

Criminal History Background Check

Bureau for Children and Families

Policy Manual

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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 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 all programs operated through the West Virginia Department of Health and Human Resources, and licensed, certified or approved Child Welfare agencies. These include, Adult Family Care, Adult Emergency Shelter Care, licensed or approved Child Placing agencies (adoption and foster care), licensed or approved Residential Child Care facilities, licensed or approved Child Care Centers, Family Child Care Facilities, registered Family Home Child Care providers, and any other program which utilizes providers for substitute care of a child or adult under the auspices of the Bureau for Children and Families. Each program operates under a set of policies or promulgated requirements 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 or requirements, as well as the Standard Operating Procedures OCFP-CAS-FBI Centers – 1.

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 **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.
- 2.4 **Department:** West Virginia Department of Health and Human Resources, and staff employed by the West Virginia Department of Health and Human Resources.
- 2.5 **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.
- 2.6 **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.
- 2.7 **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.
- 2.8 **Regulatory Specialist:** any Child Care Licensing Specialist, Child Care Regulatory Specialist, or Adult and Children's Home Finders.
- 2.9 **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.

- 2.10 **Incapacitated Person:** Any, person who by reason of physical, mental or other infirmity, is unable to physically carry on the daily activities of life necessary to sustaining life and reasonable health. (Note: Incompetence of an adult is determined by a legal proceeding and is not the same as a determination of incapacity. Similar definition of "incapacitated adult" is contained in §61-2-29 abuse or neglect of incapacitated adult or elder person regarding criminal penalties)

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) months which shows no conviction, may choose to provide the Department or Agency with a copy of their 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 For purposes of this policy, legally defined incapacitated persons living in the home of foster parents or child care providers are exempt from the CIB requirements.

4. Process for Conducting Criminal Background Record Checks and Reporting Criminal Charges

This policy and the background check procedure shall be discussed during the application process. Each Bureau for Children and Families' program must address the utilization of an applicant prior to notification from the CIB regarding

the applicant's criminal background. Agencies may use this policy as part of their personnel policies.

4.1 Initial Background Check

- 4.1.1 Applicants shall complete a signed Statement of Criminal Record (See Attachment A) which provides for a disclosure and authorization statement. Should the applicant indicate a conviction which is not confirmed by the CIB, the applicant's signed Statement of Criminal Record shall be considered true, unless the applicant is able to provide valid documentation to the contrary.
- 4.1.2 All applicants must complete a finger print card as described in Section 8.1.2 of this policy. The Statement of Criminal Record and the fingerprint card(s) are to be completed prior to the applicant's providing care.
- 4.1.3 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 to the household. The Statement of Criminal Record and fingerprint card on the new member must be completed within 30 days unless otherwise directed by program policy or rule.
- 4.1.4 A national criminal background check through the Federal Bureau of Investigation (FBI) 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 FBI check must be completed. The Department may conduct an FBI check on any applicant if given cause by a reliable source to believe a national check should be completed.
- 4.1.5 When a prospective employee resides in a bordering state and obtains employment with a West Virginia agency, an FBI 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, in which case a West Virginia State check will be conducted.
- 4.1.6 When an applicant resides outside of West Virginia, with no intention of entering West Virginia for employment or residence, an FBI 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, in which case a West Virginia State check will be conducted.

4.2 Subsequent Checks

An applicant 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. Foster parents must complete subsequent FBI checks at least every five (5) years. Other providers are not required to complete subsequent FBI checks.

4.3 Reporting Criminal Charges

An applicant shall report any criminal arrests, charges, or indictments to the facility or the Department within 24 hours. Any applicant 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 regulatory specialist 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 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 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.
- 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. The Department must be notified immediately to determine if a waiver is indicated.

8. Waiver

- 8.1 Submission Guidelines for Licensed Child Placing and Residential Child Care Agencies
- 8.1.1 If the applicant is a prospective employee of a Licensed Residential Child Care Agency or a prospective employee or prospective foster/adoptive parent of a Licensed Child Placing Agency, the waiver request is to be submitted by the Licensed Agency to the Licensing Specialist for that Agency.

- 8.2.1 The director of the Licensed Agency must submit a statement along with the waiver request indicating support for the waiver. The request will not be considered if the agency does not submit a statement of support.
- 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 14 working days of the completion of the Statement of Criminal Record, or within 14 working days of notification from the CIB, the applicant's state of residence or the FBI that there is a positive criminal record. A request submitted after 14 days may not be considered. A licensed or certified agency will be cited if the applicant remains employed or used as a provider without an approved waiver.

8.2 Submission Guidelines for local and regional department staff and licensed child care centers

- 8.2.1 A request for a waiver must be submitted by the individual in writing to the Department. Each program must designate the Department staff responsible for receiving the waiver request. For example, a family child care provider would submit the waiver request to the regional Child Care Regulatory Specialist responsible for registering and monitoring the provider. If the applicant is an employee or care provider of a licensed child care center the request is to be sent to the Child Care Center Licensing Specialist for that agency. The applicant should be advised to maintain a copy of the waiver request.
- 8.2.2 If the individual is an employee or care provider of a licensed or certified agency for child or adult care, the director of the agency must submit a statement indicating support for the waiver. The request will not be considered if the agency does not submit a statement of support.
- 8.2.3 The individual will be required to submit a waiver request with a statement of support from the licensed or certified agency although he/she may have had the same request approved while a staff member or care provider for another 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.

- 8.2.4 The waiver request must be submitted within 14 working days of the completion of the Statement of Criminal Record, or within 14 working days of notification from the CIB, the applicant's state of residence or the FBI that there is a positive criminal record. A request submitted after 14 days may not be considered. A licensed or certified agency will be cited if the applicant remains employed or used as a provider without an approved waiver.

8.3 Waiver Request

8.3.1 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.

8.3.2 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:

- 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.

8.4 Waiver Process

- 8.4.1 Upon the request for a waiver, it is the Department's responsibility to inquire about the applicant's or Licensed Agency's understanding of the waiver process. Requesting a waiver does not guarantee that a waiver will be approved. The Department staff may help organize and review the information for the waiver request. The Department may not share the information in the waiver request without the written authorization of the applicant.
- 8.4.2 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 policies.
 - A. The State Office CIB Committee will review waiver requests made by Licensed Child Placing and Residential Child Care Agencies. The Child Care Center Licensing Unit will review

waiver requests of applicants in a licensed Child Care Center.

- B. A determination must be made on the requests for residential child care facilities and Child Placing Agencies within 10 working days of receipt. A determination must be made for Child Care Providers within 30 days.
- C. When the local, regional or licensing review determines that a waiver should be approved, it must also be noted in FACTS.
- D. The staff person responsible for the facility record must inform the applicant or the Licensed Child Placing or Residential Child Care Agency in writing of the decision within five (5) working days.
- E. 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 insures 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.
- F. If the local, regional, or licensing reviewers determine that the waiver request should not be approved, the staff person responsible for the provider record must send written notice to the applicant or the Licensed Child Placing or Residential Child Care Agency within five (5) working days.

9. Submission and Notification Procedures

9.1 Submission Guidelines for Licensed Residential Child Care Agencies requires that these agencies submit all CIB/FBI checks directly to the West Virginia State Police. Submission will no longer be accepted through the Department. Reimbursement to the facilities for this service can be obtained via the cost reporting process. Agencies should contact the State Police office in South Charleston for supplies and submission criteria.

9.2 Forms Completion by Applicant

9.2.1 Each applicant submitting through the Department must complete and sign the "Statement of Criminal Record" form. This form provides the authorization for the background check and for the sharing of that information with the facility. A copy of the completed

form should be maintained until the original is returned for record keeping.

9.2.2 Each applicant submitting through the Department must provide fingerprints on a FD-258 stamped with the Department's O.R.I., and sign the Fingerprint Authorization Sticker, the WVSP #39A as a consent to the criminal history record check. Once the WVSP#39A is signed, it must be affixed to the back of the FD-258 on the left side of the margin. Fingerprinting is to be conducted by Department staff or, in the case of a licensed or certified facility, by a facility director or designee. Consult specific program policy for those persons required or approved to take fingerprints. An applicant is not to do the fingerprinting alone. The Department or facility may ask an applicant to have the fingerprints on the WVSP #39A or FD-258 completed by a local law enforcement agency.

9.2.3 Federal Bureau of Investigation Checks

Federal checks must be completed on cards with the ORI # pre-stamped. Do not use cards without the stamp. The Applicant shall complete the name, address, demographic information and signature. The CIB liaison should also sign the card, if not being submitted by a residential child care agency. Once fingerprints have been taken, the card should be photocopied, and printed with the FACTS ID#, county name, and name of where and to whom it should be returned. Do not place a sticker on the back of the FBI card, and do not write in any area marked "leave blank. Those areas are for FBI use only.

9.3 Forms Submission to the Department

9.3.1 Attach the original signed Statement of Criminal Record to the fingerprint card(s). Forms need to be submitted to the designated Department staff person according to program policy. Place the facility / FACTS number in the upper right hand corner of the Fingerprint Authorization Sticker, WVSP #39, and on the Statement of Criminal Record. Department staff is to complete required information in FACTS and submit the forms to:

West Virginia Department of Health and Human Resources
Children and Adult Services, Room 691
350 Capitol Street
Charleston, WV 25301-3704

Attn: Division of Administration

The Division of Administration personnel will enter required information into FACTS, do a search for previous submissions, and forward the FD-258 with the affixed Fingerprint Authorization Sticker, WVSP#39A, to the West Virginia State Police.

- 9.3.2 Licensed Child Placing agencies, with exception of Child Care Centers, may submit the Statement of Criminal record and the FD-258 with the affixed Fingerprint Authorization Sticker, WVSP # 39A, directly to Children and Adult Services, Division of Administration (as above) or, with the approval of Children and Adult Services, may submit the FD-258 with the affixed Fingerprint Authorization Sticker, WVSP # 39A, directly to the West Virginia State Police. All FBI checks must be submitted through the State Police, as well. The Department will not pay for those submissions made directly to the State Police.
- 9.4 The State Police will return a notice to Children and Adult Services regarding the criminal record history of the applicant, if submitted through the Department. The information returned is compared to the information listed on the Statement of Criminal Record. Child Placing agencies who submit checks for foster parents directly to the State Police must send the results of these checks to their licensing specialist, who will enter the results into FACTS.
- 9.5 The state police representative will return a notice to the licensed child welfare agency if the FD-258 with the affixed Fingerprint Authorization Sticker, WVSP # 39A was submitted by the agency directly to the State Police.
- 9.6 The Division of Administration will return the original Statement of Criminal Record, or a copy of the FD-258 Fingerprint card, with findings attached to Department staff or the director of the licensed or certified agency.
- 9.7 The applicant is to be informed by the Department staff or facility director if there is a positive criminal record. If the applicant disagrees with the information provided from the criminal record background check, he or she must contact the West Virginia State Police, Criminal Investigation Bureau or the Department of Justice regarding filing a statement to correct the information.
- 9.8 No other sources other than finger-print based checks will be accepted. Agencies may use electronic methods to obtain fingerprints, such as scanning. If an individual has sustained a disabling injury that makes

fingerprinting impossible, a name-based NCID must occur. The FBI and/or State Police must determine when individuals have sustained a disabling condition or other circumstance which makes rendering a finger print impossible. The State Police will then determine whether or not a manual background search is appropriate.

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 director of the hiring facility or a designee such as a human resources director, and the applicant. The applicant acknowledges by signing the Statement of Criminal Record that the information will be disclosed 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.