**DELAWARE CRIMINAL BACKGROUND AND CHILD PROTECTION REGISTRY CHECKS TASK FORCE**

**December 16, 2014**

**9:00 a.m.**

**Senate Hearing Room, 2nd Floor, Legislative Hall, Dover, DE**

**MEETING MINUTES**

**In Attendance:**

The Honorable Stephanie Bolden, Representative

Tania Culley, Office of the Child Advocate

Karen DeRasmo, Prevent Child Abuse Delaware

Joelle Hitch, Family Court

Brendan Kennealey, DAIS

Ellen Levin, Child Protection Accountability Commission

Jay Lynch, Dept. of Health and Social Services

Lisa Minutola, Office of the Public Defender

Jennifer Ranji, Dept. of Services for Children, Youth and Their Families (Chair)

Angeline Rivello, Department of Education

Robert Scoglietti, Office of Management and Budget

Wayne Smith, Delaware Healthcare Association

**Members of the Public:**

Peggy Bell, DELJIS

Beverly Flannigan, Legislative Aid for the Honorable Karen Peterson, Senate

Patricia Justice, Dept. of Health and Social Services

Beth Kramer, Dept. of Services for Children, Youth and Their Families

Jon Neubauton, Department of Education

Sandy Reyes, Office of Management and Budget

Renee Rigby, State Bureau of Identification

Lisa Robinson, Superior Court

Cara Sawyer, Dept. of Services for Children, Youth and Their Families

Kelly Schaffer, Dept. of Services for Children, Youth and Their Families (consultant)

1. **Welcome and Introductions**

Secretary Ranji welcomed the group to the meeting. The Task Force reviewed minutes from the November 20, 2014 Task Force meeting. The minutes were approved.

1. **Continued Discussion of Task Force Recommendations**

Secretary Ranji noted there are a few follow up items from the last meeting. Under recommendation 1.1 we voted to recommend that employees and volunteers of summer camps, after-school care facilities, and school break facilities be required to have background record checks. At the November 20th meeting the group voted on the definition of camps, with the amendment of up to 12 weeks, but then decided to revisit the definition to make sure it doesn’t apply to those that we don’t intend for it to capture, including babysitters and tutors. We talked about things like setting a minimum number of hours per day, whether or not compensation is provided, and excluding individuals that are not affiliated with an organization. Also, acknowledging parent choice. Secretary Ranji noted we ended up removing the compensation piece because the Department’s authority only kicks in when there is compensation, per statute. The definition no longer talks about uncompensated care. What we have now is a youth camp that has one or more children unattended by parent or guardian for purpose of providing recreational, athletic, educational and/or religious instruction or guidance. Camps operate three or more hours per day during the months of May through September or some portion thereof, or during holiday breaks in the course of a school year. It is not somewhere that has to be licensed already and does not include individuals that a parent would contract with on an individual basis. Secretary Ranji stated her remaining concern is that she is unsure every camp is part of a group agency or corporation. Beth Kramer confirmed that family child care providers have a business license even when serving one child. Cara Sawyer stated camps are supposed to be permitted by the Division of Public Health. Wayne Smith stated they would all be required to have insurance. Secretary Ranji responded that the concept might get us there. Mr. Smith agreed the changes to the definition of camps are good changes. A motion was made and seconded. All voted in favor of the new definition of youth camps.

For recommendation 1.2 the Task Force voted at the past meeting to require background record checks for private schools. She noted the group would discuss rap back when we get to recommendation 3. Next, the Task Force discussed recommendations related to prohibitions. Secretary Ranji stated we wanted to revisit the lifetime prohibitions as well as some of the non-felony offenses and get more information about what the different levels on the Child Protection Registry (CPR) include. Starting with level 1 on the registry there is a low risk of future harm. Individuals at level 1 are in the system so that we can see they were substantiated, but it isn’t reported out or impact the person’s employment. At level 2, it is reported out for a period of 3 years but the person is not made ineligible for employment. Secretary Ranji stated at level 3 there is a high risk of harm. These individuals may have been substantiated for child abuse, unlawful administration of drugs, or endangering the welfare of a child for example. These are reported out for 7 years and are individuals are ineligible for employment during that period. Level 4 is the highest risk of future harm and includes convictions such as homicide. They are all felony crimes against a child and individuals cannot be removed from the registry unless they request a pardon from the court. Individuals on level 4 have a lifetime prohibition. Bert Scoglietti asked what the 7 years covers. Ms. Kramer responded it is from the date of conviction or substantiation and a person can petition to get early removal.

The group then discussed what to propose for prohibitions. Secretary Ranji stated that for felonies involving physical or sexual assault crimes against a person we have a lifetime prohibition, and at the last meeting the group wanted to revisit that. The options we’ve come up with are felonies involving a child victim or elderly disabled person would be a lifetime prohibition. Felonies involving an adult or other felonies would be a 10-year prohibition. Secretary Ranji also noted expungement was also discussed at the last meeting. For reference, we listed felonies for which a lifetime prohibition would apply. Ms. Sawyer stated where it says non-felony offenses it is referring to non-felony offenses against children that result in a lifetime prohibition when there is a conviction. Secretary Ranji stated we are talking about recommending a lifetime prohibition for conviction of a crime against a child or elderly disabled victim and a 10-year prohibition for an adult victim or non-felonies.

Ms. Kramer noted that pardons are considered as part of background record checks. Expongements are not considered. Convictions are still looked at for those who have pardons. The Department still bases a decision on the decision-making protocol. Secretary Ranji asked what the pardon does. Ms. Kramer responded that it gives a person the right to vote and hold public office among others. Language states it involves forgiveness and not forgetfulness. The Department still reports out convictions that have been pardoned. A Task Force member noted individuals could not get a felony expunged from a pardon. Renee Rigby said many people do a pardon first and then try to get an expungement. Secretary Ranji confirmed that still does not apply if there is a felony. A Task Force member asked if there is an assault second if the Department lets the employer know and can the individual still work. Ms. Kramer said the Department would still recommend the person as unsuitable. It doesn’t matter if they have a pardon. They need expungement for it to not be considered. Secretary Ranji stated that for this felony part it would be lifetime. A Task Force member added that some misdemeanors might be ineligible for expungement after pardon. Secretary Ranji stated that for our purposes we should assume that what we put in for the felony level is what it will be. We have narrowed to lifetime prohibition for conviction of felony for physical or sexual assault against a child or elderly victim. Other felonies would be 10 years and then we could remind individuals about pardon and expungement. Angeline Rivello confirmed that right now it is 7 years. Brendan Kennealey stated the reason the pardon got mentioned was because of concerns over the lifetime ban. It seems like it now muddies the waters because a pardon doesn’t have a real effect. The issue of why it was put in seems to be addressed by the 10 or 7-year prohibition. The reason we talked about prohibitions was that people weren’t comfortable with a lifetime ban in all cases. He suggested getting rid of the pardon note because we have addressed the issue in other ways. Putting it in would lead some people to believe they could get a pardon, but it could waste some time. Secretary Ranji stated it matters on the misdemeanor side. It matters for employment purposes but not at this level.

Mr. Smith clarified that the example he brought up at the last meeting related to two guys in a bar fight would be a 10 year prohibition. Secretary Ranji reminded the group the prohibitions are for jobs working with children, not everywhere. A Task Force member responded that 10 years for felonies that don’t involve any physical assault that is a long period of time. Secretary Ranji said that in some cases the prohibitions we are establishing are less than what currently exists. We are trying to make it equal across the board. We could say that for felony offenses that don’t involve physical or sexual assault it is 7 or 10 years. Tania Culley noted it doesn’t prohibit an agency adding additional prohibitions. Secretary Ranji confirmed as long as it is relevant to the job. Physical or sexual crimes against a child or elderly disabled person would be lifetime. If we want we could say 10 year prohibition for felony physical sexual against an adult. Then we could say 7 year prohibition if it’s a felony that’s not physical or sexual assault. Ms. Kramer asked if the Task Force has considered what to do with people who have multiple convictions. Ms. Sawyer stated that would be captured when we do an across the board matrix to expand for everyone else. That could be an issue to tackle then. Also when you take the highest felony that would tell what the prohibition should be; though if you have multiple low level convictions that could be harder to determine. Secretary Ranji stated that if you have two felonies that might each be a 10 year or 7 year then what do you do. She noted she doesn’t think anything in the code gets to volume of convictions issues. We could deal with it when we do the weighting of other factors. Ms. Rivello stated she feels that felony against an adult, physical or sexual, should be lifetime and then all other could be 7 years. Mr. Smith disagreed. Ms. Rivello said there are some felonies not against a child that are lifetime prohibitions in licensing. A Task Force member asked if the 10 years ban has passed if it is still reported out to the agency to use that information with discretion. Ms. Kramer responded yes, it would still be reported out. Secretary Ranji stated it doesn’t seem that felony assault against another adult is currently in code as a lifetime prohibition. Ms. Sawyer stated that there is a lifetime prohibition for sexually related offenses, whether an adult or a child. Secretary Ranji added but not physical assault. Ms. Kramer suggested that the worst felonies in code could be included. Ms. Rivello stated that list is used for licensure. Ms. Culley stated it is used for expungement statute as well. Secretary Ranji asked would it be felonies involving an adult that are violent that would be lifetime. She asked if there are felony physical or sexual assaults that are not in the list of violent crimes. Ms. Kramer stated she is not sure, but doesn’t think so. Stalking, hate crimes, and rioting are all examples of violent felonies. Ms. Culley stated that in the registry statute it talks about what to do if there are consecutive crimes. It says when a person is substantiated while on the registry then the conditions must be completed consecutively, with the most restrictive being first. She suggested the Task Force could borrow some of that language. Ms. Kramer stated that doesn’t work because for the registry they may have two level 3’s, so they have to serve 14 year. But if you have someone who is convicted for multiple felonies they could be out for 40 years. That’s something to consider. For the registry, when a person gets substantiated they are reported indefinitely but will say their time has been served. Secretary Ranji stated we’re not taking something away by not building in the consecutive piece. Given where we are and the time constraints we would be doing a lot if we could settle on baseline prohibitions. We could look at how multiple convictions apply as part of the first phase. Ms. Culley stated that violent felony is any offense listed in 4201 of Title 11. Violent misdemeanors are in 10 Delaware Code 1016. Secretary Ranji asked if any felony or violent physical or sexual assaults aren’t listed there. A Task Force member said she didn’t think so. Secretary Ranji stated we could slice the prohibitions as felony or misdemeanor; we can do it either way. Given where we are it probably makes sense to do it along the felonies. The question on the table is for felonies of physical or sexual assault against adults whether there would be a lifetime or 10 year prohibition. A motion was made for a 10-year prohibition. A Task Force member stated that lifetime is too broad for that category. Ms. Culley stated that a bar fight is different than someone beating up their wife. They will both be assault second, and the person who beats up their wife would be a danger to children. Ms. Sawyer added that one of the felony convictions that is a lifetime prohibition is spousal abuse and any sexually related offenses. A Task Force confirmed that’s already in code. Ms. Sawyer said we could slice the information for adults as spousal and sexual for lifetime and 10 year for physical. Mr. Smith responded that domestic abuse is serious but there are cases where they are pushing each other and there’s physical contact but not beating up. He would be hesitant to say that for every case we would do a lifetime prohibition. Secretary Ranji said that would be unlikely to be lifetime. Secretary Ranji stated Mr. Smith made a motion and Ms. Minutola had seconded. The sexual assault part would cover children and adults. The motion was specific to the issue related to adults who physically or sexually assault another adult being a 10-year prohibition. All but one Task Force member in attendance voted in favor. 1 opposed, and there were no abstentions. The motion passed.

Next, the Task Force voted on recommending a lifetime prohibition for individuals convicted of a sexual crime against child or disabled elderly person. All voted in favor and the motion passed. The Task Force then voted to recommend that for all other felonies there would be a 7 year prohibition. A motion was made and seconded. All voted in favor and the motion passed. We will also say employers can add things that are relevant to the position. Mr. Scoglietti asked if in code there are definitions for disabled and elderly. Ms. Sawyer stated it is defined in statute and it may be called vulnerable. Ms. Minutola stated there was a statute that passed on that. Secretary Ranji added we would match it up to what’s in the code – it may be vulnerable.

Secretary Ranji stated that for non-felony offenses against children we had included ??. Ms. Kramer asked if we are talking about the Child Protection Registry. Endangering welfare depends on the level. Ms. Sawyer stated this is provided as reference. At the last meeting we proposed 5 years. Ms. Culley said some are level 4 on the registry and become lifetime bans. Ms. Culley said child abuse in third degree is on the registry at level 4. Misdemeanor is level 3. Ms. Sawyer stated that 8550 Subsection 2 of Title 11 spells out certain crimes that are prohibited for child care. It talks about another part of code, which are sexual offenses Sections 761-780. Some of those are misdemeanors. It also references 1100-1114a, in Title 11, which is some child welfare sexual offenses and offenses related to vulnerable adults. These are all lifetime prohibitions for child car employees. Ms. Culley confirmed just child care and not school or others. Secretary Ranji confirmed that we would be making it less, but the Department could add it back in through regulation. Mr. Smith asked what is unlawfully dealing with a child. Ms. Sawyer provided the example of trafficking. Secretary Ranji stated what we put forward last time was non-felony offenses against children would have a baseline prohibition of 5 years following conviction and the hiring department could determine additional time. The list is to give a sense of what non-felony offenses include. Ms. Culley stated has an issue with it being 5 years. She noted if she were to commit child abuse against someone else’s child it would be a 5 year prohibition, and against her own child it would be 7 year. Secretary Ranji stated last time we discussed that between registry and code when it comes to criminal convictions the higher length of prohibition time should apply. Though if we feel that a case against a child would not go on the registry it would be different than what a parent would get because they’d be on the registry. Ms. Culley expressed concern with consistency and asked if it should matter if its someone else’s kid or their own. Secretary Ranji suggested we could say the extent to we have anything in the non-felony category would be a higher-level prohibition if it were in the registry. We could align with the registry. Ms. Sawyer stated an example would be child abuse in 3rd degree would be 7 year. Ms. Culley said unlawful dealing with a child would then be lifetime. Secretary Ranji stated it seemed like we dealt with this with the higher level prohibition, but there’s still a disconnect with the registry. Mr. Smith looked up unlawful dealing with a child and one can be a having a child in a place of amusement that knowingly permits alcohol. He noted his point was it is broader than trafficking. Ms. Culley stated if you do that with your own kid you are level 4 on the registry as it currently stands. A Task Force member asked if that includes failing to strap a kid into a seatbelt. Ms. Rigby said they see a lot of shoplifting and that could be misdemeanor and they’re charged with endangering the welfare of a child. Secretary Ranji confirmed we should change it to misdemeanor instead of non-felony so that we’re not capturing the lower level stuff. She asked if we should try to align with the registry so that it’s the same regardless of whether it’s your kid or a stranger. Mr. Smith agreed. Secretary Ranji stated we would work on that and circulate it to the group. Ms. Rivello asked if a class A misdemeanor for incest would get you a lifetime ban. Secretary Ranji responded that means that on the criminal side that would be lifetime prohibition. Ms. Culley said it seems they’ll all come off and it will say if you do it to someone who isn’t your kid then the same applies that would happen on the registry. Ms. Rigby asked what would happen when new laws are passed, as they wouldn’t be included here. We need general wording that includes what happens when new legislation is passed. Secretary Ranji stated if we do categories then we would say it drops in. Mr. Smith stated that incest could be broader. Ms. Rivello said this is specific to someone else in your family. Secretary Ranji confirmed we would recirculate once we do the comparison with the registry. Mr. Kennealey asked if this is all misdemeanors, and does that then mean that a kid who is in college and gets charged with a misdemeanor would have a 5 year ban. Secretary Ranji confirmed. Secretary Ranji stated we also say other crimes as relevant, established through the regulatory process. We also have in there amending the code for DOE from “shall” to “may” to make prohibitions absolute rather than leaving it up to each district. Ms. Rivello noted HR directors are in support of this, as they would like to have something to refer to. Secretary Ranji stated that the last piece is if there is more than one prohibition then the higher prohibition would apply. She requested a motion that for misdemeanor offenses against children we will compare to and align with the registry and we will say that other crimes would be determined by the employer as related to job duties and established through regulation. In addition, DOE legislation that applies to districts and charters would be changed from “shall” to “may.” A motion was made and seconded. Ms. Culley requested the Department also look at the felony list and compare to the registry as a cross reference to make sure there aren’t any conflicts. Secretary Ranji confirmed she wants to make sure there are no inconsistencies. Secretary Ranji stated with that clarifications noted the recommendations would be put forward. A motion was made and second and all voted in favor.

Next, the Task Force discussed the types of background record checks that should be required. Secretary Ranji noted the options we’ve laid out are a name-based check in DELSIS, and next is a name-based and CPR check. 3.3 is DELJIS does a name-based, DSCYF does CPR and we permit the use of third party vendors as well as other checks if the employer decides to do so. The important part to focus on is the use of out of party, because the DELJIS check and CPR do not capture out of state in the same way that fingerprints with SBI and FBI do. The final option would be background record checks with fingerprinting for Delaware and out of state, and also to include CPR. Secretary Ranji stated we might want to do a pilot of the checks both ways to see that third party checks either are or are not a good source of information. We’ve thought about for the new checks we’re recommending – summer camps that will be required to have checks – could we say that they are permitted to do what we did last summer. They could do DELJIS and CPR. At the same time we could do a 6-month pilot study to see how comfortable we are with private vendor checks. We could then circle back to see if we would want to allow that for those that already do background record checks. We have some people going from nothing to something. Secretary Ranji noted she is not as comfortable saying that we’re going to suddenly allow those who have been doing background record checks to go to DELJIS check or private vendors. She stated she would rather leave that as is, and consider for those with new requirements we’re adding do the DELJIS and CPR check. Then we would allow private checks through a 6-month pilot to better determine where they fit it. She noted she is not as comfortable making a change to how we currently do it. Ms. Rigby responded she still thinks everything should be state and federal background check. It’s done for DSCYF and Education and she noted she thinks it needs to be consistent throughout; especially with Delaware being a state with a lot of military personnel and people from other states moving in. Without doing the federal check you’re not getting a full background check. Everyone should have the same type of background check. She stated she has a problem with third party checks because of the way people’s criminal histories change so fast. Vendors don’t get updates on the original information – for example, expungements. Ms. Rigby acknowledged that is her opinion and where SBI stands. Mr. Kennealey stated he likes the idea of a 6-month trial. He stated it is unclear what’s better, and having real data would be helpful to see the outcomes for people who got both checks. This information would be helpful for the group to have. He noted he likes the idea of having very clear recommendations about what the checks are that are required. Mr. Scoglietti stated we need to make an informed decision and respects what SBI shared. In order to do our due diligence we need more information. Mr. Kennealey said it should be the same people that get checked through both mechanisms. Secretary Ranji stated that she agrees the best way to do checks is probably the way we’ve been doing it now, but the issue is the cost and challenges of getting fingerprints. There are limits that make it something worth looking at other options. We also want to maintain what’s there now. Secretary Ranji requested a motion to say youth camps can do background record checks through a name-based check in DELJIS and Child Protection Registry checks at a minimum. Representative Bolden asked how we would check to ensure the background checks are done. Secretary Ranji responded we would probably need to do random spot checks. She added to the motion that we would wrap in a 6 month pilot via a private contractor and state checks with the same group. Camps would be required to a DELJIS name check and CPR check, and we would move forward with a pilot program to further examine background checks with details on the pilot to be determined. Secretary Ranji stated that at a previous meeting Deb Batatta-Bowles mentioned she would be willing to do it through the Y. A motion was made and seconded and all voted in favor. There was one abstention.

Secretary Ranji stated we talked about defining direct access and couldn’t come up with a better definition to define it. She suggested we come back to that. We weren’t confident we came up with something that captures all of the concerns.

Next, Secretary Ranji noted that recommendation 4 was completed at the last meeting. Recommendation 5 we voted on except we may want to add some funding toward education since we consider that to be as important as the background record checks. The Task Force agreed. The motion was made and seconded and all voted in favor.

Secretary Ranji stated that for recommendation 6 we voted to recommend the CPAC request, and we also voted to delve into certain areas more deeply. One thing we added was exploring the fingerprinting option in terms of whether or not we can make fingerprinting more accessible and what kinds of risks that has or doesn’t have. We could ask to look at that going forward. Ms. Minutola stated we explored this with the Civil Citations Committee. There were some roadblocks with Live Scan when it was looked into. A Task Force member asked if there are private Live Scan vendors. Ms. Rigby confirmed. You couldn’t do federal because you can’t submit to FBI; that has to come through SBI. Secretary Ranji said you could do it but it would have to go to SBI first. She requested motion to look at whether this is an option to consider. A motion was made and seconded and all voted in favor.

1. **Overview and Input on Revised Draft Task Force Report**

Secretary Ranji provided an overview of the draft final report of the Task Force. We have the standard introduction, list of members, and executive summary that gives some background information. Everyone should read this for factual accuracy and e-mail if anything is wrong. The report then talks about background information on the Task Force and what we currently have in place in Delaware. It also talks about the importance of education and prevention and that background record checks aren’t the only way to sure kids are safe. We will list the 6 recommendation areas that will be finalized after today. We have a setting the stage piece and plan to include the longer chart that shows the various prohibitions so that people understand the different levels or lack of consistency in the current requirements. It also talks about the process for background record checks and the CPR, as well as third party record check providers and the fact that we touched on consolidated background record check unit. The report also talks about summer camps, and we will change that title to youth camps. It also talks about what we did last summer and the numbers and that we ultimately don’t know how many camps we have. It goes through the private school numbers, prohibitions, and then talks about the education and prevention-based strategies including some of the information provided by Stewards of Children. Next we go into the recommendations that will be updated to reflect what we’ve talked about at the last two meetings.

Secretary Ranji suggested everyone read through the report and let us know if they see anything that needs changed or clarified. She asked if there is anything big anyone saw in the report that would be helpful to discuss today. Mr. Kennealey stated that recommendation 2.2 talks about baseline background record checks for private schools. He would feel more comfortable saying for all schools, as we are trying to get to the same level of protection for all children. It could be nuance of language. We are establishing a standard for all schools in Delaware and thus it wouldn’t’ be changing the intent. Secretary Ranji stated this is the language we voted on at the last meeting. The way it is framed is setting requirements. Other schools don’t have the option to implement the checks or not. Background record checks will be the same but private schools are getting an exception. We could reword it to say private schools will be subject to the same background record checks as public schools, but if they may choose to not comply. Ms. Culley stated she was thinking it could say extend the baseline background record check requirements to private schools. The requirements exist and we are applying them to private schools. Then we can say the private schools may opt out. Mr. Kennealey responded that’s better. The requirement part is nuanced since private schools may not apply. It’s not a requirement if there’s an out. Secretary Ranji asked if we could say background record checks that apply to public schools also apply to private schools. Mr. Kennealey said this would establish a state standard that applies to all schools. Private schools, if they choose to not comply, will have the option to inform parents. He stated he would also change the title of the section from camps and schools. Secretary Ranji stated we have to convey this is new to private schools and they have an out. We could say it as subject to the same requirements but they have the option to inform parents. Mr. Kennealey said he still likes the language of a state standard but he is okay with what Secretary Ranji has proposed.

Mr. Smith asked if the Task Force could be sent the draft report with the changes noted today. Secretary Ranji stated we would try to do that within the next couple of days. We will gather comments on the report, weave them in, and if we need to send things around for input then we will. If it’s word-smithing we’ll take care of that. Then we’ll circulate the final draft and ask for a vote. Ms. Culley stated she would like to see a paragraph that talks about Prevent Child Abuse Delaware’s personal safety program and how many children or schools were educated. Ms. Rivello asked how we would like to receive feedback. Secretary Ranji suggested a detail list. Once we send the report out we’ll give everyone a date to send feedback by. We’ll take care of grammar. If it’s substantive we can send a list of issues back out. The more specific you can be in your feedback the better. Instead of giving general guidance, give actual suggestion of what it should be.

1. **Vote on Task Force Final Report *(tentative)***
2. **Next Steps**
3. **Public Comment**
4. **Adjournment**