
Section V:	Human Resources
Title:	Human Resources Manual
Chapter:	Safety and Benefits, Criminal Records Check
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Purpose

The purpose of this policy is to outline department requirements for State and Federal criminal record checks related to employment decisions, utilization of independent contractors and volunteers.

Policy

It is the policy to enable management to conduct criminal record checks on applicants for designated classifications, current employees, independent contractors and volunteers where such checks are in the best interests of clients, patients, students, residents, wards and employees of the department; for protection of State assets; or to satisfy Federal requirements. Requests for criminal record checks shall not be due to a person's age, sex, race, color, national origin, religion, creed, political affiliation or disabling condition as defined by N.C.G.S. 168A-3.

Implementation

1. Covered Persons:
 - A. N.C.G.S. 114-19.6 defines covered persons as:
 1. An applicant for employment or a current employee in a position in the Department of Health and Human Services. To conduct a criminal record check on a current employee, there shall be reasonable cause or the employee is an applicant for another job within the department.
 2. An independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Health and Human Services.

Contracts shall include language specifying the terms and conditions for a possible criminal record check. Criminal record checks shall be conducted on independent contractors or employees of an independent contractor, if the independent contractor carries out duties customarily performed by division/facility/school personnel engaged in direct care work. Division/facility/school directors have discretion in determining

whether criminal record checks are conducted for independent contractors engaged in non-direct care work.

3. A person who has been approved to perform volunteer services for the Department of Health and Human Services.

Volunteer/student applicants will not be subject to criminal background checks if they are providing non- direct care service and seeking to observe and/or work under close supervision. Checks are to be performed on those expected to have independent time with one or more clients, patients, students, and wards of the department.

- B. .N.C.G.S. 114-19.2 defines covered persons as:

A person who is employed, applies for employment, or applies to be selected as a volunteer in the Department of Health and Human Services schools.

- C. N.C.G.S. 143B-146.16 defines covered persons as:

Any employee of a local board of education whether full time or part time, any employee of a residential school whether full time or part time or independent contractor or employee of an independent contractor who carries out duties customarily performed by school personnel. School personnel include substitute teacher, driver training teacher, bus drivers, clerical staff, houseparent and custodians.

2. Criminal Record Check Authority:

- A. Criminal Record checks are authorized by the Department for the following groups:

1. Applicant of choice for employment in designated divisions/classifications;
2. Independent contractors or employees of independent contractors (direct care);
3. Persons who perform volunteer services in schools and direct care classes;
4. Applicant of choice for employment within DHHS schools; and
1. Current department employees if reasonable cause exists.

- B. All persons for which criminal record checks are to be performed must sign and date a [Criminal Record Check Form](#) prior to a criminal record check being conducted.

- C. The department may deny employment to an applicant, dismiss an existing employee, not honor a contract for services, or disallow a volunteer that refuses to

submit to a criminal record check by not signing a Criminal Record Consent Form under this policy.

- D. Name checks shall be performed on all of the authorized groups in section II A above through the Administrative Office of the Courts Information System (AOC).
- E. Fingerprinting shall be performed for National Criminal Record checks on all school personnel for compliance with N.C.G.S. 143B-146.16. In addition, fingerprinting shall be conducted for covered persons under N.C.G.S. 114-19.6 who have not resided in the State of North Carolina during the past five (5) years.
- F. All offers for employment, contracting and volunteering are conditional offers pending no disqualifying criminal history being found.
- G. Covered persons are required to report any arrest, criminal charges, or criminal convictions (other than minor traffic violations), as well as any protective orders entered against them or any confirmed finding of abuse or neglect against them to their supervisor no later than (5) five calendar days after such occurrence. The supervisor shall then notify the Human Resources Director. Employment actions shall be reviewed according to this policy.

3. Criminal Record Check Process

- A. Only authorized DHHS human resources (HR) employees shall serve as “requesting officials” for the processing of criminal record checks.
- B. To process a criminal record name check, the requesting HR official shall access the DHHS Criminal Background Check System located at <https://NCCRC.DHHS.STATE.NC.US>.
- C. To process a criminal fingerprint check authorized under N.C.G.S. 1143B-146.16 or N.C.G.S. 114-19.6, the Human Resources Office shall access the Live Scan fingerprinting and Paper fingerprinting card site at <http://ncchildcare.dhhs.state.nc.us/general/dhhsrcc-dhhsemployees.asp>
 - 1. For live scan use the agency guide to select an approved law enforcement agency.
 - 2. Complete and sign the [Electronic Fingerprint Submission Release of Information](#) (on SBI letterhead) form.
 - 3. [Complete the Applicant Information form](#).
 - 4. Once applicant is fingerprinted by Live Scan, the Certified Electronic Fingerprint Release form shall be returned to the human resources

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manager to be kept on file. The human resources manager will then ensure the applicants information has been entered into the DHHS Personnel database so that the DHHS Criminal Record Check Unit is aware that a fingerprint check result for the applicant is pending.

5. All paper fingerprint cards must be submitted on a “Applicant FD-258” card only. Cards can be obtained by contacting the CRC Unit at 919-773-2856.
6. For paper fingerprints, have the applicant complete and sign the [“Authority for Release of Information”](#) form. Keep this record on file for 1 year.
7. The applicant FD-258 fingerprint card is to be returned by applicant to the HR office and shall be mailed by the human resources manager to: DHHS Criminal Record Check Unit, 2201 Mail Service Center, Raleigh, N.C. 27699-2201, attention: DHHS Personnel Program.
8. The human resources manager will then ensure the applicants information has been entered into the DHHS Personnel database so that the DHHS CRC Unit is aware that a fingerprint check result is pending.

- D. Covered persons under N.C.G.S. 143B-146.16, N.C.G.S. 114-19.2 and N.C.G.S. 114-19.6 shall have a criminal record check conducted at the time of the conditional offer.
- E. Covered employees shall be checked each time there is a break in employment of thirty days or more, when transferring from one division/facility/school to another or when an applicant for a position in a covered class/division. Covered contractors/volunteers shall be checked each time there is a break in service of six or more months.

4. Criminal History Findings

N.C.G.S. 114-19.6(a) (2) defines criminal history as a state or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person’s suitability for employment/service.

- A. If no criminal history is found on the person being checked, continue the employment process.

- B. Only the authorized “requesting officials” can view the criminal history record. Persons being checked are not allowed to view a criminal history record.
- C. If a criminal history is found based on a name check, the human resources office shall immediately contact the person checked and inform him or her of the criminal history finding. If the finding supports employment dismissal, job offer rescission or contract termination, DHHS shall verify the existence of such record by either obtaining a certified public record or fingerprint of the person for verification that the criminal history record information belongs to the individual checked.
- D. If a covered person’s verified criminal history reveals one or more convictions covered under N.C.G.S. 114-19.6 and/or N.C.G.S. 143B-146.16, the conviction shall constitute cause for not selecting the person or for dismissing the person from current employment. The conviction shall not automatically prohibit employment or consideration of employment; however, the following factors shall be considered by the division/facility/school director in determining whether employment shall be denied or discontinued:
1. The level and seriousness of the crime;
 2. The date of the crime;
 3. The age of the person at the time of the conviction;
 4. The circumstances surrounding the commission of the crime, if known;
 5. The nexus between the criminal conduct of the person and job duties of the person;
 6. The prison, jail, probation, parole, rehabilitation and employment records of the person since the date the crime was committed; and
 7. The subsequent commission by the person of a crime listed in subsection (a) of N.C.G.S. 114-19.6.
- E. The covered person will be rejected/separated from employment if the criminal record check and supporting records reveal a “criminal history” that indicates the individual (1) poses a threat to the physical safety of patients, students, clients, or personnel or (2) has demonstrated that he or she does not have the integrity or honesty to fulfill his/her duties as a DHHS employee, contractor or volunteer. Convictions of crimes involving sexual misconduct; child, client, or patient abuse, neglect, or exploitation; violence against a person; alcohol or controlled substances; or theft may result in disqualification/separation from employment.
- F. A decision to hire/retain a covered person with a criminal history must be reviewed and approved by the Director of the Division of Human Resources or designee. Requests for review/approval must be made by the division/facility/school director or designee in writing and include justification for the hire or continued employment that addresses the seven (7) statutory factors

listed above. The Director of the Division of Human Resources or designee will provide a written response to the request. The response along with the other criminal history findings is to be maintained by the division/facility/school human resources office separately from the personnel file.

5. Program Maintenance

- A. In order to ensure the security and confidentiality of records, the human resources office shall establish controls to protect confidential information from unauthorized access or disclosure. Records containing criminal record check information shall be kept in a file separate from the personnel file and are to be accessible only by the designated “requesting officials.”
- B. All criminal record check files shall be kept for the duration of employment.
- C. The criminal record check information and the confidential nature of the information precludes transfer of these records when employees transfer from one state agency/university to another, but does allow records to be transferred within the department.
- D. Each division/facility/school is responsible for costs associated with fingerprinting individuals.
- E. Work units/classifications/positions to be added as a covered group under N.C.G.S. 114-19.6 shall be approved by the Director, Division of Human Resources. Consideration will be given for coverage to units/classifications/positions that are responsible for handling monetary transactions and that work with confidential information. Division/facility/school directors shall use the [Criminal Record Check Request Form](#) to request coverage under this statute.
- F. [Covered positions](#) for criminal record checks can be found at this location.
- G. Each division/facility/school director shall establish annually a list of all independent contractors that will be included in their criminal records check.

For questions or clarification on any of the information contained in this policy, please contact [Human Resources](#). For general questions about department-wide policies and procedures, contact the [DHHS Policy Coordinator](#).