

## IMP 014

### Requirement for Re-Fingerprinting

The new BCC regulations, *and the Division's interim policy pending the adoption of the regulations*, require that a person be re-fingerprinted when seeking new employment or being promoted if last fingerprinted more than 3 years ago. Formerly, the time period was 5 years.

Why the change?

When a person is fingerprinted, two things are checked: the Delaware criminal history and the FBI record, which contains information about crimes committed in other states as well as all federal crimes. The law, in effect through June, 2012 said that fingerprinting would be re-done after 5 years under certain circumstances, such as a new job or a promotion.

The practice for employers has been to contact the DLTCRP in order to determine when an individual was last fingerprinted for long term care. If fingerprinting had been done within 5 years, the Division would update the State criminal record at no charge and nothing more was required. The update is possible because the DLTCRP has direct access to criminal history information. *The FBI record would not be updated.* This practice provided a cost savings for the employer (and at one time for the State because formerly the State paid for the background checks).

There was a calculated risk built into the policy—the risk that a conviction outside the State would be overlooked. Recognizing that risk, many employers required that prospective employees be re-printed even if it has last been done within the 5 year period.

There is an advisory group associated with the BCC project. The members are representatives of the various data sources and others who have an interest in employment. Data was collected regarding the number of persons with criminal histories revealed by the State record or by the federal record. The number of criminal histories revealed by the federal record check is significant. After discussion and consideration of the evidence, the group decided that the better policy is to require re-fingerprinting after 3 years instead of after 5, as a safeguard for residents. That is the requirement currently in effect, and which will be in effect when the BCC goes live.

When the new BCC statute was written, it was decided to empower DLTCRP with the authority to establish the length of time for re-printing, through the regulatory process. In other words, the time requirement can be changed through regulation, without going back to the Legislature. That gives the DLTCRP discretion as circumstances change. One circumstance that is expected to change is a federal Rap-back capability. That has been discussed, but there is no expectation that it will be available for several years.

November 29, 2012