

## Liability

# Guidelines for the Screening of Persons Working With Children and Vulnerable Adults

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## Abstract

Children, the elderly, and individuals with disabilities are subject to abuse by care providers. In response, the federal government has issued guidelines to help organizations serving children and vulnerable adults establish a policy that provides an appropriate level of screening for employees and volunteers. This report reviews the types of screening practices and the legal framework for these practices and presents a decision-making model to guide the screening decisions of individuals and organizations who hire employees or recruit volunteers to work with and provide care to vulnerable populations.

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## Introduction

During the past decade, human services organizations have encountered increasing pressure to thoroughly screen individuals that staff their programs. Every provider, whether nursing home, childcare operation, or institution for other vulnerable populations, has a legal duty to exercise reasonable care when confronted with a reasonably foreseeable risk associated with its activities.

Although studies are sketchy and do not provide a complete picture, one study indicated that 12.8 percent of the estimated two million incidents of elder abuse occurring in the home were perpetrated by service providers. A survey of 600 nursing home staff members suggested that elder abuse is a fact of institutional life: of the staff surveyed, ten percent admitted to physically abusing patients and 40 percent admitted to personally committing at least one psychologically abusive act in the preceding year. As for children, estimates of the incidence of child sexual abuse in daycare centers, foster care homes, and schools range from one to seven percent. Although the incidence of abuse may be relatively small, abuse traumatizes the victims and shakes public trust in care providers and organizations serving these vulnerable populations.

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## Overview

This report is intended to assist those faced with screening decisions by suggesting a decision-making model to use for an analysis of screening issues. It offers a framework for making decisions about who to screen and how. The decision-making model (see Appendix Exhibit 1. *Graphic Representation of DecisionMaking Model*) begins with factors that trigger the need for screening, such as the level of direct worker-consumer contact, the characteristics of the consumer served, and the amount of worker supervision present. These triggering factors set the stage for determining the type(s) and extent of screening to perform.

The next step is to consider the intervening factors that may limit the ability to perform certain kinds of screening, including cost, access, and time constraints. In providing an opportunity to consider intervening factors, the model recognizes that the most optimal screening approaches may not, in fact, be realistic options for all settings. By considering both triggering and intervening factors, the best possible screening approach can be selected.

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The model assumes that all organizations undertake at least basic screening (e.g., interview, verified application, and reference checks), even in those situations requiring the most cursory review. Thus, although some might suggest that no screening is necessary for situations in which the prospective volunteer or employee is known to the organization or agency, such an informal approach to screening is not advisable. A formal review and reference process, such as those recommended with the basic screening practices, should be undertaken. Further, with respect to basic screening, organizations and professional associations are encouraged to develop model screening procedures and interview questions as part of their hiring or volunteer placement procedures. See the following E&S Client Handouts for sample screening forms:

- CH-40-50 *Sample: Authorization to Release Information Background Screening*
- CH-40-51 *Sample: Applicant Disclosure Affidavit Background Screening*
- CH-40-52 *Sample: Request for Information Form Background Screening*
- CH-40-53 *Sample: Employer Disclosure Affidavit Background Screening*

The guidelines should be used with two caveats. First, although screening to weed out potentially abusive individuals is important, it should supplement, not substitute for, an evaluation of skill development or competency. Second, all screening practices have limitations. Their use cannot guarantee that individuals who pass through the screening will not be abusive. There is no substitute for continuing to protect against abuse using post-hiring screening and prevention procedures.

The guidelines also caution that organizations should understand the purpose of screening and the scope of specific practices that can be used to screen individuals. Because some practices include access to information held by the government (e.g., criminal records), an understanding of the legal framework is necessary.

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## Purpose: Protection of Children, the Elderly, and Individuals with Disabilities

The underlying reason for screening prospective workers who may have contact with children, the elderly, or individuals with disabilities in need of support is the same -- to identify potentially abusive individuals. When an individual entrusted with the care of someone abuses that person and then is found to have abused others previously, the following questions may arise:

- How could such a person be in a position of caring for children or other vulnerable individuals?
- How can this be prevented from happening again?
- How much screening should be done and who should decide what prior experience is inappropriate?

Efforts by organizations to answer these questions have led to a number of additional inquiries. In many cases, state and federal legislation has helped establish a framework for determining the types of positions that require background screening and the types of scenarios that require further investigation. In some cases, even the issue of whether or not a worker should be "on the job" in a paid or volunteer capacity, pending the results of screening, has been determined.

Attempts to determine who should be screened rapidly reveal the multitude of settings in which abuse might be perpetrated. A partial list of settings in which individuals may have contact with children, the elderly, and individuals with disabilities gives a sense of the enormity of the contact points:

- **Daycare:** Childcare, senior citizen centers, and community day programs for adults.

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- **Health/mental healthcare:** Hospitals, nursing homes/facilities, intermediate care, congregate care, board and care, group homes, psychiatric hospitals, residential treatment facilities, and "in-home" healthcare.
- **Foster care:** Placements for adults in need of support services or for children under the care of the state as a result of abuse or neglect or as a consequence of delinquency.
- **Other out-of-home settings:** Assisted living units/community living programs and semi-independent and independent living programs.
- **Schools:** Public and private, including preschool and nursery school.
- **Shelters:** Homeless or domestic violence shelters.
- **Youth development:** Community or volunteer organizations serving youth (e.g., Court Appointed Special Advocates (CASA), Boy Scouts of America, Girl Scouts USA, and Big Brothers Big Sisters).
- **Volunteer programs (for the elderly or individuals with disabilities):** Social Security representative payee, American Association of Retired Persons bill payer and representative payee money management, Meals on Wheels, and other community/volunteer programs.

Considering that these and other settings can encompass services provided in or out of the home by volunteers or employees, the number of instances in which screening may be considered is extensive.

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## Screening Practices

Typically, when background "screening" is discussed, the focus is on the use of information from criminal history records (e.g., FBI fingerprint checks). It is important to recognize, however, that many other practices (see Appendix Exhibit 2. Types of Background Screening Mechanisms) can weed out potentially abusive workers and volunteers. These range from standard interviewing and reference checking to more complex and controversial procedures, such as screening against child abuse, reviewing dependent adult abuse and sex offender registries, psychological testing, drug testing, and home visits. Not all of these practices can be undertaken in all states, however.

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## The Legal Framework

Congress has worked with the states to make criminal history background checks available to organizations seeking to screen employees and volunteers who work with children, the elderly, and individuals with disabilities, through the *National Child Protection Act* of 1993 (42 U.S.C. 5119 et seq.), the *Volunteers for Children Act* (Public Law 105–251; 112 Stat. 1885), the *Serve America Act* (Public Law 111–13; 123 Stat. 1460), the *Adam Walsh Child Protection and Safety Act* of 2006 (Public Law 109–248; 120 Stat. 587), and statutes enacted by 48 states in compliance with Public Law 92–544. However, there may still be persons providing care and services to vulnerable populations who fall outside these numerous and broad categories of criminal history background checks authorized by federal and state law.

At the federal level, many people who deliver home healthcare will fall under a new program in the Patient Protection and *Affordable Care Act* (ACA) that will pay for background checks for any nurse, therapist, or aide who provides care for a long-term-care patient. While the program is voluntary at this time, Centers for Medicare and Medicaid Services (CMS) officials indicate that states should consider planning for a potential mandate, noting that CMS recently made background checks mandatory for hospice workers. Another section of the ACA currently offers states up to \$3 million in matching grants to carry out screening programs.

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The two major pieces of legislation pertaining to creating a safe environment for children are the *National Child Protection Act* and the *Volunteers for Children Act*. The former allows schools, childcare centers, and other youth-serving organizations to access national criminal databases, complete with fingerprint records. The latter gave select companies broader access to these nationwide record repositories. However, it is important to note that there is no federal legislation that requires companies to screen volunteers, so it falls to state lawmakers to mandate background checks.

### State Laws

Many states have laws expressly prohibiting or limiting the use of information obtained from criminal background checks -- which promote the public policy associated with rehabilitation of past offenders, along with protecting individual privacy interests. Legislation regarding the screening of persons working with children, the elderly, and individuals with disabilities has not been passed in all states. To the extent they exist, state screening laws may be found in licensing laws, laws governing state social welfare agencies, and laws regarding specific information systems (e.g., criminal record repositories, child or elder abuse registries, or sex offender registries).

A National Service Criminal History Check consists of (1) a state criminal registry search, which involves a search of state law enforcement and court records (by name and/or fingerprints) to determine whether an applicant has a criminal history and (2) a National Sex Offender Public Registry (NSOPR) check, which consists of individuals who are required by their states to register as sex offenders. By establishing baseline requirements to document state criminal registry and NSOPR checks for positions with access to vulnerable persons, the goal is to make national and community service programs safer for all involved.

The NSOPR is a no-cost, Internet site operated by the U.S. Department of Justice, and a compilation of the sex offender registries of all 50 states, as well as Guam, Puerto Rico, and the District of Columbia. The site is located at [www.nsopw.gov](http://www.nsopw.gov).

Screening laws vary in the types of workers covered and the types of checks required. Licensing laws are obviously limited to the individuals or entities licensed. States have made differing determinations as to who to license. Typically, they may include licensed social workers, foster or adoptive parents, and persons who may work with or care for children, the elderly, or individuals with disabilities in other settings, such as group homes or residential institutions.

Among the licensing and social welfare laws in effect, there is considerable variety in the type of check to be conducted. With respect to services for children, exceptions have included: school-based childcare; youth recreation groups, such as scouting or camping organizations; childcare affiliated with a religious group; youth programs operated in adult facilities; babysitting arrangements; single-family "nanny" situations; and daycare situations in which less than a specified number of children are cared for.

Certain jobs and positions do not require a license, so states have passed separate statutes authorizing certain screening practices. These generally include checks of state criminal records or the central child abuse and neglect registry. All states have statutes providing for the investigation of elderly or dependent adult abuse, and an estimated 42 have some form of mandatory reporting. It should be apparent that it is critical for an employer to review the laws and regulations in the states where they operate, as well as to verify the various positions that require/necessitate background screening.

Title 1 of the *Adam Walsh Child Protection and Safety Act* of 2006 established a comprehensive, national sex offender registration system called the *Sex Offender Registration and Notification Act* (SORNA). SORNA aims to close potential gaps and loopholes that existed under prior laws and strengthen the nationwide network of sex offender registrations. More information about SORNA is available at <http://www.justice.gov/criminal-ceos/sex-offender-registration-and-notification-act-sorna>.

In November 2014, President Obama signed the *Child Care and Development Block Grant Act*, requiring that entities receiving government funding for childcare perform criminal background checks (CBCs) as a

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routine part of their staff hiring process. Similarly, some states require criminal background checks of anyone wanting to work in a childcare facility.

### Applicant Rights

Since the introduction of background screening, there has been clarification regarding the rights of applicants, including the right to dispute or question findings. Screening is subject to two general rules: one pertains to the employer's responsibility to screen in a reasonable, consistent manner and the other is related to the protection of the rights of individuals being screened. Each applicant (regardless if paid or volunteer) is entitled to fair treatment under the law. It is essential that the right to privacy, obtaining consent, avoiding defamation, and protecting records be adopted by an employer or volunteer organization. It is important to have an attorney review policies and practices to assure that both state and federal laws are considered with respect to protecting the rights of the applicant. If the applicant feels that the information is in error, it is his or her responsibility to contact the agency that provided the information, have the error corrected, and obtain written verification from the reporting agency that the correction was sent to the employer. Essentially, if a background screening was performed by a third party, then the applicant is allowed to dispute findings under the *Fair Credit Reporting Act (FCRA)* rules, just as if he or she would with a credit score dispute.

State laws may offer greater rights when it comes to obtaining public record information used to make an employment evaluation. For example, a California employer that obtains public record information, from any source, must give the employee or job applicant a chance to receive a copy of public records.

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## Guidelines for Organizations Developing Screening Policies

Organizations providing care or services to children, the elderly, and individuals with disabilities should adopt a thorough screening policy. The three-part decision-making model discussed later is a useful guide for organizations in developing such a policy.

### Levels of Screening

Issues appropriate for a screening policy include:

- Statements on minimum required screening standards
- Guidelines on when more extensive screening practices should be used
- Provisional hiring policies
- Guidelines on how to assess background screening information once it is received
- Maintenance and dissemination of background screening records
- Standards for working with vulnerable populations

Applicants should be advised of the organization's screening policy. Reviewing this policy annually -- and as new information on available mechanisms arises -- is also appropriate.

All applicants who are seeking a position to work or volunteer with children, the elderly, or individuals with disabilities should be screened at a basic level. Basic screening includes:

- A comprehensive application form with a signed statement providing authorization to perform a background check.

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- A thorough personal interview that examines an applicant's past employment or volunteer experience and explores other indicators of potential problem behavior.
- Reference checks with past employers (or appropriate reference checks for volunteers and young adults) and personal contacts.

Each applicant's references should be checked completely. Where prior employers do not respond to queries about the applicant, documentation should be maintained on efforts to contact the prior employer. In addition, a confirmation of education status may be appropriate.

Additional screening practices may also be warranted. Thorough consideration of all relevant factors will assist an organization in determining whether additional screening is warranted for some or all of its workers. The decision-making model can guide organizations in making this determination. Organizations using additional screening mechanisms (e.g., personality or psychological testing and criminal records checks) are advised to do so in conjunction with basic screening practices and with a full understanding of the limitations of each of the screening practices used.

### Record Checks

Due to the expertise, complexity, and accessibility of some records, there has been an increased focus on the use of third-party vendors for performing criminal history record checks. The overwhelming reason employers conduct background checks on certain job candidates or volunteers is to reduce and/or prevent abuse, whether it is theft, embezzlement, or molestation. A multilevel, jurisdictional criminal records search is the greatest asset an employer has against defending a negligent hiring lawsuit. The exchange of electronic criminal information from the United States and international agencies has provided a new level of screening in a cost-effective manner. When using a third-party provider to obtain background check information, employers need to determine whether the screening firm provides FCRA-compliant searches for permissible employment purposes. The screening firm should follow all federal, state, and local laws in regards to employment screening. A reputable third-party provider will require vetting, an executed service agreement, and training to confirm that the process is legitimate. Every employer has a responsibility to provide a safe work environment for their employees and others within their care.

### Results of Screening

Once screening information is received, it is important to have strategies for dealing with the information, especially when the screening process has yielded questions about the applicant. An organization's strategies for dealing with screening results should be set forth clearly in written policies.

To the extent possible, the hiring or placement of an applicant should be delayed until the screening process is completed. If this is not possible, the applicant, pending completion of the screening process, should be restricted to supervised situations or situations in which another worker is present. The applicant should never be alone with vulnerable individuals. In addition, the organization is advised to retain the right to terminate the worker or volunteer if the screening yields adverse information or reveals that incorrect information was provided by the applicant. As a minimum standard, automatic disqualification of a potential worker or volunteer is appropriate when the screening results indicate that the individual, as an adult, was convicted of any crime involving a child or a dependent adult, regardless of how long ago the incident occurred, or any violent crime within the past ten years.

It is recommended that disqualification for all other crimes and/or questionable behavior is discretionary, with incidents evaluated based on consultation with appropriate professionals and the following factors:

- The relationship between the incident and the type of employment or service that the applicant will provide.
- The applicant's employment or volunteer history before and after the incident.

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- The applicant's efforts and success at rehabilitation.
- The likelihood that the incident would prevent the applicant from performing his or her responsibilities in a manner consistent with the safety and welfare of the consumers served by the agency.
- The circumstances and/or factors indicating the incident is likely to be repeated.
- The nature, severity, number, and consequences of the incidents disclosed.
- The circumstances surrounding each incident, including contributing societal or environmental conditions.
- The age of the individual at the time of the incident.
- The amount of time elapsed since the incident occurred.

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## Decision-Making Model

The number of persons who may have contact with children and vulnerable adults is extensive. Countless different professions and types of organizations serve these populations. Given the need to protect children and vulnerable adults from abuse in a variety of settings and the significant differences in organizational purpose, staffing needs, and available resources, these guidelines present a decision-making model rather than a list of screening practices to be used in every circumstance. The model poses questions to ask when deciding which background screening practices to utilize. The model assumes that screening for any position will include at least a written application with a signed statement, professional and personal reference checks, and an interview. Supplemental screening measures may also be warranted.

The decision-making model provides a framework for analyzing when to conduct supplemental screening practices. It is designed to facilitate a serious, careful examination focusing on opportunities for harm. This model is not the only set of steps that could be developed. Organizations are encouraged to develop screening practices for use in particular settings. Screening for specific settings and types of workers (employees or volunteers) could also incorporate evaluations of competence for particular tasks; however, this model does not directly address competence goals.

Further, screening must be placed in context. It is one tool aimed at preventing harm. Others include education (of staff and volunteers, parents and guardians, children, and vulnerable adults) and abuse prevention policies (discouraging opportunities for abuse and encouraging children and vulnerable adults to voice concerns about inappropriate behavior). See also the "Decision-Making Model in Continuum Form" section of this report. Reviewing the types of positions in the organization and the general tasks and characteristics of each is useful before beginning to assess the screening required for a particular type of position. Screening to prevent harm should supplement selection procedures aimed at evaluating the qualifications of an applicant for a particular task or job. Before beginning to use the model, it is also useful to ask "What harms are being screened?" For example, do they include:

- Physical, sexual, and emotional abuse?
- Theft and other property offenses?
- Arson, assault, or murder?

A clear understanding of the specific potential for harm associated with particular positions will help to focus the discussion of screening issues. For example, concerns about theft may be especially important for certain programs serving the elderly.

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### The Model

The screening decision-making model includes the following three major steps:

#### Step 1: Assessment of Triggers

The first step requires an assessment of the presence and degree of screening "triggers." These triggers can be divided into three categories -- those involving the setting, those pertaining to the worker's contact with the adult or child, and special considerations.

##### Setting Considerations

- Will others (adults or children) be present during the contact (the opportunity for abuse is increased if no one else is present)?
- Who are those other people (the opportunity for abuse may still be exceptionally high if young children or certain vulnerable adults are the only others present)?
- Will the worker be closely monitored and supervised?
- What is the precise nature of the worker's involvement with the organization and with the client population (whether the worker is an employee or volunteer may be part of this assessment)?
- What is the physical location of the contact (e.g., in a classroom, a camp, etc. -- care should be taken in considering all activities and their different physical locations, including transportation to and from events)?

##### Contact Considerations

- The duration of the contact (how much time is spent with the client per occasion).
- The frequency of the contact and the length of the relationship (e.g., one time only or once a week for a year).
- The type of contact (e.g., does the worker have direct contact with children or vulnerable adults, or does he or she have administrative or other duties that support the activities of the organization).

##### Special Considerations

- Are there special circumstances to factor into the screening decision? At this point, an examination of the vulnerability of the individuals served is important. Those whose ability to communicate is impaired because of age, infirmity, life history, or other reasons may be exceptionally vulnerable to abuse.
- There may also be state laws or regulations that require certain screening practices to be used, thus triggering the use of a certain screening method. For example, states may require that state or federal criminal records checks be done. If a state license or certification is required, statutory or regulatory requirements may also be in place.

#### Step 2: Evaluation of Intervenors to Decision Making

With the triggers in mind, consideration moves to the second step of evaluating "intervenors" or items that may limit or affect the screening decision:

- Unavailable or inaccessible information. Certain screening mechanisms may not be available. For example, a number of states simply do not authorize criminal record checks for a number of types of persons serving children, the elderly, or individuals with disabilities.

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- Unexpected absences or departures. An immediate need for staff may also "intervene" in the screening decision-making process.
- Liability concerns. The risk of liability may affect screening decisions. Federal, state, or local laws may give applicants and employees certain legal rights. For example, certain questions may not be asked during an interview/application process, and generally all inquiries must be relevant to the task or position. Liability concerns could also stem from negligent hiring torts; organizations have been sued when a client was injured by an employee or volunteer they selected.
- Presence of other risk-reduction measures. A consideration of other risk-reduction measures in place is helpful in evaluating the need for specific screening practices. However, risk-reduction measures as intervenors do not necessarily obviate the need for supplemental screening. Rather, their presence is a pragmatic consideration in evaluating the screening practices used. Risk-reduction measures may include training programs or levels of supervision.
- Financial or human resources. The practical impact that financial and human resources may have on screening is also a factor to be considered.

### Step 3: Analysis and Selection of Screening Practices

The third step puts information gleaned from steps 1 and 2 together with various screening options. The model assumes that, based on this information, supplemental screening practices may be warranted. The advantages and disadvantages of each screening practice should be reviewed at this time.

As the extent and number of triggers increase, supplemental screening measures are appropriate. For example, circumstances in which repeated one-on-one contact occurs between one worker and one child or dependent adult, often in very private surroundings, will merit supplemental screening practices.

Supplemental screening practices might include the following:

- Confirmation of a person's educational status (this may be particularly appropriate for young workers for whom a professional reference may not be available or for situations in which the educational degree is relevant to the task to be performed by the applicant).
- Motor vehicle record check if the employee will be transporting consumers and/or operating company vehicles.
- Local, state, or FBI criminal record checks.
- Check of the central child or dependent adult abuse registries.
- Sex offender registry check.
- Home visits.
- Psychological testing.
- Alcohol abuse or controlled substances testing.
- Psychiatric history check.

An example of how to use the recommended model for screening is available in the Appendix of this report (see Appendix, Exhibit 3. *An Example Using the Decision-Making Model*).

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### Implementing Screening in an Organization

Although it may seem simple to endorse the concept of performing careful worker screening prior to hiring the worker, in practice, there are many details to consider. An organization should consider the following steps when implementing screening practices:

#### Designate a Point Person

Designate a person(s) within the organization who is responsible for receiving, reviewing, and acting on background screening information. Typically, an individual in the human resources or personnel department has responsibility for receipt and review of background screening information. This person should thoroughly understand all staff positions and roles so as to adequately assess the relevance of background information obtained. This person is responsible for adhering to a screening/hiring policy. Making one person responsible for overseeing the process ensures that a consistent approach is taken, the screening policy is used appropriately, and the confidentiality of employee/volunteer records is maintained. In smaller settings, the director or assistant director should assume the centralized role of "keeper of confidential worker information."

#### Develop an Application Form

Develop a comprehensive written application form that informs applicants of the organization's screening policies and facilitates the ensuing background screening process (e.g., a release from the applicant to perform background checks). Matters to consider in the initial application process include:

- An explanation of the hiring/selection process, including a written release giving consent to verify the information provided on the application (signed by the applicant) and, as necessary, to search criminal history and registry records (and conduct other checks), if appropriate. See E&S Client Handout, CH-40-50, *Sample Authorization to Release Information* form.
- Include a signed statement verifying the applicant's understanding that falsifying information is grounds for dismissal and/or other action. See Client Handout CH-40-51, *Sample Applicant Disclosure Affidavit*.

#### Interviews

Conduct personal interviews that probe for more in-depth information that may not be available through other screening mechanisms. Interview questions should be tailored to the needs of the setting and the role of the worker or volunteer. A standardized interview process would promote consistency among applicant interviews and help eliminate subjectivity associated with using multiple interviewers. Training on effective interview techniques, especially when delving into sensitive topic areas, should be provided. If possible, use of a team approach would increase objectivity, obtain different perspectives, and promote adequate documentation. Follow-up interviews may be needed as information surfaces through other background screening practices.

#### Reference Checks

Conduct reference checks, and if appropriate, educational status checks. When asking applicants for references, a verbal or written statement that references will be checked may deter unsuitable applicants and reduce fabrication. Centralizing the reference-checking process and providing training would permit responsible staff to become proficient in their inquiries. Fear of defamation or other lawsuits may limit the amount or detail of information a reference is initially willing to supply. Obtaining an applicant's written consent allowing for the release of information by previous employers makes for more effective reference checks. Some agencies ask references whether they know of any reason the person should not be hired to work with the particular clientele. See E&S Client Handouts CH-40-52, *Sample: Request for Information Form Background Screening*, and CH-40-53, *Sample: Employer Disclosure Affidavit Background Screening*.

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### Formalize Policies and Procedures

Draft organizational policies on the appropriate use of criminal history information or other registry information to the extent this information is available, and develop specific criteria for using this information for screening purposes. Thorough documentation should be maintained to show policies and procedures are executed.

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### Post-Hiring Practices

Pre-employment screening is only one aspect of identifying unsuitable workers and protecting vulnerable populations. Some individuals, such as first-time offenders, may not have a history of abuse. Effective abuse prevention should also include ongoing prevention practices and continued screening efforts after the worker is hired. Some post-hiring practices to consider include: written policies, such as a code of conduct for staff, relating to their behavior with the vulnerable client population(s); policies on reporting suspected abuse; and policies on investigating staff concerning abuse.

- **Written organizational policies regarding abuse by staff.** These policies should require employees and volunteers to attend an orientation and sign a statement that they read and understand the agency's written policies regarding appropriate treatment of the vulnerable clients served (e.g., management of difficult behavior) and the state's reporting laws. A clear and concise policy that sets the parameters for provision of care should be included in the organizational guides. It should also inform employees and volunteers that the agency will cooperate with local officials (e.g., child protective services, adult protective services, and law enforcement) in investigation of cases.
- **Staff (or Volunteer) Training.** Risk-reduction strategies engender confidence among individuals who use and depend on the services to children and vulnerable adults. These strategies include staff education and training. Ongoing personnel training topics might include the facility's crisis management techniques, identification and reporting of suspected abuse by employees and volunteers, effective communication techniques, and diversity issues. In addition, education and training on specific issues associated with working with a particular client population may be appropriate.
- **Educational Programs.** For those providing services to the elderly and individuals with disabilities, educational programs may encompass information on the nature of the illness or disability so that the care provider is better able to respond to the client's needs.
- **On-the-Job Supervision and Monitoring.** Ongoing staff supervision should be implemented to supplement pre-employment background screening.
- **Procedures for Periodic Updating and Review of Workers.** Abuse and other relevant information should be updated with periodic checks for new information. This information can be obtained through traditional registries (e.g., child abuse and neglect, and criminal record registries) and, if available, alternative (occupation-specific) registries.
- **Efforts to Increase Communication.** For example, some organizations may adopt an open-door policy for these individuals to make unannounced visits to the facility at any time.

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### Recordkeeping

Screening is a multi-step process that can seem confusing or intimidating, but needs to be performed as part of a program's overall risk management strategy when working with vulnerable populations. Organizations must understand the laws governing personnel records and know what information must be kept and how long the record(s) are to be kept. To document a check of the national sex offender public registry (NSOPR), an employer must either print the page on the screen that indicates the results of the

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NSOPR search or prepare a written memorandum for the file detailing the steps that were taken to conduct the search and the results of the search.

All employee and applicant records should be kept in secured areas. An employee records security policy that outlines what types of records will be maintained, for what purposes they will be used, and what safeguards have been put in place to ensure adequate protection of such records needs to be developed. Those with access to such records should be clearly identified and responsibilities for maintaining the security of these records should be assigned. The information, as permitted by law, should be maintained in a secure location where it can be viewed only by individuals who have an official need to review the information (much in the same manner as personal medical information is protected). Employers should establish a process to review state and federal legislation and adapt their existing processes in accordance with regulations.

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## Summary

Screening those who work with children, the elderly, and individuals with disabilities is an important component in the prevention of abuse. Such practices, from basic screening methods (e.g., written applications, interviews, and reference checks) to other, more extensive or specialized practices (e.g., checks of criminal records, abuse registries, or sex offender registries) send a clear message that an organization values their clients and will not tolerate their abuse.

The Equal Employment Opportunity Commission (EEOC), which is responsible for enforcing federal antidiscrimination laws, and the Federal Trade Commission (FTC), which is responsible for enforcing the FCRA, jointly published two guides on conducting background checks for employment purposes. The publications are an attempt by the agencies to apprise employees of their rights and educate employers on their responsibilities under the laws enforced by the agencies. The joint guidance is comprised of two documents: one entitled "Background Checks: What Employers Need to Know" and the other entitled "Background Checks: What Job Applicants and Employees Should Know." More information is available at [http://www.eeoc.gov/eeoc/publications/background\\_checks\\_employers.cfm](http://www.eeoc.gov/eeoc/publications/background_checks_employers.cfm).

It is a good idea for employers to review the laws regarding background checks and information in the states and municipalities in which they have employees. Some states regulate the use of background check information for employment purposes. To ensure compliance with state and federal laws, including antidiscrimination laws and FCRA, employers should consult with counsel for advice on how to effectively and lawfully use background checks in the applicant and employee screening process. Because screening is not a guarantee that abuse will not occur, it is critical for all concerned to incorporate screening as a part of broader abuse prevention policies and practices.

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**Appendix: Figures and Tables**

**Appendix**

**Exhibit 1. Background Screening Decision-Making Model**

**Step 1. Assess Presence and Degree of Screening Triggers**

	<b>Setting</b>	<b>Worker/Consumer Contact</b>	<b>Special Consideration</b>
Screening Triggers	<ul style="list-style-type: none"> <li>Supervision</li> </ul>	<ul style="list-style-type: none"> <li>Duration</li> </ul>	<ul style="list-style-type: none"> <li>Consumer vulnerabilities</li> </ul>
	<ul style="list-style-type: none"> <li>Number of people present</li> </ul>	<ul style="list-style-type: none"> <li>Frequency</li> </ul>	<ul style="list-style-type: none"> <li>Age, mental or developmental disability</li> </ul>
	<ul style="list-style-type: none"> <li>Staff turnover</li> </ul>	<ul style="list-style-type: none"> <li>Contact type</li> </ul>	<ul style="list-style-type: none"> <li>State requirements</li> </ul>
	<ul style="list-style-type: none"> <li>Type of staff (employee/volunteer)</li> </ul>		<ul style="list-style-type: none"> <li>Other screening agencies (State licensing/certification)</li> </ul>

**Step 2. Evaluate Impact of Interveners**

<b>Interveners to Decision-Making</b>	<ul style="list-style-type: none"> <li>Availability/accessibility of information</li> </ul>
	<ul style="list-style-type: none"> <li>Financial/human resources</li> </ul>
	<ul style="list-style-type: none"> <li>Liability concerns</li> </ul>
	<ul style="list-style-type: none"> <li>Worker characteristics (e.g., residency status, prior experience, number of relocations)</li> </ul>
	<ul style="list-style-type: none"> <li>Prior incidents of abuse perpetrated by staff</li> </ul>
	<ul style="list-style-type: none"> <li>Presence of other risk-reduction measures (e.g., written policies, periodic evaluation, degree of supervision)</li> </ul>

**Step 3. Select Screening to Be Used**

<b>Basic Screening (Required Minimum Standard)</b>	
<b>Screening Options</b>	<ul style="list-style-type: none"> <li>Written application with signed statement</li> </ul>
	<ul style="list-style-type: none"> <li>Reference checks with telephone contact</li> </ul>
	<ul style="list-style-type: none"> <li>Comprehensive personal interviews</li> </ul>

<b>Supplemental Measures to Be Used as Needed*</b>	
<ul style="list-style-type: none"> <li>Confirm educational status</li> </ul>	<ul style="list-style-type: none"> <li>Conduct Observations:</li> </ul>

**Appendix: Figures and Tables**

<ul style="list-style-type: none"> <li>• Confirm licensing/certification status</li> </ul>	<ul style="list-style-type: none"> <li>• On-the-job supervision.</li> </ul>
<ul style="list-style-type: none"> <li>• Check motor vehicle records</li> </ul>	<ul style="list-style-type: none"> <li>• Probation</li> </ul>
<ul style="list-style-type: none"> <li>• Check criminal records:</li> </ul>	<ul style="list-style-type: none"> <li>• Home visits</li> </ul>
<ul style="list-style-type: none"> <li>• Local</li> </ul>	<ul style="list-style-type: none"> <li>• Initial and periodic training</li> </ul>
<ul style="list-style-type: none"> <li>• State</li> </ul>	<ul style="list-style-type: none"> <li>• Advocate access to consumer</li> </ul>
<ul style="list-style-type: none"> <li>• FBI</li> </ul>	
<ul style="list-style-type: none"> <li>• Check other registries:</li> </ul>	<ul style="list-style-type: none"> <li>• Other:</li> </ul>
<ul style="list-style-type: none"> <li>• Central child abuse</li> </ul>	<ul style="list-style-type: none"> <li>• Psychiatric history check</li> </ul>
<ul style="list-style-type: none"> <li>• Adult/elder abuse</li> </ul>	<ul style="list-style-type: none"> <li>• Alcohol/drug testing</li> </ul>
<ul style="list-style-type: none"> <li>• Nurse and home health aide</li> </ul>	<ul style="list-style-type: none"> <li>• Psychological testing</li> </ul>
<ul style="list-style-type: none"> <li>• Sex offender</li> </ul>	
<ul style="list-style-type: none"> <li>• Professional disciplinary board</li> </ul>	
<ul style="list-style-type: none"> <li>• Other specialized checks</li> </ul>	

\*Selection of supplemental screening will vary according to circumstances and presence of triggers and interveners.

**Appendix: Figures and Tables****Exhibit 2. Some Types of Background Screening Mechanisms**

- Employment reference checks
- Personal reference checks
- Personal interviews
- Confirmation of education
- Written application
- On-the-job observation
- Local criminal record check
- State criminal record check
- State central child/dependent adult abuse registry check
- State sex offender registry check
- Nurse's aide registry record check
- Motor vehicle record check
- Professional disciplinary board background check
- Alcohol/drug testing
- Psychological testing
- Mental illness/psychiatric history check
- Home visits

## Appendix: Figures and Tables

### Exhibit 3. Background Screening Using the Decision-Making Model Example

In this example, an employer performs background screening for people working with children. In this example, the workplace is an adult daycare facility. A mentoring program in which mentors are matched with children offers a good illustration of the use of the decision-making model. The goal is to foster one-on-one relationships between children and supportive non-family persons to build self-esteem and expand their view of the world. This example assumes that the mentoring program is an offshoot of another organization and is limited to one city in one state. The program has an extremely limited budget with very few paid staff (mostly a percentage of the time of three individuals who have other duties as well). All of the mentors are volunteers.

#### Step 1. Assessment of Triggers

##### Setting Considerations

- Will others be present during the contacts? Although mentor programs vary widely, assume that in this case, the contacts are set up directly by the mentor and child -- perhaps the first Saturday afternoon of the month for outings. Although the organization encourages educational or sports activities (e.g., visits to the library, museum, bowling) in which other adults or children are generally present, these "public" activities need not take place. The mentor and child might choose to go hiking or sit in a park and play cards.
- Who else might be present? Under this scenario, it could be anyone or no one.
- Will the mentor be closely monitored and supervised? In this case, assume that the initial meeting between a mentor and child takes place with someone from the sponsoring organization. After that, the mentor will check in with someone at the organization, at least by telephone, to report on how the visits with the child are going. Every few months, the mentor meets with this "monitor." In addition, the mentor and child attend group events that may be sponsored by the organization. For example, a picnic takes place during the summer. These events occur once or twice a year. Further, the mentor picks the child up for each visit and drops the child off afterward and may briefly see the child's guardian during pickup and drop off times. More often at first, and then every few months, someone at the sponsoring organization calls the child and his or her parent or guardian to see how the visits are going.
- How will the mentor be involved with the organization? In this case, the mentor will be a volunteer who spends at least several hours once a month with a child. Some additional time will be spent conversing with staff at the sponsoring organization about how the visits are going and how best to work with a child of that age.
- Where will the visits take place? Because the mentor picks up and drops off the child, the visits will include several different physical locations: the child's residence; the mentor's vehicle (or a bus or cab); and a variety of other locations, such as a restaurant, sports facility, park, hiking trail, zoo, museum, or movie theater. The visits could, in fact, take place at the mentor's home (for example, the mentor and child decide they want to learn to make pizza).

##### Contact Considerations

- How much time will the mentor spend with the child on each visitor outing? Under this scenario, anywhere from one to six hours.
- What will the scope and frequency of the contacts be? At least once a month for a period of a year.
- What type of contact will the mentor have? Each mentor will have direct, one-on-one contact with a single child.

## Appendix: Figures and Tables

### Special Considerations

In this scenario, the children are preteen youth. Generally, they have experienced some neglect or abuse and have been referred to the sponsoring organization for matching with an adult through social service workers, foster parents, and school counselors. Their personal histories may make them particularly vulnerable to abuse.

### Summary of Step 1: Assessing the Presence and Degree of Screening Triggers

In reviewing the answers to the series of questions that constitute the first step, it becomes clear that in this case, several factors would trigger supplemental screening practices: repeated, direct, one-on-one contact over a period of a year; limited ability of the organization to monitor the visits; and children who may be particularly vulnerable to abuse.

### Step 2. Evaluation of Intervenors

The second step is to examine the factors that may "intervene" and affect the ability to screen. This scenario assumes that certain information -- state central child abuse registry and sex offender registry information -- is not available. Likewise, it assumes that state criminal record checks (done by name, not fingerprint) are not required but are available for a fee of \$5 per name. In this example, federal (fingerprint) checks are not authorized by state statute. The risk of liability may affect screening decisions. Federal, state, or local laws may give applicants and employees certain legal rights. For example, certain questions may not be asked during an interview/application process, and generally all inquiries must be relevant to the task or position at hand. Liability concerns could also stem from negligent hiring torts; organizations have been sued when a client was injured by an employee or volunteer they selected.

### Step 3. Analysis and Selection of Screening Practices

The basic screening practices should be utilized. In addition, under the scenario outlined above, supplemental screening is warranted. The repeated one-on-one contact, which may take place anywhere at various times of the day, presents risks. Because there is limited ability to monitor the mentor and the fee assessed for a state criminal check is relatively modest, use of this check would appear to be warranted. A check of the applicant's Motor Vehicle Record with the state Department of Motor Vehicles may also be appropriate.

A different set of facts might lead to a different decision. For example, some evaluators might find that criminal checks were not warranted if the applicants were high school students (age 15 to 17 at the time they applied). Others would view the cost as being minimal and able to be passed on to the applicant without causing the loss of volunteers and would proceed with the criminal check.