

Bureau for Children and Families

Socially Necessary Services Provider Background Checks

Crime Identification Bureau (CIB)

Child and Adult Protective Services (CPS/APS)

Effective February 2017

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Socially Necessary Services Provider Background Checks Crime Identification Bureau (CIB) & Child and Adult Protective Services (CPS/APS)

A. Introduction

All employees who work for providers of socially necessary services (SNS), or work as independent providers are required to undergo a background check before employment begins. The evaluation and background investigation of individuals who provide services, as a SNS provider, for adults and children is an important function of the West Virginia Department of Health and Human Resources. SNS providers must be enrolled and approved to provide SNS to families and children through the Bureau for Children and Families, Children and Adult Services Office. These providers are periodically reviewed to determine if they are meeting the established standards developed for SNS providers. The standards and policies developed are used in an effort to protect those in care and to assure quality, adequate services are being provided to children and families in West Virginia.

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. Screening criminal records and child and adult abuse records of all providers of services is a valuable process, since it allows for one method of assessing a provider's suitability to provide quality, adequate services to children and adults.

The policy contained herein is to be used by all SNS providers who provide services through the West Virginia Department of Health and Human Resources. This includes any employees who work for providers of socially necessary services or provide socially necessary services as an independent provider.

B. Definitions

1. Applicant: Owner, operator or director, contracted staff, paid staff person, uncompensated staff person, or student intern who is providing socially necessary services to children and families or assisting in the provision of socially necessary services.
2. Child Protective Services (CPS) and Adult Protective Services (APS) Background Check: A record check completed on an individual, by the Department's Office of Children and Adult Services for substantiated CPS/APS maltreatment history.

3. Contracted Staff: Persons who are contracted, by an enrolled/approved socially necessary services provider, to provide a direct service or assist in the provision of a direct service to children or adults.
4. Criminal Identification Bureau (CIB) Finger-Print Check: A CIB finger print check is completed by the West Virginia State Police for criminal history. All employees who work for providers of Socially Necessary Services or work as independent providers cannot work as a Socially Necessary Services provider until verification of clear CPS/APS check is received.
5. Department: West Virginia Department of Health and Human Resources, and staff employed by the West Virginia Department of Health and Human Resources.
6. National Crimes Information Center (NCIC):
7. Student Intern: an individual who, with or without compensation, as part of completing an educational degree, is expected by socially necessary services provider to provide a direct service or assist in the provision of a direct service to children or adults for two or more hours per week on a regularly scheduled basis.
8. 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 history reveals more than one misdemeanor conviction and the convictions are not listed in Section 5 of this policy.

C. Persons Required to Have a Background Record Check

A background record check shall be completed on anyone who falls under the above definition of “applicant” and is working for a SNS provider or providing socially necessary services as an individual. Background record checks must be completed every five years on individuals.

D. Contents of the Background Record Check

1. A background record check consists of a Criminal Identification Bureau (CIB) and a National Crime Information Center (NCIC) (when needed) finger-print check completed by the West Virginia State Police’s contracted agency and a Child and Adult Protective Services (CPS/APS) background check completed by the Department’s Office of Children and Adult Services, a NCIC. If a person lives outside of West Virginia, but is working in West Virginia, they will need to obtain a CIB in the state in which they live in addition to the checks indicated above.

2. Applicants shall complete a signed Statement of Criminal Record (SOCR), which provides for a self-disclosure of the individual's criminal past and a notification of rights statement. The applicant's signed SOCR shall be considered as true pending the outcome of the criminal background check. The SOCR must be completed prior to the applicant's providing socially necessary services. All agencies must retain a signed copy in the applicant's records.
3. Applicants must have a clear CPS/APS Record check. CPS/APS maltreatment substantiations cannot be forgiven (waived). All employees who work for providers of socially necessary services or work as independent providers cannot work as a socially necessary services provider until verification of a clear CPS/APS history check is received and on file in the applicant's personnel record.
4. Applicants must have a CIB check completed that shows that the individual is eligible for providing socially necessary services or have an approved waiver for the CIB history.
5. Applicants must have an NCIC check completed if they have lived outside of West Virginia any time after turning 18 years of age.
6. Applicants, who currently live outside the state of West Virginia, must have a CIB check completed in the state in which they currently reside in addition to the above mentioned checks.

E. Process for Background Record Checks

1. The applicant shall complete a signed Statement of Criminal Record form which provides for a self-disclosure of the individual's criminal past and a notification of rights statement.
2. The applicant must submit to a fingerprint based CIB record check through the local State Police contracted agency. If an NCIC check is required the applicant will request both checks at the same time.
3. If the applicant lives outside of West Virginia, they will submit to a fingerprint based CIB check in the state in which they live and have the results sent to the SNS provider or to themselves.
4. The CIB record check results will be sent directly to the SNS provider or to the individual, if providing SNS as an independent provider.
5. The CPS/APS record check form, for an applicant, will be submitted to the Department's Office of Children and Adult Services for processing.
6. When the results of the CIB record check reveals a charge or conviction that may not be waived as indicated in section 8 of this policy, the individual may not be employed or utilized in any way in providing SNS to children and families.

7. When the CPS/APS record check reveals a history of substantiated abuse or neglect, the individual may not be employed or utilized in any way in providing SNS to children and families.
8. If the CIB record check results reveal any charges or convictions that may be waived, the provider or individual 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.
9. 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 three times before permission can be granted to conduct a name-based check.

F. Subsequent Checks

An applicant shall complete a Statement of Criminal Record every two (2) years after the initial submission to the respective agency. A subsequent background 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, NCIC or CPS/APS information may have changed. The same process as described in this policy shall be applied to subsequent checks. Initial and subsequent background checks and results must be maintained in the employee's record.

G. Reporting Criminal Charges (While Awaiting Results or After Employment)

An applicant or employee shall report any criminal arrests, charges, or indictments to the agency within 24 hours. Any applicant convicted of a criminal offense shall report the conviction to the agency within 24 hours. Upon the applicant's report, an agency shall notify the Office of Children and Adult Services immediately, to determine if the person can continue to provide services or if a waiver request is required.

H. Convictions

1. The applicant shall not be approved, employed, utilized nor considered for a waiver if ever convicted of:
 - Abduction;
 - Any violent felony crime including but not limited to rape, sexual assault, homicide, malicious wounding, unlawful wounding, felonious domestic assault or battery;
 - Child/adult abuse or neglect;
 - Crimes which involve the exploitation of a child or an incapacitated adult;

- Misdemeanor domestic battery or domestic assault;
 - Felony arson;
 - Felony or misdemeanor crime against a child or incapacitated adult which causes harm;
 - Felony drug related offenses within the last ten (10) years;
 - Felony DUI within the last ten (10) years;
 - Hate crimes;
 - Kidnapping;
 - Murder/homicide;
 - Neglect or abuse by a caregiver;
 - 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;
 - Purchase or sale of a child;
 - Sexual offenses including but not limited to incest, sexual abuse, or indecent exposure.
 - The applicant shall not be approved, employed, utilized nor considered for a waiver if on parole or probation for a felony conviction.
2. An applicant shall not be approved, employed, nor utilized if convicted of a felony not listed in Section H-1, above unless a waiver is requested and approved.
 3. An applicant shall not be approved, employed, nor utilized if convicted of a crime of deceit or dishonesty (i.e., forgery, bad checks) that is less than two (2) years old.
 4. An applicant shall not be approved, employed, nor utilized if convicted of a crime of misdemeanor DUI that are less than two (2) years old unless proof of a deferral program can be provided. If applicant is currently involved in a deferral program, a contingency plan might be considered.
 5. Any convictions involving reckless, erratic and/or dangerous driving behaviors must be less than two (2) years old unless proof of a deferral program can be provided. If applicant is currently involved in a deferral program, a contingency plan might be considered.

6. Any misdemeanor drug convictions must be less than five (2) years old unless proof of a deferral program can be provided. If applicant is currently involved in a deferral program, a contingency plan might be considered.
7. An applicant shall not be approved, employed, nor utilized if convicted of two or more misdemeanors unless a waiver is requested and approved.
8. 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.
9. If an applicant's criminal background check indicates a "nolo contendere plea" for a crime against a person, as specified under Section H-1 of this policy, the applicant shall not be approved, employed, utilized nor considered for a waiver.
10. If an applicant's criminal background check indicates a "nolo contendere plea" that is not a crime against a person as specified under Section H-1 of this policy, the applicant's plea will be evaluated by the State Office ASO Background Check Waiver Committee for approval or denial. In reviewing a "nolo contendere plea," the State Office ASO Background Check Waiver Committee will evaluate the crime, plea, and circumstances surrounding the crime in relation to the person's character.
11. The "nolo contendere plea" cannot be considered as a conviction.
12. An applicant currently under indictment or charged with any crime, except those listed in Section H-1 which are not eligible for waiver, shall not be permitted to provide services until such a time as the charges are resolved or a request for a waiver is made and approved.
13. Any individual, previously having no convictions on their CIB, covered under this policy, who is indicted or charged with any offense named in Section H-1 shall not be permitted to provide services until such a time as the charges are resolved.
14. Any applicant with unresolved charges (no disposition listed on the criminal background check results) shall be asked to obtain 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.

I. Waivers

Waiver Submissions

1. All waiver requests will be evaluated by Department's Office of Children and Adult Services, ASO Background Check Waiver Committee. Providers wishing to employ any individual with a conviction should direct all of the required documentation indicated below to:

Socially Necessary Services Waiver Requests
350 Capitol Street, Room 691
Charleston, WV 25301

2. The waiver request form must be submitted by the director or their designee of the agency and completed in detail;
3. A statement of support from the agency director;
4. If a waiver request is being submitted by an independent provider, a recommendation statement from at least one professional source (prior employer) must be included.
5. No waivers will be considered for convictions listed in Section 9.1 of this policy.
6. No waivers will be considered for a CPS/APS maltreatment finding.
7. 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. 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 waiver request form completed in detail;
 - c. Supporting documentation from agency;
 - d. A copy of the applicants CIB and NCIC (when required) results;
 - e. Documentation from applicants on circumstances of incident or incidents and how things have changed;
 - f. Dispositional documentation necessary when a disposition is not indicated on the results;
 - g. Documentation on diversion programs, if applicant was sent to a diversion program.

Waiver Process

1. The ASO Background Check Waiver Committee reviews the waiver requests and accompanying documentation to make a determination as to whether a waiver can be provided for the charges/convictions.
2. A determination must be made on the requests within 30 working days.

3. Waiver approvals must be documented on the waiver request form and filed in the SNS Provider record.
4. The ASO Background Check Waiver Committee will provide notification to the SNS provider in writing via the waiver request form of the decision.
5. 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.

J. 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.

K. Grievances/Appeals

There is no grievance processes afforded to Socially Necessary Services providers to dispute the waiver guidelines detailed in this policy or to grieve the decisions made by the SNS CIB Waiver Committee.

L. Challenging Background Record Information

If the applicant believes that the results of their Background Check results are 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
(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.

To dispute a CPS/APS result, the applicant must contact the local DHHR County Office to request a copy of the investigation and results and to request a review of those results by the local office who conducted the investigation.