

**CRIMINAL BACKGROUND CHECK**  
**Effective Date: 1/27/93**

**I. INTRODUCTION**

This policy has been developed to meet the requirements of House Bill 737, which was signed into law in July, 1990 and is now referred to as Chapter 3, Title 31, Section 309 of the Delaware Code.

The main purpose of this policy is the protection of children/youth who are in the care or custody of the Department. To this end, persons who are employees/volunteers of the Department and its contractors, as well as foster and adoptive parents, will have their criminal history checked prior to employment/placement and/or during a conditional period of employment/placement.

It is the position of the Department that child/youth care persons (see the Definitions section of this policy) of the Department and of our licensed contractors be free from any prior criminal activity or involvement in substantiated cases of abuse and/or neglect that may lead to the harm of any child/youth.

It is the Department's professional, ethical and legal obligation to our children/youth that led to the development of these policies and procedures to investigate the criminal history of child/youth care persons and foster parents of the Department and of our contractors.

**II. DEFINITIONS**

A. Child/Youth Care Person means any employee in a residential child care facility and/or employed by the Department in a position which involves supervisory or disciplinary authority over a child/youth or in a position which provides the opportunity to have direct access to/contact with (see E. below) a child/youth without the presence of other employees or adults. This definition includes foster parents and volunteers. (See definitions G and I)

B. Conditional Child/Youth Care Person means a child/youth care person who has been offered a position or has agreed to volunteer with the Department or in a

residential child care facility. Under the provisions of the law, a child/youth care person may be hired on a temporary basis until the determination of suitability is made by the Department. If a determination of unsuitability is made, the child/youth care person or foster parent will be dismissed. Foster parents may be provisionally approved prior to the results of the criminal background check and in accordance with the Division of Child Protective Services policy.

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

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

E. Direct Access means the opportunity to approach children/youth without the presence of other adults in the course of one's assigned duties and responsibilities.

F. Employer means any of the following:

1. The Divisions within the Department (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.)
2. Any contractor who operates a program that matches the definition of a residential child care facility
3. Any contractor who provides foster care and/or adoption services

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

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

I. Volunteer means any person who has direct access to children/youth in the performance of unpaid duties and will be in a facility or in the service of the

Department for 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 this law. (For limited, occasional, volunteer efforts that last less than 5 days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

### **III. POLICY**

#### **A. Department Responsibilities**

The Department has the responsibility to promulgate regulations according to Chapter 3, Title 31, Section 309 of the Delaware Code.

The Department is responsible for conducting the Child Abuse Registry Check and will be responsible for the receipt, evaluation and dissemination of information resulting from the criminal history and Child Abuse Registry checks for all identified Department and contractor child/youth care persons, and foster parents.

The Department assures the confidentiality and security of the information gathered.

The results of any history check will be shared by the Department Criminal History Specialist with the Division Director, employer and the child/youth care person. In the case of Department foster parents, the information will be shared with the Division Director, County Foster Home Coordinator and the foster parent.

#### **B. Employer (Division/Contractor) Responsibilities**

Each Department division and contractor (as defined in E.) will be responsible for having child/youth care persons and foster parents complete the Criminal History Record Request form, the fingerprint process and for sending the YELLOW COPY of the Criminal History Record Request form to the Criminal History Specialist.

This process needs to be completed either as soon as the employer knows that this person has accepted the position or agreed to serve as a volunteer, or no later than the fifth working day. For foster parents, this is to be done prior to completion of pre-service training or the home study process.

All child/youth care persons and foster parents shall be required to notify the employer of any subsequent arrests/charges as a condition of continued employment/approval.

#### **C. Conditional Status**

The employer may have the child/youth care person begin work prior to the results of the history check. The Department will consider this as conditional employment and the child/youth care person should be notified to this effect by the employer at the time of hire. Foster parents may be provisionally approved prior to the receipt of the results of the background check and in accordance with the Division of Child Protective Services policy. An interim report may be issued under special circumstances and at the discretion of the Criminal History Specialist.

#### D. Notification Procedure

When the information is received by the Department from the State Bureau of Identification the Federal Bureau of Identification and other applicable sources, the information will be reviewed, a decision made, and results forwarded to the child/youth care person and the employer or, in the case of Department foster parents, to the County Foster Home Coordinator.

#### E. Administrative Review

In any case where the child/youth care person believes the criminal history is incorrect or incomplete, she/he has the opportunity to request a review of the facts of the criminal history check within 5 working days of the receipt of the employment/approval decision. If the child/youth care person believes that additional information regarding the circumstances would clarify the situation, she/he has the opportunity to request a review of the decision within 10 working days of the receipt of the employment approval decision.

### **IV. PROCEDURES**

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

1. Foster parents located out of state

- a. The Criminal History Specialist sends a Criminal History Record Request form along with Delaware State and Federal fingerprint cards to the foster parent.
- b. The foster parent takes the State and Federal fingerprint cards to a local police station or a State Police barrack and has two sets of fingerprints taken.
- c. The fingerprint cards and the completed Criminal History Record Request form are then to be sent directly to the Criminal History Specialist by the foster parent.
- d. The Criminal History Specialist will maintain the Yellow copy of the Criminal History Record Request form, send the Pink copy to the Foster Home Coordinator/contracting agency and the white copy with fingerprint cards attached to the State Bureau of Identification for the criminal history background check to be completed.

B. The employer or in the case of Department approved foster parents, the Division of Child Protective Services sends the **YELLOW** copy of the Criminal History Record Request form to the Department Criminal History Specialist and files the **PINK** copy in the child/youth care person's personnel file or the foster parent's case record.

C. The child/youth care person or foster parent takes the **WHITE** copy of the form to any Delaware State Police barrack and has **two** sets of fingerprints taken. The **WHITE** copy is attached by the trooper to the fingerprint cards.

D. The Delaware State Police follow established State Bureau of Identification procedures used to obtain criminal history background information from the State Bureau of Identification and Federal Bureau of Identification. The results of the State Bureau of Identification and Federal Bureau of Identification checks are sent to the Criminal History Specialist as they are completed.

E. Simultaneously, the Criminal History Specialist conducts a review of the Child Abuse Registry to determine if the child/youth care person is named as a perpetrator in a substantiated case of child abuse.

F. When the Criminal History Specialist receives the information from the State Bureau of Identification, Federal Bureau of Identification and the Child Abuse

Registry, she/he reviews that information, along with the Criminal History Record Request form in order to prepare a report of the findings for the appropriate Division Director. If there is need for clarification on some of the information, the Criminal History Specialist will contact the child/youth care person. In some instances, clarification may also be obtained from the court system, appropriate criminal justice personnel (arresting officer, attorney general, etc.) or Child Protective Services personnel (investigating worker). This review is guided by the criteria specified in Regulations 25-27. Results of the review are maintained in the child/youth care persons criminal history background check file.

G. Notification of results of the record review:

1. Department child/youth care persons

- a. When there is no record, the Criminal History Specialist reports this information to the appropriate Division Director. The Division Director sends notification to the employee and copies the Criminal History Specialist and Personnel. In the case of foster parents, the notification is sent to the foster parent with copies to the County Foster Home Coordinator and the Criminal History Specialist.
- b. When there is a criminal history, the Criminal History Specialist prepares a summary of the findings of the check and a recommendation regarding suitability for the appropriate Division Director. The Division Director then makes a decision, guided by regulations 25-27, and sends notification to the employee with a copy of the findings and copies Personnel and the Criminal History Specialist.
- c. When the criminal history results in a determination of unsuitability, the Division Director recommends to the Cabinet Secretary that an employee be terminated and the Cabinet Secretary will make the final decision regarding suitability. Personnel will prepare a letter to the employee and the Division Director sends this notification to the employee and copies the Criminal History Specialist.

- d. When there is a criminal history of a foster parent, the Criminal History Specialist prepares a summary of the findings of the check and a recommendation regarding suitability for the Division Director. The Division Director then makes a decision, guided by Regulations 25-27, and sends notification to the foster parent with a copy of the findings and copies to the County Foster Home Coordinator and the Criminal History Specialist.

## 2. Contracting agency child/youth care persons

- a. When there is no record, the Criminal History Specialist reports this information to the appropriate Division Director. The Division Director sends notification to the child/youth care person and copies the contracting agency and the Criminal History Specialist.
- b. When there is a criminal history of a child/youth care person, the Criminal History Specialist prepares a summary of the findings of the check and a recommendation regarding suitability for the appropriate Division Director. The Division Director then makes a decision, guided by Regulations 25-27, and sends notification to the child/youth care person with a copy of the findings and copies the contracting agency and the Criminal History Specialist.

H. Administrative review: the child/youth care person is notified of the right to an administrative review when a determination of unsuitability has been made.

1. In the event that a child/youth care person feels that the criminal history information is incorrect or incomplete, she/he must file a written or reduced to writing request with the Criminal History Specialist (with a copy to the employer) for a review of the facts of the criminal history within 5 working days of the receipt of the decision denying/recommending termination/terminating employment/volunteering/foster parenting. The child/youth care person should make application for correct information to the State Police (for criminal record) or Division of Child Protective Services (for child abuse information). When the corrected information is

obtained by the child/youth care person it will be reviewed by the Criminal History Specialist's Supervisor or the Division of Program Support Director and the Criminal History Specialist. The Criminal History Specialist will issue a report/recommendation based on the corrected information.

2. If the child/youth care person believes that additional information regarding the circumstances of the particular offenses would clarify the situation, she/he must file 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 copies to the employer and the Criminal History Specialist. This is to be submitted within 10 working days from the date of the receipt of the decision denying/recommending termination/terminating employment, volunteering or foster parenting. The individual may also request to give an oral presentation at her/his review.

- a. When the individual had previously requested a review of the facts of the criminal history, the administrative review must be requested within 5 working days of the receipt of the decision based on the results of that review.

3. When a child/youth care person requests a review of the facts of the criminal history or an administrative review, the employer notifies the Criminal History Specialist of the action to remove the child/youth care person from direct access to children/youth or provisions made for on-site supervision of the person during working hours pending the results of the review (s). (This is in addition to following established procedures already governing state personnel or individual residential child care facilities.) 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. In the case of adoptive parents, the application shall remain active, but children may be removed from the home pending results of the review (s).

I. 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/youth care person. The Criminal History Specialist shall be present as a witness.

1. In the case of a review of a decision involving a Department approved foster parent, the Division of Child Protective Services Director (or designee) shall conduct the review with the County Foster Home Coordinator and Supervisor staffing the review and the Criminal History Specialist present as a witness.
2. In the case of a review of a decision involving an employee or foster parent in a contracted facility, the Division 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.

J. The child/youth care person will be notified of the results of the Administrative Review within 15 working days from the date of the review.

1. If the review indicates the child/youth care person has not provided evidence to warrant disregard of the criminal history record, the denial or termination of employment, volunteering or foster parenting is upheld and the child/youth care person and employer are so notified in writing by the Criminal History Specialist or Division Director.
2. If the review indicates the child/youth care person has provided evidence to warrant disregard of the criminal history record, the denial or termination is overturned and the child/youth care person and employer are so notified in writing by the Criminal History Specialist or the Division Director.

K. Employers will be monitored for compliance with the regulations.

1. The Criminal History Specialist will review a 10% sample of Criminal History Record Requests within divisions of the Department and Department operated (but not licensed) residential facilities for required written documentation and will provide a written report of the compliance review on form DSCYF/CHR/3.
2. The Office of Child Care Licensing-Residential Child Care Licensing Specialist will review a 10% sample of Criminal History Record

Request forms in licensed residential facilities and child placing agencies for required documentation as a part of the annual licensing investigation and will provide a written report of the compliance review on form DSCYF/CHR/3.

3. The Criminal History Specialist will notify the appropriate Department Personnel regarding employers who willfully violate the regulations, so that appropriate sanctions can be initiated.

L. The Criminal History Specialist ensures confidentiality of all files of criminal history checks and the Administrative Review process.

6/17/92