



Department of Services for Children Youth and their Families Policy and Procedures

Initial Background Checks and Subsequent Arrests and/or Allegations of Child Abuse/Neglect	
POLICY # 313	Page 1 of 7
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1. Policy Purpose

The purpose of this policy is to provide a uniform standard of guidance and expectations relative to background checks, criminal charges and convictions, and child abuse/neglect investigations and substantiations.

2. Scope

This policy is applicable to all current and prospective employees, casual/seasonal personnel, interns, and volunteers. Department Contractors are also subject to background check requirements; however, those are outlined in the [Operating Guidelines](#) located on the Department's Contracting Information webpage.

3. Definitions

Child: any person who has not reached that person's own eighteenth birthday

Child Protection Registry: information dating back to August 1, 1994 about persons who have been substantiated for abuse or neglect as provided in Delaware Code, Title 16, Sections 921-929.

Conviction: means entry of a plea of guilty or nolo contendere, regardless of whether the plea was subsequently discharged or dismissed under the first offenders domestic violence diversion program pursuant to §1024 of Title 10, or under the first offenders controlled substances diversion program pursuant to §4767 of this title, or of a Robinson plea, or of a probation before judgment discharge without judgment of conviction notwithstanding the provisions of § 4218(g) of Title 11, or a finding of guilt after trial, or a finding of not guilty after trial as a result of the defense of mental disease or defect pursuant to Title 11, or adjudication of delinquency for conduct which if committed by an adult, would constitute a crime; or "conviction" or "convicted" under similar proceedings of another state, territory or jurisdiction.

DSCYF Criminal History Unit: responsible for completing background checks.

Federal Bureau of Identification: the domestic intelligence and security service of the United States and its principal federal law enforcement agency.

IdentoGO: contracted vendor responsible for the secure capture and transmission of electronic fingerprints for employment, certification, licensing, and other verification purposes.

Individual: current and prospective employees, casual/seasonal personnel, interns, and volunteers.

Ineligible: an individual with a criminal conviction(s) and/or child abuse or neglect substantiation(s) that indicates likely risk to children. The ineligible person is unable to be employed or approved as set forth in Delacare Regulations Background Checks for Child-Serving Entities 7.0 - 7.2. These individuals are given an opportunity to request an administrative review of the ineligible determination. Based on the outcome of the review, the person could be determined eligible at present time or in the future.

Prohibited: a person has a prohibited conviction or child protection registry substantiation that prevents them from employment, volunteering, contracting, or being a foster parent as designated under 31 Delaware Code, Section 309, The Adoption and Safe Families Act of 1997, and The Child Care Development Block Grant Act of 2014. These individuals are given an opportunity to request an administrative review of the prohibited determination. Based on the outcome of the review, the person could be determined eligible at present time or in the future.

State of Bureau of Identification: the central state repository for criminal history record information.

4. Policy / Procedures

RESPONSIBILITIES OF INDIVIDUALS

- A. Individuals have certain responsibilities to assure the safety of children and be positive role models for Delaware's children. As such, employees must:
1. Be free from criminal activity or involvement in substantiated cases of abuse/neglect that may lead to harm of any child or youth.
 2. Each individual shall immediately inform their supervisor or manager of any criminal convictions, arrests, investigations, or indictment of themselves or of any investigation of child abuse/neglect or entry onto the Child Protection Registry. Failure to immediately notify their supervisor or manager of any of the above, including final disposition, could result in discipline, up to and including termination.

BACKGROUND CHECK PROCESS

- A. Upon acceptance of employment or agreement to volunteer and before the start of employment/volunteer activity, prospective individual will complete the DSCYF Criminal History and Child Abuse and Neglect Background Check Request Form and submit to the DSCYF Criminal History Unit. Upon receipt of the completed form Human Resources will provide the required DSCYF IdentGO service code to the individual.
- B. The prospective individual will then schedule an appointment and go to the selected IdentGO – State Agency Enrollment location and have fingerprints taken. The employee shall provide the receipt of fingerprinting to the Human Resources.
- C. IdentGO – State Agency Enrollment locations follow established procedures to obtain criminal history information from the State Bureau of Identification and Federal Bureau of Investigation. A report of the person'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.
- D. The comprehensive background analyst reviews the background check results from:
 1. State Bureau of Identification
 2. Child Protection Registry
 3. Federal Bureau of Investigation
 4. The “Background Check Request” form

This review is guided by the criteria specified in the Delacare Regulations Background Checks for Child-Serving Entities 6.1-7.2.

- E. When the background check review is completed, and all further investigation is conducted:
 1. The comprehensive background check analyst shares the results with the comprehensive background check supervisor when the recommendation is ineligible or prohibited.
 2. The supervisor makes the eligibility determination based on the criteria specified in Delacare Regulations Background Checks for Child-Serving Entities 6.1-7.2.
 3. If a determination is made that the individual is ineligible or prohibited from employment or volunteering, the Criminal History Unit shall provide notification to the applicable division director, Human Resources, and the individual.
 4. If a determination is made that the individual is eligible, HR, the applicable division director, and hiring manager are notified.
 - i. There are further factors found in DSCYF Policy #318 that may result in a disqualification from employment with the department. That criterion can be found in [Policy #318 Conducting Pre-Employment Checks and Responding to Employment Check Request](#).

- F. In the event the individual has reason to challenge the accuracy or completeness of the background check results, an administrative review will be provided, as explained in the determination letter sent to the individual and as outlined below.

ADMINISTRATIVE REVIEW

- A. The background check is only one factor being considered in the hiring or approval process. If the Department makes an adverse judgment before the check is completed based on any criterion other than the background check this administrative review does not apply. Other criterion can be found in DSCYF [Policy #318 Conducting Pre-Employment Checks and Responding to Employment Check Request](#).
- B. Any individual who is determined to be ineligible or prohibited from employment/volunteering as a result of an adverse judgment made by the Criminal History Unit on the basis of the criminal background check results, shall be entitled to an administrative review for reconsideration.
- C. If the individual believes the criminal background check information resulting in a determination of ineligible or prohibited is inaccurate or incomplete, the individual may request an administrative review. The request must be submitted in writing to the Criminal History Unit within 10 business days of receiving written notification of the determination of ineligible or prohibited.
- D. When a person has requested an administrative review, the following shall apply:
1. If the person is working at the department, the 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.
 2. The applicable division director or designee shall conduct the review within the context of these regulations, merit rules and labor agreements, and the employment status of the employee.

SUBSEQUENT OFFENSES

- A. The Criminal History Unit will receive Subsequent Arrest Reports (SAR) from the Delaware Justice Information System (DELJIS) and the Division of Family Services, Office of Children's Services will notify the Criminal History Unit when an employee is being investigated for child abuse/neglect subsequent to the initial employment check. The Criminal History Unit shall share this information with the appropriate division director and Human Resources. The information will include the specifics of the arrest and/or allegation of abuse/neglect including:

<i>Arrests</i>	<i>Allegations of Abuse/Neglect</i>
<ul style="list-style-type: none">• Date of arrest• Charge(s)• Arraignment date if known• Other pertinent information related to the charge(s)	<ul style="list-style-type: none">• Date of complaint• Age of child• Relationship of child• Other pertinent information related to the incident/complaint

- B. The supervisor/manager shall meet with the individual to discuss the specifics of the charges and report to the division director and Human Resources.
- C. Based on the charge(s) and the individual's explanation of the events that led to the charges, immediate removal from the workplace could result (reference [DSCYF Policy 309 – Removal of Employees from the Workplace](#)). Alternatively, aspects of an individual's work (including but not limited to work duties, ability to interact with children, work location, etc.) may be temporarily modified with the approval of the division director based on consideration of the information provided by the individual, the individual's work history, and whether a conviction and/or substantiation of child abuse/neglect could result in a determination that the individual is prohibited or ineligible for continued activity or employment with the Department.
- D. Upon adjudication of a criminal offense or final outcome of a child abuse/neglect investigation and placement on the Child Protection Registry, the Criminal History Unit will advise the respective division director and Human Resources as to its recommendation regarding the individual's eligibility for continued employment, volunteering, or internship opportunities based on the applicable statutes, regulations, and department policy.
- E. If the offense is not a prohibited offense under the Delacare Regulations Background Checks for Child-Serving Entities, the Criminal History Unit will be guided primarily by the Child Protection Registry Levels in substantiations of child abuse/neglect. For non-prohibited criminal offenses, the Criminal History Unit will utilize the Department's Criminal History Unit Decision-Making Protocol in formulating an eligible/ineligible recommendation.
- F. Division directors, in consultation with Human Resources, will make a final eligible/ineligible determination and formulate a course of action by utilizing the following criteria:
1. The recommendation of the Criminal History Unit
 2. Job relatedness and job assignment
 3. Severity of the offense(s)
 4. Nature of the offense(s)
 5. Employment record

6. Policies of the Department
 7. Merit Rules
 8. Collective bargaining agreements
 9. Due process requirements
- G. If a recommendation for termination is warranted due to a prohibited offense, ineligible determination, or a substantiation of child abuse/neglect determination, the individual may be immediately removed from having direct contact with children and/or restricted to no unsupervised contact with children while the individual is offered a pre-decision meeting. A representative of the Criminal History Unit may be called upon as a witness in any subsequent adversarial proceedings.
- H. Any individual who is being investigated for abuse/neglect against a child may immediately be removed from having direct and/or unsupervised contact with children. If the findings of the investigation are unsubstantiated or substantiated at Level I or Level II, the individual may be returned to their function without restrictions if it is appropriate to do so based on the facts of the case. However, if criminal charges are pending, such individual may be removed from the workplace or required to have no unsupervised contact with children even if their investigation is unsubstantiated or substantiated at Level I or Level II.
- I. Any individual substantiated for abuse/neglect against a child resulting in a Level III or Level IV placement on the Child Protection Registry shall be prohibited from continuing employment with the department and termination proceedings will ensue.
- J. If the findings of the investigation are an intent to substantiate at Level III or Level IV, the individual may be removed from the workplace or transferred from direct contact with children pending results of the substantiation hearing. This could result in a temporary change of work duties and/or location. If the child abuse/neglect substantiation is overturned or the Level reduced to a Level I or Level II, the individual may be returned to duty and made whole, if applicable.

CRIMINAL CHARGES/WORKPLACE RELATED ACTIVITY

- A. When an individual has been charged with criminal misconduct as a result of activity related to the workplace, an administrative investigation will be conducted by the manager/supervisor to determine whether the conduct meets the just cause standard for discipline. The investigation will be separate and detached from the criminal proceedings and the decision to discipline will be based solely on the outcome of the administrative investigation.

CONFIDENTIALITY

- A. The department shall ensure that use of the criminal history record information is restricted to its purpose of determining eligibility for employment and/or continued employment and will further ensure confidentiality of all files of criminal background checks and child protection registry checks.

5. Training

The Center for Professional Development will add this policy to the Delaware Learning Center (DLC) for employees to read and acknowledge annually. Applicable individuals without access to the DLC shall be provided a copy of this policy with the DSCYF Criminal History and Child Abuse and Neglect Background Check Request Form.

6. Legal Authority/Associated Regulations/Requirements

[Title 31, Chapter 3, Section 309 of the Delaware Code](#) requires a check of SBI and FBI records and a review of the Department's Child Protection Registry be conducted on individuals active with the department hired after September 1, 1989, who have regular direct access or the opportunity for unsupervised direct access to children and/or adolescents under the age of 18. Delaware Regulations Background Checks for Child-Serving Entities apply Title 31, Chapter 3, Section 309 to all Departmental employees hired after September 1, 1989. The checks are completed by the Department's Criminal History Unit prior to employment or during a conditional period of employment. Based on established criteria, the Criminal History Unit makes a determination as to whether or not a prospective employee or current employee is "eligible", "ineligible", or "prohibited" from employment. The Delaware Regulations Background Checks for Child-Serving Entities and the Department's Decision-Making Protocol contains a listing of convictions and substantiations that prohibit employment with the Department and those that are discretionary.

Title 16, Chapter 9 of the Delaware Code [Subchapter I](#) and [Subchapter II](#) apply to acts of child abuse/neglect that are alleged to have occurred on or after August 1, 1994. Level II, III and IV substantiations carry with them the legal presumption that the person substantiated is respectively, a moderate, high, or highest risk of future harm to children. The Levels determine the length of time an individual is reported out to potential employers as being on the Registry and whether or not an individual is eligible for employment within a child-serving entity.

Child Protection Registry Levels

Level I Not reported out to employers/potential employers as being on the Registry.

Level II Reported out for 3 years; is eligible for employment in a child-serving entity.

Level III Reported out for 7 years; is not eligible for employment in a child-serving entity while on the Registry.

Level IV Reported out forever; is not eligible for employment in a child-serving entity while on the Registry unless ordered for removal by Family Court.

7. Associated Forms

[DSCYF Criminal History and Child Abuse and Neglect Background Check Request Form](#)

8. Responsibility for this Policy

The Criminal History Unit and Human Resources are responsible for addressing questions related to this policy.