

Act 169 of 1996

PURPOSE: Requires criminal history background checks for employees of NH, PCH, Dom Care, Home Health and ADC. Employees with convictions for prohibitive offenses are precluded from working in these facilities.

PROHIBITIVE OFFENSES:

- Criminal Homicide
- Aggravated Assault
- Kidnapping
- Unlawful Restraint
- Rape
- Statutory Sexual Assault
- Involuntary Deviate Sexual Intercourse
- Sexual Assault
- Aggravated Indecent Assault
- Indecent Assault
- Indecent Exposure
- Arson and Related Offenses
- Burglary
- Robbery
- Theft (Felony or 2 Misdemeanors)
- Forgery
- Securing Execution of Documents by Deception
- Incest
- Concealing the Death of a Child
- Felony Drug Offense
- Child Endangerment
- Dealing in Infant Children
- Intimidation of Witness
- Retaliation Against a Witness
- Prostitution (Felony Offense)
- Obscene or Other Sexual Materials
- Corruption of Minors

EMPLOYEES: An employee is defined as an applicant or new employee, including contract employees with direct contact with residents or unsupervised access to the personal living quarters. Also included are persons employed or contracted to provide care to a care-dependent individual for monetary consideration in the individual's residence.

FACILITY: The type of facilities covered by the Act are as follows:

- domiciliary care home
- home health care agency
- long-term care nursing facility
- adult daily living center/day care
- personal care home

The Act also includes any private or public organization which provides care to care-dependent persons in their residence.

In addition, PA Department of Public Welfare has determined that the following DPW-licensed and DPW-operated residential facilities for adults are also covered by the Act:

- assisted living residences
- community residential rehabilitation services
- community homes for individuals with mental retardation
- family living homes
- ICF/MR's (private and state)
- state mental hospitals
- nursing facilities (licensed by DPW)
- long term structured residences

(continued)

Act 169 of 1996 (continued)

In addition, PA Department of Health has determined that the following DOH-licensed facilities are also covered by the Act:

hospices

birth centers

- home care agencies – any public or private organization which provides care to a care-dependent individual in their place of residence
- home care registry or “registry” – any organization or business entity that supplies, arranges or refers independent contractors to provide activities of daily living or instrumental activities of daily living or specialized care in the consumer’s place of residence or other independent living environment for which the registry receives a fee, consideration or compensation of any kind.

PROCESS: An applicant/new hire who has been a resident of the state for the last 2 years, uninterrupted, needs to obtain a *Request for Criminal History Background Check* from the nearest PA State Police barracks. The applicant/new hire will complete the application and forward it with a money order or cashier’s check for \$10 to the State Police for processing. The Act does allow for the provisional hire of an employee for 30 days if the conditions listed below are met. If there is no criminal history or record, the PSP will forward a letter stating same. If there is a criminal record, the PSP will forward a copy of the *rap sheet* to the applicant.

If the applicant has not been a PA resident for the 2 years before application, he/she will need to have PSP criminal history background check completed **and** an FBI background check. PDA is the intermediary between the facility and the FBI. PDA uses Cogent fingerprinting systems for the electronic fingerprinting process to the FBI. The FBI will run a check and send the results to PDA. PDA will notify both the applicant and the facility of the outcome. PDA is the entity responsible for interpreting the *rap sheet* from the FBI to see if any of the crimes are those enumerated by Act 169.

To provisionally hire an employee for 30 days under PSP, or up to 90 days for FBI, requires:

1. Applicant must supply proof that he/she applied for the background check;
2. Applicant must sign a statement that he/she has not been convicted of any of the enumerated offenses;
3. Facility must have no personal knowledge that the applicant has been convicted of the offenses.



ATTENTION: Effective June 4, 2012, The Department of Aging will begin using an electronic fingerprinting process. Manually submitted background check requests will no longer be accepted.

All requests for FBI background checks must be made directly through Cogent Systems, a 3rd party electronic background check processor contracted by the Department of Aging. This change will expedite the submission and processing of FBI background check requests.

Background:

As required by the Older Adults Protective Services Act (OAPSA), applicants/employees of specific [facilities or agencies](#) who have **NOT** been a resident of the Commonwealth of Pennsylvania for the last two years must obtain criminal history record information reports from both the Pennsylvania State Police (PSP) and the Federal Bureau of Investigation (FBI). The employment determinations for applicants/employees who require an FBI check must come from the PA Department of Aging.

The Process:

(1) Applicant Registration: Applicants will now register online at www.pa.cogentid.com or by telephone at 1-888-439-2486, Monday through Friday, 8 A.M. to 6 P.M. EST. Following registration, the applicant will be provided with a registration number that they will take with them when they go to the Cogent site for fingerprinting. Applicants must be registered with Cogent Systems prior to arriving at a fingerprinting site.

When registering on-line, please select the Pennsylvania Department of Aging icon. Fingerprinting requests processed through any other agency cannot be accepted. If an applicant mistakenly registers through a different department, the registration must be cancelled. The applicant must restart the registration process using the Aging icon. This must be completed prior to being fingerprinted. Once fingerprinted, registration and/or results cannot be transferred to another state agency.

Note to facilities and/or agencies: If your agency chooses to be billed for fingerprinting, Cogent Systems allows the fee to be billed to the facilities/agencies address. In order to use this course of action, the facility/agency must complete and submit the Cogent Systems' Agency Billing Agreement. The agreement is available on the Cogent website at www.pa.cogentid.com. The billing account must be established prior to sending applicants to the fingerprint site.

(2) FEES: The fee for an FBI background check is **\$34.25**. Payment can be made during on-line registration by using a credit or debit card or in-person at the fingerprinting site with a money order or cashier's check made payable to Cogent Systems. No cash transactions or personal checks will be accepted.

(3) FINGERPRINT SITES: Since April 2007, Cogent Systems has established more than 110 sites across the Commonwealth. We encourage all facilities to direct perspective applicants to the most convenient fingerprint service site. To find a site near you visit www.pa.cogentid.com

(4) Processing FBI Reports: Cogent Systems will forward the applicant's fingerprints electronically to the FBI. Responses from the FBI will be sent to the PA Department of Aging for analysis. The Department of Aging will review the results to determine if any convictions listed in OAPSA would prohibit the applicant/employee from being employed. The Department of Aging will send employment determination letters to both the facility and applicant. Employment determinations from any other source are not acceptable under the law.

Security of Applicant Information: Data collected during the fingerprinting process is secured and regulated by both Cogent Systems and the regulations governing the use of that data. The computer system is housed within a secured network that is protected by firewall devices configured to allow only permissible protocols and traffic. Cogent Systems will ensure that all devices procured under this process continue to adhere to the Commonwealth's Security requirements.

Inquiries or Questions: Individuals who are seeking additional information regarding the process and print locations may contact Cogent Systems at: www.pa.cogentid.com.

For more information on criminal history background checks, please visit the Department of Aging [online training](#) or call 717-265-7887.

Facility/Agency Types

Adult Daily Living Center

Assisted Living

Birth Center

Community Homes for Individuals for Individuals with Mental Retardation – Group Home/Community Living Arrangement

Community Residential Rehabilitation Services

Domiciliary Care

Family Living Home

Home Care Agency or Registry - is defined to include those agencies licensed by the Department of Health and any public or private organization which provide care to a care-dependent individual in their place of residence.

Home Health Care Organization or Agency

Hospitals – ONLY those with a *Long Term Care Unit, Skilled Transitional Unit, OR Extended Care Unit AND you must be employed in or potentially rotate to one of these units.*

Hospice

Intermediate Care Facilities for Individuals with Mental Retardation

Living Independence for the Elderly

Long Term Structured Residence

Nursing Home/Long Term Care Nursing Facility

Office of Long Term Living/Waiver Program

Personal Care Home

Nursing Schools - for students doing an internship or clinical rotation, or any other individual, who has been granted access to the facility to perform clinical services.

State Mental Hospital

South Mountain Restoration Center

Staffing Agency – entity that supplies, arranges for, or refers their employees to provide care in other OAPSA facilities.

OLDER ADULTS PROTECTIVE SERVICES ACT
Prohibitive Offenses

Following Offenses as Contained in PA Crimes Code (18 Pa. C.S.)

Dept. of Aging, May 2011

Offense Code	Prohibitive Offense Description	Type/Grading of Conviction
CC2500	Criminal Homicide	Any
CC2502A	Murder I	Any
CC2502B	Murder II	Any
CC2502C	Murder III	Any
CC2503	Voluntary Manslaughter	Any
CC2504	Involuntary Manslaughter	Any
CC2505	Causing or Aiding Suicide	Any
CC2506	Drug Delivery Resulting in Death	Any
CC2702	Aggravated Assault	Any
CC2901	Kidnapping	Any
CC2902	Unlawful Restraint	Any
CC3121	Rape	Any
CC3122.1	Statutory Sexual Assault	Any
CC3123	Involuntary Deviate Sexual Intercourse	Any
CC3124.1	Sexual Assault	Any
CC3125	Aggravated Indecent Assault	Any
CC3126	Indecent Assault	Any
CC3127	Indecent Exposure	Any
CC3301	Arson and Related Offenses	Any
CC3502	Burglary	Any
CC3701	Robbery	Any
CC3901	Theft	<div style="border: 1px solid black; padding: 10px; text-align: center;"> Any ONE (1) FELONY or TWO (2) MISDEMEANORS within the 3900 Series (CC3901-CC3934) </div>
CC3921	Theft By Unlawful Taking	
CC3922	Theft By Deception	
CC3923	Theft By Extortion	
CC3924	Theft By Property Lost	
CC3925	Receiving Stolen Property	
CC3926	Theft of Services	
CC3927	Theft By Failure to Deposit	
CC3928	Unauthorized Use of a Motor Vehicle	
CC3929	Retail Theft	
CC3929.1	Library Theft	
CC3929.2	Unlawful Possession of Retail or Library Theft Instruments	
CC3929.3	Organized Retail Theft	
CC3930	Theft of Trade Secrets	
CC3931	Theft of Unpublished Dramas or Musicals	
CC3932	Theft of Leased Properties	
CC3933	Unlawful Use of a Computer	
CC3934	Theft From a Motor Vehicle	
CC4101	Forgery	Any
CC4114	Securing Execution of Documents by Deception	Any
CC4302	Incest	Any
CC4303	Concealing Death of a Child	Any
CC4304	Endangering Welfare of a Child	Any
CC4305	Dealing in Infant Children	Any
CC4952	Intimidation of Witnesses or Victims	Any
CC4953	Retaliation Against Witness or Victim	Any
CC5902B	Promoting Prostitution	Felony
CC5903C	Obscene or Other Sexual Materials to Minors	Any
CC5903D	Obscene or Other Sexual Materials	Any
CC6301	Corruption of Minors	Any
CC6312	Sexual Abuse of Children	Any

CONTINUED ON NEXT PAGE

Offenses as Contained in PA Controlled Substance, Drug, Device & Cosmetic Act (P.L. 233, No. 64)--**PARTIAL LISTING***

Offense Code	Prohibitive Offense Description	Type/Grading of Conviction
CS13A12	Acquisition of Controlled Substance by Fraud	Felony
CS13A14	Delivery by Practitioner	Felony
CS13A30	Possession with Intent to Deliver	Felony
CS13A35 (i), (ii), (iii)	Illegal Sale of Non-Controlled Substance	Felony
CS13A36	Designer Drugs	Felony
CS13Axx*	ANY OTHER FELONY DRUG CONVICTION APPEARING ON PA RAP SHEET	



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF AGING
555 Walnut Street – 5th Floor
Harrisburg, Pennsylvania 17101-1919

February 2004

**Subject: Older Adults Protective Services Act – Criminal Background Check Provisions
Nixon v. Commonwealth of PA, et al, 2003 LEXIS 2604 (12/30/2003)**

The Supreme Court of Pennsylvania issued the above-referenced decision on December 30, 2003, which, in effect, held the criminal history background check prohibitive hire provisions of the Older Adults Protective Services Act (OAPSA) to be unconstitutional "as applied to the individual plaintiffs." The Court only granted specific relief to the individual plaintiffs and not to all persons affected by the criminal history background check provisions in OAPSA.

The Pennsylvania Department of Aging (PDA) anticipates legislative action in the near future. In the interim, the protective services program in PDA will operate as follows for all facilities required to comply with OAPSA:

1. Criminal history reports are still required for all applicants.
2. The PA State Police will continue to process applications for state criminal history reports and provide such information to the entity requesting the criminal history report.
3. PDA will continue to process FBI criminal history reports.
4. Letters from PDA will continue to indicate "clear" or "prohibited", based on FBI criminal history background check information.
5. Effective February 4, 2004, facilities will not be sanctioned for hiring or continuing to employ individuals who demonstrate rehabilitation by evidence of a minimum five-year aggregate work history in care-dependent services, without incident, from either the date of conviction or release from incarceration, whichever is later. Applicants are responsible for providing official verification of such dates. Care-dependent services include healthcare, eldercare, childcare, mental health, mental retardation, or care of the disabled. Facilities must reasonably investigate the character of an individual with a previously disqualifying criminal offense by means of interviews, references and evidence of work history. Facilities that hire such an individual are required to obtain specific employer-provided documentation of that individual's employment in care-dependent services and retain it in the individual's personnel file.
6. The Court's ruling in no way prohibits a facility from refusing to employ an individual, even one who has a clean aggregate five-year work history, based on information obtained in a criminal history report. Pennsylvania law, 18 Pa.C.S. § 9125, provides that an employer may consider criminal history felonies and misdemeanors, to the extent they relate to the applicant's suitability for employment in the position sought. The employer is required to notify the applicant, in writing, if the decision not to hire the applicant is based, in whole or in part, on the applicant's criminal history.

If you have any questions, please contact the Pennsylvania Department of Aging, Criminal History Background Check Unit at 717-265-7887.

Sincerely,

A handwritten signature in black ink, appearing to read 'Wilmarie Gonzalez'.

Wilmarie González, Director
Bureau for Advocacy, Protection and Education



Pennsylvania State Police
People Serving People Since 1905

ALL EMPLOYEES

- Patch (PA Access to Criminal History)
Available on-line at <https://epatch.state.pa.us>
- Manual Submission Information
www.psp.state.pa.us

SAMPLE CRIMINAL HISTORY REPORT

SP4-137B

PENNSYLVANIA STATE POLICE
CENTRAL REPOSITORY
1800 ELMERTON AVENUE
HARRISBURG, PENNSYLVANIA 17110
(717) 787-9092

COMPILED: 08/07/97
PAGE: 1

USE OF THE FOLLOWING CRIMINAL HISTORY RECORD FOR *SID/000-01-23-6*
REGULATED BY ACT 47, AS AMENDED.

III - SINGLE STATE OFFENDER

Single State Offender indicates Record only in PA
Multiple State Offender indicates fingerprints on file in another state

Name used when arrested	DOB: 08/25/44 SEX: M RAC: W SOC: 202-22-5555 FBI: 898989A	
Date Arrested	NAME: TEST, RECORD OTN: Q333333-0 ARRESTED: 08/25/87 PAPSP3600 HARRISBURG PSP OCA: E19804 DISTRICT JUSTICE: 06306	OTN=Offense Tracking is assigned by the District Justice
Police Dept. Making arrest	07/24/87 CC5505 PUBLIC DRUNKENNESS - S PLEAD GUILTY 07/24/87 CC5503A DISORDERLY CONDUCT - S PLEAD GUILTY	OCA=Number Assigned by the Police Department
Date of Offense	NAME: TEST, RECORD OTN: E123456-1 ARRESTED: 06/30/90 PA0350400 SCRANTON PD OCA: B25000 DISPOSITION DATE: 10/25/90 COMMON PLEAS DOCKET: 90-1990	Common Pleas Court Docket Number assigned to the case.
Date Disposition made by Court	06/30/90 CC6106 FIREARM CARRIED W/O A LICENSE - M1 GUILTY CO. PROBATION 05 YRS - 06 YRS	Disposition of the Charge
Code charged with and the section number: CC=Crimes Code CS=The Controlled Substance, Drug, Device & Cosmetic Act	06/30/90 CC0908 PROHIBITED OFFENSIVE WEAPONS - M1 GUILTY CO. PROBATION 05 YRS - 06 YRS	
Grade of Crime most serious to least serious: F-1 F-2 F-3 M-1 M-2 M-3 S	NAME: RECORD, TEST OTN: E949949-7 ARRESTED: 07/04/97 PAPSP54111 McCONNELLSBURG PSP OCA: G12345 DISPOSITION DATE: 07/04/97 CS13A30 VIO CS/DRUG/DEV & COSMETIC ACT DISPOSITION UNREPORTED	IF THE ARREST IS 3 YEARS OR LESS FROM THE DATE OF YOUR REQUEST AND WE HAVE NOT RECEIVED A DISPOSITION FROM THE CLERK OF COURTS, IT IS SHOWN AS "DISPOSITION UNREPORTED" TO LET YOU KNOW CHARGE(S) MAY BE PENDING. IF YOU DESIRE A DISPOSITION ON THE CHARGE(S), YOU MUST CONTACT THE CLERK OF COURTS IN THE COUNTY WHICH THE POLICE DEPARTMENT THAT MADE THE ARREST IS LOCATED.

F = FELONY, M = MISDEMEANOR, S = SUMMARY AND THE NUMERIC = THE DEGREE

ARREST (S) SUPPORTED BY FINGERPRINT CARD (S) ON FILE.

RESPONSE BASED ON COMPARISON OF REQUESTER FURNISHED INFORMATION AND/OR FINGERPRINTS AGAINST A NAME INDEX AND/OR FINGERPRINTS CONTAINED IN THE FILES OF THE PENNSYLVANIA STATE POLICE CENTRAL REPOSITORY ONLY, AND DOES NOT PRECLUDE THE EXISTENCE OF OTHER CRIMINAL RECORDS WHICH MAY BE CONTAINED IN THE REPOSITORIES OF OTHER LOCAL, STATE OR FEDERAL CRIMINAL JUSTICE AGENCIES.

IMPORTANT NOTE

All employees of OAPSA facilities* required to conduct criminal history background checks are also required to comply with **Act 13 Mandatory Abuse Reporting** requirements.



www.aging.state.pa.us/psonlinelearning

The PA Department of Aging provides on-line, self-study Training for Mandatory Abuse Reporting and Criminal History Background Checks.

The overall aim of the Self Study Course is to give you the concepts, strategies, and techniques that will allow you to understand the basic tenets of the Act, and the roles and responsibilities of various individuals and regulatory systems in the provision of protective services in long term care facilities.

You can access the training by going to the PA Department of Aging website at www.aging.state.pa.us and clicking on “Professionals and Providers” “Protective Services and Ombudsman” and under “Criminal History Background Check Quick Links” click on the **Online Training: Mandatory Abuse Training, Criminal History Background Checks.**

Facilities defined by the act include:* Act-13 mandates the following facilities to report: Domiciliary Care Homes, Home Health Care Agencies, Long Term Care Nursing Facilities (licensed by Dept. of Health), Adult Daily Living Centers (licensed by Dept. of Aging), and Personal Care Homes (licensed by Dept. of Public Welfare). In addition, the Pennsylvania Department of Health has defined home health care organization or agency to include: hospices, birth centers, home care agencies and home care registries. The Pennsylvania Department of Public Welfare (DPW) has concluded that the Act is applicable to all DPW-licensed and DPW-operated residential facilities for adults; specifically: Personal Care Homes, 55 Pa. Code Ch. 2620; Assisted Living Residences, 55 Pa. Code Ch. 2800; Community Residential Rehabilitation Services, 55 Pa. Code Ch. 5310; Long Term Structured Residences, 55 Pa. Code Ch. 5320; Community Homes for Individuals with Mental Retardation, 55 Pa. Code Ch. 6400; Family Living Homes, 55 Pa. Code Ch. 6500; ICF-MRs (private and state), 55 Pa. Code Ch. 6600; State Mental Hospitals; and Nursing Facilities.

***A Home Care Agency is further defined to include those agencies licensed by the Department of Health and any public or private organization which provides care to a care-dependent individual in their place of residence. A Home Care Registry or “Registry” is further defined to include those agencies licensed by the Department of Health any organization or business entity that supplies, arranges or refers independent contractors to provide activities of daily living or instrumental activities of daily living or specialized care in the consumer’s place of residence or other independent living environment for which the registry receives a fee, consideration or compensation of any kind.*