

**DELACARE**

**REGULATIONS**

**FOR**

**CRIMINAL HISTORY**

**RECORD CHECKS**

NOTICE OF RESCISSION AND PROMULGATION

The Office of Child Care Licensing, Division of Family Services, Department of Services for Children, Youth and Their Families adopts and promulgates the following regulations for conducting criminal history record checks as authorized by Delaware Code Title 31, Chapter 3, Subchapter I, Section 309. All previous regulations are null and void. These regulations shall take effect on October 1, 2013.

  
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Jennifer Ranji, Secretary  
Department of Services for Children,  
Youth and Their Families

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Victoria Kelly, Director  
Division of Family Services

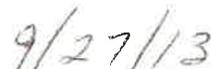
  
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## REGULATIONS

### 301 Criminal History Record Checks for Child Care Persons

#### 1.0 Legal Base

1.1 The legal base for these regulations is in the Delaware Code, Title 31, Chapter 3, Subchapter I, Section 309.

#### 2.0 Purpose

2.1 The overall purpose of these regulations is the protection of children who are in the care or custody of the Department. To this end, persons in residential child care facilities and/or employees or volunteers of the Department or a Department contractor will have their criminal history checked prior to employment or during a conditional period of employment. In addition, foster/respite/adoptive parents will have their criminal history checked prior to approval or during a period of provisional approval with the Department or contracted providers. Each employer may use his/her own employment/acceptance criteria which may be stricter than those described herein.

#### 3.0 Definitions

**"Child Care Person"** means any person who seeks employment for compensation, volunteers to provide direct child care service, or, for any reason, has regular direct access to children and/or adolescents under the age of 18 years. This definition shall include any employee or volunteer of the Department of Services for Children, Youth and Their Families or one of its contractors who has regular direct access to children and/or adolescents under the age of 18 years and foster parents.

**"Conditional Child Care Person"** means a child care person who has been offered a position or has agreed to volunteer with the Department or one of its contractors or in a residential child care facility. Under the provisions of the law, a child care person may be hired on a temporary basis until the determination of suitability is made by the Department. Foster parents may be provisionally approved prior to the results of the criminal background check and in accordance with the Division of Family Services policy. If a determination of unsuitability is made, the child care person will be dismissed and in the case of foster parents the conditional placement will be rescinded.

**"Criminal History Supervisor"** means the Department staff member, located in the Office of Child Care Licensing, who is responsible for the implementation of the criminal history policies, procedures, and regulations.

**"Criminal History Specialist"** means the Department staff member, located in the Office of Child Care Licensing, who is responsible for processing and reviewing criminal history information consistent with Departmental policies, procedures and regulations.

**"Department"** means the Department of Services for Children, Youth and Their Families.

**"Direct Access"** means the opportunity to have personal contact with persons receiving care.

**"Employer"** means any of the following:

- The Divisions within the Department of Services for Children, Youth and Their Families (PLEASE NOTE: The Divisions within the Department do not "employ" foster/adoptive parents or volunteers, but for purposes of this document, the Divisions are referred to as employer.)

- Any Delaware contractor who operates a program that provides regular direct access to children.

- Any Delaware contractor who provides foster care or adoption services.

**"Foster Parents"** means foster/respite/adoptive parents and all household members 18 years of age or older.

**"Residential Child Care Facility"** means any facility that provides care or treatment for children overnight or is a 24-hour facility. This facility is State owned and operated or is licensed by the Department to provide services.

**"Volunteer"** means any person who has direct access to children in the performance of unpaid duties and who will be in a facility or in the service of the Department for five (5) or more days in a fiscal year. Student interns, regularly scheduled volunteers, and volunteer counselors will be required to have a criminal history check under these regulations. (For limited, occasional, sporadic, one-time volunteer efforts that last less than five (5) days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

#### **4.0 Individuals Subject To the Law**

4.1 Generally, child care persons subject to a criminal history record check shall be 1) persons employed or volunteering in a residential child care facility; or 2) persons employed or volunteering with the Department; or 3) foster/adoptive parents; or 4) persons employed or volunteering at an agency that contracts with the Department; who are in a position which involves:

4.1.1 The opportunity to have direct access to or contact with a child without the presence of other employees or adults.

Individuals subject to the law shall be those individuals who are hired or apply for the status described in 4.1 to 4.4 on or after September 1, 1990 or have less than one year service prior to that date.

#### **4.2 Residential Child Care Facilities and Department Contractors**

4.2.1 Criminal history record checks shall be conducted on the following child care persons of licensed residential child care facilities and Department contractors:

- 4.2.1.1 Child care workers;
- 4.2.1.2 Child care supervisors;
- 4.2.1.3 Maintenance, transportation, kitchen, clerical workers;
- 4.2.1.4 Teachers, aides, principals;
- 4.2.1.5 Administrators, coordinators, directors, and administrative staff;
- 4.2.1.6 Volunteers as defined in 3.0;
- 4.2.1.7 Social Workers;
- 4.2.1.8 Recreation staff;
- 4.2.1.9 Medical staff.

(This list is not necessarily all-inclusive, due to the various titles used in different facilities. Regulation 4.2 above is to be used for guidance.)

#### 4.3 Foster/Adoptive Parents as defined in 3.0

##### 4.3.1 Criminal history record checks shall be conducted on:

4.3.1.1 Applicants for foster/respite care within the Department and in licensed child placing agencies providing foster care.

4.3.1.2 Applicants for adoption within the Department and in licensed child placing agencies providing adoption services.

4.3.1.3 Petitioners in relative adoptions.

4.3.1.4 Interstate applicants for adoption or foster placement when a child is from another state and is being placed in Delaware and when a Delaware child is being placed in another state.

#### 4.4 Department Employees

4.4.1 Criminal history record checks shall be conducted on all Department employees and volunteers.

4.5 Individuals subject to the law shall be those individuals who are hired or apply for the status described in 4.1 to 4.4 on or after September 1, 1990 or have less than one year service prior to that date.

## **5.0 Criminal History Record Check Process**

5.1 The employer shall require each individual subject to the law, either as soon as that individual has accepted a position, or has agreed to serve as a volunteer, or no later than the fifth working day to complete the Criminal History Record Request form and be fingerprinted. In the case of foster parents, the Criminal History Record Request form and fingerprinting must be completed prior to completion of pre-service training or the home study process.

5.2 The child care person or foster parent goes to a designated Delaware State Police Troop and has two sets of fingerprints taken.

5.3 The Delaware State Police follow established State Bureau of Identification procedures to obtain criminal history information from the State Bureau of Identification and Federal Bureau of Investigation. A report of the child care person's or foster parent's criminal history record or a statement that there is no criminal history information relating to that person is forwarded to the Criminal History Unit.

5.4 Simultaneously, the Criminal History Specialist conducts a review of the Child Protection Registry to determine if the child care person is named as a perpetrator in a substantiated report of child abuse or neglect.

5.5 When the Criminal History Specialist receives the information from the State Bureau of Identification, Child Protection Registry, and Federal Bureau of Investigation she/he reviews that information, along with the Criminal History Record Request form. This review is guided by the criteria specified in Regulations 6.1-7.2.

5.6 When there is no record, the Criminal History Specialist provides notification to the appropriate Division Director, who notifies the employer or child placing agency and the child care person or foster parent.

5.7 When there is a criminal history, the Criminal History Specialist provides a written summary of the findings of the check with a recommendation to the appropriate Division Director.

5.8 The appropriate Division Director makes the determination of suitability for employment, volunteering or foster parenting and notifies the child care person or foster parent and employer or child placing agency, with a copy of the findings attached.

5.9 In the event that the child care person or foster parent has reason to provide additional information regarding the information in her/his criminal history check, an administrative review will be held, as delineated in regulations 9.1 - 9.10.

## **6.0 Criteria for Prohibited Offenses**

6.1 Child care persons or foster parents convicted of a sexually related offense(s) or other offenses against children shall be prohibited from employment, volunteering, or foster care/adoption without consideration of other criteria.

6.2 The Adoption and Safe Families Act of 1997 prohibits individuals from becoming foster or adoptive parents if they have the following felony convictions:

6.2.1 Child abuse or neglect, spousal abuse, crimes against children (including child pornography), and crimes involving violence including rape, sexual assault and homicide committed at any time.

6.2.2 Physical assault, battery and drug related offenses committed within the past five years.

## **7.0 Criteria for Unsuitability**

7.1 Information received from the criminal history record and Child Protection Registry checks shall be reviewed by the Criminal History Specialist and Division Director on the basis of the following criteria for a determination of suitability for employment, volunteering, or foster care/adoption.

### **7.1.1 Types of criminal conviction(s) and/or substantiation(s)**

7.1.1.1 Criminal convictions other than those that are prohibited shall be reviewed in consideration of other criteria below. Other convictions for offenses which may make a child care person unsuitable for employment or volunteering, or may make a prospective foster parent unsuitable for foster parenting, are those in the Delaware Code, Titles 11 and 16 which may contain (but are not limited to) the following characteristics:

7.1.1.1.1 Criminal conviction(s) against the person where physical harm or death has taken place

7.1.1.1.2 Criminal conviction(s) involving weapons, explosive devices or threat of harm

7.1.1.1.3 Criminal conviction(s) involving public indecency and obscenity which may have been the result of plea bargain situations

7.1.1.1.4 Criminal conviction(s) that show a disregard of others, such as reckless endangering, arson

7.1.1.1.5 Criminal conviction(s) of cruelty to animals or deviant behavior such as abusing a corpse

7.1.1.1.6 Criminal conviction(s) against the Uniform Controlled Substances Act

7.1.1.2 The criminal conviction(s) contained in Regulation 7.1.1.1. and/or existence of a substantiated case of child abuse or neglect involving the child care

person or foster parent as perpetrator shall be reviewed in consideration of other criteria below.

7.1.2 Frequency of conviction(s)/substantiation(s)

7.1.3 Length of time since the conviction(s)/substantiation(s)

7.1.4 Age at the time of the conviction(s)/substantiation(s)

7.1.5 Severity of the conviction(s)/substantiation(s)

7.1.6 Record since the conviction(s)/substantiation(s)

7.1.7 Relationship of the conviction(s)/substantiation(s) to the type of job assignment and/or responsibilities of the child care person or foster parent

7.1.8 Policies of the Department

7.2 Failure by a child care person or foster parent to disclose relevant criminal history or child protection registry information on the Criminal History Record Request form that is subsequently disclosed as a result of the criminal history record check may be grounds for immediate termination of an employee or denial of approval for foster or adoptive care.

## **8.0 Sanctions**

8.1 Sanctions against employers (division/facility/ agency) shall be applied and enforced in the following circumstances:

8.1.1 An employer fails to require criminal history record checks for affected employees, volunteers, or applicants for foster care or adoption.

8.1.2 An employer knowingly hires or approves a child care person who is prohibited from employment or foster care or adoption as a result of a conviction for a prohibited offense.

8.1.3 An employer does not comply with the final recommendation of an administrative review.

8.2 Sanctions applied to contracted agencies, residential facilities, and child placing agencies for violation of the law or the regulations may include:

8.2.1 Amendment or dissolution of any agreements with the Department to provide the contracted service

8.2.2 Removal of children from placement

8.2.3 Suspension of future child referrals

#### 8.2.4 Revocation of licensure

8.3 Sanctions against Department Divisions for violation of the law or regulations shall be applied to responsible staff by the Secretary on a case-by-case basis and may include:

##### 8.3.1 Involuntary reassignment

##### 8.3.2 Discipline up to and including dismissal

### **9.0 Administrative Review**

Criminal history is only one factor being considered in the hiring or approval process. If the employer makes an adverse judgment based on any criterion other than criminal history, this administrative review process does not apply.

9.1 Any child care person or foster parent who is denied, recommended for termination, terminated from employment, volunteering or foster care as a result of an adverse judgment made on the basis of a criminal history record check shall be entitled to an administrative review.

9.2 The child care person will be notified of the right to an administrative review when a determination of unsuitability has been made.

9.3 If the child care person believes the criminal history information is incorrect or incomplete, she/he shall submit a request for a review of the facts of the criminal history to the Criminal History Specialist in writing or reduced to writing within five (5) working days of the receipt of the decision for denial/recommending termination/ termination of employment, volunteering, foster care or adoption resulting from a determination of unsuitability. When the corrected information is obtained by the child care person, it will be reviewed by the Criminal History Specialist's Supervisor and the Criminal History Specialist. A recommendation will be issued to the appropriate Division Director based on the corrected information. The Division Director makes a final decision and notifies the child care person, foster or adoptive parent and copies the employer or child placing agency and the Criminal History Specialist.

9.4 If the child care person believes that additional information regarding the circumstances of the particular offense(s) would clarify the situation, she/he shall submit a written or reduced to writing request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with a copy to the employer and the Criminal History Specialist. This shall be submitted within 10 working days of the receipt of the decision for denial, recommendation to terminate employment, volunteering, foster care, or adoption resulting from a determination of unsuitability. The Division Director makes a final decision and notifies the child care person or foster parent and copies the employer or child placing agency and the Criminal History Specialist.

9.5 If the individual had previously requested a review of the facts of the criminal history, the request for an administrative review shall be submitted within five (5) working days of the receipt of the decision based on the results of that review.

9.5.1 The child care person may also request to give an oral presentation at her/his administrative review.

9.6 When a child care person has requested a review of the facts of the criminal history and/or an administrative review, the following shall apply:

9.6.1 The child care person shall be removed from direct access to children or provisions made for on-site supervision of the person during working hours pending the results of the review.

9.6.2 In the case of foster parents, children may be removed from the home or no further placements shall be made pending the results of the review.

9.6.3 In the case of adoptive parents, the application shall remain active, but children may be removed from the home pending results of the review.

9.6.4 The employer shall notify the Criminal History Specialist of the action taken with the child care person pending the results of the administrative review. (This notification is in addition to following established procedures already governing state personnel or individual facilities or agencies.)

9.7 In the case of a review of a decision involving a Department operated facility or Department staff, the Division Director (or designee) shall conduct the review in conjunction with Personnel and within the context of these regulations, merit rules/labor agreements and the employment status of the child care person. The Criminal History Specialist shall be present as a witness.

9.8 When the review involves a Division of Family Services approved foster parent, the Director of the Division of Family Services (or designee) shall conduct the review with the County Foster Home Coordinator staffing the review and the Criminal History Specialist present as a witness.

9.9 In the case of a review of a decision involving a contracted facility or child placing agency, the Director (or designee) of the contracting Division shall conduct the review with the employer staffing the review and the Criminal History Specialist present as a witness.

9.10 The employer and the child care person shall be bound by the final decision of the administrative review which is made by the Division Director or designee. If the employer does not accept the decision, sanctions shall apply.

## **10.0 Employer Responsibilities**

10.1 The employer (division/facility/agency) shall ensure that a Criminal History Record Request has been completed as specified by law and that the employer copy is maintained in the personnel/application file. Employers shall direct child care persons to the State Police to have fingerprints taken and shall ensure the completion of this process.

10.1.1 The employer, whenever possible, will notify the Criminal History Specialist if a child care person is terminated prior to completion of the criminal history check process.

10.1.2 The employer shall require all child care persons and foster parents to notify the employer of any subsequent arrests or charges as a condition of continued employment or approval.

10.2 When the employer is notified of a history of prohibited convictions/substantiations, the employer shall immediately take steps to terminate the child care person. A copy of this letter shall be sent to the Criminal History Specialist and a copy maintained in the personnel/application file.

10.3 In the event that a child care person requests an administrative review, the employer shall notify the Criminal History Specialist of the action taken to remove the child care person from direct access to children pending the results of the review. The employer shall abide by the decision of the administrative review. Copies of written documentation related to the administrative review shall be maintained in the personnel/application file.

## **11.0 Confidentiality**

Title 11, subsection 8513 (c) (1) of the Delaware Code permits the State Bureau of Identification to furnish information pertaining to the identification and conviction data of any person of whom the Bureau has record individuals and agencies for the purpose of employment of the person whose record is sought, provided the use of the conviction data is limited to the purpose for which it was given.

11.1 The Department shall ensure that written and electronically recorded criminal history record information shall be stored in a systematic manner, to provide for the security and confidentiality of records and to protect against any anticipated threats to their security and integrity.

11.2 The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment or approval to provide child care services for child care persons or foster parents as defined in these regulations.

11.3 The Department shall not release to employers as defined in these regulations copies of actual Federal Bureau of Investigation criminal history records.

11.4 The Department shall provide to employers and child care persons or foster parents written summaries of criminal record information for a child care person or foster parent whose criminal history record check results in a finding of prohibited offense(s), other arrests and convictions, or information that the individual is named in the Child Protection Registry as the perpetrator of a substantiated report of child abuse or neglect.

11.5 The following procedure shall be established to permit the review of criminal history record files by the child care person or foster parent:

11.5.1 An individual shall submit a request in writing to the Criminal History Specialist for the on-site review of his/her criminal history record file.

11.5.2 An appointment shall be made for the individual to review the record in the offices of the Office of Child Care Licensing. Identification will be required at the time of the review.

11.5.3 The record shall be reviewed in the presence of the Criminal History Specialist.

11.5.4 Written documentation of the date and time of the review and the name of the reviewer shall be filed in the criminal history record file for the child care person or foster parent.

11.5.5 The Department shall ensure that criminal history record files (written and computer-generated) shall not be removed from the secure files for any purpose other than to permit review by the named child care person or foster parent.

11.6 Criminal history record information shall not be disseminated to any persons other than the child care person or foster parent whose record is being sought and his/ her employer, the Division Director or Foster Home Coordinator, in compliance with Title 11, subsection 8513 (d) of the Delaware Code.

**Delaware Code - TITLE 31**

**Welfare**

**In General**

**CHAPTER 3. CHILD WELFARE**

**§ 309. Criminal history information relating to child care personnel and foster and adoptive parents.**

(a) "Child care facility" as used in this section means residential child care facilities under contract to or operated directly by the Department of Services for Children, Youth and Their Families (DSCYF).

(b) "Child care personnel" as used in this section means all persons who seek employment for compensation or persons who volunteer to provide direct child care service or persons who for any reason have regular direct access to children and/or adolescents under the age of 18 at any facility as referred to in subsection (a) of this section. This definition shall include any employee or volunteer of the Department of Services for Children, Youth and Their Families or one of its contractors who have regular direct access to children and/or adolescents under the age of 18, but who do not provide child care services at a facility as referred to in subsection (a) of this section. Child care personnel, for purposes of this section, shall also include applicants wishing to become adoptive or foster parents.

(c) All prospective child care personnel are covered by the provisions of this section as well as current child care personnel who have been providing said child care for a period of less than 1 year. In the case of adoptive parents, criminal background checks shall be performed in all cases in which a final adoption decree has not yet been filed.

(d) All child care personnel covered by this section shall be required to submit their fingerprints and other necessary information in order for the following to be obtained:

(1) Report of the individual's entire criminal history record from the Delaware State Police or a statement from the Delaware State Police that the State Police Central Repository contains no such information relating to that person.

(2) A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544. The Division of State Police shall be the intermediary for the purposes of this paragraph.

(3) A certification from the Department of Services for Children, Youth and Their Families as to whether the individual is named in the Central Register as the perpetrator of a report of child abuse.

(e) Costs associated with obtaining said criminal history information and child abuse registry information shall be borne by the State.

(f) All information required in subsection (d) of this section shall be forwarded to the DSCYF which will assess the information and make a determination of suitability for employment based upon the types of offenses, recency, record since the offenses, and responsibilities of the position which the individual has obtained or is seeking to obtain. The DSCYF must exercise case-by-case judgment on the results. Any adverse judgment affecting the current or prospective child care individual shall be reviewed subject to regulations promulgated by the DSCYF under subsection (h) of this section.

(g) Upon making its determination of suitability, the DSCYF shall forward the determination, together with the results of the investigation, to the applicant and to the prospective or current employer or agency.

(h) The DSCYF shall, in the manner provided by law, promulgate regulations necessary to implement this section. These regulations shall:

(1) Set forth criteria for unsuitability for employment in or certification for child care services. Such criteria shall relate to criminal history record information and may include other information in addition to that set forth above. Such criteria and information shall be reasonably related to the prevention of child abuse.

(2) Prohibit any individual convicted of a sexually related offense or offenses against children or adolescents from employment in child care services.

(3) Set forth sanctions for employers who willfully hire or retain individuals in violation of this section or in violation of the regulations promulgated hereunder.

(4) Provide for the confidentiality of information obtained pursuant to subsection (d) of this section.

(5) Provide for administrative review of an adverse judgment by the DSCYF.

(i) Facilities and agencies which are subject to this section may provisionally hire an employee or a volunteer or place a child, pending the determination of the DSCYF. The failure of an individual to disclose any relevant criminal history information requested by the DSCYF as part of an application process that is subsequently disclosed as a result of a criminal history check performed pursuant to this chapter shall be grounds for immediate termination or removal of a placement.

(j) The DSCYF shall issue its determination in a reasonable amount of time following the receipt of information obtained pursuant to subsection (d) of this section.

67 Del. Laws, c. 409, § 1.;

