

	INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY	
	Chapter 13: Background Checks	Effective Date: July 1, 2017
	Section 4: Evaluation of Background Checks for DCS Contractors	Version: 6

STATEMENTS OF PURPOSE

The Indiana Department of Child Services (DCS) will evaluate the results of Fingerprint-Based National Criminal History Checks (Fingerprint-Based Checks) on all DCS Contractor Agencies and Subcontractor Agencies (referred to collectively as “DCS Contractor Agencies”). The DCS Contractor Agency will evaluate the remaining background checks. See separate policy [13.3 Conducting Background Checks for DCS Contractors](#).

Fingerprint-Based Check

The DCS Central Office Background Check Unit (COBCU) will evaluate the results of the Fingerprint-Based Check and notify the assigned contact person at the DCS Contractor Agency by e-mailing the Fingerprint-Based Check Status Letter.

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

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

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

1. Any misdemeanor that may relate to the health and/or safety of a child;
2. Any felony;
3. Four (4) or more misdemeanor convictions; or
4. A juvenile adjudication for an act that if committed by an adult would be one (1) of the 22 felonies listed in the waiver section below.

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

Child Protection Services (CPS) History Checks

The DCS Contractor Agency will review the completed CPS History Check results from Indiana and all other states of residency within the past five (5) years (if applicable), and the DCS Contractor Agency will determine if there are reports of any substantiations of child abuse and/or neglect for the subject of the check. If there is substantiated CPS history in Indiana or the

equivalent in another state, the filing and approval by COBCU of a CPS waiver is required for consideration of, or continued, employment or volunteering (see “Waivers” section).

Sex Offender Registry Check

The DCS Contractor Agency will evaluate the Sex Offender Registry Check to determine if there are any matches. If there is a match, the subject of the check cannot be employed or volunteer for the contractor; and the DCS Contractor Agency will notify the COBCU immediately. The COBCU will re-evaluate the Fingerprint-Based Check report and reissue an amended Fingerprint-Based Check Status Letter, if applicable.

Local Law Enforcement Agency (LEA) History Check

The DCS Contractor Agency will evaluate the results of the local LEA Records Checks. If this name-based arrest report returns arrests for a felony, four (4) or more misdemeanors, or a misdemeanor that may relate to the health and safety of a child, the DCS Contractor Agency or designee shall obtain additional verifications (see procedure for additional information and guidance). If these arrests resulted in a conviction or pending conviction, the DCS Contractor Agency will contact the COBCU consultant listed on the fingerprint based letter immediately. The COBCU will cross-reference the local LEA Records Check with the Fingerprint-Based Check Report to ensure there is no discrepancy between the results of the two (2) checks. If at any time the DCS Contractor Agency believes the local LEA Records Check Report may alter the status of the Fingerprint-Based Check Report, the DCS Contractor Agency will contact the COBCU consultant listed on the Fingerprint-Based Check Status Letter for further action.

Waivers

Upon receipt of the positive written recommendation of support for employment and/or volunteering from the DCS Contractor Agency Executive Director or Human Resources (HR) Director, COBCU will accept a request for a waiver of disqualified juvenile history or of substantiated CPS history. COBCU will also accept a waiver request for disqualifying criminal history if the subject of the check has not been convicted or is pending conviction of any of the felonies listed below:

1. [Murder \(IC 35-42-1-1\)](#);
2. [Causing suicide \(IC 35-42-1-2\)](#);
3. [Assisting suicide \(IC 35-42-1-2.5\)](#);
4. [Voluntary manslaughter \(IC 35-42-1-3\)](#);
5. [Reckless homicide \(IC 35-42-1-5\)](#);
6. [Battery \(IC 35-42-2-1\)](#) within the past five (5) years;
7. [Domestic battery \(IC 35-42-2-1.3\)](#);
8. [Aggravated battery \(IC 35-42-2-1.5\)](#);
9. [Kidnapping \(IC 35-42-3-2\)](#);
10. [Criminal confinement \(IC 35-42-3-3\)](#) within the past five (5) years;
11. [Human Trafficking \(IC 35-42-3.5\)](#);
12. [A felony sex offense under \(IC 35-42-4\)](#);
13. [Carjacking \(IC 35-42-5-2\)](#) (repealed) within the past five (5) years prior to repeal;
14. [Arson \(IC 35-43-1-1\)](#) within the past five (5) years;
15. [Incest \(IC 35-46-1-3\)](#);
16. Neglect of a dependent ([IC 35-46-1-4\(a\)\(1\)](#)) and ([IC 35-46-1-4\(a\)\(2\)](#));
17. Child selling ([IC 35-46-1-4\(d\)](#));
18. A felony involving a weapon under ([IC 35-47](#)) or ([IC 35-47.5](#)) within the past five (5) years;
19. A felony relating to controlled substances under ([IC 35-48-4](#)) within the past five (5) years;

20. An offense relating to material or a performance that is harmful to minors or obscene under ([IC 35-49-3](#));
21. A felony under [IC 9-30-5](#) within the past five (5) years;
22. A felony that is substantially equivalent to a felony listed in subdivisions one (1)- (21) for which the conviction was entered in another state.

The contractor will immediately ensure the subject of the check with:

1. A-1 level covered personnel duties will not be employed or volunteer in a capacity in which the subject of the check has or will have direct contact on a regular and continuing basis, or any contact where a child is alone or only with contractor's staff, in connection with performance of any services of activities pursuant to the contract/subcontract with DCS; or
2. A-2 level covered personnel duties will not be employed or volunteer in a capacity in which the subject of the check has or will have electronic or physical access to children's records if the criminal or waiver process subsequently reveals:
 - a. Disqualifying criminal history that is not eligible to be waived;
 - b. Disqualified criminal history or substantiated CPS history in which a waiver action is not supported or pursued by the DCS contractor agency; or
 - c. Disqualified criminal history or substantiated CPS history in which a waiver is not granted by DCS.

The decision of the Background Check Waiver Committee regarding criminal and/or CPS waiver is not subject to appeal. However, if the subject's situation were to change and/or additional information is obtained, a new waiver packet may be resubmitted for re-evaluation by COBCU. A new evaluation will then be completed, and a subsequent official decision will be issued.

Code References

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

PROCEDURE

The DCS Contractor Agency will ensure that the DCS Contractor completes the following:

1. Review the results letter received from COBCU for a Fingerprint-Based Check:
 - a. Provide a copy of the Fingerprint-Based Check Status Letter to the subject of the check;
 - b. Instruct the subject of the check to contact the COBCU Consultant listed on the Fingerprint-Based Check Status Letter and provide the required documentation to that COBCU consultant within seven (7) business days of the date of the fingerprint-based status results letter if it returns as conditionally disqualified. Upon receipt of the required information, the COSBU consultant will re-evaluate and issue an amended fingerprint status letter reflecting Qualified or Disqualified. If the subject of the check is conditionally disqualified, he or she may not be hired or volunteer with the DCS Contractor Agency. If already employed or volunteering, the subject of the check must have the conditionally disqualified status resolved within 10 business days. If resolved satisfactorily, the DCS Contractor Agency will receive an amended fingerprint based status letter from COBCU of Qualified before the end of the 10th business day. If the DCS Contractor Agency does not receive this amended qualified status within the timeframe, the DCS Contractor Agency will:

- i. Remove the subject of the check from the schedule immediately,
 - ii. Ensure the subject of the check with A-1 level covered personnel duties will not be employed or volunteer in a capacity in where he or she has, or will have, direct contact on a regular and continuing basis, or any contact where a child is alone or only with contractor's staff, in connection with the performance of any services or activities pursuant to the contract/subcontract with DCS, or
 - iii. Ensure the subject of the check with A-2 level covered personnel duties will not be employed or volunteer in a capacity where the subject of the check has or will have electronic or physical access to the children's records unless the necessary waiver(s) has been granted. Upon re-evaluation, refer to "c" below if the status is disqualified.
 - c. Instruct the subject of the check to contact the COBCU consultant listed on the Fingerprint-Based Check Status Letter if the fingerprint-based status returns as disqualified, and the DCS contractor agency is in support of pursuing a criminal history waiver for the subject of the check, in order to determine whether he or she is eligible to apply for a waiver. If eligible and the DCS Contractor supports the waiver, the DCS Contractor Agency and the subject of the check shall work together to submit a complete waiver packet to COBCU as quickly as possible (see Practice Guidance regarding applying for a waiver). If the subject of the check is disqualified, he or she may not be hired or volunteer with the DCS Contractor Agency unless the necessary waiver(s) have been granted. If already employed or volunteering, the DCS Contractor Agency will:
 - i. Remove the subject from the schedule immediately,
 - ii. Ensure the subject of the check with A-1 level covered personnel duties will not be employed or volunteer in a capacity in where he or she has, or will have, direct contact on a regular and continuing basis, or any contact where a child is alone or only with contractor's staff, in connection with the performance of any services or activities pursuant to the contract/subcontract with DCS, or
 - iii. Ensure the subject of the check with A-2 level covered personnel duties will not be employed or volunteer in a capacity where the subject of the check has or will have electronic or physical access to the children's records unless the necessary waiver(s) has been granted.
2. Review the results of the CPS History Check;
 - a. Give the subject of the check a copy of the completed Indiana [Request for a Child Protection Services \(CPS\) History Check \(SF52802/CW2128\)](#) form showing substantiated history if a substantiated CPS history is discovered from Indiana (see separate policy, [2.6 Sharing of Confidential Information](#)), and
 - b. Work with the subject of the check to complete and submit a waiver packet to COBCU as quickly as possible when CPS substantiation is discovered and the DCS Contractor Agency is in support of pursuing the CPS history waiver. A request for a CPS waiver should be filed and processed at the time of initial contract award, every four (4) years (based on the anniversary of the covered individual's personnel initial checks), hiring, or upon discovery of any additional CPS substantiation which was not previously granted a CPS waiver if discovered between these times (see Practice Guidance regarding applying for a waiver). The request for the waiver must be granted by COBCU for the employee or volunteer to be employed or volunteer as part of the DCS Contractor Agency. If the subject of the check is already hired or volunteering, the DCS Contractor Agency will:
 - i. Immediately remove the subject from the work schedule,

- ii. Ensure the subject of the check with A-1 level covered personnel duties will not be employed or volunteer in a capacity in where he or she has, or will have, direct contact on a regular and continuing basis, or any contact where a child is alone or only with contractor's staff, in connection with the performance of any services or activities pursuant to the contract/subcontract with DCS, or
 - iii. Ensure the subject of the check with A-2 level covered personnel duties will not be employed or volunteer in a capacity in which the subject of the check has or will have electronic or physical access to the children's records unless the necessary waiver(s) have been granted.
3. Review the results of the Sex Offender Registry Check for a match to the subject of the check. Each name or combination of names the subject has used in his or her lifetime must be searched individually. Upon obtaining the results of a name-based search, the results should be printed. The screen shot must be printed, signed, and dated by the assigned DCS Contractor Agency worker. For those results without matches, the assigned worker at the DCS Contractor Agency will also write "NO MATCH" on the printed page that has his or her signature and date the result was reviewed. If there is a match for the subject of the check, the DCS Contract Agency cannot hire or allow the subject to volunteer at the facility. If already employed or volunteering, then the subject of the check must be dismissed;
4. Review the results of the local LEA Record Checks and obtain the necessary verification for any arrests returned that may be a felony, a total of four (4) or more misdemeanors, or a misdemeanor that may relate to the health and safety of a child. For arrests that have had charges filed but are pending conviction, the DCS Contractor Agency shall obtain court issued verification of the currently pending charge(s) and level of the charge(s) (misdemeanor or felony). For arrests that lead to a criminal conviction, the DCS Contractor Agency shall obtain court issued dispositions reflecting the conviction charge(s) and the level of each conviction. For arrests that resulted in no charges filed or charges dismissed, the DCS Contractor Agency shall obtain court or police department issued verification of such an outcome.
5. If the arrests result in a conviction or pending conviction, contact the COBCU consultant listed on the fingerprint-based status letter within five (5) days to have the COBCU consultant re-evaluate the fingerprint-based status and if necessary issue a new amended status letter. If at any time the DCS Contractor Agency believes the local LEA Record Check report may alter the status of the Fingerprint-Based Check Status, the DCS Contractor Agency will contact the COBCU Consultant listed on the Fingerprint-Based Check Status Letter for further action;
6. Request a waiver of disqualified criminal history and/or substantiated CPS history by submitting the required information to the COBCU. See Practice Guidance for a list of the required information; and
7. Place a copy of the results for all background checks and any waiver letters in the employee's or volunteer's personnel file.

Note: A criminal history or CPS waiver granted for the purpose of employment or volunteering with a DCS Contractor Agency may not be used for any additional purpose. A new waiver request must be submitted and granted for each additional agency or level of employment performance of service or activities requiring additional background checks (see separate policy, [13.3 Conducting Background Checks for DCS Contractors](#)).

The DCS COBCU will:

1. Evaluate the criminal history report within five (5) business days of receipt of the Fingerprint-Based Check and notify, by e-mail, the DCS Contractor Agency's assigned contact person regarding the clearance status;
2. Provide guidance regarding conditionally disqualified or disqualified applicants and contractor agencies (see separate policy, [2.6 Sharing Confidential Information](#));
3. Re-evaluate history based on the received documentation received from the subject and issue a new Fingerprint-Based Check Status Letter, when applicable; and

Note: For waivers of disqualified criminal history and substantiated CPS history:

- a. Upon receipt of the complete waiver request packet from the subject of the check and the DCS Contractor Agency, the COBCU consultant will summarize, make a recommendation, and submit the request to the Central Office Background Check Team Manager or designee within three (3) business days;
- b. The Central Office Background Check Team Manager or designee will submit the recommendation to the Background Check Waiver Committee within two (2) business days for a joint decision; and
- c. Notify, by e-mail, the DCS Contractor Agency's assigned contact person of the waiver decision. A decision will be returned in approximately 10 business days after submission to the Background Check Waiver Committee members and the status will be either "waiver granted" or "waiver not granted" (see Related Information).

[NEW] At times, additional information will be requested and this will delay the issuance of the final "Waiver granted" or "Waiver not granted" status. Additional information may be needed to submit a complete waiver or after the waiver is submitted and questions have been asked by the Background Check Waiver Committee members. Failure to submit the requested information by the stated deadline may result in the waiver denial due to failure to cooperate.

4. Collect all necessary verification and requests as required for a request for a Medical Exception to fingerprint and submit to the Indiana State Police (ISP) for approval. Upon approval from ISP, generate the Indiana Limited Criminal History (LCH) check and issue a Medical Exception Fingerprint Granted status letter to the DCS Contractor Agency's contact person by e-mail if the subject is found to be eligible (see separate policy, [13.3 Conducting Background Checks for DCS Contractors](#)).

PRACTICE GUIDANCE

The information below is to be submitted to COBCU in one packet by the DCS contractor agency. The following items are required to be submitted in the waiver packet for the purpose of employment, volunteering, or interning with a DCS Contractor Agency:

1. **Proof of Previous Waiver**

If applicable for continued employment, provide the official notice previously issued to the subject by COBCU granting the criminal and/or CPS waiver for the purpose of hiring employees, volunteers, and/or interns at DCS Contractor Agency. The waiver cannot be processed unless this is included in the waiver packet.

2. **Letter from the Subject**

A signed letter from the subject of the check requesting a criminal and/or CPS waiver for the purpose of becoming an employee or volunteer at a DCS Contractor Agency. The letter should explain in detail the situation involving each arrest and child abuse

investigation, regardless of conviction or substantiation. The letter should include, but is not limited to, the following:

- a. Provide the date, location, and charge of each arrest during the subject's lifetime.
 - i. Indicate which of the arrests resulted in any type of conviction,
 - ii. Indicate the date of conviction, the final conviction charge, and the level (felony or misdemeanor),
 - iii. Of each conviction indicate the sentence given, time served, time on probation/parole as well as other court ordered fines, therapy, fines and other obligations that were court ordered,
 - iv. Indicate if the subject is currently on probation/parole or the date probation/parole was officially ended on each conviction, and
 - v. Provide any information regarding self-referred services related to this conviction or arrest.
- b. Provide the date of each CPS report and assessment involving the subject during his or her lifetime.
 - i. Indicate if the investigation resulted in a substantiation against the subject, and if substantiated, include the date of the substantiation,
 - ii. Include the final findings (physical abuse, sexual abuse, and/or neglect) for those assessments that resulted in a substantiation,
 - iii. Indicate whether the child was removed from the subject's home as a result of the substantiation. If the child was removed, provide an outline regarding the length of time out-of-home and indicate whether the child has returned to the subject's home, and
 - iv. Identify the services the subject participated in and indicate whether these were court ordered services. Also, identify what the subject learned through the services and how the subject's behavior changed as a result of the services.
- c. Provide evidence of the person's rehabilitation, including the person's cooperation with a treatment plan.
 - i. Include and explain past and ongoing treatment if mental illness and/or substance abuse is/was a contributing factor in the previous criminal and/or CPS history of the subject. Provide any supporting documentation, and
 - ii. Explain the subject's ability and long-term plan to provide for the child's safety and well-being in an environment that will allow the child to thrive.
- d. The subject requesting the waiver may also include any additional reference letters or documentation that would support any rehabilitation that has occurred in his or her life.

3. **Letter from the DCS Contractor Agency**

Provide a written recommendation from the DCS Contractor Agency in regard to the subject's criminal and/or CPS waiver request. The letter must be signed by the Executive Director or HR director and submitted on the DCS Contractor Agency's letterhead or sent by e-mail from his or her business e-mail address. The letter should include the Executive Director's or HR director's observations of the subject of the check, as well as, the reasons he or she does or does not support the waiver request. The DCS Contractor Agency shall include a description of the subject's anticipated job duties if hired or for continued employment, or provide a formal job description as well as indicate the Indiana county(ies) in which that the subject of the check will be performing services.

4. **Child Abuse and Neglect Check**

A child abuse and neglect check must be completed and submitted for all states in which the subject of the check has resided in the previous five (5) years.

- a. For dates of residency in Indiana, the current version of [Indiana Request for a Child Protection Services \(CPS\) History Check \(SF 52802/CW 2128\)](#) must be completed in accordance with the published instructions. If any portion of the form is missing information or incorrectly completed, it is not acceptable and will be returned for correction.
- b. For dates of residency outside of Indiana, the DCS Contractor must obtain and submit the appropriate documentation for confirmation of child abuse and neglect checks in that specific state.
- c. If there is a substantiation in Indiana, a copy of the approved [Assessment of Alleged Child Abuse or Neglect \(SF 113/CW 0311\)](#) for all assessments must be submitted with the CPS waiver request. A screen print from the Management Gateway for Indiana's Kids (MaGIK) is not an acceptable substitution for the completion of the appropriate form or copy of the approved [Assessment of Alleged Child Abuse or Neglect \(SF 113/CW 0311\)](#). This may mean locating the hard copy case file and including supporting documentation from the hard copy file with the waiver submission.
- d. If substantiation of abuse and/or neglect is found in another state, the approved assessment (the narrative similar to the [Assessment of Alleged Child Abuse or Neglect \(SF 113/CW 0311\)](#) in Indiana) must be obtained from that other state and submitted with the CPS waiver request.

5. **Screen Print of National Sex Offender Registry Check**

The National Sex Offender Registry Check is required for any subject 14 years or older. All sex offender searches must be completed on the Dru Sjodin National Sex Offender Public website at <http://www.nsopw.gov/Core/Portal.aspx>. Any other website search is unacceptable and is duplicating the worker's efforts, because the other search sites are all linked to this national site.

- a. Each name or combination of names the subject has used in his or her lifetime must be searched individually.
- b. Upon obtaining the results of a name search, the results should be printed. The screen shot must be printed, signed, and dated by the assigned worker. For those results without matches, the DCS Contractor will also write "NO MATCH" on the printed page that has his or her signature and date the result was reviewed

6. **Local Law Enforcement Agency (LEA) Results**

The local LEA Records Check is a name-based arrest record only. A copy of the written results must be obtained from each of the local LEAs that have jurisdiction to respond to an emergency 911 call at the subject's current home address, as well as, all other home addresses in which the subject has resided in the past five (5) years. These searches should be completed for every name or combination of names used by the subject for each LEA. Provide court issued dispositions on arrests.

Note: The local LEA Records Check is neither an Indiana State Police Limited Criminal History Check nor a court records search.

8. **Fingerprint-Based Check Status Letter**

If requesting only a CPS waiver, include a copy of the Fingerprint-Based Check Status letter, which was e-mailed to the DCS Contractor Agency and was completed for the

purpose of employment or volunteering showing the fingerprint-based status of qualified. This applies to subjects 18 years and older.

FORMS AND TOOLS

N/A

RELATED INFORMATION

Background Check Waiver Committee

The Background Check Waiver Committee is made up of the Deputy Director of Outcomes and Services, the DCS Local Office Director (LOD), Regional Manager (RM), and the Central Office Background Check Team Manager or designee. Additional members may be consulted from time to time. The committee's decision may be made via phone or e-mail.

Factors for the DCS Contractor Agency and Background Check Waiver Committee to Consider when Recommending and/or Approving the Criminal and/or CPS History Waivers

When evaluating background check information, the factors the DCS Contractor Agency and Background Check Waiver Committee should consider include, but are not limited to:

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

Disclosing National Criminal History Check Information

Neither the DCS Contractor Agency nor the subject of the check shall receive a copy of the official FBI or ISP transcript. DCS may verbally disclose the specific crimes to the subject of the check. If any of the checks conducted by DCS reveal an inaccurate record, the subject of the check may formally challenge the record. A Review Challenge of inaccurate information must be made to the law enforcement agency that posted the record. To refute inaccurate Indiana criminal history records or information, the subject of the check must request a Review Challenge from ISP. The subject of the check must be fingerprinted for the Review Challenge, at his or her own expense. The process of the Review Challenge takes place between ISP and the subject of the check, and DCS is not involved in the process.

Disqualified Fingerprint Status

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

Conditionally Disqualified Fingerprint Status

"Conditionally Disqualified" fingerprint status means that the subject of the check is ineligible to be hired as a new employee or volunteer. If an existing employee or volunteer, the conditional status must be resolved in a timely manner per this policy or be removed from the work schedule or have a change or duty assignment until the conditionally disqualifying arrest or

conviction is resolved and the status is changed to “Qualified” (or the status is changed to “Disqualified” and a waiver is subsequently granted) to be Covered Personnel.

Examples of reported information on a Fingerprint-Based Check Report that will lead to a “Conditional Disqualification” include, but are not limited to:

1. An arrest without a disposition,
2. A conviction without the level of the conviction being a misdemeanor or a felony, or
3. A conviction where additional information on the circumstances of the arrest and conviction are required.

Qualified Fingerprint Status

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

Existence of CPS Substantiated History

The existence of CPS history of abuse or neglect means that unless a waiver is granted, the subject of the check is ineligible to be hired or continue employment in a position as “covered personnel”. “Covered Personnel” is any person that is required by the contract or DCS policy to have some level or type of a background check.