

SEARCH Resolution 09-52

Of the Membership Group of SEARCH, The National Consortium for Justice Information and Statistics

May 26, 2009

National Child Protection Act Amendments

WHEREAS, in 1993, the Membership Group supported the enactment of the National Child Protection Act (NCPA);

WHEREAS, in 1999, the Membership Group supported the enactment of the Volunteers for Children Act, amending the NCPA;

WHEREAS, in the period since 1999, the Congress has considered numerous bills to further amend the NCPA;

WHEREAS, in August, 1999 and in January, 2003, the SEARCH Membership Group adopted Resolutions calling for further amendments to the NCPA;

WHEREAS, the 1999 and 2003 SEARCH Resolutions called for the following changes, among others, to the NCPA;

- A recognition that the highest quality checks are initiated through the State in which a covered entity is located;
- A recommendation that States may (but should not be required to) return the entire criminal history record to the requesting covered entity;
- A recommendation that fees charged by the States and the FBI for volunteer processing must be at the lowest reasonable amount, so as not to discourage covered entities from requiring volunteers to be subject to background checks;
- A recommendation that fees for employees of covered entities should be at cost;
- A recognition that NCPA background screening is for non-criminal justice purposes and, thus, should be subject to rules issued by the National Crime Prevention and Privacy Compact Council;
- A recommendation that, at the national level, no new agency, organization or entity should be created or authorized to process or facilitate NCPA checks or to set standards for these checks;
- A recommendation that States which opt, wholly or partly, not to process NCPA checks should not suffer any diminishment in federal justice assistance or suffer any other type of penalty; and
- A recommendation that the Department of Justice should create a grant program for the States to support fingerprinting for NCPA checks; to offset the States' cost of researching missing dispositions or correcting other record deficiencies; and to offset other costs;

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WHEREAS, SEARCH supports a Compact Council rule that outsources to private sector, approved channeling agents the authority to submit prints and non-criminal justice background check requests through the Interstate Identification Index;

WHEREAS, in 2008 the 110th Congress actively worked on legislation to comprehensively amend the NCPA;

WHEREAS, the 111th Congress is expected to again take up comprehensive NCPA reform;

WHEREAS, the SEARCH Membership Group continues to find that entities covered by the NCPA can obtain a record of a prospective volunteer's or employee's criminal history record from various commercial and other sources, but these checks are name-based and are not as comprehensive or reliable;

NOW, THEREFORE, BE IT RESOLVED, by the Membership Group of SEARCH, the National Consortium for Justice Information and Statistics, that:

- A. SEARCH continues to support amending the NCPA to assure that background checks for volunteers and employees providing services to children are comprehensive, reliable, affordable and processed as expeditiously as practicable;
- B. SEARCH supports NCPA enhancement legislation which would require the obtaining and submission of fingerprints; consent by covered individuals; appropriate privacy and security safeguards for criminal history records; and providing covered individuals with appeal and correction rights;
- C. SEARCH recognizes that it is appropriate, as a predicate to requiring the initiation of the check through the State, that the States meet reasonable and appropriate criteria for the fees to be charged for conducting the check, provided that the criteria are flexible and permit states to recover their costs, and, for time periods to be met in returning the check, provided that compliance requirements are based on a "pattern and practice" of on-time compliance;
- D. SEARCH supports language in NCPA enhancement legislation which gives states which operate "qualified programs" (i.e., programs which meet financial and time frame requirements) full discretion to operate the program in accordance with state law and other state requirements, while making covered entities in these states ineligible to participate in the national program;

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- E. SEARCH recognizes that it is reasonable for NCPA enhancement legislation to permit covered entities to obtain checks directly from the FBI if they are located in States which do not, or cannot, process requests from legitimate covered entities within reasonable time frames or at reasonable cost;
- F. SEARCH supports NCPA enhancement legislation that would provide that, in evaluating State performance and otherwise operating the nationwide NCPA background check program, the Attorney General is made legally responsible for all such duties;
- G. SEARCH urges the Congress to assure that NCPA enhancement legislation permits legitimate covered entities to obtain the entire, available criminal history record where they desire to do so and where they meet appropriate privacy and security standards; and
- H. SEARCH urges the Congress to avoid the creation of unfunded mandates on the States in fulfilling requirements under the NCPA and to provide, through fees and/or grants or other means, adequate financial resources for the States to participate in any revised NCPA background check program.