	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL	
	Chapter 13: Administration of Child Welfare	**Effective Date:** August 1, 2013
	Section 4: Evaluation of Background Checks for DCS Contractors	**Version:** 4

POLICY [REVISED]

The Indiana Department of Child Services (DCS) will evaluate all Fingerprint-Based National Criminal History Checks (Fingerprint-Based Checks) on all DCS Contractors. The DCS Contractor will evaluate the remaining background checks. See separate policy 13.3 Conducting Background Checks for DCS Contractors.

Fingerprint-Based Checks
The DCS Central Office Background Check Unit (COBCU) will evaluate the results and notify the contractor by e-mailing the Fingerprint-Based Check Status Letter.

The COBCU will conditionally disqualify all persons whose criminal history is incomplete and requires further verification.

> **Note**: The subject of the check will remain in a conditionally disqualified status until the subject provides the COBCU with a copy of required verification of charges, including but not limited to court orders showing disposition and level of conviction, court order showing dismissal and/or arrest reports. Upon receipt of all necessary verifications, COBCU will reevaluate the status and issue an amended Fingerprint-Based Check Status Letter to the assigned contractor's contact person by e-mail.

The COBCU will disqualify all persons whose criminal history report includes the following, although some may be eligible to file for a waiver (see section on Waivers):

1. Any misdemeanor related to the health and/or safety of a child;
2. Any felony;
3. Four (4) or more misdemeanor convictions; and/or
4. **[REVISED]** A juvenile adjudication for an act that if committed by an adult would be one of the 21 felonies listed in the Waivers section below.

The COBCU will qualify all persons whose Fingerprint-Based Check Report has no criminal history or reflects arrests and/or convictions that do not result in a conditionally disqualified or disqualified status.

Child Protection Services (CPS) History Checks
The contractor will review the completed CPS History Check results from Indiana, and if applicable, all other states of residency within the past five (5) years and determine if there are reports of any substantiations of child abuse and/or neglect for the subject of

the check. If there is substantiated CPS history in Indiana or the equivalent in another state, a Waiver is required. See section on Waivers.

Sex Offender Registry Checks
The contractor will evaluate the Sex Offender Registry Checks to determine if there are any matches. If there is a match, the subject of the check cannot be employed or volunteer for the contractor; notify the COBCU immediately. The COBCU will re-evaluate the Fingerprint-Based Check criminal history report.

Local Law Enforcement Agency (LEA) History Checks
When completed, the contractor will evaluate the results of the LEA Records Checks. If there is a felony, four (4) or more misdemeanors, or a misdemeanor that relates to the health and safety of a child, the contractor or designee will contact the COBCU immediately. The COBCU will cross-reference the LEA Records Check with the Fingerprint-Based Check History Report to assure the LEA Records Check results do not alter the Fingerprint-Based Check Status. If the contractor believes the LEA Records Check report may alter the status of the Fingerprint-Based Check Report, the contractor will contact the consultant that is listed on the Fingerprint-Based Check Status Letter for further action.

Waivers
COBCU will accept a request for a waiver of disqualified juvenile history or of substantiated CPS history. COBCU will also accept a waiver request for disqualifying criminal history if the subject of the check has not been convicted of a misdemeanor related to the health and safety of a child or has not been convicted of any of the felonies listed below:

1. Murder (IC 35-42-1-1);
2. Causing suicide (IC 35-42-1-2);
3. Assisting suicide (IC 35-42-1-2.5);
4. Voluntary manslaughter (IC 35-42-1-3);
5. Reckless homicide (IC 35-42-1-5);
6. Battery (IC 35-42-2-1) within the last five (5) years;
7. Domestic battery (IC 35-42-2-1.3);
8. Aggravated battery (IC 35-42-2-1.5);
9. Kidnapping (IC 35-42-3-2);
10. Criminal confinement (IC 35-42-3-3) within the last five (5) years;
11. A felony sex offense under (IC 35-42-4);
12. Carjacking (IC 35-42-5-2) within the last five (5) years;
13. Arson Class (IC 35-43-1-1) within the last five (5) years;
14. Incest (IC 35-46-1-3);
15. Neglect of a dependent (IC 35-46-1-4(a)(1)) and (IC 35-46-1-4(a)(2));
16. Child selling (IC 35-46-1-4(d));
17. **[NEW]** Operating a vehicle while intoxicated (IC 9-30-5) within the last five (5) years;
18. A felony involving a weapon within the last five (5) years under (IC 35-47) or (IC 35-47.5);

19. A felony relating to controlled substances within the last five (5) years under (IC 35-48-4);
20. An offense relating to material or a performance that is harmful to minors or obscene under (IC 35-49-3); and/or
21. A felony that is equivalent to a felony listed in subdivisions one (1) through (19) for which the conviction was entered in another state.

The contractor will immediately remove the subject of the check from the schedule to work if the background check subsequently reveals:

1. Disqualified history or substantiated CPS history that is not waived by DCS; or
2. Disqualified history or substantiated CPS history where a waiver is not being actively pursued.

Code References

1. IC 10-13-3-38.5 Conducting Fingerprint Criminal History Checks for Contractors
2. IC 10-13-3-27 Disclosure of State Limited Criminal History Information
3. IC 9-30-5: Operating a Vehicle While Intoxicated

PROCEDURE

DCS Division responsible for the contract will ensure that the contractor completes the following steps.

1. For a Fingerprint-Based Check, review the results letter received from COBCU. Where the status of the Fingerprint-Based Check results are either conditionally disqualified or disqualified;
    a. Provide a copy of the Fingerprint-Based Check Status Letter to the subject of the check,
    b. If disqualified, instruct the subject of the check to contact the COBCU Consultant listed on the Fingerprint-Based Check Status Letter to determine if the subject of the check is eligible to apply for a Waiver. If eligible and the DCS Contractor supports the Waiver, instruct the subject of the check that a request for a Waiver must be submitted to the COBCU within 10 days of the date of the Fingerprint-Based Check Status Letter, (See # 5 below regarding applying for a Waiver), or
    c. If conditionally disqualified, instruct the subject of the check to contact the COBCU Consultant listed on the Fingerprint-Based Check Status Letter within 10 days of the date of the results letter. Provide the requested documentation to the COBCU consultant. Upon reevaluation, if the status is disqualified refer to “b” above.

2. Review the results of the CPS History Check;
    a. If a substantiated CPS history is discovered, the DCS Contractor will give the subject of the check a copy of the completed Indiana Request for a Child Protection Services (CPS) History Check

(SF52802/CW2128) form showing substantiated history or any comparable results from another state. See separate policy, 2.6 Sharing of Confidential Information, and

b. A request for a Waiver should be filed within 10 days of receiving the CPS history. (See Waiver section below.) The request for the waiver must be granted for the employee or volunteer to be employed or volunteer as part of the DCS contractor. If already hired or volunteering, remove from the work schedule immediately.

3. Review the results of the Sex Offender Registry Check for a match to the subject of the check. If there a match for the subject of the check, do not hire or allow the subject to volunteer. If already employed or volunteering, then remove the subject of the check from the schedule immediately;
4. Review the results of the LEA Record Checks and contact COBCU within five (5) days of the check for further evaluation if there is a felony, four (4) or more misdemeanors, or a misdemeanor that relates to the health and safety of a child. At any time the DCS Contractor believes the LEA Record Check report may alter the status of the Fingerprint-Based Check, the DCS Contractor will contact the COBCU Consultant that is listed on the Fingerprint-Based Check Status Letter for further action;
5. To request a Waiver of disqualified criminal history and/or substantiated CPS history submit to the COBCU by fax at 317-234-4633 or scan/e-mail at background.checkunit@dcs.in.gov:
   a. A signed letter from the subject of the check explaining in detail the situation involving the substantiation or criminal act and addressing:
      1. The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect;
      2. The severity of the offense or abuse or neglect, including jail or prison time served and whether they are currently on probation or parole; and
      3. Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

   b. A signed letter on the DCS Contractor's letterhead or email from the Executive Director, or Human Resource Director explaining:
      1. His or her observation of the subject of the check;
      2. The reasons he or she supports or does not support the waiver request;
      3. If the subject is currently employed, volunteering or being considered for future work; and
      4. If a waiver has been applied for and granted in the past.

   c. The Indiana Request for a Child Protection Service History (CPS) History Check (SF52802). If substantiation of abuse and/or neglect is found, there must be a print out the 311. Also if the subject has

resided outside the state of Indiana in the past five (5) years, the other state's CPS search results must also be submitted.

d. A screen print of the completed Sex Offender Registry Check from the required National Sex Offender website,
e. A copy of the written results for all LEA checks, if applicable, and
f. A copy of the fingerprint based status letter which was e-mailed to the contractor, if requesting a CPS waiver only. This is required for checks completed for the purpose of contractor employment or contractor volunteer showing the fingerprint based status of qualified.

6. Place a copy of the results for all background checks and any waiver letters in the employee or volunteer's personnel file;

Note: A criminal history or CPS waiver granted for the purpose of employment or volunteering with a DCS contractor may not be used for any additional purpose. A new waiver request must be submitted and granted for each additional purpose.

The DCS COBCU will:

1. Evaluate the fingerprint-based check report within five (5) business days of receipt and notify by e-mail the assigned contractor's contact person regarding the clearance status;
2. If conditionally disqualified or disqualified, provide guidance, reevaluate history based on the received documentation, and issue a new Fingerprint-Based Check Status Letter, when applicable.
3. For waivers of disqualified criminal history and substantiated CPS history;
   a. Upon receipt of the complete waiver request packet, the COBCU will summarize, make a recommendation, and submit the request to the Deputy Director of Placement Support and Compliance or designee;
   b. Deputy Director of Placement Support and Compliance or designee will submit the recommendation to the Background Check Team for a joint decision;

Note: The Background Check Review Team is made up of the DCS Local Office Director (LOD) and Regional Manager located in the county/region in which the contractor is/will be located, the Deputy Director of Services and Outcomes or designee, and the Deputy Director of Placement Support and Compliance or designee. The team decision may be made via phone or email.

   c. Notify by email the assigned contractor's contact person of the waiver decision. A decision will be returned in approximately 10 business days and the status will be either "waiver granted" or "waiver not granted".

4. For Exception to Fingerprint request, when the exception is granted, generate the LCH and notify by e-mail the assigned contractor's contact person regarding the granted status.

PRACTICE GUIDANCE

N/A

FORMS AND TOOLS

N/A

RELATED INFORMATION

Factors for the Contractor and Background Check Review Team to Consider when Recommending and/or Approving the Background Check Waivers
Information yielded on all background checks should be considered, including but not limited to the following:

1. The length of time that has passed since the conviction, juvenile adjudication, or child abuse and/or neglect substantiation;
2. The severity of the offense; and
3. Evidence of the person's rehabilitation.

Disclosing National Criminal History Check Information
Neither the contractor nor the subject of the check shall receive a copy of the official criminal history transcript that contains criminal history reported by the Federal Bureau of Investigation (FBI) and the Indiana State Police (ISP). DCS may verbally disclose the specific crimes to the subject of the check. If any of the checks conducted by DCS reveal an inaccurate record, the subject of the check may formally challenge the record. A Review Challenge of inaccurate information must be made to the law enforcement agency that posted the record. To refute inaccurate Indiana criminal history records or information, please request a Review Challenge from Indiana State Police (ISP).

Disqualified Fingerprint Status
Disqualified status means that the subject of the check is ineligible unless a waiver is granted, to be an employee, volunteer and/or intern, including a subcontractor, who have or will have electronic or physical access to children's records, or direct contact with children on a regular and continuing basis or any contact when a child(ren) is/are alone or only with the contractor's staff in connection with performance of any services or activities pursuant to a contract with DCS ("Covered Personnel").

Conditionally Disqualified Fingerprint Status
Conditionally Disqualified status means that the subject of the check is ineligible until the conditionally disqualifying arrest or conviction is resolved and the status is changed

to Qualified (or the status is changed to Disqualified and a Waiver is subsequently granted) to be Covered Personnel.

Examples of reported information on a Fingerprint-Based Check Report that will lead to a conditional disqualification include but are not limited to an arrest without a disposition, a conviction without the level of the conviction being a misdemeanor or a felony, or a conviction where additional information on the circumstances of the arrest and conviction are required.

Qualified Fingerprint Status
Qualified fingerprint status means that the subject of the check is eligible to be Covered Personnel, as long as the subject of the check passes all other background checks.