

1080 0.0 EMPLOYMENT DISQUALIFICATION: CRIMINAL & MALTREATMENT HISTORY CHECKS

1080.0.1 This establishes Department of Human Services (DHS) policy regarding criminal and maltreatment history checks for employees in designated positions in compliance with Ark. Code Ann. § 21-15-101 et. seq. It is applicable to all divisions and offices.

1080.0.2 DHS will employ and retain in designated positions only staff who successfully complete the formal process for Employee Criminal and Maltreatment History Checks as established in this policy.

1080.1.0 Severability

If any of the provisions of these procedures, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions hereof are declared severable.

1080.2.0 Immunity

Under Act 995 of 2001, individuals and state agencies are expressly immune from suit or liability for damages for acts or omissions, other than malicious acts or omissions, occurring in the performance of duties imposed by said Act.

1080.3.0 Definitions

As used in these procedures, the following definitions shall apply unless the text clearly indicates otherwise:

1080.3.1 Child: a person under the age of eighteen years

1080.3.2 Designated Position: a position in which a person is employed to provide care, supervision, treatment, or any other services to the elderly, mentally ill or developmentally disabled persons, to individuals with mental illnesses, or to children who reside in any state-operated facility, or a position in which the employee will have direct contact with a child

1080.3.3 Developmentally Disabled Person: persons with a disability which:

- A. is attributable to mental retardation, cerebral palsy, epilepsy, or autism
- B. is attributable to any other condition of a person found to be closely related to mental retardation, because it results in an impairment of general intellectual

functioning or adaptive behavior similar to those of mentally retarded persons or requires treatment and services similar to those required for such persons

C. is attributable to dyslexia resulting from a disability associated with mental retardation, cerebral palsy, epilepsy, or autism

1080.3.4 Direct Contact: the ability to interview, question, examine, interact with, talk with, or communicate with a child without being in the physical presence of a person other than the child

1080.3.5 Elderly: persons age sixty-five or older

1080.3.6 Employee: all employees of DHS working on a full or part-time basis

1080.3.7 Maltreatment History Central Registry Check: a review of the databases of the Child Maltreatment Central Registry, the Adult Abuse Central Registry and the Certified Nursing Assistant/Employment Clearance Registry

1080.3.8 Mentally Ill Persons: those who suffer from a substantial impairment of emotional processes, or of the ability to exercise conscious control of their actions, or the ability to perceive reality or to reason, when the impairment is manifested in instances of extremely abnormal behavior or extremely faulty perceptions

1080.3.9 National Criminal Record Check: a review of national criminal records maintained by the Federal Bureau of Investigation (FBI) based on fingerprint identification or other positive identification methods

1080.3.10 State Criminal Record Check: a review of state criminal records conducted by the Arkansas State Police (ASP)

1080.4.0 Applicable Offenses

DHS shall not knowingly employ or hire a person in a designated position who has been found guilty of or has pleaded guilty or nolo contendere to any of the offenses listed below in any court of the State of Arkansas or any similar offense in a federal court or court of another state.

1080.4.1 Capital murder, as prohibited by A.C.A. § 5-10-101

1080.4.2 Murder in the first degree and second degree, as prohibited in A.C.A. §§ 5-10-102 and 5-10-103

1080.4.3 Manslaughter, as prohibited in A.C.A. § 5-10-104

1080.4.4 Negligent homicide, as prohibited in A.C.A. § 5-10-105

- 1080.4.5 Kidnapping, as prohibited in A.C.A. § 5-11-102
- 1080.4.6 False imprisonment in the first degree, as prohibited in A.C.A. § 5-11-103
- 1080.4.7 Permanent detention or restraint, as prohibited in A.C.A. § 5-11-106
- 1080.4.8 Robbery, as prohibited in A.C.A. § 5-12-102
- 1080.4.9 Aggravated robbery, as prohibited in A.C.A. § 5-12-103
- 1080.4.10 Battery in the first degree as prohibited in A.C.A. § 5-13-201
- 1080.4.11 Aggravated assault, as prohibited in A.C.A. § 5-13-204
- 1080.4.12 Introduction of a controlled substance into the body of another person, as prohibited in A.C.A. § 5-13-210
- 1080.4.13 Terroristic threatening in the first degree, as prohibited in A.C.A. § 5-13-301
- 1080.4.14 Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in A.C.A. §§ 5-14-103 - 5-14-106
- 1080.4.15 Sexual abuse in the first degree and second degree, as prohibited in A.C.A. §§ 5-14-108 and 5-14-109
- 1080.4.16 Sexual solicitation of a child, as prohibited in A.C.A. § 5-14-110
- 1080.4.17 Violation of a minor in the first degree and second degree as prohibited in A.C.A. §§ 5-14-120 and 5-14-121
- 1080.4.18 Incest, as prohibited in A.C.A. § 5-26-202
- 1080.4.19 Offenses against the family, as prohibited in A.C.A. §§ 5-26-303 - 5-26-306
- 1080.4.20 Endangering the welfare of an incompetent person in the first degree, as prohibited in A.C.A. § 5-27-201
- 1080.4.21 Endangering the welfare of a minor in the first degree, as prohibited in A.C.A. § 5-27-203
- 1080.4.22 Permitting child abuse, as prohibited in subdivisions (a) (1) and (a) (3) of A.C.A. § 5-27-221
- 1080.4.23 Engaging children in sexually explicit conduct for use in visual or print media, transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or

consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in A.C.A. §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403

- 1080.4.24 Felony adult abuse, as prohibited by A.C.A. § 5-28-103
- 1080.4.25 Theft of property, as prohibited in A.C.A. § 5-36-103
- 1080.4.26 Theft by receiving, as prohibited in A.C.A. § 5-36-103
- 1080.4.27 Arson, as prohibited in A.C.A. § 5-38-301
- 1080.4.28 Burglary, as prohibited in A.C.A. § 5-39-201
- 1080.4.29 Felony violation of the Uniform Controlled Substances Act, as prohibited in A.C.A. § 5-64-401
- 1080.4.30 Promotion of prostitution in the first degree, as prohibited in A.C.A. § 5-70-104
- 1080.4.31 Stalking, as prohibited in A.C.A. § 5-71-229
- 1080.4.32 Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in A.C.A. §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection

1080.5.0 Identification of Designated Positions

Each division/office director will identify all Designated positions (as defined in 1080.3.3.) and report the information to the Office of Administrative Services, Human Resources/Support Services Section (OAS,HR/SS) at least annually. HR/SS will maintain a master list of the identified positions. Divisions/offices will ensure that functional job descriptions for all identified positions clearly reflect whether the position has responsibility for direct contact with children in an unsupervised setting.

1080.6.0 Requirement for Criminal and Maltreatment History Checks

All applicants selected for job offers in designated positions and all incumbent employees in such positions must immediately complete a DHS-1114, Criminal Record Check Form (9/97), and the appropriate Central Registry Check Forms as part of the hiring and employment process. Within five (5) days of the decision to hire an applicant, the hiring supervisor shall forward the criminal and central registry check forms to ASP and the central registries.

1080.7.0 Notification to Selected Applicants Prior to Job Offer

The hiring supervisor shall inform a selected applicant that hiring and continued employment are contingent upon the results of initial, periodic and random criminal and maltreatment record checks, and that the applicant has the right to obtain a copy of the reports from the registries.

1080.8.0 Notification to Incumbent Staff

1080.8.1 Division/office directors/designees shall inform all incumbent employees in designated positions that continued employment is contingent upon the results of periodic and random criminal and maltreatment record checks and that the employee has the right to obtain a copy of the reports.

1080.8.2 Employees in designated positions must immediately notify their supervisor when arrested for a prohibited offense and inform the supervisor regarding the outcome of the arrest.

1080.9.0 CRIMINAL RECORD CHECK

The DHS criminal record check process shall include a review of state records, and national records when applicable. Division/office directors or their designees will provide the DHS-1114 forms to applicants selected for a job offer and to incumbent staff for completion in a confidential manner, and will monitor their submission to and return from the ASP and, if appropriate, the FBI. If a national record check is required, the applicant must also complete an FBI fingerprint card at a duly authorized location. Divisions/offices may order the DHS-1114 forms through the DHS form supply system. Division/office directors must designate specific contact persons to receive and control the use of the DHS-1114, the uniquely coded FBI fingerprint cards, the resultant reports from both law enforcement agencies, and the resultant reports from both law enforcement agencies.

1080.10.0 Exemption from National Criminal Record Check

Only a state records check is required, if the hiring official can verify either of the following:

1080.10.1 Employment: The applicant has been employed by a state division/office in a position that includes, as part of the job description, direct contact with children, for 60 days continuously prior to the date of the application.

1080.10.2 Residence: The applicant has lived continuously in the State of Arkansas for the last five years.

NOTE: Examples of evidence that can be used to verify employment or residence are listed below. Copies of the verification must be maintained as part of the DHS central personnel record in cases where a “state only” records check was conducted:

- A. Employment records
- B. Payroll check stubs
- C. Tax records
- D. Rent/house payment records
- E. Utility bills
- F. School records, etc.

1080.11.0 CENTRAL REGISTRY CHECK

- 1080.11.1 Division/office directors or their designees shall have obtained central registry checks for all employees in designated positions by October 1, 2002.
- 1080.11.2 Division/office directors or their designees will provide the required central registry check forms to applicants selected for a job offer and to incumbent staff for completion in a confidential manner. The forms will be sent, as appropriate, to the Child Maltreatment Central Registry, the Adult Abuse Central Registry and the Certified Nursing Assistant/Employment Clearance Registry for a central registry check.

1080.12.0 Employment Disqualification

- 1080.12.1 Upon receipt of a completed criminal history report from the ASP, the division/office director will determine if an applicant or employee is disqualified from employment in affected positions based solely upon the record of applicable offenses. For employees who do not require a federal criminal record check, this will be the final determination. For those employees requiring a federal record check, this will be an initial determination. A final determination will be made when the results of the federal record check are received.
- 1080.12.2 If an applicant has been named as an offender or perpetrator in a true, substantiated, or founded report from a central registry check, the applicant shall be immediately disqualified.

1080.13.0 Mandatory Discharge

If an incumbent employee has been named as an offender or perpetrator in a true, substantiated, or founded report from a central registry check, the employee shall be immediately discharged.

1080.14.0 Police or Central Registry Record Considered Accurate

The **correctness** of the record as reported by the ASP, FBI or central registry will not be an issue for review under opportunity for Administrative Hearing. Any errors or omissions in the record must be addressed under procedures listed in Section 1080.16.0, Challenge to Criminal or Central Registry Record.

1080.15.0 Administrative Hearing

1080.15.1 The appropriateness of discharge as a remedy will not be an issue subject to review under opportunity for Administrative Hearing.

1080.15.2 In accordance with A.C.A. § 21-15-103 a person may request an administrative hearing regarding the results of the criminal history check. The purpose of the hearing will be to determine that the criminal hearing information received is that of the person requesting the hearing, not the criminal history of another person. Except for the identity of the offender, the deciding official has no authority to determine whether the criminal charges were proper or had merit, whether the person pleaded guilty or nolo contendere, to the charges, or whether the person was found guilty of the charges. Likewise, the deciding official is bound by the applicable laws, rules or both governing the person's continued employment.

1080.15.3 The request for a hearing must be made to the Division Director. The Division Director will designate a person to hear such cases. The employee will have the burden of proof. The hearing will be held within five days of the request and a decision will be issued within five days of the hearing. The employee will be on leave without pay until the matter is resolved. If the matter is resolved in the employee's favor, the employee shall be reinstated to the employee's former position or, if that position is no longer available, the first available position, equivalent to the position the employee held prior to discharge. The reinstatement will be without back pay or back benefits.

1080.16.0 Challenge to Criminal or Central Registry Record

A person may, as permitted by the enabling legislation of each registry, challenge the completeness or accuracy of criminal or maltreatment history information issued by the ASP/FBI/Central Registry. The division/office director shall make determinations based on the information obtained from the ASP/FBI/central registry and shall not be responsible for allegations regarding the disposition, expungement or accuracy of the information. The process for the applicant or employee to challenge the record is as follows:

1080.16.1 Any challenges to the accuracy or completeness of the criminal history report should be directed to the Arkansas State Police/State Identification Bureau (501) 618-8500, #1 State Police Plaza Drive, Little Rock, Arkansas 72209; or to the Federal Bureau of Investigation.

1080.16.2 Any challenges to the accuracy of the maltreatment report should be directed to the appropriate central registry.

1080.16.3 The criminal/maltreatment history information may be reviewed only by the subject, or the subject's attorney authorized in writing by the subject.

1080.16.4 If a registry corrects a report, a corrected report shall be promptly submitted to the requesting supervisor. If the division director/designee determines, based on the corrected report, that the incumbent should not be disqualified, the employee shall be reinstated to the employee's former position or, if that position is no longer available, the first available position, equivalent to the position the employee held prior to discharge. The reinstatement will be without backpay or back benefits. An applicant who is determined to have been disqualified due to an inaccurate or incomplete report shall be eligible for consideration for employment in future positions.

NOTE: Challenges to the records, requests for waivers, and appeals of disqualification are to be pursued simultaneously. The time frames for pursuing a method of recourse will not be held pending the outcome of any other method of recourse.

1080.17.0 Request for Waiver of Disqualification

1080.17.1 General Provisions: Determination of employment disqualification based on a person's criminal/maltreatment record check may be waived by the DHS Director upon request by:

- A. Supervisor or other managerial employee in the Department
- B. An affected applicant for employment
- C. An incumbent employee discharged or subject to discharge

1080.17.2 Factors to be Considered: Factors to be considered before granting a waiver shall include, but not be limited to, the following:

- A. The age at which the crime or act was committed
- B. The circumstances surrounding the crime or act
- C. The length of time since the crime or act occurred
- D. The person's subsequent work history
- E. The person's employment references
- F. The person's character references
- G. Any other evidence demonstrating that the person does not pose a threat to the health or safety of children, or other clients of the Department

1080.18.0 Waiver Procedure

- 1080.18.1 Upon receiving the notification of a determination of an employment disqualification from the division/office director or his/her designee, the hiring official shall advise the applicant or employee of the results. The documentation may be available for examination by the applicant, employee or authorized representative.
- 1080.18.2 Within five (5) days of the date of the determination of disqualification, the applicant or employee must submit a letter to the division director requesting a waiver of employment disqualification and attach any documents and statements as listed in Section 1080.16.2, "Factors to be Considered" to support a decision. Incumbent employees who have been convicted of one or more of the prohibited offenses may submit a waiver request and supporting documents with their Criminal Records Check Form, DHS-1114, or the appropriate central registry check form.
- 1080.18.3 The division director/designee(s) shall consider each application for a waiver to determine if mitigating circumstances existed at the time the crime or act was committed or whether the applicant has been substantially rehabilitated since that time. The decision shall be made solely from the documentation. The division director/designee(s) shall not be required to make an independent investigation of the applicant's allegations.
- 1080.18.4 Within five (5) days, the division director/designee shall review the documents and determine if the waiver should or should not be granted. The division director/designee shall provide Notice of Intent to Deny the Waiver to the applicant. The applicant may request a hearing within five (5) days of receipt of notice.
- 1080.18.5 The hearing and review shall be conducted by the division director/designee(s) within 10 calendar days of receiving the applicant's request for a hearing. The applicant or employee shall be given a notice of hearing including all information as specified in Ark. Code Ann. § 25-15-208(a)(2). The hearing will be conducted in the same manner as hearings under the Administrative Procedure Act Ark. Code Ann § 25-15-208 and Ark. Code Ann. § 25-15-213, but shall not be subject to judicial review under Ark. Code Ann. § 25-15-212. Incumbent employees who file a waiver request and supporting documents with their Criminal Records Check form, DHS-1114, or the appropriate central registry check form will be given the opportunity for an expedited hearing within 10 working days of a determination that the employee is disqualified.
- 1080.18.6 The applicant shall be notified in writing of the findings within three working days of the hearing.

- 1080.18.7 If the employment disqualification is waived, the division director/designee(s) may:
- A. Grant the waiver for the specific position originally applied for if still under recruitment
 - B. Grant the waiver for a specific class or series of classes within the division
- 1080.18.8 The above waivers must identify the specific position and/or classification(s) for which the waiver is granted.
- 1080.18.9 Any waiver granted under this section is specific to the position and/or classification identified. Separate waivers must be requested for employment in different divisions and non-waived classifications.
- 1080.18.10 Incumbent employees who are terminated under this policy and subsequently granted a waiver shall be reinstated to their former, or if filled, equivalent positions without backpay.
- 1080.18.11 If the employment disqualification is not waived, this agency decision is final.

1080.19.0 Eligibility to Apply for Alternate Position

The discharge of incumbents will be a non-disciplinary termination without prejudice and will not bar the employee from other employment with the division/office in non-designated positions.

1080.20.0 Confidentiality

All reports obtained under these regulations are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the ASP, the FBI, DHS and the person who is the subject of the report. The information contained in reports shall not be released or otherwise disclosed to any other person or division/office except by court order and is specifically exempt from disclosure under the Arkansas Freedom of Information Act (A.C.A. 25-19-101, et seq.).

1080.21.0 Record Retention

HR/SS shall maintain on file, subject to inspection by the Arkansas Crime Information Center and the ASP, evidence that criminal and maltreatment record checks have been initiated on all applicable employees and a copy of the determinations made by the division/office.

1080.22.0 Originating Section/Department Contact

Office of Administrative Services
Human Resources/Support Services Section
Policy and Administrative Program Management
P.O. Box 1437/Slot Number W403
Little Rock, AR 72203-1437
Telephone: 682-5835

Replacement Notation: This policy replaces DHS 1080 dated May 19, 2002