

**Department of Health and Human Services
Criminal Background Check Unit
Division of Child Development and Early Education**

Title: **Criminal Background Check Review Policy**

Current Effective Date: **September 7, 2016**

Original Effective Date: **November 1, 2007**

PURPOSE

To ensure the safety and well-being of children in licensed and regulated child care facilities in North Carolina, and in accordance with North Carolina Child Care Act, N.C.G.S. § 110-90.2, and the Child Care and Development Block Grant Act of 1990, 42 U.S.C. § 9858, sec. 658H, as amended (CCDBG), the Department of Health and Human Services (DHHS), Division of Child Development and Early Education (DCDEE), has set forth criminal offenses that have a bearing on a child care provider’s ability to care for children in North Carolina.

POLICY

This policy will identify crimes requiring mandatory disqualification of a child care provider and will identify some of the crimes for which DCDEE may disqualify a child care provider. This policy gives effect to N.C.G.S. § 110-90.2(b), which provides in relevant part, “The Department shall ensure that prior to employment and every three years thereafter, the criminal history of all child care providers is checked and a determination is made of the child care provider’s fitness to have responsibility for the safety and well-being of children based on the criminal history.”

This policy sets forth the procedure for review of an individual’s criminal history pursuant to N.C.G.S. § 110-90.2. **The list of crimes in this policy is not exhaustive. DCDEE may determine that a crime not listed in this document has a bearing on an individual’s fitness to care for children.**

This objective of this policy is:

1. To set forth agency procedures for processing criminal record check applications of a child care provider with relevant hits;
2. To set forth the offenses that require immediate disqualification;
3. To set forth the offenses that are subject to expedited review; and
4. To set forth some of the offenses listed in N.C.G.S. § 110-90.2(c) that must be considered for disqualification in determining if an applicant is qualified; and
5. To set forth the offenses requiring immediate disqualification pursuant to CCDBG.

DEFINITIONS

For the purpose of this specific DHHS, DCDEE policy, the proceeding terms are defined as the following:

1. **Criminal Offense:** Conviction(s), pending charge(s) or pending indictment(s) specified on a child care provider's criminal history.
2. **Relevant Hit:** Conviction(s), pending charge(s) or pending indictment(s) specified on a child care provider's criminal history that could affect a child care provider's ability to be employed in licensed or regulated child care or have residency in a family child care home, non-licensed home receiving subsidy or center in a residence in North Carolina.
3. **Internal Review Panel:** An independent body consisting of employees of the DCDEE charged with reviewing criminal histories and weighing the evidence and explanation of child care providers as it relates to their fitness to care for the safety and well-being of children.
4. **Request for Additional Information Letter:** A request for information in which the child care provider has 15 business days to submit information they wish the Internal Review Panel to consider before a final agency decision is rendered as to their fitness to care for the safety and well-being of children. Failure to respond to the letter within 15 business days will result in the child care provider being disqualified.
5. **DCDEE Management Representative:** An employee of the DCDEE who has responsibility for the supervision of people or programs within DCDEE.
6. **DUI/DWI:** Driving while under the influence or driving while intoxicated by either drugs (legal and/or illegal) and/or alcohol.
7. **Minor Traffic Offense:** A traffic offense that includes, but is not limited to, speeding tickets, seat belt violations, registration of the vehicle, and operational status of the vehicle. It does not include offenses such as DWI or DUI.

IMPLEMENTATION

Mandatory Disqualification Pursuant to N.C.G.S. § 110-90.2 and 42 U.S.C. § 9858, et seq.

The following require automatic and immediate disqualification of an individual:

- Pending charge or conviction of a misdemeanor or felony crime involving child neglect or child abuse;
- Pending charge or conviction of assault on a child under 12;
- Pending charge or conviction of contributing to the delinquency of a minor or juvenile;
- Pending charge or conviction of exposing a child to fire;
- Pending felony charge or conviction of:
 - Crimes against children, including child pornography
 - Murder

- Spousal abuse
- Crimes involving rape or sexual assault
- Kidnapping
- Arson
- Physical assault or battery
- Drug-related offense committed during the preceding 5 years;
- Pending violent misdemeanor or a conviction committed as an adult against a child, including child endangerment, sexual assault, or of a misdemeanor involving child pornography;
- Placement on any state's child abuse/neglect registry or adjudicated a responsible individual pursuant to N.C.G.S. § 7B-807(a1);
- Placement on the NC Child Maltreatment Registry pursuant to N.C.G.S. § 110-105.5(c);
- Registered or required to be registered on a state sex offender registry or repository or the National Sex Offender Registry (established by the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901, *et seq.*)), or convicted of a reportable conviction pursuant to N.C.G.S. § 14-208.6(4);
- Refusal to consent to a criminal history record check;
- Intentional falsification of any information required to be furnished to conduct a criminal history record check; or

NOTE: Failure to respond to request for additional information will result in the applicant's disqualification

Expedited Review Procedure

No request for additional information or the Internal Review Panel review is needed when:

- A DCDEE Regulatory Services management representative determines that an expedited review is required to protect the health, safety, or welfare of children; or
- A DCDEE Regulatory Services management representative determines an applicant is a habitually excessive user of alcohol, illegally uses narcotic or other impairing drugs, or is mentally or emotionally impaired to an extent that may be injurious to children. The DCDEE management representative shall consider the following factors, among other things, in determining the above:
 - DCDEE has received information that a child care provider is an excessive user of alcohol, illegally uses narcotics or other impairing drugs, or is mentally or emotionally impaired;
 - The provider has a pending misdemeanor drug related offense;
 - The provider has been convicted of a misdemeanor drug related offense within the last 3 years; or
 - The provider has two (2) or more DWI convictions and/or pending charges of DWI within the past three years.

Additional Crimes Requiring Further Information from Applicant

A. The following offenses require a request for additional information prior to Internal Review:

- Homicide, manslaughter GS Chapter 14, Article 6, Homicide
- Indecent exposure GS Chapter 14, Article 26, Offense...Public Morality
- Misdemeanor sexual assaults GS Chapter 14, Article 7B, Rape/Kindred Offense
- False imprisonment GS Chapter 14, Article 10, Kidnapping and Abduction
- Incest GS Chapter 14, Article 26, Offense...Public Morality

B. The following offenses require a request for additional information prior to Internal Review:

- Robbery GS Chapter 14, Article 17, Robbery
- Crimes against nature GS Chapter 14, Article 26, Offense...Public Morality
- Drugs (except felony less than 5 years) GS Chapter 90 Article 5, Controlled Substance Act
- Cruelty to animals GS Chapter 19A, Protection of Animals
- Riots GS Chapter 14, Article 36A, Riots and Civil Disorders
- Misdemeanor assaults GS Chapter 14, Article 8, Assaults
- Drug paraphernalia GS Chapter 90 Article 5, Controlled Substance Act
- DUI/DWI, 2 or more charges at any level GS Chapter 20, Section 138, Impaired Driving
- DUI/DWI, 1 charge at levels 1-3 GS Chapter 20, Section 138, Impaired Driving
- Prostitution GS Chapter 14, Article 27, Prostitution

Related to the above crimes, if all the conditions listed below are met, the applicant will be qualified.

1. The child care provider was not incarcerated for more than five (5) years; **and**
2. The child care provider has been fully discharged from imprisonment, probation or conditions of the conviction for 10 years at the time the background check is completed; **and**
3. The child care provider has not had any additional convictions or pending charges or indictments, other than a minor traffic offense.

C. The following offenses require a request for additional information prior to Internal Review:

- Simple Affray GS Chapter 14, Article 8, Assaults
- Misdemeanor Arson GS Chapter 14, Article 15, Arson and other Burnings

- Weapon offense GS Chapter 14, Article 35, Offense Against Public Peace
- Stalking GS Chapter 14, Article 35, Offense Against Public Peace
- Death by motor vehicle GS Chapter 20, Article 3, Motor Vehicle Act of 1937
- Breaking and/or entering GS Chapter 14, Article 14, Burglary and other Housebreakings
- Identity Theft GS Chapter 14, Article 19C, Identity Theft
- Embezzlement GS Chapter 14, Article 18, Embezzlement
- Obtaining property by false pretense GS Chapter 14, Article 19 False Pretense and Cheats
- ESC Fraud GS Chapter 96, Article 1, Definitions and Funds
- Food Stamp fraud GS Chapter 108A, Article 2, Programs of Public Assistance
- Medicaid fraud GS Chapter 108A, Article 2, Programs of Public Assistance
- Public assistance fraud GS Chapter 108A, Article 2, Programs of Public Assistance
- Forgery GS Chapter 14, Article 21, Forgery
- Uttering GS Chapter 14, Article 21, Forgery
- Felony Larceny GS Chapter 14, Article 16, Larceny
- Child Care Subsidy Fraud GS Chapter 110, Article 7, Child Care Facilities
- Bribery GS Chapter 99
- Slander GS Chapter 99
- Libel GS Chapter 99
- Other crimes involving fraud
- Probation violation (related to a relevant hit only) that occurs after the criminal history has been reviewed either upon initial employment or during the requalification process.

Related to the above crimes, if all the conditions listed are met, the applicant will be qualified.

1. The child care provider was not incarcerated for more than five (5) years; **and**
2. The child care provider has been fully discharged from imprisonment, probation or conditions of the conviction for 5 years at the time the background check is completed; **and**
3. The child care provider has not had any additional convictions or pending charges or indictments, other than a minor traffic offense.

DEMONSTRATION OF REHABILITATION

DCDEE is required to consider evidence of rehabilitation when reviewing an applicant's criminal history. With respect to rehabilitation, the following factors should be taken into consideration:

1. No additional convictions or pending charges or indictments, other than a minor traffic offense;
2. Documentation of successful completion of a recognized substance abuse program(s) (drug and/or alcohol);
3. Documentation from a trained substance abuse professional detailing a minimum of one (1) year of sustained sobriety after completion of all conditions of probation;
4. Documentation of successful completion of a recognized anger management, parenting or other behavior modification program(s);
5. Documentation of successful completion of all probation and/or parole conditions as ordered by the court system;
6. Documentation from the owner, director or individual in a position of management of a child care facility attesting to the applicant's moral character and work performance.

REAPPLY PROCESS

In accordance with NCGS 110-90.2(d), disqualified applicants have the right to appeal their disqualification by filing a civil lawsuit in district court within 60 days of receipt of the disqualification. It is DCDEE policy to also offer disqualified applicants the opportunity to reapply under certain conditions ("reapply process").

Disqualified applicants may request a review of their criminal history once every six (6) months after the original disqualification. The reapply process includes a review of the disqualified applicant's criminal background information. Applicants whose criminal history has changed, either through dismissal of charges or a favorable verdict, may reapply at any time after the change.

In accordance with the Federal Bureau of Investigation (FBI) best practice advisories, the panel charged with reviewing the disqualified applicant's file in the reapply process will be a secondary panel that was not involved in the decision that originally led to the applicant being disqualified.

PREVIOUSLY QUALIFIED APPLICANTS

If an individual who holds a current qualification letter receives a charge, indictment, or conviction, DCDEE will review their criminal history to determine if they should be disqualified based on those charges.

If an individual was previously qualified with relevant offenses other than those subject to mandatory disqualification, the individual will remain qualified so long as there are no new relevant offenses on the individual's history.

If DCDEE reviews a previously qualified individual's record that contains relevant offenses that were never previously reviewed by the DCDEE staff:

- A DCDEE manager will review misdemeanor convictions, voluntary leave (VL), or other pending dispositions will be dealt on a case by case basis to determine if the applicant can continue to be qualified. If the previously unreviewed relevant offenses could result in disqualification, the applicant's record will be reviewed under the Internal Review Panel process.
- A DCDEE manager will review felony convictions, voluntary leave (VL), or other pending dispositions on a case by case basis to determine if the qualification is able to be continued. If the qualification is unable to be continued, the applicant will be subject to the Internal Review Panel process.
- In no case will an applicant be qualified if the previously unreviewed relevant offense requires mandatory disqualification.