrist, chiropractor, podiatrist, intern, registered nurse, licensed practical nurse, hospital personnel engaged in the admission, examination, care or treatment of persons, a Christian Science practitioner, school administrator, school teacher, school nurse, social services worker, day care center worker or any other child care or foster care worker, mental health professional, peace officer or law enforcement official. The privileged communication between any professional person required to report and his patient or client shall not apply to situations
involving child abuse and shall not constitute grounds for failure to report as required by this act.

(d) Any person who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, makes or causes said report to be made and who, as a result thereof, is discharged from his employment or in any other manner is discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, may file a cause of action in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred for appropriate relief. If the court finds that the individual is a person who, under this section, is required to report or cause a report of suspected child abuse to be made, that he, in good faith, made or caused to be made a report of suspected child abuse, and that as a result thereof he was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, it may issue an order granting appropriate relief, including but not limited to reinstatement with back pay. The Department of Public Welfare may intervene in any action brought pursuant to this subsection.

Section 2. Section 15(a) of the act is amended by adding a clause to read:

Section 15. Confidentiality of Records.—(a) Except as provided in section 14, reports made pursuant to this act including but not limited to report summaries of child abuse made pursuant to section 6(b) and written reports made pursuant to section 6(c) as well as any other information obtained, reports written or photographs or x-rays taken concerning alleged instances of child abuse in the possession of the department, a county children and youth social service agency or a child protective service shall be confidential and shall only be made available to:

   * * *

(12) A mandated reporter of child abuse as defined in section 4 who made a report of abuse involving the subject child: Provided, however, That the information permitted to be released to such mandated reporter shall be limited to the following:

(i) the final status of the report following the investigation, whether it be indicated, founded or unfounded; and

(ii) any services provided, arranged for, or to be provided by the child protective service to protect the child from further abuse.

* * *

Section 3. Section 23.1 of the act is amended by adding a subsection to read:

Section 23.1. Information Relating to Prospective Child Care Personnel.—* * *

(b) Notwithstanding subsections (b) and (c), administrators may employ applicants on a provisional basis for a single period not to exceed 30 days, or, for out-of-State applicants, a period of 90 days, provided that all of the following conditions are met:

(1) the applicant has applied for the information required under subsection (b), and the applicant provides a copy of the appropriate completed request forms to the administrator;
(2) the administrator has no knowledge of information pertaining to the applicant which would disqualify him from employment pursuant to subsection (d) or (e);
(3) the applicant swears or affirms in writing that he is not disqualified from employment pursuant to subsection (d) or (e);
(4) if the information obtained pursuant to subsection (b) reveals that the applicant is disqualified from employment pursuant to subsection (d) or (e), the applicant shall be immediately dismissed by the administrator; and
(5) the administrator requires that the applicant not be permitted to work alone with children and that the applicant work in the immediate vicinity of a permanent employee.

Section 4. This act shall take effect in 60 days.

APPROVED—The 6th day of November, A. D. 1987.

ROBERT P. CASEY