

**STATE OF RHODE ISLAND  
DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES**

**PUBLIC NOTICE OF PROPOSED RULE-MAKING**

In accordance with Rhode Island General Law (RIGL) 42-35 and 42-72-5, notice is hereby given that the Department of Children, Youth and Families proposes to amend the following DCYF rule:

**Criminal Record Background Checks**

This amended rule reflects statutory changes made by the General Assembly with regard to where application is made by individuals required to have criminal record background checks and also requires all prospective employees of the Department of Children, Youth and Families to have such checks. In the amendment of this rule, consideration was given to the following: (1) alternative approaches and (2) overlap or duplication with other statutory and regulatory provisions. No alternative approach or duplication or overlap was identified based upon available information.

This amended rule is accessible on the DCYF website (<http://www.dcyf.ri.gov>) or the R.I. Secretary of State's website (<http://www.sec.state.ri.us/ProposedRules/>). Interested persons may submit written comments by April 2, 2012 to Susan Bowler, Implementation Director for Policy and Programs, Department of Children, Youth and Families, 101 Friendship Street, Providence, RI 02903 ([Susan.Bowler@dcyf.ri.gov](mailto:Susan.Bowler@dcyf.ri.gov)).

In accordance with RIGL 42-35-3, an oral hearing will be granted if requested by twenty-five (25) persons, by an agency or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within thirty (30) days of this notice.

# Criminal Record BackgroundRecords Check(s)

Rhode Island Department of Children, Youth and Families

Policy: 900.0040

Effective Date: January 9, 2006

Revised Date: ~~November 16, 2009~~2012

Version: 23

To ensure appropriate safeguards, state and federal law mandates criminal record background checks for many individuals who provide care to children and youth. The Department of Children, Youth and Families (the Department), is both authorized and required to promulgate rules to implement state and federal law. **Related Procedures** provide detailed direction regarding who is required to submit to statewide and/or nationwide criminal record background check(s), the process for securing these checks and disqualifying information that may be reported as a consequence of the check(s). For the purpose of this policy, a nationwide criminal record background check always includes the taking of fingerprints. An individual subject to a criminal record background check may also be required to undergo an employment background check and/or a clearance for substantiated allegations of child abuse and neglect. Refer to DCYF Policy 900.0035, Employment Background Checks Facility Operators/Facility Employees and DCYF Policy 700.0105, Clearance of Agency Activity. An individual who has an adverse decision as a result of information discovered is entitled to appeal in accordance with the Administrative Procedures Act and DCYF Policy 100.0055, Complaints and Hearings. ~~Statewide and nationwide, including fingerprinting, Criminal~~criminal background checks are required for the following individuals in accordance with Federal and State law and Department policy:

- ~~• Prospective foster parents, including prospective visiting resources for children receiving DCYF Department services, and household members, age eighteen (18) 18 or over~~
- ~~• Prospective adoptive parents and household members age eighteen (18) 18 or over~~
- ~~• Prospective legal guardians and household members age eighteen (18) 18 or over~~
  - ~~• Prospective residential child care facility operators~~
- ~~• Prospective residential child care facility employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees~~
  - ~~• Prospective child care center and family child care home owners and operators~~
  - ~~• Prospective child care center and family child care home employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees~~
  - ~~• Prospective child placing agency owners and operators~~
  - ~~• Prospective child placing agency employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees~~
  - ~~• Prospective operators and employees, applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees, of community based programs, which are required to be licensed or certified by the Department~~
- ~~• Prospective Rhode Island Training School Department employees, volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees~~

~~Statewide criminal background checks are required for the following individuals:~~

~~Prospective Department volunteers and consultants if the individuals are applying for positions that involve supervisory or disciplinary power or involve routine contact with a child or children without the presence of other employees~~

- ~~Family child care home household members, age eighteen (18) or 18 or older over~~
- ~~Respite care providers~~
  - ~~All DCYF employees, interns and volunteers (other than Training School, who require fingerprinting)~~

Statewide criminal background checks may be required for the following individuals:

- ~~Subjects of reports of child abuse and/or neglect to the Call Floor~~
- ~~Individuals referred to the Department for services and all adult household members~~
- ~~Persons who have contact with children receiving DCYF services from the Department~~

The following Federal and State statutes apply:

<del>The Adam Walsh Child Protection and Safety Act of 2006</del>
<del>The Adoption and Safe Families Act (ASFA)</del>
<del>The Child Abuse Prevention and Treatment Act (CAPTA)</del>
<del>The Fostering Connections to Success and Increasing Adoptions Act of 2008</del>
<del>The National Child Protection Act of 1993</del>
<del>RIGL 14-1-34</del>
<del>RIGL 15-7-11</del>
<del>RIGL 40-13</del>
<del>RIGL 42-35-9 and 42-35-15</del>

An individual subject to a criminal records check may also be required to undergo an employment background check (refer to ~~DCYF Policy 900.0035, Employment Background Checks Facility Operators/Facility Employees~~; and/or a clearance for substantiated allegations of child abuse and neglect (refer to ~~DCYF Policy 700.0105, Clearance of Agency Activity~~).

~~require clearances Adam Walsh Child Protection and Safety Act of 2006 (PL 109-248) Fostering Connections to Success and Increasing Adoptions Act of 2008, (Public Law 110-351) RIGL 15-7-11 Investigation and report as to adoptive home. RIGL 40-11-13 Confidentiality of reports and records — Penalty for disclosure. RIGL 40-13.2 Certification of Child Care and Youth Serving Agency Workers RIGL 40-13.2-2 Qualification for childcare employment. RIGL 40-13.2-3.1 CANTS (Child Abuse and Neglect Tracking System) check — Operators — and employees. RIGL 40-13.2-7 Rules and regulations. RIGL 42-72.1-3 Powers and scope of activities. RIGL 42-72-8 Confidentiality of records. The National Child Protection Act of 1993 [42 U.S.C. 5119] (a) authorizes nationwide criminal records checks to determine if a child care provider has been convicted of a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children.~~

- ~~The Child Abuse Prevention and Treatment Act (CAPTA) requires criminal background checks for all prospective foster and adoptive parents and other adults living in the household regardless of the funding source for the child's placement.~~

- ~~The Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248) requires a nationwide fingerprint-based check of the national crime information databases (NCID) for prospective foster and adoptive parents. The results must be received before the foster or adoptive caretaker may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child. This Act also allows DCYF Child Protective Services administrative staff who meet security and training standards established by the U.S. Attorney General to access these databases electronically only in investigating or responding to reports of child abuse, neglect or exploitation.~~
- ~~The Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law (P.L.) 110-351, requires the Department to complete criminal records checks, including fingerprint-based checks of national crime information databases on any relative guardian before the relative guardian may receive Title IV-E kinship guardianship assistance payments on behalf of the child.~~
- ~~Federal Law [42 U.S.C. 671] (a) (20) and Regulation [45 CFR 1356.30] relating to the Adoption and Safe Families Act (ASFA) require that the Department cannot approve or license an adoptive home or a foster home if the prospective foster or adoptive parent has been convicted of a felony involving child abuse or neglect, spousal abuse, a crime against a child or children (including child pornography) or a crime involving violence, including rape, sexual assault or homicide. Further, the Department cannot approve or license an adoptive parent or a foster parent who has, within the last five years, been convicted of a felony involving physical assault, battery or a drug-related offense.~~
- ~~Rhode Island General Law (RIGL) 14-1-34 requires prospective foster parent to undergo a statewide and nationwide criminal records check. The nationwide criminal records check will be provided to the foster care applicant without charge.~~
- ~~RIGL 15-7-11 requires prospective adoptive parent to undergo a statewide and nationwide criminal records check. The results are included in the adoption home study report submitted to the Family Court. The Department or the private child placing agency conducting the home study is responsible for all costs relating to the criminal checks.~~
- ~~RIGL 40-13.2-4 requires that any person seeking to operate a facility which is required to be licensed or registered with the Department shall undergo a nationwide criminal records check.~~
- ~~RIGL 40-13.2-5 requires that any person seeking employment in any facility which is required to be licensed or registered with the Department or seeking employment at the RI Training School if that employment involves supervisory or disciplinary power over a child or children or involves routine contact with a child or children without the presence of other employees shall undergo a nationwide criminal records check. The nationwide criminal records check will be provided to the applicant for employment without charge.~~

~~The Department has established, in compliance with RIGL 40-13.2, a listing of criminal activity (refer to the attached Criminal Records Checks Addendum, Disqualifying Information) which constitutes disqualifying information because that information would indicate that the employment could endanger the health or welfare of a child or children. The arrest and conviction or arrest pending disposition for one of the criminal offenses included in the Criminal Records Checks Addendum disqualifies an applicant from operating or seeking employment in a child care facility, receiving a license or certification to provide care for a child, receiving approval as an adoptive parent, seeking employment at the RI Training School or serving in any other role subject to a criminal background check in accordance with federal and/or state law or DCYF Department policy. For purposes of this protocol, "conviction" means a judgment of conviction entered by a~~

~~court subsequent to a finding of guilty. Further, any case where a defendant has entered a plea of nolo contendere and has received a sentence that includes a fine and/or a period of incarceration shall constitute a conviction. AnyIn addition, any instance where the defendant has entered a plea of nolo contendere and has received a sentence of only probation shall constitute a conviction while the probationary period is pending. This Addendum is also utilized to carry out the provisions of RIGL 40-13-2-4.1 and 40-13-2-5.1 relating to statewide criminal records checks for youth serving agency operators and employees.~~

~~An individual subject to a nationwide criminal records check may apply to the bureau of criminal identification of the state police or the local police department. The check will conform to applicable federal standards including the taking of fingerprints to identify the applicant. If disqualifying information is found, the applicant and, in the case of foster and adoptive parents and facility operators, the Department will be informed in writing of the nature of the disqualifying information. The employer will be informed whether or not disqualifying information exists. If no disqualifying information is found, the applicant and the employer and/or the Department will be informed in writing of this fact.~~

~~An individual subject to a statewide criminal background check authorizes the Department and/or the employer to process and obtain the results of the statewide BCI check.~~

~~RIGL 40-13-2-6 provides that if an applicant for employment has undergone a criminal records check within eighteen (18) 18 months of an application for employment, an employer may request from the bureau of criminal identification of the state police or the local police department, or the Attorney General's Office for employees of youth serving agencies, a letter indicating if any disqualifying information was discovered. The state or local police bureau of criminal identification or the Attorney General's Office will respond by stating if an item of disqualifying information was discovered without disclosing the nature of the disqualifying information or by stating that no disqualifying information was discovered. The letter may be maintained on file to satisfy the fingerprinting requirements for employment. RIGL 15-7-11 provides that aA prospective adoptive parent may not be required to submit to a nationwide criminal records check if he or she has submitted to this check, provided that, in accordance with DCYF Department policy, the fingerprinting was completed within the previous eighteen (18)18 months of an application.~~

~~An individual who has disqualifying information (refer to the attached Criminal Records Checks Addendum, Disqualifying Information) is entitled to appeal that disqualification in accordance with the Administrative Procedures Act (RIGL 42-35-9 and 42-35-15) and subject to the procedures promulgated within this rule.~~

## **Related Procedures**

### **Individuals Subject to Criminal Record Background Check(s)**

#### **RI Criminal History System Clearance (Statewide BCI)**

#### **Criminal Criminal Record BackgroundRecords Checks on Prospective Foster and Adoptive Resources**

#### **Criminal Criminal Record BackgroundRecords Checks on Prospective Facility Operators and Employees**

#### **Criminal Criminal Record BackgroundRecords Checks on Prospective Employees of the Department Training School**

### **Appeal of Denial/Revocation of Licensure/Certification or Denial/Termination of Employment**

#### **Criminal Records ChecksCriminal Record Background Checks - Addendum, Disqualifying Information**

**Related Policies**

**Background Checks Facility Operators/ Facility Employees**

**Clearance of Agency Activity**

**Kinship Care**

**Complaints and Hearings**

## Individuals Subject to RI Criminal Record Background Check(s) History System Clearance (Statewide BCI)

Procedure from Policy 900.0040: Criminal Record Background Check(s)

- A. Statewide and nationwide criminal record background checks are required for prospective:
1. Foster parents and visiting resources for children receiving Department services and household members, age eighteen or over.
  2. Adoptive parents and household members age eighteen or over.
  3. Legal guardians and household members age eighteen or over.
  4. Owners and operators of:
    - a. Residential child care facility(s)
    - b. Child Care Center(s) and Family Child Care Home(s)
    - c. Child Placing Agency(s)
    - d. Community-based program(s) required to be licensed or certified by the Department
  5. Applicants for positions involving supervisory or disciplinary power over or routine contact with a child(ren) without the presence of other employees, including any prospective employees, volunteers and consultants of a:
    - a. Residential Child Care Facility
    - b. Child Care Center or Family Child Care Home
    - c. Child Placing Agency
    - d. Community-Based Programs required to be licensed by the Department
  6. Applicants for employment in any Department position.
  7. Volunteers, interns and consultants applying for Department positions that involve supervisory or disciplinary power or routine contact with a child(ren) without the presence of other employees.
- B. Statewide criminal record background checks are required for prospective:
1. Department volunteers and consultants applying for positions that do not involve supervisory or disciplinary power or routine contact with a child(ren) without the presence of other employees.
  2. Family child care home household members, age eighteen or older.
  3. Respite care providers.
  4. Members of the Board of Directors of a child placing agency.
- C. Statewide criminal record background checks may be required for individuals who:
1. Are subjects of reports of child abuse and/or neglect to the Child Protective Services.
  2. Are referred to the Department for services or are adult household members of individuals referred to the Department for services.
  3. Have contact with children receiving services from the Department.
- ~~A. The following Certain individuals, who are not required to undergo nationwide criminal records checks, but (including fingerprinting), are subject to statewide criminal background checks (BCI).~~
- ~~1. Statewide criminal background checks are required for the following individuals:~~
    - ~~a. Family child care home household members, age eighteen (18) or over~~
    - ~~b. Respite care providers~~
    - ~~c. All DCYF Department employees, interns and volunteers (other than RI Training School, who require fingerprinting)~~
  - ~~2. Statewide criminal background checks may be required for the following individuals:~~
    - ~~a. Subjects of reports of child abuse and/or neglect to the Call Floor~~
    - ~~b. Individuals referred to the Department for services and all adult household members~~

~~c. Persons who have contact with children receiving DCYF services from the Department~~

~~An individual, in accordance with this policy, who requires a nationwide criminal records check, including fingerprinting, is also subject to the statewide BCI clearance. Some statewide BCI clearances are completed by DCYF Department staff and others are completed by the Department of the Attorney General upon the request of a child placing agency or facility operator, in accordance with provisions outlined within this rule.~~

~~C. A DCYF Department staff person is responsible to complete or ensure the completion of any required statewide BCI check relating to his or her work assignments.~~

- ~~1. Designated DCYF Department staff persons have access to the Rhode Island Criminal History System, through an agreement with the Department of the Attorney General.~~
- ~~2. DCYF Department staff person, requiring statewide BCI, who does not have access to the System, submits the Rhode Island Criminal History System Clearance (DCYF #034) to a designated staff person authorized to access the System.~~
- ~~3. Authorized staff person, who completes the statewide BCI, documents results on the DCYF #034 and prints and attaches to the DCYF #034 information relating to any suspected matches.~~
- ~~4. Worker who requested the clearance reviews the results of the check to ensure that the information relates to the intended person and includes a copy of the results in the DCYF Department record.~~
- ~~5. DCYF Department staff person is prohibited from providing copies of this information to persons outside of the Department. Subjects of BCI clearances who wish copies of clearance results must request a clearance directly from the Department of the Attorney General.~~

~~D. An individual who requires a nationwide criminal record background check is also subject to the statewide criminal record background check. A nationwide criminal record background check always includes the taking of fingerprints.~~

## **Criminal Criminal Record Background Records Checks - Prospective Foster and Adoptive Resources**

Procedure from Policy 900.0040: Criminal Criminal Record Background Records Check(s)

- A. Statewide and nationwide ~~criminal-criminal record background records~~ checks are completed on all prospective foster and adoptive parents ~~and, including~~ prospective visiting resources for children receiving ~~DCYF-Department~~ services, and ~~their~~ household members over age eighteen ~~(18)-18~~. A visiting resource is an individual who agrees to maintain regular contact, which may include overnight and weekend visitation, with a child in ~~DCYF~~-care and is considered to be a prospective foster care resource.
- B. Statewide Criminal Record Background Check:
1. It is the responsibility of the child placing agency, in the case of a foster or adoptive home licensed through a child placing agency, to ensure that the statewide criminal record background check is completed on applicants and their household members eighteen and over.
  2. A Department staff person completes or ensures the completion of any required statewide criminal record background check relating to his/her work assignments.
  3. A ~~S~~ statewide ~~criminal record background check~~BCI is completed by the designated ~~D~~epartment~~CYF~~ staff ~~person~~ and the results are documented on RI Criminal History System Clearance (DCYF #034):-
    - 1-a. As part of the initial application process for foster care or adoption licensing, the statewide ~~criminal record background check~~check is completed by the licensing staff person.
    - 2-In the case of an emergency placement of a child in a kinship foster home prior to the completion of the licensing process, the statewide ~~criminal record background check~~ ~~criminal check~~ is completed by the assigned ~~worker in~~ Child Protective Services, Family Services, Juvenile Probation or ~~the~~ RI Training School staff ~~person~~ responsible to place the child. Refer to [DCYF Policy 900.0025, Kinship Care](#) for specific procedures relating to completing, reviewing and processing this preliminary criminal check).
  - b. As part of the re-licensing process, a statewide criminal record background check is completed by:
    - a. Department licensing staff for foster and adoptive resources licensed through the Department.
    - b. The child placing agency staff person for foster and adoptive resources licensed through the child placing agency.
  4. Department staff are prohibited from providing copies of this information to persons outside of the Department. Staff refer subjects of a criminal record background check, who wish copies of clearance results, directly to the Department of the Attorney General.
- ~~C. It is the responsibility of the child placing agency, in the case of a foster or adoptive home licensed through a child placing agency, to ensure that the statewide BCI is completed.~~
- C. Nationwide Criminal Record Background Check
- B.1. The Applicant or adult household member is instructed (by the ~~assigned DCYF Department or child placing agency staff~~foster care or adoption licensing worker, the ~~DCYF Department~~ staff person placing the child in a kinship ~~placement~~ home on an emergency basis prior to completion of the licensing process or by the ~~child placing agency staff, in the case of a foster or adoptive home licensed through a child placing agency~~) to to apply to the bureau of criminal identification of the state police or the local police department for a nationwide ~~criminal~~

~~criminal record background records check, which includes the taking of fingerprints.~~

~~1.a. The Applicant is provided with, and instructed to bring to law enforcement agency, the Fingerprint Affidavit (DCYF #109A). The DCYF 109A, which includes the Criminal Records Checks Criminal Record Background Checks Addendum, Disqualifying Information and informs the law enforcement agency where to send the results (either the Department or the Child Placing Agency) of the check should be sent.~~

~~b. Criminal record background records check is conducted without charge to prospective foster parents or adoptive parents. In the case of prospective adoptive parents, DCYF the Department or the private child placing agency conducting the adoption home study is responsible for all costs relating to the criminal checks.~~

~~3.b. Results of the check are sent to the Department or child placing agency.~~  
a.2. DCYF The Department ~~is~~ will be provided with details of criminal convictions in addition to being notified that there is disqualifying information ~~(refer to Criminal Records Checks Addendum, Disqualifying Information).~~

~~i.a. If the Department receives information regarding a history of non-disqualifying criminal information, this information must be reviewed by a supervisor and administrator prior to proceeding with licensing.~~

~~ii.b. An applicant with a conviction of an offense that is not automatically disqualifying may be denied licensure if it is determined that the conduct of the applicant impacts upon the fitness and suitability of the applicant to provide child care.~~

~~b.3. A child placing agency is~~ will only be notified whether or not disqualifying information exists.

4. RIGL 15-7-11 provides that an individual applying to be an adoptive parent may not be required to submit to this check if he/she has undergone a nationwide ~~criminal record background records~~ check, in accordance with a statutory provision referenced below. The applicant must have submitted to fingerprinting for the Department within the eighteen (18) months prior to the date of application. A letter from the state or local police who completed the nationwide check verifying the date and results of that check shall be acceptable.

~~a. RIGL 14-1-34 (foster parent)~~

~~b. RIGL 40-13.2-2, 40-13.2-4, 40-13.2-5 (child care facility employee or operator)~~

~~c. RIGL 16-48.1-4, 16-48.1-5 (nursery school operator or employee)~~

~~E.D. If no criminal history that would disqualifying information the applicant has been discovered, DCYF Department Licensing or child placing agency staff proceeds with the licensing process and places the results of the criminal record background check criminal records check in the provider file applicant's record.~~

~~F.E. If disqualifying information has been discovered, DCYF Department Licensing or the child placing agency will immediately notify the applicant in writing of the denial of licensure, (except if the applicant is a prospective child specific kinship caregiver and Level 2 disqualifying information has been discovered. R (refer to Procedure: Appeal of Denial/Revocation of Licensure/Certification or Denial/Termination of Employment)).~~

~~G.F. The notification letter informs the applicant of the right to appeal to the Department's hearing officer in conformance with DCYF Policy 100.0055, Complaints and Hearings and Criminal Record Background Checks - Addendum, Disqualifying Information.~~

~~F. As part of the re-licensing process, a statewide BCI is completed by DCYF Department or child placing agency staff person who is completing the re-licensing process.~~

# **Criminal Criminal Record Background Records Checks - Prospective Facility Operators and Employees**

Procedure from Policy 900.0040: Criminal Criminal Record Background Records Check(s)

## A. Facility Owners and Operators

1.A. Statewide and nationwide criminal record background checks criminal records checks are completed on all prospective residential child care facility owners and operators, child placing facility owners and operators, child care center owners and operators, family child care home operators and owners/operators of community-based programs requiring DCYF Department licensing.

1. A Sstatewide criminal record background check BCI is completed by designated DCYF Department Licensing staff, person and r

a. Results are documented on RI Criminal History System Clearance (DCYF #034) and included in the DCYF provider file Department record.

b. As part of the re-licensing process, Licensing staff completes a statewide criminal record background check and ensures that Employment History Affidavit (DCYF #108), Criminal History Affidavit (DCYF #109) and written results are in the provider file for each owner and operator.

3.2. For a nationwide criminal record background check, the Aapplicant is instructed to apply to the Rhode Island Bureau of Criminal Identification bureau of criminal identification of the state police or the local police department for a nationwide criminal records check, which includes the taking of fingerprints. All nationwide criminal record background checks include the taking of finger-prints.

a. Any expense associated with obtaining the criminal record backgrounds check is paid by the applicant and/or requesting agency.

a.b. The Aapplicant completes the Employment History Affidavit (DCYF #108) and Criminal History Affidavit (DCYF #109) for the provider file DCYF record.

b.c. The Aapplicant is provided with and brings to the Rhode Island Bbureau of Criminal Identification law enforcement agency Fingerprint the Fingerprint Affidavit (DCYF #109A). The DCYF 109A, which includes the Criminal Records Checks Criminal Record Background Checks Addendum, Disqualifying Information and informs the law enforcement agency bureau where results of the check should be sent.

e.3. Results of the criminal record background check check, identifying the nature of any the disqualifying information, are sent to the Department.

4.a. If there is no criminal history, Licensing staff proceeds with the licensing process and places the results of the criminal record background check criminal records check in the provider file applicant's record.

b. If the Department receives information regarding a history of non-disqualifying criminal information:

i. this information must be reviewed by the supervisor and an administrator prior to proceeding with licensing.

ii. An applicant with a conviction of an offense that is not automatically disqualifying may be denied licensure if it is determined that the conduct of the applicant impacts upon the fitness and suitability of the applicant to provide child care.

6.c. If disqualifying information has been discovered, Licensing staff will immediately notify the applicant of the denial of licensure.

7.d. The notification letter informs the applicant of the right to appeal, if applicable, the disqualifying criminal offense is appealable, to the Department's hearing officer in conformance with DCYF Policy 100.0055, Complaints and Hearings and Criminal Record Background Checks Addendum, Disqualifying Information.

~~5. As part of the re-licensing process, DCYF Department Licensing staff completes a statewide BCI check on the owner/operator and ensures that Employment History Affidavit (DCYF #108), Criminal History Affidavit (DCYF #109) and written results of the criminal records check are in the DCYF Department file for each owner/operator.~~

B. Employees ~~of residential child care facilities, of child placing facilities, of child care centers, of community-based programs requiring Department licensing and of family child care homes:~~

~~1. Family child care home assistants and individuals providing emergency coverage~~

~~a.1. Family child care home assistants and individuals providing emergency coverage are subject to statewide and nationwide criminal record background checkscriminal records checks, including fingerprinting. All nationwide criminal record background checks include the taking of finger prints.~~

~~b.a. Family child care home operator ensures that the applicant completes Employment History Affidavit (DCYF #108) and Criminal History Affidavit (DCYF #109) and forwards to DCYF Department Child Care Licensing.~~

~~e.b. Child Care Licensing staff completes statewide criminal record background checkBCI check for the applicant. Results are documented on RI Criminal History System Clearance (DCYF #034) and included in the DCYF provider fileDepartment record.~~

~~e. Family child care home operator instructs the applicant to apply to the bureau of criminal identification of the state police or the local police department for a nationwide criminal record background checkercriminal records check, which includes the taking of fingerprints. The The nationwide criminal records check is conducted without charge to applicant.~~

~~i.c. ApplicantThe applicant is provided with, and brings to law enforcement agency, Fingerprint Affidavit (DCYF #109A), which includes the Criminal Records ChecksCriminal Record Background Checks - Addendum, Disqualifying Information and informs the law enforcement agency where to send resultsof the check should be sent.~~

~~ii.d. Results of the fingerprinting arewill be sent to the Department, indicating that the applicant does or does not have disqualifying information. f. If there is no criminal history, Child Care Licensing staff informs the family child care home operator that the prospective employee is eligible for employment and places the results of the criminal record background check criminal records check in the provider filefile of the provider.~~

~~i.~~

~~f.ii. If the Department receives criminal history information that is not automatically disqualifying, this information must be reviewed by supervisor and administrator. An applicant with a conviction of an offense that is not automatically disqualifying may be denied licensure if it is determined that the conduct of the applicant impacts upon the fitness and suitability of the applicant to provide child care.~~

~~iii. If disqualifying information has been discovered, Child Care Licensing staff informs the family child care home operator that the prospective employee is ineligible for employment.~~

~~g.iv. The applicant/employee is provided with a copy of theis notification and informed of his or her right to appeal if applicable in conformance with DCYF Policy 100.0055, Complaints and Hearings and Criminal Record Background Checks Addendum, Disqualifying Information. (refer to the attached Criminal Records Checks Addendum, Disqualifying Information).~~

- ~~h.e.~~ As part of ~~the re-licensing process, DCYF Department~~ Licensing staff completes a statewide ~~criminal record background check BCI check~~ on family child care home assistants, individuals providing emergency coverage and adult household members. Staff ensures that Employment History Affidavit (DCYF #108), Criminal History Affidavit (DCYF #109) and written results of the ~~criminal records checks~~~~criminal record background checks~~ are in the ~~provider file~~~~DCYF record~~ for family child care home staff.
2. ~~Employees of residential child care facilities, of child placing facilities, of child care centers and of community-based programs requiring Department licensing: Facility Employees~~
- a. Facility operator ~~must~~ requires all persons who are offered employment, ~~volunteers and consultants~~, in positions that involve supervisory or disciplinary power over a child or involve routine contact with a child without the presence of other employees, to undergo statewide and nationwide ~~criminal record background check~~~~criminal records checks~~. ~~All nationwide criminal record background checks include the taking of finger prints. Department policy requires criminal records checks not only on prospective employees but also volunteers and consultants when their positions involve supervisory or disciplinary power or routine contact with a child without the presence of other employees.~~
- b. ~~The Operator ensures that the applicant completes the~~ Employment History Affidavit (DCYF #108) and Criminal History Affidavit (DCYF #109) ~~is completed by the applicant.~~  
~~The Operator instructs the applicant to apply to the bureau of criminal identification of the state police or the local police department for a nationwide criminal record background records check, which includes the taking of fingerprints. The nationwide criminal records check is conducted without charge to the applicant for employment.~~
- ~~i.~~ ~~The A~~pplicant is provided with, and brings to law enforcement agency, the Fingerprint Affidavit (DCYF #109A), which includes the ~~Criminal Records Checks~~~~Criminal Record Background Checks - Addendum~~, ~~Disqualifying Information~~ and informs the law enforcement agency where ~~to send the results, of the check should be sent.~~
- ~~ii.c.~~ Results of the ~~check~~~~fingerprinting~~ are sent to the employer, indicating that the applicant does or does not have disqualifying information.
- d. If facility administrator hires the employee prior to receiving the results of the ~~check~~~~fingerprinting~~, the following provisions apply:
- i. Employment History Affidavit (DCYF #108), Criminal History Affidavit (DCYF #109) and results of the statewide ~~criminal record background check~~~~BCI~~, indicating no history of disqualifying information, must be completed and fingerprints taken prior to the applicant beginning the job assignment.
- ii. Applicant ensures that prior to starting employment, the employer has received written verification that the nationwide ~~criminal record background check~~ ~~criminal records check~~ has been initiated and this documentation ~~of fingerprinting shall be~~ placed in the employee's personnel file.
- iii. Until the results of the ~~check~~~~fingerprinting~~ are received by the employer, the employee, volunteer or consultant ~~shall does will~~ not have supervisory or disciplinary power ~~over~~ or routine contact with child(ren) without the presence of others.
- iv. Within ninety ~~(90)~~ calendar days of hiring, notice ~~shall be~~ placed in the personnel file identifying the results of the criminal ~~records~~~~background~~ -check. If notice is not received within ninety

- (90) days, the applicant shall be relieved of child caring responsibilities.
- e. Upon receipt of notification that disqualifying information has been discovered, the facility administrator shall immediately notify the applicant that his/her application is rejected or, if in the case of an individual who is already employed, that employment will be terminated in ten (10) working days.
    - i. This letter shall inform the employee of his/-or her right to appeal in conformance with DCYF Policy 100.0055, Complaints and Hearings and (refer to the attached Criminal Records Checks Criminal Record Background Checks - Addendum, Disqualifying Information).
    - ii. A copy of this letter is provided to DCYF Department Licensing and to the DCYF HDepartment hearing Officer.
    - iii. Any notifications by the DCYF HDepartment hearing Officer to the Licensing staff Unit within the context of the appeal process are to be shared by the Licensing staff with the facility administrator.
  - f. ECertain employees, volunteers or consultants who do not have supervisory or disciplinary power over or routine contact with children without the presence of others need not undergo the criminal record recordsbackground check if they do not have supervisory or disciplinary power or routine contact with children without the presence of others.
    - i. TIn these situations the facility operator must have certified in writing that this individual has no supervisory or disciplinary power over or routine contact with child(ren).
    - ii. A copy of this certification is must be provided to the Department's Licensing Unit staff and filed in the employee's personnel file.
  - g. Facility operator's failure to require the riminal-criminal record backgroundrecords check, in compliance with law or DCYF policy, or failure to maintain the written results of the check or the above referenced certification on file constituteswill be grounds to revoke the license or certification of the operator.
  - h. As part of the re-licensing process, the facility operator is responsible to ensure that a statewide criminal record background check BCI check is completed for each full or part time employee, volunteer or consultant who has supervisory or disciplinary power over or routine contact with child(ren) without the presence of others. DCYF Department Licensing staff ensures that the facility record-provider file contains Employment History Affidavit (DCYF #108), Criminal History Affidavit (DCYF #109) and written results of the riminal-criminal record backgroundrecords check for these individuals.
  - i. Expungement of the results of the employee's riminal-criminal record backgroundrecords check shall be consistent with the facility's policy on expunging the employee's personnel file after termination of employment.
3. Prior nationwide riminal-criminal record background checks for employees:
    - a. RIGL 40-13.2-6 provides that Anan applicant for employment may not be required to submit to fingerprinting if he/she has submitted to the nationwide riminal-criminal record backgroundrecords check, in accordance with a statutory provision referenced below, in the eighteen eighteen (18) months prior to the date of application check pursuant to:
      - i. RIGL 40-13.2-4 (child care facility operator)
      - ii. RIGL 40-13.2-4.1 (youth serving agency operator)

iii. ~~RIGL 40-13.2-5 (child care facility employee)~~

iv. ~~RIGL 40-13.2-5.1 (youth serving agency employee)~~

- b. Employer may request, from the bureau of criminal identification of the state police or the local police department or the Attorney General's Office for employees of ~~youth-serving residential child care facilities, of child placing facilities, of child care centers or, of community-based programs requiring Department licensing agencies pursuant to 40-13.2-4.1 and 40-13.2-5.1,~~ a letter indicating if any disqualifying information was discovered.
- c. State or local police bureau of criminal identification or the Attorney General's Office ~~will~~ responds by stating if ~~an item of~~ disqualifying information was discovered (without disclosing the nature of the ~~disqualifying~~ information) or by stating that no disqualifying information was discovered.
- d. ~~The~~is letter from the state or local police who completed the nationwide ~~criminal record background~~ check, ~~which~~ verifies the date and results of that check, ~~shall be acceptable and is must be~~ maintained on file, ~~to satisfy the requirements of RIGL 40-13.2-4, 40-13.2-4.1, 40-13.2-5 or 40-13.2-5.1.~~

## **Criminal ~~Criminal Record~~ Background ~~Records~~ Checks - Employees of the Training ~~School~~ Department**

Procedure from Policy 900.0040: **Criminal Record ~~Records~~ Background Check(s)**

- A. ~~All prospective employees of the RI Training School Department who are offered employment in positions that involve supervisory or disciplinary power over a child or involve routine contact with a child without the presence of other employees are required to undergo statewide and nationwide (including fingerprinting) criminal record background checks. The nationwide criminal record background check includes the taking of fingerprints.~~
- B. ~~All prospective Department volunteers, interns and consultants undergo a criminal record background check(s).~~
- ~~1. A statewide criminal record background check is required for volunteers, interns and consultants when their positions **will not involve** supervisory or disciplinary power or routine contact with a child without the presence of other employees.~~
  - ~~2. Statewide and nationwide criminal record background checks are required for Department volunteers, interns and consultants when their positions **involve** supervisory or disciplinary power or routine contact with a child without the presence of other employees.~~
    - ~~a. The appropriate Department (administrator?) determines whether a volunteer, intern or consultant will have supervisory or disciplinary power over or routine contact with child(ren) without the presence of other employees.~~
    - ~~b. If the determination is made that a volunteer, intern or consultant will not have contact described in paragraph C1 and that a nationwide criminal background check is unnecessary, a letter certifying this is maintained on file by the Department administrator.~~
- C. ~~For a statewide criminal record background check, a Department staff person completes or ensures the completion of the check of any required statewide criminal record background check relating to his/her work assignments.~~
- ~~1. Designated Department staff have access to the Rhode Island Criminal History System.~~
  - ~~2. Department staff, requiring a statewide criminal record background check, who do not have access, submit the Rhode Island Criminal History System Clearance (DCYF #034) to designated staff authorized to access the System.~~
  - ~~3. The designated staff, who completes the statewide criminal record background check, documents results on the DCYF #034 and prints and attaches to the DCYF #034 information relating to any suspected matches.~~
  - ~~4. The staff who requested the clearance reviews the results to ensure that the information relates to the intended person and includes a copy of the results in the personnel file.~~
  - ~~5. Department staff are prohibited from providing copies of this information to persons outside of the Department. Staff refer subjects of a criminal record background check, who wish copies of clearance results, directly to the Department of the Attorney General.~~
- ~~—Department policy requires criminal records checks not only on prospective employees but also volunteers and consultants when their positions involve supervisory or disciplinary power or routine contact with a child without the presence of other employees.~~
- ~~B. Prospective employee completes the Criminal Information Section of the Application for Employment at the time of the initial interview.~~

~~C. The Department completes the statewide BCI check, results are documented on RI Criminal History System Clearance (DCYF #034) and included in the personnel file.~~

~~D. The Employment History Affidavit (DCYF #108) is completed by the applicant.~~

~~D. For a nationwide criminal record background check, the Department instructs Juvenile Program workers applicants to upon acceptance to the training academy and other prospective employees subject to this check upon selection for the position to apply to the bureau of criminal identification of the Department of the Attorney General, state police or the local police department for a nationwide check, which includes the taking of fingerprints.~~

~~The Employment History Affidavit (DCYF #108) is completed by the applicant.~~

~~1. The Applicant is provided with, and brings to law enforcement agency, Fingerprint Affidavit (DCYF #109BA).~~

~~which The DCYF 109B includes the Criminal Records Checks Addendum, Disqualifying Information and informs the law enforcement agency where to send results of the check should be sent.~~

~~2.~~

~~E. If the prospective employee has undergone a nationwide criminal records check within eighteen (18) months of application for employment, the Department may accept a letter from the Bureau of Criminal Identification verifying the date and results of the check (refer to section 3, Prior Nationwide Criminal Checks in the above Procedure: Criminal Records Checks on Prospective Facility Operators and Employees for details).~~

~~F. Upon written verification that fingerprints were taken, the Department may hire the applicant for a provisional period not to exceed ninety (90) calendar days. Until the results of the fingerprinting are received by the Department, the employee, volunteer or consultant shall will not have supervisory or disciplinary power or routine contact with child(ren) without the presence of others.~~

~~H.E. Upon receipt of the results of the criminal criminal record background records check, the Department may take action relative to the applicant's employee's continued employment based on the following:~~

- ~~1. If there is no criminal history, both the applicant/employee and the Department are will be informed of this fact in writing. Written documentation of that fingerprints were taken and results of the criminal criminal record background records check are maintained in the employee's personnel file.~~
- ~~2. If the Department receives criminal history information that is not automatically disqualifying, this information must be reviewed by an appropriate supervisor and administrator. An applicant with a conviction of an offense that is not automatically disqualifying may be denied employment license if it is determined that the conduct of the applicant impacts upon the fitness and suitability of the applicant to provide child care.~~
- ~~3. If disqualifying information has been found, the applicant/employee is will be informed in writing of the nature of the disqualifying information. The Department is will be informed in writing only that disqualifying information has been found.~~

- ~~a. Upon receipt of notification that disqualifying information has been discovered, the Department immediately notifies the applicant/employee in writing that he/she will not be hired or that his/her employment will be terminated within ten (10) working days. A copy of this letter is provided to the appropriate administrator/division head.~~

- b. The notification letter informs the applicant/~~employee~~ of the right to appeal in conformance with DCYF Policy 100.0055, Complaints and Hearings and Criminal Record Background Checks - Addendum, Disqualifying Information.

F. If the prospective employee, volunteer, intern or consultant has undergone a nationwide criminal records background check within the previous six months of application for employment, the Department may accept a letter from the Bureau of Criminal Identification verifying the date and results of the check.

## Appeal of Denial/Revocation of Licensure/~~Certification~~ or Denial/ Termination of Employment

Procedure from Policy 900.0040: ~~Criminal Criminal Record Background~~ Records Check(s)

- A. ~~Level 1 Offenses~~—If an individual is disqualified for the arrest and/or conviction for any Level 1 Offense (refer to ~~the attached Criminal Records Checks~~ Criminal Record Background Checks Addendum, Disqualifying Information), that individual ~~shall have~~ has a right to appeal the denial or revocation of a license/~~certification~~ or the denial or termination of employment for the purpose of demonstrating that he or she has not been arrested and/or convicted for such an offense.
1. Within ~~thirty (thirty)~~ 30 days of receipt of an adverse agency decision, the applicant/employee must inform the Department of his or her intent to appeal by filing a Formal Request for Hearing (DCYF #016) with the ~~Department's hearing officer~~ Hearing Officer.
    - a. The applicant/employee must attach a copy of his/her disqualifying information report, which identifies the specific disqualifying offense(s).
    - b. The applicant/employee ~~shall provide~~ provides evidence that he or she has not been arrested and/or convicted of any Level 1 offense.
  2. The ~~Department's administrative hearing officer~~ Hearing Officer reviews the materials submitted on behalf of the applicant/employee and conducts the appeal process and provides a written decision in accordance with timeframes and procedures established in DCYF Policy 100.0055, Complaints and Hearings.
    - a. If the applicant/employee is unable to present evidence that he or she has not been arrested and/or convicted of a Level 1 offense, the ~~hearing officer~~ Hearing Officer ~~shall~~ upholds the denial, termination or revocation and ~~notifies~~ notifies the applicant, employer and DCYF Department Licensing, if applicable.
    - b. If the applicant/employee has presented evidence that he or she has not been arrested and/or convicted of a Level 1 offense, the ~~hearing officer~~ Hearing Officer ~~shall~~ overturns the rejection based on disqualifying information and notify the applicant, employee and DCYF Department Licensing, if applicable.
- B. ~~Level 2 Offenses~~—If an individual is disqualified for the arrest and/or conviction for any Level 2 Offense (refer to ~~the attached Criminal Records Checks~~ Criminal Record Background Checks Addendum, Disqualifying Information), that individual ~~shall have~~ has a right to appeal the denial or revocation of a license/~~certification~~ or the denial or termination of employment for the purpose of demonstrating his/~~or~~ her long standing record of excellence in child care.
1. ~~All appeals relating to Level 2 offenses will be processed in accordance with procedures outlined below, except w~~ When the Department is seeking to place a specific child with a kinship caregiver and Level 2 disqualifying information (~~refer to Criminal Records Checks Addendum~~) has been discovered, ~~In this situation,~~ a divisional administrative review ~~is~~ will be completed by the appropriate DCYF Department's licensing administrator, pursuant to DCYF Policy 100.0055, Complaints and Hearings, ~~to for purposes of determining~~ if the applicant would be a fit and proper caregiver for the child and if there should be an override of the rejection based on disqualifying information. ~~In the event the override is denied,~~ the applicant has the right to appeal to the ~~Department's H~~ hearing O ~~officer~~ as described in paragraphs B2 and B3, below in accordance with procedures outlined below.
  - 1.2. ~~Except as described in paragraph B1, W~~ within ~~thirty~~ 30 days of receipt of an adverse agency decision, ~~an~~ the applicant/employee ~~must~~ must inform ~~s~~ the Department of his/~~or~~ her intent to appeal by filing Formal Request for Hearing (DCYF #016) with the ~~H~~ Department's ~~hearing O~~ officer.

- a. The applicant/employee must attach a copy of his/her disqualifying information report, which identifies the specific disqualifying offense(s).
- b. The applicant/employee must provide written references attesting to the applicant's long standing record of excellence in child care. Such references must be from individuals who are qualified by virtue of education and/or experience to testify to the abilities of the applicant/employee. Such individuals ~~would~~ include:
  - i. Licensed child care providers
  - ii. Current or previous child care professionals
  - iii. Other professionals with credentials ~~that would enable them~~ to effectively judge the applicant's qualifications in providing child care.

2.3. The ~~H~~Department's administrative hearing ~~O~~fficer reviews the materials submitted on behalf of the applicant/\_employee\_, ~~and~~ conducts the appeal process and provides a written decision in accordance with timeframes and procedures established in [DCYF Policy 100.0055, Complaints and Hearings](#).

- a. If the applicant/employee has not demonstrated a record of excellence in child care sufficient to warrant disregard of the otherwise disqualifying information, the ~~H~~hearing ~~O~~fficer ~~shall~~ upholds the denial, termination or revocation and ~~notifies~~ the applicant, employer and ~~DCYF~~ [Department](#) Licensing, if applicable.
- b. If the applicant/employee has demonstrated a record of excellence in child care, the ~~H~~hearing ~~O~~fficer ~~shall~~ ~~may~~ overturn the rejection based on disqualifying information and notify the applicant, employee and ~~DCYF~~ ~~Department~~ Licensing, if applicable.

STATE OF RHODE ISLAND DEPARTMENT OF CHILDREN, YOUTH AND FAMILIES  
~~Criminal Records Checks~~Criminal Record Background Checks - Addendum  
Disqualifying Information

The arrest and conviction\* or arrest pending disposition for one of the criminal offenses listed below or for any offense, which involves elements of proof that are substantially similar to the offenses listed below, disqualifies an individual from serving in a child caring capacity in a program or service operated by or for DCYF and/or requiring licensure or certification by DCYF or residing in a household wherein such a program or service is provided or from owing or operating any such program or service or from serving as a DCYF employee, intern, volunteer or consultant or from functioning in any other capacity subject to a statewide or nationwide ~~criminal background~~criminal record background check in accordance with federal and/or state law or DCYF rule.

- \* For purposes of this protocol, "conviction" means a judgment of conviction entered by a court subsequent to a finding of guilty. Further, any case where a defendant has entered a plea of nolo contendere and has received a sentence that includes a fine and/or a period of incarceration ~~shall constitutes~~ a conviction. ~~In addition, any~~ Any instance where the defendant has entered a plea of nolo contendere and has received a sentence of only probation ~~shall constitutes~~ a conviction while the probationary period is pending.

#### LEVEL 1 OFFENSES

If an individual is disqualified for the arrest and/or conviction for any of the following offenses, that individual ~~shall have~~has a right to appeal for the purpose of demonstrating that he or she has not been arrested and/or convicted for such an offense.

- Felony Child Abuse or Neglect
- Felony Domestic Violence
- Felony committed against a child
  - 1st Degree Child Molestation
  - 2nd Degree Child Molestation
  - Child Pornography
  - Circulation of obscene publications and shows
  - Sale or exhibition to minor of indecent publications, pictures or articles
  - Child nudity in publication
  - Transportation for Indecent purposes
  - Harboring
  - Prostitution
  - Pandering
  - Deriving support or maintenance from prostitution
- Felony Drug Offense committed less than five (5) years ago
- Felony involving violence
  - Murder
  - Manslaughter
  - Rape
  - 1st Degree Sexual Assault
  - 2nd Degree Sexual Assault
  - Kidnapping
  - Car-jacking
  - 1st Degree Arson
  - 2nd Degree Arson

- Mayhem
- Felony Assault committed less than five (5) years ago
- Felony Battery committed less than five (5) years ago

## **LEVEL 2 OFFENSES**

**If an individual is disqualified for the arrest and/or conviction for any of the following offenses, that individual ~~shall have~~has a right to appeal for the purpose of demonstrating his or her long standing record of excellence in child care:**

- Felony Assault committed over five (5) years ago
- Felony Battery committed over five (5) years ago
- Felony Drug Offense committed over five (5) years ago
- Robbery
- Breaking and Entering
- Burglary
- Illegal Possession of a Firearm
- Misdemeanor Domestic Assault
- 3rd Degree Sexual Assault

**If an individual is disqualified for the arrest and/or conviction for any of the following offenses, when the offense does not involve a child, that individual ~~shall have~~has a right to appeal for the purpose of demonstrating his or her long standing record of excellence in child care:**

- Transportation for Indecent purposes
- Harboring
- Prostitution
- Pandering
- Deriving support or maintenance from prostitution
- Circulation of obscene publications and shows