

Background Checks for Volunteering Programs

October 21, 2013

Overview

Due to changes in federal law, participants in a broad range of volunteering and community service programs must now obtain background checks prior to serving. In South Carolina, SLED manages the “state central record repository” through which fingerprints may be submitted to the FBI in order to complete a national background check that would satisfy the new requirements. Using this path would require a change in state law, although similar statutes have recently been adopted for emergency medical technicians and employees of childcare facilities. In the meantime, our volunteer programs have received temporary approval from federal authorities to use an alternate verification process that is less reliable, more cumbersome, and which may not be continued indefinitely. A more durable statutory solution is required in the 2014 legislative session.

Legislative and Regulatory History

- The Corporation for National and Community Service (CNCS) is the federal agency responsible for overseeing a variety of volunteering programs, including AmeriCorps, Volunteers in Service to America (VISTA), and SeniorCorps, among others.
- CNCS is the successor to several previous federal entities; chief among these was the Commission on National and Community Service, which was established under the National and Community Service Act of 1990.
- CNCS was established in its current form by the National and Community Service Trust Act of 1993 (P.L. 103-82), which broadly overhauled the 1990 Act.
- In 2009, the underlying 1990 Act was further revised by the Serve America Act (P.L. 111-13). Several provisions of the 2009 Act require background checks for volunteers participating in national service programs. Section 189D of the Act (42 USC 12645g) states in relevant part:

SEC. 189D. CRIMINAL HISTORY CHECKS.

(a) IN GENERAL.—Each entity selecting individuals to serve in a position in which the individuals receive a living allowance, stipend, national service educational award, or salary through a program receiving assistance under the national service laws, shall, subject to regulations and requirements established by the Corporation, conduct criminal history checks for such individuals.

(b) REQUIREMENTS.—A criminal history check under subsection (a) shall, except in cases approved for good cause by the Corporation, include—

(1) a name-based search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.); and

(2) (A) a search of the State criminal registry or repository in the State in which the program is operating and the State in which the individual resides at the time of application; or

(B) submitting fingerprints to the Federal Bureau of Investigation for a national criminal history background check.

- On October 5, 2012, CNCS issued the final rule (77 FR 60922) to implement the new, more stringent background check requirements of the Serve America Act. These changes took effect January 1, 2013. The critical passage relating to background check requirements appears in the amendments to 45 CFR 2540.203:

*The National Service Criminal History Check for individuals in covered positions must include (1) a nationwide check of the Department of Justice's National Sex Offender Public Web site (NSOPW) and (2) either (a) a name- or fingerprint-based search of the official state criminal history registry in the state in which the grantee is operating and of the official state criminal history registry in the state in which the individual resides at the time of application, or (b) **submission of fingerprints through a state central record repository to the Federal Bureau of Investigation for a national criminal history background check.** [Emphasis added]*

- Option (b) is seen as the preferred path forward because it requires the use of fingerprints, as opposed to option (a), which could rely on only a name. As SLED's enclosed letter observes, "Fingerprint based searches are the most reliable way to conduct criminal record checks and the least likely to result in either a false positive or a false negative search result."
- The FBI's authority to conduct background checks for non-criminal justice agencies is governed by P.L. 92-544, which requires that participating states adopt statutes that require fingerprinting for specific classes of employees, volunteers, or licensees, and which direct the relevant state agency to share the fingerprint records with the FBI. The state's statute must be approved by the Attorney General.
- The Governor's Office, working in association with the South Carolina Commission on National and Community Service, requests that the General Assembly adopt legislation during the 2014 legislative session that would authorize SLED to process fingerprint-based background checks for volunteers applying to participate in CNCS-sponsored community and national service programs.

Comparable Statutes

- SC Code 44-61-80. Emergency medical technician certificate; educational standards; examination; state criminal history background check; renewal; misconduct. ([Link](#))
- SC Code 63-13-40. Background checks for employment. ([Link](#))

Other References

- P.L. 92-544 (1972) ([Link](#))
- Serve America Act (2009) ([Link](#))
- CNCS Final Rule (2012) ([Link](#))

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

September 25, 2013

Brent Kossick, Director of South Carolina Service Commission
(United Way Association of South Carolina)
400 Arbor Lake Dr
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Columbia SC 29223

RE: National Service Criminal History Checks
Generally (§ 2540.203)

Dear Mr. Kossick:

The information provided under (§ 2540.203) specifically states: "(2) *either* (a) name or fingerprint based search of the official state criminal history registry in the state in which the grantee is operating and of the official state criminal history registry in the state in which the individual resides at the time of application, *or* (b) submission of fingerprints through a state central record repository to the Federal Bureau of Investigation for national criminal history background check."

Once state law is established for fingerprint based criminal history checks, the individual's fingerprints will be processed through the state level and through the FBI. Fingerprint based searches are the most reliable way to conduct criminal record checks and the least likely to result in either a false positive or a false negative search result. Individuals can use different names, date of births and even social security numbers if arrested; however, they cannot change their fingerprints.

If you have any questions please feel free to contact me at 803-896-7125.

Sincerely,

Seraphim Haftoglou, AFIS/Fingerprint Supervisor
SLED Crime Information Center

CALEA



An Accredited Law Enforcement Agency

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Bill Draft

Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Section 23-3-47. A person seeking a covered position, as that term is defined in 45 CFR 2540, or who otherwise volunteers or serves in a position supported, sponsored, or administered by the South Carolina Commission on National and Community Service (Commission) must undergo a state criminal history background check, supported by fingerprints by the South Carolina Law Enforcement Division (SLED), and a national criminal history background check, supported by fingerprints by the Federal Bureau of Investigation (FBI). The results of these criminal history background checks must be reported to the Commission. SLED is authorized to retain the fingerprints for certification purposes and for notification of the Commission regarding criminal charges. The cost of the state criminal history background check must not exceed eight dollars and must be paid by the Commission upon application for the state check. The cost of the national criminal history background check is established by the FBI and must be paid by the Commission upon application for the national check.”