



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

February 2004

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

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

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

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

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

Sincerely,

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

Wilmarie González, Director
Bureau for Advocacy, Protection and Education