

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 13:</b> Licensed Residential Facilities and Child Placing Agency	<b>Effective Date:</b> July 1, 2014
	<b>Section 2:</b> Evaluation of Background Checks for Licensed Residential Facilities and Child Placing Agency	<b>Version:</b> 4

**POLICY [REVISED]**

The Indiana Department of Child Services (DCS) will evaluate all Fingerprint-Based National Criminal History Checks (Fingerprint-Based Checks) on all required persons for the purpose of licensing Residential Facilities and Child Placing Agencies (referred to collectively as “DCS-licensed agencies”). The DCS-licensed agency will evaluate the remaining background checks (see separate policy, [13.1 Conducting Background Checks for Licensed Residential Facilities and Child Placing Agency](#)).

**Fingerprint-Based Checks**

The DCS Central Office Background Check Unit (COBCU) will evaluate the results and notify the assigned DCS-licensed agency contact person via e-mail of the Fingerprint-Based Check status.

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 the required verification of charges, including, but not limited to: court orders showing disposition and level of conviction, a court order showing dismissal, and/or arrest reports. Upon receipt of all necessary verifications, the COBCU will reevaluate the status and issue an amended Fingerprint-Based Check Status Letter to the assigned DCS-licensed agency 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; or
4. A juvenile adjudication for an act that if committed by an adult would be one (1) of the 20 felonies listed in the waiver 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 History Check (CPS History Check)**

The DCS-licensed agency will review the completed CPS history 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 a substantiated CPS history in Indiana or the equivalent in another state, a waiver is required for consideration of employment and/or volunteering (see section on [Waivers](#)).

### **Sex Offender Registry Check**

The DCS-licensed agency 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 facility. Notify the COBCU immediately, and the COBCU will reevaluate the Fingerprint-Based Check Report.

### **Law Enforcement Agency (LEA) Record Checks**

When completed the DCS-licensed agency 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 DCS-licensed agency will contact the COBCU immediately. The COBCU will cross-reference the LEA Record Check with the Fingerprint-Based Check History Report to ensure the LEA Records Check do not alter the Fingerprint-Based Check Status. At anytime the DCS-licensed agency believes the LEA Record Check may alter the status of the Fingerprint-Based Check Report, the DCS-licensed agency will contact the COBCU Consultant that is listed on the Fingerprint-Based Check Status Letter for further action.

### **[REVISED] Waivers**

Upon receipt of the positive written recommendation of support for employment and/or volunteering from the DCS licensed agency Executive Director or HR Director, COBCU will accept a request for a waiver of disqualified juvenile history or of substantiated CPS history. COBCU will also accept a waiver of disqualifying criminal history if the subject of the check has not been convicted, or is pending conviction, 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; prior to its repeal
13. [Arson \(IC 35-43-1-1\)](#) 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. [Operating a vehicle while intoxicated \(IC 9-30-5\)](#) within the last five (5) years;
18. **[REVISED]** A felony involving a weapon ([IC 35-47](#)) or ([IC 35-47.5](#)) within the last five (5) years;
19. **[REVISED]** A felony offense relating to controlled substances ([IC 35-48-4](#)) within the last five (5) years;
20. **[REVISED]** A felony offense relating to obscenity or pornography [IC 35-49-3](#); obscene under;
21. **[NEW]** [Attempt \(IC 35-41-5-1\)](#) in combination with any of the above listed felonies; and/or

22. **[REVISED]** A felony that is equivalent to a felony listed in subdivisions (1) through (21) for which the conviction was entered in another state.

The DCS-licensed agency will immediately remove the subject of the check from the work schedule 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 31-27-3-3: Apply for licenses; criminal history checks](#)
2. [IC 31-27-3-5: Grounds for denial of license applications; waiver](#)
3. [IC 31-27-5-4: Apply for licenses; criminal history checks](#)
4. [IC 31-27-5-6: Grounds for denial of license applications; waiver](#)
5. [IC 31-27-6-2: Apply for licenses; criminal history checks](#)
6. [IC 31-27-6-3: Grounds for denial of license applications; waiver](#)

<b>PROCEDURE</b>
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DCS Residential Licensing staff will ensure that the DCS-licensed agency completes the following steps:

1. For a Fingerprint-Based Check, review the results letter received from COBCU. Where the Fingerprint-Based Check Status is conditionally disqualified or disqualified status;
  - 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-licensed agency 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 date of the Fingerprint-Based Check Status Letter (see #5 below regarding applying for a waiver ), and
  - 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-licensed agency will give the subject of the check a copy of the completed Indiana [Request for Child Protection Service \(CPS\) History Check \(SF52802\)](#) form showing substantiated history (see separate policy, [2.6 Sharing of Confidential Information](#)), and
  - b. File a request for a Waiver within 10 days of receiving the CPS history at initial licensing, relicensure, or hiring (see Waivers section below). The request for the waiver must be granted otherwise the employee or volunteering cannot be hired or volunteer in the DCS-licensed agency. If already hired or volunteering, remove the subject of the check from the 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 at the facility. 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-licensed agency believes the LEA Record Check report may alter the Fingerprint-Based Check Status, the DCS-licensed agency will contact the COBCU Consultant that is listed on the Fingerprint-Based Check Status Letter for further action;
5. To request a Waiver of a 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](mailto: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 of 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 letterhead or e-mail from the DCS-licensed agency's Executive Director or HR director explaining their observations of the subject of the check as well as the reasons he/she does or does not support the Waiver request. Also submit copies of all other background checks (CPS History Check, Sex Offender Registry Check, Fingerprint-Based Check Status Letter, and LEA Records Check).

**Note:** DCS will not require a new CPS Waiver annually unless a new substantiation is discovered.

6. Place a copy of the results documents 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 in a DCS-licensed agency 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 DCS-licensed agency's contact person regarding the Fingerprint-Based Check Status;
2. If either 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 waiver request letter from the subject of the check and the DCS-licensed agency's Executive Director or HR director, the COBCU will summarize, make a recommendation, and submit the request to the Deputy General Counsel over COBCU, or designee,
  - b. Deputy General Counsel over COBCU 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 and Regional Manager located in the county/region in which the facility is/will be located, and the Deputy General Counsel over COBCU and Residential Licensing or designee. The team decision may be made via phone or e-mail.

- c. Notify, by e-mail, the DCS-licensed agency's assigned contact person of the waiver decision. A decision will be returned in approximately 10 working 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 Indiana Limited Criminal History (LCH) check and collect any other state's non-fingerprint based checks from the DCS-licensed agency, evaluate and notify by e-mail the DCS-licensed agency assigned contact person regarding the status.

#### **PRACTICE GUIDANCE**

N/A

#### **FORMS AND TOOLS**

[Request for Child Protection Service \(CPS\) History Check \(SF52802\)](#)

#### **RELATED INFORMATION**

##### **Factors for the DCS-licensed agency 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 CA/N substantiation;
2. The severity of the offense, and/or
3. Evidence of the person's rehabilitation.

##### **Disclosing Fingerprint-Based Check Information**

Neither the facility 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 ISP.

##### **Disqualified Fingerprint Status**

Disqualified status means that unless a Waiver is granted the subject of the check is ineligible to be a(n):

1. Applicant for a license;
2. Manager of a DCS-licensed agency; or
3. Employee, volunteer and/or intern in DCS-licensed agency if the employee/volunteer/intern has or will have direct contact, on a regular and continuing

basis, with child(ren) who are or will be under the direct supervision of the DCS-licensed agency.

### **Conditionally Disqualified Fingerprint Status**

Conditionally Disqualified status means that 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), the subject of the check is ineligible to be a(n):

1. Applicant for a license;
2. Manager of a DCS licensed agency; or
3. Employee, volunteer, and/or intern in DCS-licensed agency if the employee/volunteer/intern has or will have direct contact, on a regular and continuing basis, with child(ren) who are or will be under the direct supervision of the DCS-licensed agency.

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 an applicant for a license, a facility manager, or an employee, volunteer and/or intern in DCS licensed agency if the employee/volunteer/intern has or will have direct contact, on a regular and continuing basis, with child(ren) who are or will be under the direct supervision of the agency, as long as the subject of the check passes all other background checks.