

# Criminal and Protective Services Background Check Policy

West Virginia Department of Health and Human Resources  
Bureau for Social Services  
Office of Children and Adult Services  
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## 1. Background Check Overview

- 1.1 Providers are required to complete background checks every five years.
- 1.2 A background check for a potential employee, independent contractor, resource, or certified kinship/relative caregiver includes a state (CIB) and federal (FBI) criminal history record check, a protective service (CPS/APS) check, state sex offender check, National Crime Information Center (NCIC) and National Sex Offender Registry check (NSOR).
- 1.3 A protective service check for resource or certified kinship/relative caregiver is required initially and at the time of recertification.
- 1.4 Covered provider agencies are required to request a record check of child abuse and neglect registries and databases in any other state where the individual has resided in the past five years or who works in the state of WV and resides in another state.
- 1.5 The West Virginia Office of the Inspector General (OIG) processes criminal background checks through the West Virginia Clearance for Access: Registry and Employment Screening (WV CARES).
  - 1.5.1 WV CARES processes the following background checks via fingerprinting:
    - 1.5.1.1 The State of West Virginia Crime Identification Bureau (CIB) check
    - 1.5.1.2 The Federal Bureau of Investigations check (FBI)
  - 1.5.2 The WV CARES website provides a link for sex offender registries to be searched during prescreening:
    - 1.5.2.1 The State of West Virginia Sex Offender Registry check
    - 1.5.2.2 The National Crime Information Center (NCIC)
    - 1.5.2.3 National Sex Offender Registry (NSOR)
- 1.6 Protective service checks are processed by the Bureau for Social Services.

## 2. Definitions

- 2.1 **Authorization and Release for Protective Services and Provider Record Checks** -- A document signed by an employee, potential employee or prospective resource or certified kinship/relative caregiver granting permission to conduct a search of Department records related to his or her involvement in adult or child abuse and/or neglect allegations or findings, or other investigations documented by the Department.
- 2.2 **Covered Provider** – Providers who must check any child abuse and neglect registry maintained by any other State in which the person has resided in the preceding five years. Per the [Social Security Act §471\(a\)\(20\)](#) this is any prospective resource, or certified kinship/relative caregiver, any other adult living in the prospective home and prospective employees of child-care institutions, including group homes, residential treatment centers, shelters, or other congregate care settings. Additionally, prospective employees of center-based child care providers and family child care providers as per [45 CFR 98.43](#).

- 2.3 **Criminal History Background Check** -- A review of information pursuant to 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 69CSR10, and an examination of protective service records to determine eligibility for employment or participation under this rule.
- 2.4 **Fitness Determination** -- means a finding by the Secretary after review of an applicant's criminal history record information that the applicant is either eligible for employment or not.
- 2.5 **Protective Services (APS/CPS) Background Check** – an authorized disclosure of an individual's history with the Department as an identified adult or child abuse maltreater.
- 2.6 **Self-disclosure Application and Consent Form.** -- A signed declaration of criminal convictions, indictments, and court ordered supervision and authorization to allow a criminal history background check as required by the WV CARES process.
- 2.7 **West Virginia Clearance for Access: Registry & Employment Screening (WV CARES)** -- administered by the DHHR and the West Virginia State Police Criminal Investigation Bureau (CIB) in consultation with CMS, the Department of Justice (DOJ), and the Federal Bureau of Investigation (FBI). Through fingerprinting, this program provides a comprehensive criminal history records search of national and state criminal history records. The West Virginia State Police contracts with a private agency to securely capture and transmit fingerprints to be processed through the West Virginia State Police and the FBI.

### 3. WV CARES Procedures

- 3.1 The provider will obtain a WV CARES self-disclosure application and consent form signed by the potential employee, independent contractor, resource, or certified kinship/relative caregiver indicating any past criminal conviction or pending charges.
- 3.2 The provider shall submit a request for a criminal history background check to the WV CARES unit of the Department for each potential employee or independent contractor prior to permitting that employee or independent contractor to work.
- 3.3 Documentation of the completed criminal history background check shall be maintained with the personnel file of the applicant. Documentation shall include a fitness determination of eligibility from the WV CARES unit and a variance or waiver that has been granted by the Secretary if the applicant has convictions of disqualifying offenses or pending charges.
- 3.4 A WV CARES self-disclosure application and consent form will be completed on each employee, independent contractor, resource, and certified kinship/relative caregiver every five years, after the initial submission. Updated fingerprints are required every five years.
- 3.5 The organization must demonstrate compliance will all provisions of the WV CARES Act [W. Va. Code §16-49 et seq.](#), and its Legislative rule, [69CSR10](#).

## 4. Protective Services Record Check Procedures

- 4.1 For any provider required to submit a protective services background check, the record check shall be conducted on all potential employees, independent contractors, resources, or certified kinship/relative caregiver, including household members over age 18, staff, and volunteers.
- 4.2 A protective service check is required for an employee, potential employee, volunteer, or household member of the following agencies:
- 4.2.1 Licensed Child Placing Agencies
  - 4.2.2 Licensed Residential Child Care and Treatment Facilities
  - 4.2.3 Licensed Childcare Centers
  - 4.2.4 Family Child Care Facility
  - 4.2.5 Family Child Care in Home
  - 4.2.6 Socially Necessary Service Agencies
  - 4.2.7 Other family services agencies required by state law, licensing regulations, or DHHR policy or contract language to complete protective services background checks on potential/current employees or volunteers.
  - 4.2.8 Other states and agencies as required by the [Adam Walsh Child Protection and Safety Act of 2006](#).
- 4.3 The Authorization and Release for Protective Services and Provider Record Check forms for employment purposes and for resource and or certified kinship/relative caregivers are on the [BSS website](#).
- 4.4 The provider will obtain an Authorization and Release for Protective Services and Provider Record Check form signed by the potential employee, independent contractor, resource, or certified kinship/relative caregiver indicating any past child or adult abuse and/or neglect findings and pending investigations.
- 4.4.1 Incomplete Forms will be returned to the provider.
  - 4.4.2 Record checks will not be processed if there is an open CPS/APS investigation; the open investigation will be documented on the form and returned to the requesting agency.
- 4.5 The complete signed Authorization and Release for Protective Services and Provider Record Check form will be mailed to:
- APS/CPS Background Check Unit  
350 Capitol Street, Room B-18  
Charleston, WV 25301
- 4.6 The Authorization and Release for Protective Services and Provider Record Check form will be completed on each employee, independent contractor, and volunteer every five years, after the initial submission.

- 4.7 The Authorization and Release for Protective Services and Provider Record Check form will be completed on each resource, or certified kinship/relative caregiver, including household members over age 18, at the time of recertification, after the initial submission.
- 4.8 The Authorization and Release for Protective Services and Provider Record Check completed form will be processed by BSS and returned to the employing agency.

## 5. Reporting and Documenting Protective Service Checks

This procedure refers to Child Protective Services (CPS) findings and protective services background checks for employment purposes only. Protective services background checks for resource and/or certified kinship/relative caregivers are not included in this procedure.

- 5.1 If a finding of child abuse and/or neglect is made and a petition for child abuse and/or neglect could be filed but the Bureau for Social Services (BSS) does not file a petition, all BSS records related to the finding are considered sealed one year after the finding is made and will not be reported or documented on a protective service background check.
  - 5.1.1 However, if the subject of the protective service background check has a second finding of child abuse and/or neglect within a one-year period following the initial finding, it will be reported and documented on the protective service background check.
  - 5.1.2 This does not apply to a person whom a finding of child abuse and/or neglect was made, but a petition cannot be filed pursuant to W. Va. Code §49-4-601, *et. seq.*
    - 5.1.2.1 A petition cannot be filed due to findings of child abuse and/or neglect made by the Institutional Investigative Unit (IIU). All findings of child abuse and/or neglect that are a result of an IIU investigation will be reported and documented on the protective service background check.
- 5.2 If a finding of child abuse and/or neglect is made by BSS on or after June 9, 2023, and a petition is filed with the circuit court and the court does not make a judicial determination that child abuse and/or neglect occurred, BSS must override the finding in PATH.
  - 5.2.1 BSS via the investigating county shall ensure that the decision is recorded within 60 days of the signed order.
  - 5.2.2 If it is discovered during a protective service background check that there was no judicial determination that child abuse and/or neglect occurred but an override was not completed in FACTS and/or PATH, all BSS records related to the finding are considered sealed and will not be reported or documented on a protective service background check.
    - 5.2.2.1 For findings made on or after June 9, 2023, the Protective Service Background Check Unit will notify the Program Manager of the investigating county if a petition was filed but no judicial determination of child abuse and/or neglect was made.

5.3 When a finding of child abuse and/or neglect is determined and a judicial determination of child abuse and/or neglect is made, a person may petition in the circuit court where they were found to be an abusive and/or neglectful parent or guardian to have the BSS's record(s) of his or her child abuse and/or neglect finding sealed after five years have elapsed since the finding of child abuse and/or neglect was made.

5.3.1 A petition to seal records may not be filed if the person has been the subject of another, separate finding of child abuse and/or neglect during the five years between the initial finding of child abuse and/or neglect and the filing of the petition.