

ARKANSAS DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS DIRECTOR'S OFFICE POLICY MANUAL

Policy Type	Subject of Policy	Policy No.
Administrative	Criminal Records Checks	1087

1. **Purpose:**

The purpose of this policy is to delineate the requirements, allowances, exclusions, and general implementation of criminal record checks, in accordance with Act 1548 of 2001, hereafter referred to as "the Act", Ark. Code Ann. § 20-38-101 *et seq.* and Ark. Code Ann. § 20-48-812 (collectively, the "Law").

2. **Scope:**

This policy is applicable to all providers licensed and certified by ~~DDS-DHS~~, excluding facilities licensed by the Office of Long Term Care, to provide services for persons with developmental disabilities, any owner of a Provider, all employees of ~~these P~~providers, and all applicants for employment by those with pProviders. This policy does not cover any required adult or child maltreatment registry checks.

3. **Definitions**

"Alternative Living Home" means a residential dwelling owned or operated by an Employee used to provide Direct Care to an Individual with Disabilities.

"Bureau" means the Identification Bureau of the Department of the Arkansas State Police.

"DDS" means the Arkansas Department of Human Services, Division of Developmental Disabilities Services.

"DHS" means the Department of Human Services.

"Determination" means a written conclusion made by the appropriate division of DHS that a person is or is not qualified for employment, licensure, or certification based on the results of an Arkansas State Criminal Record Check or a National Criminal Record Check.

"Direct Care" means providing treatment, services, assistance, education, training, instruction, or supervision to an Individual with Disabilities, or having access to the finances or personal property of an Individual with Disabilities.

"Employee" means a person who:

1. Is employed by a Provider to deliver Direct Care to an Individual with Disabilities; or
2. Provides Direct Care to an Individual with Disabilities on behalf or under the supervision of, or by arrangement with, a Provider (i.e., volunteers, interns, independent contractors, etc.).

An employee does not include a person who is a family member of an Individual with Disabilities, unless the family member is paid by the Provider to provide Direct Care to the Individual.

"Group Home" means a residential dwelling that has been continuously owned or operated by a Provider since prior to July 1, 1995, and has space to provide private sleeping areas for more than four (4), but no more than fourteen (14), unrelated Individuals with Disabilities.

"Individual with Disabilities" means an individual receiving DDS services through a Provider.

"National Criminal Record Check" means a review of national criminal records based on fingerprinting or other identification methods.

"Provider" includes all of the following:

1. A certified Community and Employment Supports (CES) Waiver program service provider;
2. A certified First Connections (Part C of IDEA) program service provider;
3. Any certified adult day program service provider;
4. Any program certified as one of the following: Children's Health Management Services (CHMS), Developmental Day Treatment Clinic Services (DDTCS), or any successor program to CHMS or DDTCS; and
5. Any other person or entity licensed or certified by DDS or DHS, other than facilities licensed by the Office of Long Term Care, to provide DDS services, including, but not limited to, applied behavior analysts, First Connections service coordinators, and First Connections developmental therapists, occupational therapists, physical therapists, and speech language pathologists.

"State Criminal Record Check" means a review of state criminal records conducted by the Bureau.

"Supported Living Arrangement" means a residential dwelling owned or operated by a Provider which has space to provide private sleeping areas for no more than four (4) Individuals with Disabilities.

**4. Criminal Records Check Requirements under the Criminal Record Checks policy:**

A. State Criminal Record Check: Except as provided elsewhere in this Section, a Provider (and any applicant to become a Provider) is required to request a State Criminal Record Check on the following persons by submitting a fully executed DDS Form 5088-STATE, or any successor document, completed as per the instructions found therein:

1. Each person applying to be a Provider, or who is an owner of an organization applying to become a Provider;
2. Each applicant to become an Employee of a Provider; and
3. Any person over twelve (12) years of age residing in an Alternative Living Home, Group Home, Supported Living Arrangement, or other residential setting in which services are provided to Individuals with Disabilities.

B. National Criminal Record Check: Except as provided elsewhere in this Section, in addition to the State Criminal Record Check, a Provider (and any applicant to become a Provider) is also required to request a National Criminal Record Check, which must include a fingerprint check, on the following persons by submitting a fully executed DDS Form 5088-FBI, or any successor document, completed as per the instructions found therein:

1. Each person that would be an owner of an organization applying to become a Provider; and
2. Any Employee or applicant for employment that has not been a resident of the State of Arkansas for the entire five (5) preceding years.

C. Record Check Retention: Providers are required to maintain evidence that all required criminal record checks were conducted.

D. Excluded Professionals: The criminal record checks required by this Policy are not required for any person who renders services subject to a professional license that requires the same or similar checks, such as a licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech-language pathologist, audiologist, nursing home administrator, or behavior analyst.

- E. Required Renewal: The criminal record checks required by this Policy must be requested/renewed by a Provider at least once every five (5) years for each person to whom the Policy is applicable.
- F. Subsequent Discovery of a Criminal Record: In the event evidence of a potentially disqualifying conviction is discovered in the five (5) year period between required criminal record checks, the Provider must request a new State Criminal Record Check, and, if applicable, National Criminal Record Check, within five (5) days of discovery. Providers must temporarily disqualify/suspend an Employee's employment upon discovery of a potentially disqualifying conviction, pending a Determination by the appropriate division of DHS.
- G. Qualifying Determinations by other DHS Divisions: A Provider is not required to request a State Criminal Record Check or National Criminal Record Check on an Employee or an applicant to become an Employee if the Division of Child Care and Early Childhood Education, or any other DHS Division, has issued a qualifying Determination for the individual within the past sixty (60) days. The Provider is responsible for retaining and submitting all proper documentation.
- ~~(a) Requirement for completion and notarization of a criminal record check form (which complies with the Act) and completion of a fingerprint card (when required) by any person to whom the provider intends to offer employment on or after August 13, 2001~~
- ~~(b) Requirement for conveyance of forms and fees within five (5) days to the Arkansas State Police Bureau of Identification for any person to whom a service provider intends to offer employment~~
- ~~(c) Requirement for initiation of Central Registry checks by a service provider prior to an offer of employment~~
- ~~(d) Requirement for temporary disqualification for employment by a service provider upon discovery of a criminal record, pending a determination by the Division of Developmental Disabilities Services (DDS), based on the provisions of the Act~~
- ~~(e) Requirement for both an Arkansas and a national criminal record check unless the individual meets specific residency or employment qualifications~~
- ~~(f) Requirement for evidence that criminal record checks were performed on agency, temporary, and contract staff~~
- ~~(g) Requirement for notification by service providers to applicants and current employees that employment is contingent upon results of criminal record checks~~
- ~~(h) Requirement for a determination by DDS of an individual's employment qualification or disqualification, based on the provisions of the Act, and for forwarding of this determination to the service provider~~
- ~~(i) Requirement for the denial or termination of employment by a service provider to any person determined by DDS to be disqualified for employment, based on the provisions of the Act~~
- ~~(j) Requirement for the maintenance of evidence of criminal record checks on applicants and current employees and copies of determinations by DDS~~

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DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
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Policy Type	Subject of Policy	Policy No.
Administrative	Criminal Records Checks	1087

- ~~(k) Requirement that DDS issue a determination, based on the provisions of the Act, that a person is disqualified from employment with a service provider if that person has pled guilty or nolo contendere to or has been found guilty of certain offenses~~
- ~~(l) Requirement that service providers not knowingly employ a person who has pled guilty or nolo contendere to or has been found guilty of certain offenses~~
- ~~(m) Requirement that provisions of the Act not be waived~~
- ~~(n) Requirement that conviction for certain offenses results in permanent disqualification from employment~~
- ~~(o) Requirement for DDS to prepare necessary forms and to promulgate procedures~~
- ~~(p) Requirement for DDS to establish remedies to be imposed for failure to comply with the Act~~
- ~~(q) Requirement for all reports to remain confidential and restricted to the use of parties specified in the Act, and exempt from Freedom of Information Act (FOIA) disclosure, except to parties identified in the Act~~
- ~~(r) Requirement for the immunity of parties for damages, other than for malicious acts or omissions~~
- ~~(s) Requirement for completion of criminal record checks on all current employees of a service provider by October 1, 2002~~

4. ~~Allowances under the Criminal Record Check policy:~~

- ~~(a) Allowances for continued temporary employment of an individual, if no finding of fault records are found in a Central Registry, while awaiting the results of a criminal record check~~
- ~~(b) Allowances for employment of an individual upon determination by DDS that the person is qualified for employment, based on the provisions of the Act~~
- ~~(c) Allowances for employment of individuals with one conviction for certain offenses if conviction was ten years prior to application for employment~~
- ~~(d) Allowances for employment of an individual convicted of a misdemeanor not related to exploitation, abuse, neglect, or sexual abuse of a person~~
- ~~(e) Allowances for denial or revocation of a service provider's license for failure to obtain criminal record checks in compliance with the Act~~
- ~~(f) Allowances for applicants and employees to challenge the completeness or accuracy of criminal history information to the Arkansas State Police, Bureau of Identification~~

ARKANSAS DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS DIRECTOR'S OFFICE POLICY MANUAL

Policy Type _____	Subject of Policy _____	Policy No. _____
Administrative _____	Criminal Records Checks _____	1087 _____

5. ~~Exclusions from the Criminal Record Check policy:~~

This policy does not apply to:

- (a) A person who renders services subject to a professional license as a:  
~~Licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech-language pathologist, audiologist, or nursing home administrator.~~
- (b) An individual who has maintained employment in the state for twelve months, has successfully completed a criminal record check, and submits evidence thereof.

**5. Determinations**

The appropriate division of DHS will make a Determination on each person for whom a State Criminal Record Check and/or National Criminal Record Check is conducted. No Employee or applicant for Employment with a Provider is permitted to perform Direct Care services for a Provider prior to receiving a Determination permitting the person to be employed. Each Determination will be in one of the following categories:

- A. Provisionally Qualified: A determination that a person may be employed as a result of a State Criminal Record Check.
- B. Qualified: A determination that a person may be employed as result of both a State Criminal Record Check and a National Criminal Record Check.
- C. Disqualified: A determination that a person may not be employed as a result of a State Criminal Record Check and/or a National Criminal Record Check.
- D. Tentatively Qualified: A determination that a "Qualified" or "Provisionally Qualified" Determination cannot be issued due to the existence of one or more potentially disqualifying charges that are less than a year old and have not reached disposition in court on a State Criminal Record Check or National Criminal Record Check. In such cases, the Provider may offer employment to the person but must re-submit the required criminal record check(s) every three (3) months until final determination is issued by the appropriate division of DHS.



Notwithstanding the foregoing, any individual that has an Arkansas State Criminal History Report that states "No Criminal History Found for this Subject" automatically receives a "Provisionally Qualified" Determination and will not actually have a Determination Letter issued.

6. Disqualifying Offenses.

A. Permanently Disqualifying Offenses: A person shall be permanently prohibited from being an owner or Employee of a Provider if that person has pled guilty or nolo contendere or been found guilty of any of the following offenses by any court in the State of Arkansas, or any similar offense by a court in another state or a federal court:

1. Abuse of an endangered or impaired person, if felony (§ 5-28-103)
2. Aggravated assault upon a law enforcement officer or an employee of a correctional facility, if a Class Y felony (§ 5-13-211)
32. Arson (§ 5-38-301)
43. Capital Murder (§ 5-10-101)
54. Endangering the Welfare of an Incompetent person—1<sup>st</sup> Degree (§ 5-27-201)
65. Kidnapping (§ 5-11-102)
76. Murder in the First Degree (§ 5-10-102)
87. Murder in the Second Degree (§ 5-10-103)
98. Rape (§ 5-14-103)
910. Sexual Assault in the First Degree (§ 5-14-124)
1140. Sexual Assault in the Second Degree (§ 5-14-125)
12. Sexual extortion (§ 5-14-113)

A plea of guilty or nolo contendere or a conviction for any of the above offenses permanently prohibits an individual from being an owner or Employee of a Provider regardless of whether or not the record of the offense is expunged, pardoned, or otherwise sealed.

B. Potentially Disqualifying Offenses: A person who has pled guilty, nolo contendere, or been found guilty of any offense listed in this Section by any court in the State of Arkansas, or of any similar offense by a court in another state or a federal court, is prohibited from being an owner or Employee of a Provider, unless one of the following situations apply:

1. The offense is a misdemeanor, and the date of the conviction or plea of guilty or nolo contendere, is more than five (5) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during that five (5) year period.

OR

2. The offense is a felony, and the date of the conviction or plea of guilty or nolo contendere is more than ten (10) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been no other criminal convictions or pleas of guilty or nolo contendere of any type or nature during that ten (10) year period.

The following offenses disqualify an individual who does not meet one of the criteria above from being an Employee or an owner of a Provider, regardless of whether or not unless the record of the offense has been expunged, pardoned or otherwise sealed:

1. Assault in the First, Second, or Third Degree (§§ 5-13-205—207)
2. Aggravated Assault (§ 5-13-204)
3. Aggravated Assault on a Family or Household Member (§ 5-26-306)
4. Aggravated Assault upon a Law Enforcement Officer or an Employee of a Correctional Facility, if a Class Y felony (§ 5-13-211)
5. Battery in the First, Second, or Third Degree (§§ 5-13-201—203)
6. Breaking or Entering (§ 5-39-202)
7. Burglary (§ 5-39-201)
8. Coercion (§ 5-13-208)
9. Computer Crimes Against Minors (§§ 5-27-601 *et seq.*)
10. Contributing to the Delinquency of a Juvenile (§ 5-27-220)
11. Contributing to the Delinquency of a Minor (§ 5-27-209)
12. Criminal Impersonation (§ 5-3-208)
13. Criminal Use of a Prohibited Weapon (§ 5-73-104)
14. Cruelty to Animals (§ 5-62-103)
15. Aggravated Cruelty to Dog, Cat or Horse (§ 5-62-104)
16. Death Threats Concerning a School Employee or Student (§ 5-17-101)
17. Domestic Battery in the First, Second or Third Degree (§ 5-26-303—305)
18. Employing or Consenting to the Use of a Child in a Sexual Performance (§ 5-27-402)
19. Endangering the Welfare of a Minor in the First or Second Degree (§§ 5-27-205—206)
20. Endangering the Welfare of an Incompetent Person in the Second Degree (§§ 5-27-201—202)
21. Engaging Children in Sexually Explicit Conduct for Use in Visual or Print Media (§ 5-27-303)
22. False Imprisonment in the First or Second Degree (§§ 5-11-103—104)
23. Financial Identity Fraud (§ 5-37-227)
24. Forgery (§ 5-37-201)
25. Incest (§ 5-26-202)
26. Interference with Court Ordered Custody (§ 5-26-502)
27. Felony Interference with a Law Enforcement Officer (§ 5-54-104)
28. Interference with Visitation (§ 5-26-501)
29. Introduction of a Controlled Substance into Body of Another Person (§ 5-13-210)
30. Manslaughter (§ 5-10-104)
31. Negligent Homicide (§ 5-10-105)



- ~~32. Obscene Performance at a Live Public Show (§ 5-68-305)~~
- ~~33. Pandering or Possessing Visual or Print Medium Depicting Sexually Explicit Conduct Involving a Child (§ 5-27-304)~~
- ~~34. Patronizing a Prostitute (§ 5-70-103)~~
- ~~35. Permanent Detention or Restraint (§ 5-11-106)~~
- ~~36. Permitting Abuse of a Minor (§ 5-27-221)~~
- ~~37. Producing, Directing, or Promoting a Sexual Performance by a Child (§ 5-27-403)~~
- ~~38. Promoting Obscene Materials (§ 5-68-303)~~
- ~~39. Promoting Obscene Performance (§ 5-68-304)~~
- ~~40. Promoting Prostitution in the First, Second, or Third Degree (§§ 5-70-104—106)~~
- ~~41. Prostitution (§ 5-70-102)~~
- ~~42. Public Display of Obscenity (§ 5-68-205)~~
- ~~43. Resisting Arrest (§ 5-54-103)~~
- ~~44. Robbery (§ 5-12-102)~~
- ~~45. Aggravated Robbery (§ 5-12-103)~~
- ~~46. Any Sexual Offense, including sexual extortion (§§ 5-14-101 *et seq.*)~~
- ~~47. Simultaneous Possession of Drugs and Firearms (§ 5-74-106)~~
- ~~48. Soliciting Money or Property from Incompetents (§ 5-27-229)~~
- ~~49. Stalking (§ 5-71-229)~~
- ~~50. Terroristic Act (§ 5-13-310)~~
- ~~51. Terroristic Threatening (§ 5-13-301)~~
- ~~52. Theft by Receiving (§ 5-36-106)~~
- ~~53. Theft of Property (§ 5-36-103)~~
- ~~54. Theft of Services (§ 5-36-104)~~
- ~~55. Transportation of Minors for Prohibited Sexual Conduct (§ 5-27-305)~~
- ~~56. Unlawful Discharge of a Firearm from a Vehicle (§ 5-74-107)~~
- ~~57. Felony Violation of the Uniform Controlled Substances Act (§§ 5-64-101 *et seq.*)~~
- ~~58. Voyeurism (§ 5-16-102)~~
- ~~59. Criminal attempt (§ 5-3-201), criminal complicity (§ 5-3-202), criminal solicitation (§ 5-3-301), or criminal conspiracy (§ 5-3-401) to commit any of the offenses listed in (A) or (B) above.~~

~~(a) These offenses may disqualify an individual from employment by a service provider, as referenced in items 4. (c) and (d) of this policy:~~

- ~~1. Manslaughter, as prohibited in § 5-10-104;~~
- ~~2. Negligent homicide, as prohibited in § 5-10-105;~~
- ~~3. False imprisonment in the first degree, as prohibited in § 5-11-103;~~
- ~~4. Permanent detention or restraint, as prohibited in § 5-11-106;~~
- ~~5. Robbery, as prohibited in § 5-12-102;~~
- ~~6. Aggravated robbery, as prohibited in § 5-12-103;~~
- ~~7. Battery, as prohibited in §§ 5-13-201, 5-13-202, and 5-13-203;~~
- ~~8. Aggravated assault, as prohibited in § 5-13-204;~~
- ~~9. Introduction of controlled substance into body of another person, as prohibited in § 5-13-210;~~

- ~~10. Terroristic threatening in the first degree, as prohibited in § 5-13-301;~~
- ~~11. Sexual solicitation of a child, as prohibited in § 5-14-110;~~
- ~~12. Violation of a minor in the first degree and second degree, as prohibited in §§ 5-14-120 and 5-14-121;~~
- ~~13. Incest, as prohibited in § 5-26-202;~~
- ~~14. Offenses against the family, as prohibited in §§ 5-26-303—5-26-306;~~
- ~~15. Endangering the welfare of a minor in the first degree, as prohibited in § 5-27-203;~~
- ~~16. Permitting child abuse, as prohibited in § 5-27-221(a)(1) and (a)(3);~~

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DIVISION OF DEVELOPMENTAL DISABILITIES SERVICES  
DDS DIRECTOR'S OFFICE POLICY MANUAL

Policy Type _____	Subject of Policy _____	Policy No. _____
Administrative _____	Criminal Records Checks _____	1087 _____

- ~~17. Engaging children in sexually explicit conduct for use in visual or print media; transportation of minors for prohibited sexual conduct, pandering or possessing visual or print medium depicting sexually explicit conduct involving a child, or use of a child or consent to use of a child in a sexual performance by producing, directing, or promoting a sexual performance by a child, as prohibited in §§ 5-27-303, 5-27-304, 5-27-305, 5-27-402, and 5-27-403;~~
- ~~18. Theft of property, as prohibited in § 5-36-103;~~
- ~~19. Theft by receiving, as prohibited in § 5-36-106;~~
- ~~20. Felony violation of the Uniform Controlled Substances Act, as prohibited in § 5-64-401;~~
- ~~21. Burglary, as prohibited in § 5-39-201;~~
- ~~22. Promotion of prostitution in the first degree, as prohibited in § 5-70-104;~~
- ~~23. Stalking, as prohibited in § 5-71-229;~~
- ~~24. Forgery, as prohibited in Sec. 5-37-201~~
- ~~25. Breaking or entering, as prohibited in Sec 5-39-202;~~
- ~~26. Obtaining a controlled substance by fraud, as prohibited in Sec. 5-64-403; and~~
- ~~27. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed above.~~

~~(b) These offenses will permanently disqualify a person from employment by a service provider:~~

- ~~1. Capital murder, as prohibited in § 5-10-101;~~
- ~~2. Murder in the first degree and second degree, as prohibited in §§ 5-10-102 and 5-10-103;~~
- ~~3. Kidnapping, as prohibited in § 5-11-102;~~
- ~~4. Rape and carnal abuse in the first degree, second degree, and third degree, as prohibited in §§ 5-14-103 - 5-14-106;~~
- ~~5. Sexual abuse in the first degree and second degree, as prohibited in §§ 5-14-108 and 5-14-109;~~
- ~~6. Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;~~
- ~~7. Felony adult abuse, as prohibited by § 5-28-103; and~~
- ~~8. Arson, as prohibited in § 5-38-301.~~

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DDS DIRECTOR'S OFFICE POLICY MANUAL

Policy Type _____	Subject of Policy _____	Policy No. _____
Administrative _____	Criminal Records Checks _____	1087 _____

~~7. Program Management and Compliance Monitoring. The DDS Licensure Section has the responsibility for managing the Criminal Record Check program and for monitoring compliance with this policy and all related procedures.~~

**7. Criminal Record Check Document Retention**

DHS shall maintain all criminal record check documentation required to be retained under restricted access available only to those authorized and trained for its use. All criminal record check documentation shall remain on file for at least five (5) years, and followed by secure destruction.

**8. Appeals**

Applicants or Employees receiving a Disqualified Determination shall be notified by DHS in writing. A "Disqualified" Determination is the only Determination that may be appealed.

If the Applicant or Employee wishes to appeal, he or she must submit the request for appeal within ten (10) business days of receipt of the written notification. Failure to submit an appeal within this timeframe will result in the appeal being denied. All appeals must be in writing and contain, at a minimum:

- A. The name, address, and telephone number of the person filing the appeal;
- B. The relationship the person filing the appeal has with DDS;
- C. The decision that is being appealed;
- D. The reason(s) the decision is being appealed;
- E. The desired outcome of the appeal;
- F. The law and/or facts being relied upon in filing the appeal;
- G. The person who will present the appeal; and

H. Whether the person will be represented and if so, the name, address and telephone number of the authorized representative.

Appeals that do not contain ALL of this information will be denied.

The Appeal must filed with the DHS division that issued the Determination. Within ten (10) business days of receipt of the appeal, the DHS division will schedule and conduct a hearing with all parties. All parties shall be notified of the hearing date, time and location in writing. An extension may be allowed when either party has a valid reason for postponement or both parties agree to the delay.

At the hearing, only issues relevant to the appeal shall be discussed and considered. The DHS Division shall issue a written decision within ten (10) business days of the meeting. The written decision will be submitted to all parties who participated in the hearing. This decision constitutes the final agency action for purposes of the Arkansas Administrative Procedures Act (A.C.A. § 25-15-201 et seq.)

References: ~~Arkansas Code Annotated (ACA) § 20-48-801 et. seq., § 20-33-201 through 203~~

~~Department of Human Services Policy 1052 and Procedures~~

~~Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council: reviewed December 6, 2001 and March 7, 2002.~~

Effective date: ~~August 13, 2001 (emergency promulgation);  
March 5, 2002 (final promulgation)~~





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“Alternative Living Home” means a residential dwelling owned or operated by an Employee used to provide Direct Care to an Individual with Disabilities.

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2. Provides Direct Care to an Individual with Disabilities on behalf or under the supervision of, or by arrangement with, a Provider (i.e., volunteers, interns, independent contractors, etc.).

An employee does not include a person who is a family member of an Individual with Disabilities, unless the family member is paid by the Provider to provide Direct Care to the Individual.

“Group Home” means a residential dwelling that has been continuously owned or operated by a Provider since prior to July 1, 1995, and has space to provide private sleeping areas for more than four (4), but no more than fourteen (14), unrelated Individuals with Disabilities.

“Individual with Disabilities” means an individual receiving DDS services through a Provider.

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“Provider” includes all of the following:

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5. Any other person or entity licensed or certified by DDS or DHS, other than facilities licensed by the Office of Long Term Care, to provide DDS services, including, but not limited to, applied behavior analysts, First Connections service coordinators, and First Connections developmental therapists, occupational therapists, physical therapists, and speech language pathologists.

“State Criminal Record Check” means a review of state criminal records conducted by the Bureau.

“Supported Living Arrangement” means a residential dwelling owned or operated by a Provider which has space to provide private sleeping areas for no more than four (4) Individuals with Disabilities.

4. **Criminal Records Check Requirements**

- A. **State Criminal Record Check**: Except as provided elsewhere in this Section, a Provider (and any applicant to become a Provider) is required to request a State Criminal Record Check on the following persons by submitting a fully executed DDS Form 5088-STATE, or any successor document, completed as per the instructions found therein:
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  2. Each applicant to become an Employee of a Provider; and
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- B. **National Criminal Record Check**: Except as provided elsewhere in this Section, in addition to the State Criminal Record Check, a Provider (and any applicant to become a Provider) is also required to request a National Criminal Record Check, which must include a fingerprint check, on the following persons by submitting a fully executed DDS Form 5088-FBI, or any successor document, completed as per the instructions found therein:
1. Each person that would be an owner of an organization applying to become a Provider; and
  2. Any Employee or applicant for employment that has not been a resident of the State of Arkansas for the entire five (5) preceding years.
- C. **Record Check Retention**: Providers are required to maintain evidence that all required criminal record checks were conducted.
- D. **Excluded Professionals**: The criminal record checks required by this Policy are not required for any person who renders services subject to a professional license that requires the same or similar checks, such as a licensed professional counselor, social worker, nurse, occupational therapist, pharmacist, physical therapist, physician, surgeon, podiatrist, psychologist, psychological examiner, speech-language pathologist, audiologist, nursing home administrator, or behavior analyst.
- E. **Required Renewal**: The criminal record checks required by this Policy must be requested/renewed by a Provider at least once every five (5) years for each person to whom the Policy is applicable.

- F. Subsequent Discovery of a Criminal Record: In the event evidence of a potentially disqualifying conviction is discovered in the five (5) year period between required criminal record checks, the Provider must request a new State Criminal Record Check, and, if applicable, National Criminal Record Check, within five (5) days of discovery. Providers must temporarily disqualify/suspend an Employee's employment upon discovery of a potentially disqualifying conviction, pending a Determination by the appropriate division of DHS.
- G. Qualifying Determinations by other DHS Divisions: A Provider is not required to request a State Criminal Record Check or National Criminal Record Check on an Employee or an applicant to become an Employee if the Division of Child Care and Early Childhood Education, or any other DHS Division, has issued a qualifying Determination for the individual within the past sixty (60) days. The Provider is responsible for retaining and submitting all proper documentation.

## **5. Determinations**

The appropriate division of DHS will make a Determination on each person for whom a State Criminal Record Check and/or National Criminal Record Check is conducted. No Employee or applicant for Employment with a Provider is permitted to perform Direct Care services for a Provider prior to receiving a Determination permitting the person to be employed. Each Determination will be in one of the following categories:

- A. Provisionally Qualified: A determination that a person may be employed as a result of a State Criminal Record Check.
- B. Qualified: A determination that a person may be employed as result of both a State Criminal Record Check and a National Criminal Record Check.
- C. Disqualified: A determination that a person may not be employed as a result of a State Criminal Record Check and/or a National Criminal Record Check.
- D. Tentatively Qualified: A determination that a "Qualified" or "Provisionally Qualified" Determination cannot be issued due to the existence of one or more potentially disqualifying charges that are less than a year old and have not reached disposition in court on a State Criminal Record Check or National Criminal Record Check. In such cases, the Provider may offer employment to the person but must re-submit the required criminal record check(s) every three (3) months until final determination is issued by the appropriate division of DHS.

Notwithstanding the foregoing, any individual that has an Arkansas State Criminal History Report that states "No Criminal History Found for this Subject" automatically receives a "Provisionally Qualified" Determination and will not actually have a Determination Letter issued.

## 6. Disqualifying Offenses.

A. Permanently Disqualifying Offenses: A person shall be permanently prohibited from being an owner or Employee of a Provider if that person has pled guilty or nolo contendere or been found guilty of any of the following offenses by any court in the State of Arkansas, or any similar offense by a court in another state or a federal court:

1. Abuse of an endangered or impaired person, if felony (§ 5-28-103)
2. Aggravated assault upon a law enforcement officer or an employee of a correctional facility, if a Class Y felony (§ 5-13-211)
3. Arson (§ 5-38-301)
4. Capital Murder (§ 5-10-101)
5. Endangering the Welfare of an Incompetent person—1<sup>st</sup> Degree (§ 5-27-201)
6. Kidnapping (§ 5-11-102)
7. Murder in the First Degree (§ 5-10-102)
8. Murder in the Second Degree (§ 5-10-103)
9. Rape (§ 5-14-103)
10. Sexual Assault in the First Degree (§ 5-14-124)
11. Sexual Assault in the Second Degree (§ 5-14-125)
12. Sexual extortion (§ 5-14-113)

A plea of guilty or nolo contendere or a conviction for any of the above offenses permanently prohibits an individual from being an owner or Employee of a Provider regardless of whether or not the record of the offense is expunged, pardoned, or otherwise sealed.

B. Potentially Disqualifying Offenses: A person who has pled guilty, nolo contendere, or been found guilty of any offense listed in this Section by any court in the State of Arkansas, or of any similar offense by a court in another state or a federal court, is prohibited from being an owner or Employee of a Provider, unless one of the following situations apply:

1. The offense is a misdemeanor, and the date of the conviction or plea of guilty or nolo contendere, is more than five (5) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been no criminal convictions or pleas of guilty or nolo contendere of any type or nature during that five (5) year period.

OR

2. The offense is a felony, and the date of the conviction or plea of guilty or nolo contendere is more than ten (10) years prior to the date of the State Criminal Record Check or National Criminal Record Check request, and there have been

no other criminal convictions or pleas of guilty or nolo contendere of any type or nature during that ten (10) year period.

The following offenses disqualify an individual who does not meet one of the criteria above from being an Employee or an owner of a Provider, unless the record of the offense has been expunged, pardoned or otherwise sealed:

1. Assault in the First, Second, or Third Degree (§§ 5-13-205—207)
2. Aggravated Assault (§ 5-13-204)
3. Aggravated Assault on a Family or Household Member (§ 5-26-306)
4. Aggravated Assault upon a Law Enforcement Officer or an Employee of a Correctional Facility, if a Class Y felony (§ 5-13-211)
5. Battery in the First, Second, or Third Degree (§§ 5-13-201—203)
6. Breaking or Entering (§ 5-39-202)
7. Burglary (§ 5-39-201)
8. Coercion (§ 5-13-208)
9. Computer Crimes Against Minors (§§ 5-27-601 *et seq.*)
10. Contributing to the Delinquency of a Juvenile (§ 5-27-220)
11. Contributing to the Delinquency of a Minor (§ 5-27-209)
12. Criminal Impersonation (§ 5-3-208)
13. Criminal Use of a Prohibited Weapon (§ 5-73-104)
14. Cruelty to Animals (§ 5-62-103)
15. Aggravated Cruelty to Dog, Cat or Horse (§ 5-62-104)
16. Death Threats Concerning a School Employee or Student (§ 5-17-101)
17. Domestic Battery in the First, Second or Third Degree (§ 5-26-303—305)
18. Employing or Consenting to the Use of a Child in a Sexual Performance (§ 5-27-402)
19. Endangering the Welfare of a Minor in the First or Second Degree (§§ 5-27-205—206)
20. Endangering the Welfare of an Incompetent Person in the Second Degree (§§ 5-27-201—202)
21. Engaging Children in Sexually Explicit Conduct for Use in Visual or Print Media (§ 5-27-303)
22. False Imprisonment in the First or Second Degree (§§ 5-11-103—104)
23. Financial Identity Fraud (§ 5-37-227)
24. Forgery (§ 5-37-201)
25. Incest (§ 5-26-202)
26. Interference with Court Ordered Custody (§ 5-26-502)
27. Felony Interference with a Law Enforcement Officer (§ 5-54-104)
28. Interference with Visitation (§ 5-26-501)
29. Introduction of a Controlled Substance into Body of Another Person (§ 5-13-210)
30. Manslaughter (§ 5-10-104)
31. Negligent Homicide (§ 5-10-105)
32. Obscene Performance at a Live Public Show (§ 5-68-305)
33. Pandering or Possessing Visual or Print Medium Depicting Sexually Explicit Conduct Involving a Child (§ 5-27-304)



34. Patronizing a Prostitute (§ 5-70-103)
35. Permanent Detention or Restraint (§ 5-11-106)
36. Permitting Abuse of a Minor (§ 5-27-221)
37. Producing, Directing, or Promoting a Sexual Performance by a Child (§ 5-27-403)
38. Promoting Obscene Materials (§ 5-68-303)
39. Promoting Obscene Performance (§ 5-68-304)
40. Promoting Prostitution in the First, Second, or Third Degree (§§ 5-70-104—106)
41. Prostitution (§ 5-70-102)
42. Public Display of Obscenity (§ 5-68-205)
43. Resisting Arrest (§ 5-54-103)
44. Robbery (§ 5-12-102)
45. Aggravated Robbery (§ 5-12-103)
46. Any Sexual Offense, including sexual extortion (§§ 5-14-101 *et seq.*)
47. Simultaneous Possession of Drugs and Firearms (§ 5-74-106)
48. Soliciting Money or Property from Incompetents (§ 5-27-229)
49. Stalking (§ 5-71-229)
50. Terroristic Act (§ 5-13-310)
51. Terroristic Threatening (§ 5-13-301)
52. Theft by Receiving (§ 5-36-106)
53. Theft of Property (§ 5-36-103)
54. Theft of Services (§ 5-36-104)
55. Transportation of Minors for Prohibited Sexual Conduct (§ 5-27-305)
56. Unlawful Discharge of a Firearm from a Vehicle (§ 5-74-107)
57. Felony Violation of the Uniform Controlled Substances Act (§§ 5-64-101 *et seq.*)
58. Voyeurism (§ 5-16-102)
59. Criminal attempt (§ 5-3-201), criminal complicity (§ 5-3-202), criminal solicitation (§ 5-3-301), or criminal conspiracy (§ 5-3-401) to commit any of the offenses listed in (A) or (B) above.

## **7. Criminal Record Check Document Retention**

DHS shall maintain all criminal record check documentation required to be retained under restricted access available only to those authorized and trained for its use. All criminal record check documentation shall remain on file for at least five (5) years, and followed by secure destruction.

## **8. Appeals**

Applicants or Employees receiving a Disqualified Determination shall be notified by DHS in writing. A “Disqualified” Determination is the only Determination that may be appealed.

If the Applicant or Employee wishes to appeal, he or she must submit the request for appeal within ten (10) business days of receipt of the written notification. Failure to submit an appeal within this timeframe will result in the appeal being denied. All appeals must be in writing and contain, at a minimum:

- A. The name, address, and telephone number of the person filing the appeal;
- B. The relationship the person filing the appeal has with DDS;
- C. The decision that is being appealed;
- D. The reason(s) the decision is being appealed;
- E. The desired outcome of the appeal;
- F. The law and/or facts being relied upon in filing the appeal;
- G. The person who will present the appeal; and
- H. Whether the person will be represented and if so, the name, address and telephone number of the authorized representative.

Appeals that do not contain ALL of this information will be denied.

The Appeal must be filed with the DHS division that issued the Determination. Within ten (10) business days of receipt of the appeal, the DHS division will schedule and conduct a hearing with all parties. All parties shall be notified of the hearing date, time and location in writing. An extension may be allowed when either party has a valid reason for postponement or both parties agree to the delay.

At the hearing, only issues relevant to the appeal shall be discussed and considered. The DHS Division shall issue a written decision within ten (10) business days of the meeting. The written decision will be submitted to all parties who participated in the hearing. This decision constitutes the final agency action for purposes of the Arkansas Administrative Procedures Act (A.C.A. § 25-15-201 *et seq.*)