

Crime Identification Bureau (CIB) & National Crime
Information Center (NCIC)
Background Checks

Bureau for Children and Families
Policy Manual
Chapter 2000

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1. Introduction

The evaluation and background investigation of facilities and people who care for adults and children is one of the most important functions of the West Virginia Department of Health and Human Resources. The Department uses a number of processes for this: licensing, certification, registration, approval, funding and contracting. Standards and policies used for evaluations and investigations cover a range of potential problems in an effort to protect those in care and to assure adequate care.

The care provider and others in the home or facility are of primary concern in any investigation, since they determine the type of care offered. Although a difficult task, policies and standards require that a provider's reputation and character be assessed. Generally, a provider is evaluated through interviews, references, discussions with those in care, development of ongoing relationships, and an assessment of the total program. These are excellent methods and their use will be continued.

West Virginia Code, Chapter 49 (Child Welfare), ~~Article 2B, Section 8~~ requires a check of personnel criminal records for licensed, certified and registered child welfare and child caring agencies. The Adoption and Safe Families Act requires criminal background checks on all individuals and agency staff providing care for foster children or for prospective adoptive parents to whom adoptive assistance payments are made. West Virginia Code, Chapter 15 (Public Safety), Article 2C, allows for home care service providers not otherwise licensed to be registered so they may access information established by the Central Abuse Registry. With emphasis being placed on screening criminal records of providers, the value of such record checks must be kept in perspective. It is one method for assessing a provider's suitability to care for children and adults.

The policy contained herein is to be used by some programs operated through the West Virginia Department of Health and Human Resources, and licensed, certified or approved Adult or Child Welfare agencies and Child Caring agencies. These include DHHR Foster Care & Adoption, Adult Family Care, Adult Emergency Shelter Care, licensed or approved Child Care Centers, Family Child Care Facilities, registered Family Home Child Care providers, any other program which utilizes providers under the auspices of the Bureau for Children and Families. Each program operates under a set of policies or promulgated rules separate from this one. Legislative rules that have been promulgated have the effect of law and take precedence over policy. If the two conflict, staff shall follow the legislative rule in lieu of policy. The policy set forth here is to be used in conjunction with program policies and requirements. Licensed or approved Child Placing Agencies, and the foster home providers they certify, and licensed or approved Residential Child Care Facilities, including Emergency Shelter Facilities are exempt from this policy and follow the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act (WV CARES), W. Va. Code §16-49-1 et seq., and W. Va. Code R. §§69-10-1, et seq.

2. Definitions

- 2.1 **Adult Household Member:** Anyone age 18 years or older who lives in the home or is in the home on a continuing basis while care is being provided.
- 2.2 **Applicant:** Owner, operator or director, paid staff person, uncompensated staff person, volunteer, student intern, substitute, respite provider, foster parent or potential adoptive parent, or transportation provider in a Department licensed, certified or approved child welfare agency. Also, any caregiver, adult household member, volunteer, substitute, respite provider, or transportation provider in an adult care home, prospective adoptive home, foster family home, family child care home, in-home care provider or an MR/DD home. Any person applying to fill or currently filling these named positions.
- 2.3 **Clearance to Work:** Approval given from the Office of the Deputy Commissioner of Operations for an individual to become employed or used following a criminal background fingerprint scan.
- 2.4 **Contracted staff:** Persons who are contracted by a licensed or certified agency to provide a direct service to children or adults at the facility or as part of the facility's services.
- 2.5 **Denial for Employment or Use:** Rejection by the Department's program staff for an individual to become employed or used following a criminal background fingerprint scan revealing (1) criminal convictions for one or more crimes listed in Section 5 which are not eligible for a waiver, or (2) two or more misdemeanor crimes that would require a waiver.
- 2.6 **Department:** West Virginia Department of Health and Human Resources, and staff employed by the West Virginia Department of Health and Human Resources.
- 2.7 **Dual Provider:** an individual who provides service for more than one program at a time, such as Socially Necessary Services (ASO), Foster/Adoptive Care, Adult Family Care, Family Emergency Shelter Home Care, Child Care, Specialized Family Care, and Specialized Foster/Adoptive Care. All of these programs are vitally important programs within the Department, and each requires a great deal of time and energy on the part of the provider, so it is generally not encouraged for a provider to become a dual provider.

- 2.8 **Facility or agency:** any place or residence, including personnel, used for the care of a child(ren) or adult(s) on a residential or other basis for any number of hours a day in any structure maintained for that purpose. The terms facility or agency may be used interchangeably.
- 2.9 **Program Staff:** Individuals employed by the Department of Health and Human Resources who are assigned to specific, specialized areas and who hold knowledge allowing them to make independent decisions regarding their area of expertise.
- 2.11 **Student Intern:** an individual who, with or without compensation, as part of completing an educational degree, is expected by the facility or home to provide a direct service to children or adults for two or more hours per week on a regularly scheduled basis.
- 2.12 **Volunteer:** an individual who, without pay or compensation, is expected by the facility or home to provide a direct service to children or adults for two or more hours per week on a scheduled basis.
- 2.13 **Waiver:** A written declaration that a specific criminal conviction may be treated as inapplicable when considering the applicant for employment or use (See Section 9). A waiver is required when the criminal background scan reveals two or more convictions for crimes that are not listed in Section 5.
- 2.14 **WV Cares:** West Virginia Clearance for Access: Registry and Employment Screening Act (WV CARES), W. Va. Code §16-49-1 et seq., and W. Va. Code R. §§69-10-1, et seq.

3. Persons Required to Have a Criminal Record Check

- 3.1 A Criminal Identification Bureau (CIB) record check shall be completed on all applicants. Applicants who have completed a CIB check within the last twelve (12) month and has been cleared for employment, may choose to provide the Department or Agency with a copy of his or her clear CIB.
- 3.2 Contracted staff and/or dual providers must have a CIB record check or provide a record check that has been completed within twelve (12) months of the initial contract and every five years thereafter.
- 3.3 This policy applies to all categories of persons named in the previous sections unless otherwise stated in a specific program policy or promulgated rule.

- 3.4 All applicants for the foster care program will also be required to have a National Crime Information Center (NCIC) check as well as a CIB.

4. Process for Conducting Criminal Background Record Checks

- 4.1.1 This policy shall be discussed during the application process for all applicants.
- 4.1.2 Each Bureau for Children and Families' program must address, through descriptive policies, the ability to utilize an applicant prior to notification from the CIB/NCIC regarding the applicant's criminal background. Provider agencies may use this policy as part of their personnel policies.
- 4.1.3 Licensed or approved–Child Care Centers shall obtain their live scan fingerprints as directed by the **West Virginia DHHR Bureau for Children and Families Background Check Guide**. This will enable provider agencies to avoid a CIB fee (they will only pay the NCIC fee) and the fingerprint card fee. In this way, faulty scans can be tracked by the Bureau for Children and Families, verifying that at least two faulty scans have been obtained in order to complete a name-based check.
- 4.1.4 There may be specific situations when fingerprints cannot be successfully captured due to physical disability, occupational injury or age. A fingerprint scan must be attempted two times before permission can be granted to conduct a name-based CIB/NCIC check.
- 4.1.5 The applicant must have two NCIC rejections and two CIB rejections to obtain a name-based check.
- 4.1.6 For the State Police or FBI to conduct a name search, the rejections must fall within the following time frame: Rejection dates must be within a year of each other, with one rejection being within the last 90 days. The FBI Name Search Request Form is attached and should be used when two FBI rejections fall within the required time frame. This form must be sent to the Office of Deputy Commissioner of Programs and Resource Development, CIB Unit, 350 Capitol Street, Room 730, Charleston, WV 25301.
- 4.1.7 For Departmental foster/adopt homes, Adult Family Care Homes, Family Child Care Homes and Family Child Care Facilities, the fingerprint scans will occur as directed through the **STANDARD OPERATING PROCEDURE: BCF Field Office Operating Procedure for Operation of Livescan**.

- 4.1.8 The Office of the Deputy Commissioner of Programs and Resource Development will send via USPS, written notification to licensed or certified providers when a background check comes back with no charges or convictions, indicating that the person can be employed or utilized.
- 4.1.9 When a criminal background check is received with any charges or convictions, The Office of the Deputy Commissioner of Programs and Resource Development will notify the Bureau's program staff by sending a copy of the results through the US Postal Service to the program staff assigned for review.
- 4.1.10 If the criminal background check results reveal any charges or convictions that may be waived, the program staff will be notifying the provider that a waiver must be requested and approved by the Bureau before the person can be employed or utilized. **Program staff shall not provide copies of results or verbally share the results of the criminal background check to a provider agency or applicant, except during a grievance (see section 12).** The provider agency will make a determination as to whether they will request a waiver for the criminal background check after discussing it with the applicant and reviewing the Statement of Criminal Record. The individual may have to obtain their own criminal background check to review with the potential employer.
- 4.1.11 If the criminal background check results reveal any charges or convictions that cannot be waived, the program staff will notify the provider that a waiver is not possible and that the applicant cannot be employed or utilized.
- 4.1.12 For DHHR foster parents utilized by the Bureau for Children and Families, the waiver review can occur once the program staff have received the results of the criminal background check since there is no private provider involved.

4.2 **Initial Criminal Background Check**

- 4.2.1 Applicants shall complete a signed Statement of Criminal Record form as outlined in Section 8 of this policy (see West Virginia DHHR Bureau for Children and Families Background Check Guide) which provides for a self-disclosure of the individual's criminal past and a notification of rights statement. The applicant's signed Statement of Criminal Record shall be considered as true pending the outcome of the criminal background check and clearance or denial to work. The Statement of Criminal Record must

be completed prior to the applicant's providing care or being engaged for employment. All agencies must retain a signed copy in the employee's records and provide a signed copy to the applicant.

- 4.2.2 Providers must be instructed to notify the Department or the agency, as applicable, within 72 hours when a new household member requiring a background check has been added. The Statement of Criminal Record and fingerprint card/scan on the new member must be completed within 30 days unless otherwise directed by program policy or rule.
- 4.2.3 A national criminal background check through the National Crime Information Center (NCIC) shall be completed on an applicant if the applicant has ever lived outside of the state of West Virginia. For all prospective and current foster parents, regardless of whether or not he or she has lived outside of West Virginia, an NCIC check must be completed. The Department may conduct an NCIC check on any applicant if given cause by a reliable source to believe a national check should be completed.
- 4.2.4 When a prospective employee resides in a bordering state and obtains employment with a West Virginia agency, an NCIC check and a state check from the individual's resident state must be obtained unless the resident's state does not have a law or policy allowing for fingerprint checks to be conducted.

4.3 Subsequent Criminal Checks

An applicant or employee shall complete a Statement of Criminal Record every two (2) years after the initial submission to the respective agency or Department. A subsequent CIB check shall be completed at least every five (5) years, but may be submitted at any point if there is an indication that the CIB information may have changed. The same process as described in this policy shall be applied to subsequent checks. DHHR foster parents must complete subsequent NCIC checks at least every five (5) years. Other applicants may be required to complete subsequent NCIC checks. The CIB check will be documented in FACTS according to each program's individual policies and procedures, ensuring that no specific detail regarding the history is captured.

4.4 Reporting Criminal Charges- While Awaiting Results or After Employment

An applicant or employee shall report any criminal arrests, charges, or indictments to the facility or the Department within 24 hours. Any applicant or employee convicted of a criminal offense shall report the conviction to the facility

or the Department within 24 hours. Upon the applicant's report, a facility shall notify the Department's program staff within 24 hours.

5. Convictions

- 5.1 The applicant shall not be approved, employed, utilized nor considered for a waiver if ever convicted of:
 - 5.1.1 Abduction;
 - 5.1.2 Any violent felony crime including but not limited to rape, sexual assault, homicide, malicious wounding, unlawful wounding, felonious domestic assault or battery;
 - 5.1.3 Child/adult abuse or neglect;
 - 5.1.4 Crimes which involve the exploitation of a child or an incapacitated adult;
 - 5.1.5 Misdemeanor domestic battery or domestic assault;
 - 5.1.6 Felony arson;
 - 5.1.7 Felony or misdemeanor crime against a child or incapacitated adult which causes harm;
 - 5.1.8 Felony drug related offenses within the last ten (10) years;
 - 5.1.9 Felony DUI within the last ten (10) years;
 - 5.1.10 Hate crimes;
 - 5.1.11 Kidnapping;
 - 5.1.12 Murder/homicide;
 - 5.1.13 Neglect or abuse by a caregiver;
 - 5.1.14 Pornography crimes involving children or incapacitated adults including but not limited to, use of minors in filming sexually explicit conduct, distribution and exhibition of material depicting minors in sexually explicit conduct or sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct;
 - 5.1.15 Purchase or sale of a child;
 - 5.1.16 Sexual offenses including but not limited to incest, sexual abuse, or indecent exposure.
- 5.2 The applicant shall not be approved, employed, utilized nor considered for a waiver if on parole or probation for a felony conviction.

- 5.3 An applicant shall not be approved, employed, nor utilized if convicted of a felony not listed in 5.1 above unless a waiver is requested and approved.
- 5.4 An applicant shall not be approved, employed, nor utilized if convicted of two or more any misdemeanors unless a waiver is requested and approved.
- 5.5 An applicant shall not be approved, employed, nor utilized if he/she failed to report convictions to the Department or agency unless a waiver is requested and approved.

6. Nolo Contendere Pleas:

- 6.1 If an applicant's criminal background check indicates a "nolo contendere plea" for a crime against a person, as specified under section 5.1 of this policy, the applicant shall not be approved, employed, utilized nor considered for a waiver.
- 6.2 If an applicant's criminal background check indicates a "nolo contendere plea" that is not a crime against a person as specified under section 5.1 of this policy, the applicant's plea will be evaluated by the Regional or State Office CIB committee for approval or denial. In reviewing a "nolo contendere plea," the Regional or State Office CIB committee will evaluate the crime, plea, and circumstances surrounding the crime in relation to the person's character.
- 6.3 The "nolo contendere plea" cannot be considered as a conviction.

7. Indictments or Charges

- 7.1 A new applicant currently under indictment or charged with any crime, except those listed in section 5.1 which are not eligible for waiver, shall not be permitted to care for or have contact with children or adults in care until such time as the charges are resolved or a request for a waiver is made and approved. The care of children or adults during the time period in which the waiver is being considered must be determined on a case-by-case basis.
- 7.2 Any individual, previously having no convictions on their CIB, covered under this policy who is indicted or charged with any offense named in Section 5.1 shall not be permitted to care for or have contact with children or adults in care until such time as the charges are resolved. Each program policy must address the provision of care for the children or adults in this event. The Department must be notified immediately to determine if a waiver is indicated.
- 7.3 Any individual providing care who is indicted or charged with any crime, except those named in 5.1 shall not be permitted to care for or have contact with children or adults in care until such time as the charges are resolved or a request for a waiver is made and approved. The care of children or adults during the

time period in which the waiver is being considered must be determined on a case-by-case basis.

- 7.4 Any applicant with unresolved charges (no disposition listed on the criminal background check results) will be asked to obtain a copy of his or her criminal background check results before discussion can occur. At such a time that the applicant obtains and reviews his or her own results, he or she will be instructed to provide written documentation, through court records, dismissal orders or other verifiable legal means, that indicates the charges have been resolved. At that time, a decision will be made regarding the applicant's ability to be employed or utilized.

8. **Waiver**

8.1 Waiver Submissions

8.1.1 The director of the agency who has reviewed the criminal history obtained by the potential employee and wants to hire applicant must submit a waiver request and statement of support.

8.1.2 No waivers will be considered for convictions listed in Section 5 of this policy. All other crimes, regardless of age, require a waiver before employment or use can occur,

8.1.3 A waiver approval is not transferable from one agency to another. If an individual, for whom a waiver had been approved, moves from one agency to another, a new waiver request must be submitted with a letter of support from the new agency. It is not the intent of this policy to require an agency to hire or utilize an applicant based upon a previous approval for a waiver.

8.1.4 The waiver request must be submitted within 30 working days of the receipt of the Denial for Work decision. A licensed or certified agency will be cited if the applicant remains employed or used as a provider without an approved waiver.

8.2 **Waiver Request**

8.2.1 Related to each conviction.

The waiver request must include the following information related to each conviction, indictment or charge:

- a. A copy of the signed and witnessed Statement of Criminal Record;

- b. The crime committed or alleged;
- c. The date(s) of the crime;
- d. The date of conviction, indictment or charge.

8.2.2 Information for consideration and justification

The waiver request must include information which will be used in considering potential risk to children and adults in care should the request be approved. The applicant must provide justification for the waiver and include the following supportive documentation:

A. The Waiver Request must include The Waiver Form with the following supporting documentation:

- 1.) Description of the circumstances surrounding the crime
- 2.) If there was a victim of the crime and, if so, the age of the victim and the physical, emotional or financial harm to the victim. The victim is not to be identified
- 3.) Dates of incarceration;
- 4.) Statement or document from the probation or parole officer, or an officer of the court that the sentence has been successfully completed.
- 5.) If the crime or alleged crime is driving or vehicular related, a driving record and copy of a current, valid driver's license must be submitted
- 6.) A statement regarding how circumstances have changed since the commission of the crime and the individual's motivation towards rehabilitation;
- 7.) In the case of an individual seeking a waiver to remain during the time a charge or indictment is being resolved, a statement from the employer or head of the household that there is a plan in place which will reasonably assure the safety of children or adults in care;

B. The Waiver Request may also include:

- 1.) Letter of recommendation from a probation or parole officer, or an officer of the court;
- 2.) Employment, training and education history;
- 3.) Documentation of participation in therapy or counseling programs;
- 4.) Character references or statements of Family support;
- 5.) Documentation of involvement in community, religious, or volunteer activities;
- 6.) Any other information the applicant would like to have considered.

8.3 Waiver Process

- 8.3.1 Each Region within the Department will establish written operating procedures for a local or regional review of waiver requests which must be performed in a timely manner in accordance with specific program polices.
- 8.3.2 The Child Care Center Licensing Unit will review waiver requests of applicants in a licensed Child Care Center.
- 8.3.3 The Waiver Committees review the waiver requests and accompanying documentation to make a determination as to whether a waiver can be provided for the charges/convictions.
- 8.3.4 A determination must be made on the requests within 30 working days.
- 8.3.5 Waiver approvals must be documented in FACTS according to each program's policies and procedures.
- 8.3.6 The staff person responsible for the applicant's or agency's record must inform the applicant or the agency in writing of the decision within five working days.
- 8.3.7 It is critical that staff involved in the waiver process carefully review all evidence submitted by providers prior to making a determination to grant or deny a waiver. This ensures a fair and equitable decision based on facts that balance the need for protection of vulnerable adults and children and the rights of the applicant to be gainfully employed.

9. Criminal Background Check Results Dissemination and Storage

- 9.1 The Office of the Deputy Commissioner of Operations staff will maintain original criminal background check results, providing hard copies through the US Postal Service to the Bureau for Children and Families' program staff.
- 9.2 All original and hard copies of criminal background check results must be in locked file cabinets.
- 9.3 No criminal background check results are to be emailed under any circumstances, regardless of whether or not the email recipient is located within the Bureau for Children and Families or outside the agency. Sharing criminal background checks results among waiver review committee members must occur through the US Postal Services. In emergency situations, criminal background check results may be faxed through the Bureau for Children and Families' fax machine system, as long as the intended recipient of the fax is aware of its transmittal ahead of time and can be at the fax machine to retrieve it upon arrival.

- 9.4 No criminal background check results are to be stored in FACTS or any other electronic media under any circumstances. You may store copies of self-disclosures signed by the applicant, such as the Statement of Criminal Record.
- 9.5 Any hard copies of criminal background check results that are outdated or no longer needed for the Bureau for Children and Families' purposes shall be shredded using cross-cut shredding machines.
- 9.6 During the appeal process, which may occur due to a denial for work or use, criminal background check results may be viewed by the applicant in a DHHR building. No copies are to be given to the applicant of his or her criminal background check results. If the applicant wishes to obtain a copy of his or her results, he or she will need to visit the Morpho Trust site nearest them for the fingerprint scan.

10. **Confidentiality**

Statements of criminal records are not to be disclosed to unauthorized persons. Those authorized are Department staff responsible for carrying out this policy. The applicant acknowledges by signing the Statement of Criminal Record that the information will be disclosed only to authorized persons. These records are to be kept in a secure confidential file. All other laws regarding confidential records and Department confidentiality policies apply.

11. **Publication of Criminal Record Check Requirements**

All Bureau for Children and Families program policies shall refer to this policy as it applies to providers for the specific program. All approved, licensed and certified facilities shall reflect in personnel policies the requirement for a criminal history background check.

12. **Grievance/Appeals**

An applicant may appeal a decision made by the Department through the grievance procedures for clients and providers of service found in the Common Chapters Manual, Hearings, Appendix C.

12.1 Challenging criminal record information

If a Denial for Work is received for the applicant, it will be necessary for the applicant to obtain a personal finger-print scan. If, after reviewing the identification record, the applicant believes that it is incorrect or incomplete in any respect and wishes changes, corrections or updating of the alleged deficiency, the applicant should make application directly to the agency which contributed the questioned information. The applicant may contact the West Virginia State Police, Criminal Identification Bureau, at (304) 746-2179 and/or the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306. The FBI will forward the challenge to the agency which submitted the data requesting that agency to verify or correct the challenged entry. Upon the receipt of an official communication directly from the agency which contributed the original information, the FBI CJIS Division will make any changes necessary in accordance with the information supplied by that agency.