

111TH CONGRESS  
1ST SESSION

# S. 2903

To amend the Child Care and Development Block Grant Act of 1990 to require criminal background checks for child care providers.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2009

Mr. BURR (for himself and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To amend the Child Care and Development Block Grant Act of 1990 to require criminal background checks for child care providers.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Child Care Protection  
5 Act of 2009”.

1 **SEC. 2. REQUIREMENT OF CRIMINAL BACKGROUND**  
2 **CHECKS.**

3 The Child Care and Development Block Grant Act  
4 of 1990 (42 U.S.C. 9858 et seq.) is amended by inserting  
5 after section 658G the following new section:

6 **“SEC. 658H. CRIMINAL BACKGROUND CHECKS.**

7 “(a) IN GENERAL.—A State that receives funds to  
8 carry out this subchapter shall have in effect—

9 “(1) requirements, policies, and procedures to  
10 require and conduct criminal background checks for  
11 child care staff members (including prospective child  
12 care staff members) of child care providers described  
13 in subsection (c); and

14 “(2) licensing, regulation, and registration re-  
15 quirements, as applicable, that prohibit the employ-  
16 ment of child care staff members as described in  
17 subsection (c).

18 “(b) REQUIREMENTS.—A criminal background check  
19 for a child care staff member under subsection (a) shall  
20 include—

21 “(1) a search of the State criminal registry or  
22 repository in the State where the child care staff  
23 member resides and each State where such staff  
24 member previously resided;

25 “(2) a search of State-based child abuse and  
26 neglect registries and databases in the State where

1 the child care staff member resides and each State  
2 where such staff member previously resided;

3 “(3) a search of the National Crime Informa-  
4 tion Center;

5 “(4) a Federal Bureau of Investigation finger-  
6 print check using the Integrated Automated Finger-  
7 print Identification System; and

8 “(5) a search of the National Sex Offender  
9 Registry established under the Adam Walsh Child  
10 Protection and Safety Act of 2006 (42 U.S.C.  
11 16901 et seq.).

12 “(c) PROHIBITIONS.—

13 “(1) CHILD CARE STAFF MEMBERS.—A child  
14 care staff member shall be ineligible for employment  
15 by a child care provider that is licensed, regulated,  
16 or registered by the State or receives funds provided  
17 under this subchapter in a State if such individual—

18 “(A) refuses to consent to the criminal  
19 background check described in subsection (b);

20 “(B) makes a false statement in connec-  
21 tion with such criminal background check;

22 “(C) is registered, or is required to be reg-  
23 istered, on a State sex offender registry or the  
24 National Sex Offender Registry established

1 under the Adam Walsh Child Protection and  
2 Safety Act of 2006 (42 U.S.C. 16901 et seq.);

3 “(D) has been convicted of a felony con-  
4 sisting of—

5 “(i) murder, as described in section  
6 1111 of title 18, United States Code;

7 “(ii) child abuse or neglect;

8 “(iii) a crime against children, includ-  
9 ing child pornography;

10 “(iv) spousal abuse;

11 “(v) a crime involving rape or sexual  
12 assault;

13 “(vi) kidnaping;

14 “(vii) arson; or

15 “(viii) physical assault, battery, or a  
16 drug-related offense, committed within the  
17 past 5 years.

18 “(2) CHILD CARE PROVIDERS.—A child care  
19 provider described in paragraph (1) shall be ineli-  
20 gible for funds provided under this subchapter if the  
21 provider employs a staff member who is ineligible for  
22 employment under paragraph (1).

23 “(d) SUBMITTAL OF REQUESTS FOR BACKGROUND  
24 CHECKS.—

1           “(1) IN GENERAL.—A child care provider cov-  
2           ered by subsection (c) shall submit a request, to the  
3           appropriate State agency designated by a State, for  
4           a criminal background check described in subsection  
5           (b), for each child care staff member (including pro-  
6           spective child care staff members) of the provider.

7           “(2) STAFF MEMBERS.—In the case of an indi-  
8           vidual who became a child care staff member before  
9           the date of enactment of the Child Care Protection  
10          Act of 2009, the provider shall submit such a re-  
11          quest—

12                   “(A) prior to the last day described in sub-  
13                   section (i)(1); and

14                   “(B) not less often than once during each  
15                   5-year period following the first submission date  
16                   under this paragraph for that staff member.

17          “(3) PROSPECTIVE STAFF MEMBERS.—In the  
18          case of an individual who is a prospective child care  
19          staff member on or after than that date of enact-  
20          ment, the provider shall submit such a request—

21                   “(A) prior to the date the individual be-  
22                   comes a child care staff member of the pro-  
23                   vider; and

1           “(B) not less often than once during each  
2           5-year period following the first submission date  
3           under this paragraph for that staff member.

4           “(e) BACKGROUND CHECK RESULTS AND AP-  
5 PEALS.—

6           “(1) BACKGROUND CHECK RESULTS.—The  
7           State shall carry out the request of a child care pro-  
8           vider for a criminal background check as expedi-  
9           tiously as possible and shall provide the results of  
10          the criminal background check to such provider.

11          “(2) APPEALS.—The State shall provide for a  
12          process by which a child care staff member (includ-  
13          ing a prospective child care staff member) may ap-  
14          peal the results of a criminal background check con-  
15          ducted under this section to challenge the accuracy  
16          or completeness of the information contained in such  
17          member’s criminal background report.

18          “(f) FEES FOR BACKGROUND CHECKS.—Fees that a  
19          State may charge for the costs of conducting a criminal  
20          background check as required by this section shall not ex-  
21          ceed the actual costs to the State for the administration  
22          of such criminal background checks.

23          “(g) CONSTRUCTION.—Nothing in this section shall  
24          be construed to prevent a State from disqualifying individ-  
25          uals as child care staff members based on their conviction

1 for crimes not specifically listed in this section that bear  
2 upon an individual's fitness to provide care for and have  
3 responsibility for the safety and well-being of children.

4 “(h) DEFINITIONS.—In this section—

5 “(1) the term ‘child care provider’ means a cen-  
6 ter-based child care provider, a group home child  
7 care provider, a family child care provider, or other  
8 provider of child care services for compensation and  
9 on a regular basis that—

10 “(A) is not an individual who is related to  
11 all children for whom child care services are  
12 provided; and

13 “(B) is licensed, regulated, or registered  
14 under State law or receives funds provided  
15 under this subchapter; and

16 “(2) the term ‘child care staff member’ means  
17 an individual (other than an individual who is re-  
18 lated to all children for whom child care services are  
19 provided)—

20 “(A) who is employed by a child care pro-  
21 vider for compensation;

22 “(B) whose activities involve the care or  
23 supervision of children for a child care provider  
24 or access to children who are cared for or su-  
25 pervised by a child care provider; or

1                   “(C) who is a family child care provider.

2                   “(i) EFFECTIVE DATE.—

3                   “(1) IN GENERAL.—A State that receives funds  
4                   to carry out this subchapter shall meet the require-  
5                   ments of this section for the provision of criminal  
6                   background checks for child care staff members de-  
7                   scribed in subsection (d)(1) not later than the last  
8                   day of the second full fiscal year after the date of  
9                   enactment of the Child Care Protection Act of 2009.

10                  “(2) EXTENSION.—The Secretary may grant a  
11                  State an extension of time, of not more than 1 fiscal  
12                  year, to meet the requirements of this section if the  
13                  State demonstrates a good faith effort to comply  
14                  with the requirements of this section.

15                  “(3) PENALTY FOR NONCOMPLIANCE.—Except  
16                  as provided in paragraphs (1) and (2), for any fiscal  
17                  year that a State fails to comply substantially with  
18                  the requirements of this section, the Secretary shall  
19                  withhold 5 percent of the funds that would otherwise  
20                  be allocated to that State under this subchapter for  
21                  the following fiscal year.”.

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