ALABAMA DEPARTMENT OF HUMAN RESOURCES SOCIAL SERVICES DIVISION ADMINISTRATIVE CODE

CHAPTER 660-5-46
CRIMINAL HISTORY BACKGROUND INFORMATION CHECKS

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660-5-46-.01 Legal Base.

Alabama Act 2000-775 provides for criminal background checks for licensees, license applicants, volunteers, volunteer applicants, and prospective and current employees of licensed or approved child and adult care facilities and for foster homes and adoptive homes approved by child placing agencies or the Department of Human Resources. The Act requires the Department of Human Resources to request criminal history background information on all license applicants, current licensees, applicants for employment, volunteers, and certain current employees and to issue suitability determinations based upon the presence of certain convictions. Individuals receiving a determination of unsuitability shall not be, or continue to be, licensed, approved, or employed, or work as a volunteer in the areas covered by the Act.

Author: Dianne Wright, James E. Long

Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.

History: **New Rule**: Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.02 Coverage.

The provisions of this chapter governing criminal history background information checks amends and is applicable to the following:

(1) Minimum Standards for Day Care Centers and Nighttime Centers for Children (660-5-25-.05);

(2) Minimum Standards for Group Day Care Homes and Group Nighttime Homes for Children (660-5-25-.06);

(3) Minimum Standards for Family Day Care Homes and Nighttime Homes for Children (660-5-25-.07);

(4) Minimum Standards for Child Foster Family Homes (660-5-28-.02);

(5) Minimum Standards for Residential Child Care Facilities (660-5-37);

(6) Minimum Standards for Child Placing Agencies (660-5-39);

(7) Minimum Standards for Foster Homes for Adults (660-5-42);

(8) Minimum Standards for Day Care Centers for Adults;

(9) Minimum Standards for Day Care Homes for Adults.

Author: Dianne Wright, James E. Long
Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.
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660-5-46-.03 Definitions.

When used in this chapter, the following words shall have the following meanings:

(1) ADULT. An individual 19 years of age and older.

(2) ADULT CARE FACILITY. A person or entity holding a Department of Human Resources license or approval or certification to provide care, including foster care for adults.

(3) APPLICANT. A person or entity who submits an application for a license as a child care or adult care facility to the Department of Human Resources or a child placing agency, or an application for employment or for a volunteer position to a Department of Human Resources licensed child care or adult care facility. With regards to child care and adult care facilities in a home setting, the term includes an adult household member whose residence is in the home. The term also includes an individual who submits an application for a volunteer position or for employment with the Department of Human Resources in a position in which the person has unsupervised access to children, adults, or individuals with disabilities as one of the essential functions of the job. The term also includes an applicant for approval as an adoptive parent of a child or as a foster parent of an adult or child.

(4) CARE. The provision of care, treatment, education, training, instruction, supervision, or recreation to children, adults, or individuals with disabilities.

(5) CARETAKER SETTING. A building, structure, or location, public or private property, or vehicle, utilized for or involved in the providing of care, education, training, instruction, or supervision of children, adults, or individuals with disabilities or transportation in connection with activity provided by a licensed, approved, or certified child or adult care facility.

(6) CHIEF EXECUTIVE OFFICER. The Commissioner of the Department of Human Resources, the director of a county department of human resources, or the head of an employer covered by this chapter, but not specifically enumerated.

(7) CHILD or CHILDREN. An individual under 19 years of age.

(8) CHILD CARE FACILITY. A person or entity holding a Department of Human Resources license, permit, or approval to provide child care, including foster care, under Chapter 7 of Title 38 of the Code of Ala. 1975. The term excludes exempt child care facilities.

(9) CHILD PLACING AGENCY. A person or entity licensed by the Department of Human Resources under Chapter 7 of Title 38 of the Code of Ala. 1975, issuing approvals to foster family homes and adoptive homes.

(10) CONVICTION. A determination of guilt as the result of a plea, including a plea of nolo contendere, or a trial.

(11) CRIMINAL INVOLVING VIOLENCE. Crimes of murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are

included as "crimes involving violence" if (A) the offense has as element the use, attempted use or threatened use of physical force against the person of another, or (B) the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another. "Crime involving violence" also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.

(12) CRIMINAL HISTORY BACKGROUND INFORMATION CHECK. The review of any and all records containing any information collected and stored in the criminal record repository of the Federal Bureau of Investigation and the Alabama Department of Public Safety involving an arrest or conviction by a criminal justice agency, including, but not limited to, child abuse crime information as defined by 42 U.S.C. §5119, the National Child Protection Act of 1993, conviction record information, fingerprint cards, correctional data and release information, and identifiable descriptions and notations of convictions. Criminal history background information shall not include any analytical records or investigative reports that contain intelligence information or criminal investigation information.

(13) CURRENT. An individual who is presently employed, licensed or approved, or working as a volunteer on the effective date of this chapter.

(14) DAILY LIVING TASKS. Activities of daily living, including walking, working, learning, grooming and hygiene, bathing, dressing, eating, cooking, cleaning, shopping, transportation, managing money, maintaining a residence, writing, and using telephones, computers, and other automated communication devices.

(15) ELDERLY. An individual 65 years of age or older.

(16) EMPLOYEE. An individual currently in the service of an employer for compensation, full-time or part-time, and employed by contract or at will, in which the employer has the authority to control the person in the material details of how work shall be performed and when compensation shall be provided.

(17) EMPLOYER. An individual, person, group of persons, association, partnership, corporation, limited liability company or partnership, business, or other entity which hires employees, has volunteers, or contracts with others to provide personnel to work with or provide care to children, adults, or individuals with disabilities in a caretaker setting.

(18) ESSENTIAL FUNCTIONS. The fundamental, not merely marginal, job duties of the employment as determined by a written job description or the judgment of the employer.

(19) EXEMPT CARE FACILITY. A person or entity exempt by law from licensure by the Department of Human Resources or a child placing agency, including church day care, child centers, or elder centers.

(20) INDIVIDUAL. A natural person.

(21) INDIVIDUAL WITH DISABILITIES. A person with a mental or physical impairment who requires assistance to perform one or more daily living tasks.

(22) LAW ENFORCEMENT. The sheriff's department of a county or the police department of a municipality.

(23) LICENSE. A license, permit, certification, approval, registration, or other form of permission required by law by whatever designation for a child care facility, adult care facility, child placing agency, foster parent or foster home, adoptive parent or adoptive home, or any other person or entity in which an individual has unsupervised access to children, the elderly, or individuals with disabilities.

(24) LICENSED SOCIAL WORKER. A social worker licensed by the Alabama State Board of Social Work Examiners to conduct family home studies and psychosocial assessments in adoptive or custody cases by court order or for treatment not otherwise required to conduct a criminal history check.

(25) LICENSEE. Holder of a license or approval and an adult household member whose residence is in the home in regards to child care and adult care facilities in a home setting.

(26) PERSON or ENTITY. A natural person, sometimes referred to as an individual, an owner or operator of any adult care facility, child care facility, child placing agency, exempt child care facility, or licensee, whether an individual, corporation, limited liability company or partnership, partnership, association, or other legal entity or group, and a board member, an officer, member or partner of an entity who has direct contact with children, the elderly, or individuals with disabilities in care.

(27) REASONABLE SUSPICION. Belief by a prudent person that reasonable articulable grounds exist to suspect that the employee's past or present behavior should be reviewed to determine if such behavior or conduct bears upon the individual's fitness to teach or supervise or have responsibility for the safety and well-being of children, the

elderly, or persons with disabilities as defined in this chapter.

(28) REPORT. A written statement of criminal history background information.

(29) RESIDENCE. Place of abode, domicile, or dwelling with intention to remain permanently and continuously or for an indefinite or uncertain length of time.

(30) SEX CRIME. Includes the following:

(a) Enticing a child to enter a vehicle, room, house, office, or any other place for immoral purposes, as proscribed by Section 13A-6-69 of the Code of Ala. 1975.

(b) Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Ala. 1975.

(c) Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Ala. 1975.

(d) Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112 of the Code of Ala. 1975.

(e) Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Ala. 1975.

(f) Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Ala. 1975.

(g) Sexual torture, as proscribed by Section 13A-6-65 of the Code of Ala. 1975.

(h) Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Ala. 1975.

(i) Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Ala. 1975.

(j) Soliciting a child by computer for the purposes of committing a sexual act and transmitting obscene material to a child by computer as proscribed by Sections 13A-6-110 and 13A-6-111 of the Code of Ala. 1975.

(k) Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Ala. 1975.

(l) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to k., inclusive.

(m) A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Ala. 1975.

(n) Conviction for a violation or attempted violation of an offense committed outside the State of Alabama or under federal law is a sex crime or any other crime if the offense would be a crime in Alabama.

(31) SUITABILITY CRITERIA.

(a) Convictions for any of the following crimes shall make an individual unsuitable for employment, volunteer work, approval, or licensure:

1. Murder, manslaughter, or criminally negligent homicide.

2. A sex crime.

3. A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.

4. A crime committed against a child.

5. A crime involving the sale or distribution of a controlled substance.

6. Robbery.

7. A crime or offense committed in another state or under federal law which would constitute any of the above crimes in this state.

(b) Conviction for any crime listed in the Adoption and Safe Families Act, 42 U.S.C. §671(g)(20), shall disqualify a person from being approved or continuing to be approved as a foster parent or adoptive parent and a convicted person shall be deemed unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent.

(c) The Department of Human Resources may set other disqualifying convictions by rule under the Administrative Procedure Act, Section 41-22-1 of the Code

of Ala. 1975, et seq., for Department of Human Resources licensed child or adult care facilities.

(32) SUITABILITY DETERMINATION. A decision that an individual is or is not suitable for employment, volunteer work, or licensure based upon the existence of a prohibited criminal conviction.

(33) UNSUPERVISED ACCESS TO A CHILD OR CHILDREN, THE ELDERLY, OR AN INDIVIDUAL WITH DISABILITIES. Contacts, interviews, questions, examinations, interaction, or communications outside the presence, supervision, and control of someone other than a child or elderly or disabled individual in care during the provision of care, education, training, instruction, supervision, or other employment or license related activities.

(34) VOLUNTEER. An individual who provides services without an express or implied promise of compensation, but shall not include the parent, family member, legal custodian, or legal guardian of a child, the elderly, or disabled individual in care.

(35) WRITTEN CONSENT. A signed statement by the applicant or employee containing all of the following:

(a) The name, address, date of birth, race, gender, and Social Security number appearing on a valid identification document as defined in subsection (d) of 18 U.S.C. §1028. If the applicant does not have a Social Security number because of sincerely held personal beliefs, the Social Security number shall not be required and the Department of Human Resources and the Department of Public Safety shall provide an alternative means of identification and procedure.

(b) Notice to the applicant or employee of the right to obtain a copy of the background check report, challenge the accuracy and completeness of any information contained in the report, and to obtain a prompt determination as to the validity of a challenge.

(c) Name, address, and telephone number of the employer or licensing entity for which the criminal history information is being sought.

(d) Release of the criminal history report to the Department of Human Resources.

Author: Dianne Wright, James E. Long
Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.

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660-5-46-.04 Criminal Records Checks Required.

(1) Every employer, child care facility, adult care facility, the Department of Human Resources, and child placing agency shall request the Department of Public Safety to conduct a criminal history background information check for the following:

(a) An employment applicant, employee or volunteer of an employer, child care facility, adult care facility, or child placing agency.

(b) A current foster parent for a child or adult or adult household member of a foster family or applicant and an adult household member of a foster family seeking approval to operate as a foster parent or foster family home for a child placing agency or the Department of Human Resources. No criminal history background information check shall be conducted under this chapter on a current foster parent or household member of a foster family if a Federal Bureau of Investigation and Alabama Department of Public Safety criminal history background information check has already been conducted under other law. Subsequent convictions of foster parents, or convictions entered into the automated system subsequent to the initial report, shall be sent by the Department of Public Safety to the Department of Human Resources as provided in this chapter.

(c) An applicant in a position in the Department of Human Resources which requires unsupervised access to children, the elderly, or individuals with disabilities as one of the essential functions of the job. No current employee of the Department of Human Resources shall be subjected to a criminal history background information check except upon reasonable suspicion. Criminal history background checks shall be required for prospective and current personnel under contract with the Department of Human Resources or working with another entity under contract with the Department of Human Resources, students, mentors, and volunteers in positions requiring unsupervised access to children, the elderly, or persons with disabilities as one of the essential functions of the job. The Department of Human Resources shall pay any fees related to checks required pursuant to this subdivision.

(d) A current licensee or applicant for a license through the Department of Human Resources to operate a child care or adult care facility.

(e) A parent applicant for a child adoptive placement through the Department of Human Resources or child placing agency and any Department of Human Resources or child placing agency approved adoptive parent prior to entry of a final decree of adoption. No criminal history background information check shall be conducted under this chapter on a current adoptive parent or household member of an adoptive family if a Federal Bureau of Investigation and Alabama Department of Public Safety criminal history background information check has already been conducted under other law. Subsequent convictions of adoptive parents, or convictions entered into the automated system subsequent to the initial report, shall be sent by the Department of Public Safety to the Department of Human Resources as elsewhere provided in this chapter.

(2) An employer, child care facility, adult care facility, the Department of Human Resources, or a child placing agency may only request a criminal history background information check by its chief executive officer, or his or her designee authorized in writing and notarized, and law enforcement shall render assistance, including assistance in obtaining fingerprints required for submission of a request to the Department of Public Safety.

(3) Every employee, volunteer or applicant, for employment or a volunteer position, licensee, Department of Human Resources adoptive parent applicant or approved adoptive parent, or applicant for a license to the Department of Human Resources to operate a child care or adult care facility shall submit two sets of fingerprints and sign a written consent to obtain the criminal history background information. Fingerprints shall not be required when a disability prevents a person from being fingerprinted. Disabilities preventing fingerprinting include the loss of both hands, severe scarring of all fingers, closed paralytic hands, and similar disabilities. In cases involving disability, a written consent to obtain available criminal history background information by name only shall be obtained. No one who fails or refuses to give written consent or submit fingerprints necessary to obtain criminal history background information may be employed, allowed to perform volunteer or other work, approved or issued a license, or allowed to retain a license or approval by the Department of Human Resources, an employer, child care facility, adult care facility, or child placing agency.

(4) Child care facilities or adult care facilities exempt from Department of Human Resources licensing shall not be required to comply with this chapter, but may voluntarily collect and forward two complete acceptable sets of fingerprints, the written consent, and nonrefundable fee from applicants or employees to the Department of Public Safety to request a criminal history background information check which shall be processed pursuant to this chapter. Licensed social workers conducting home studies may also request a criminal history background check which shall be

processed pursuant to this chapter. Provided, however, if a license-exempt child care facility operated as part of a church ministry or religious school does not choose to comply with this chapter on a voluntary basis, then the employee or prospective employee of the child care facility shall request a criminal history background check, and the request shall be processed in the same manner as for other employees or applicants under the provisions of this chapter. The Department of Human Resources shall, prior to the disbursement of any subsidized child care funds, require all employees and applicants of legally operating child care facilities to submit verification of the application for a criminal history background check and the results thereof when obtained. Upon reasonable suspicion that the individual has a criminal conviction or has not had a criminal history background check conducted, the Department of Human Resources shall have the right to require employees of license-exempt facilities to submit each applicant for a criminal history background check and the results thereof when obtained.

Author: Dianne Wright, James E. Long

Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.

History: **New Rule:** Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.05 Responsibilities Of Employers And Agencies.

(1) Every employer, child care facility, adult care facility, the Department of Human Resources, and child placing agency required to obtain a criminal history background information check pursuant to this chapter shall obtain, prior to or upon the date of employment, or issuance of a license or approval or renewal thereof, and maintain in the agency or personnel file, a request with written consent for the criminal history background information check and a statement signed by the applicant, volunteer, or employee indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The statement shall include a notice and questionnaire the same as or similar to the following:

(a) MANDATORY CRIMINAL HISTORY CHECK NOTICE: Alabama law requires that a criminal history background information check be conducted on all persons who hold a license or work in a Department of Human Resources licensed child care or adult care facility, a foster or adoptive home approved by the Department of Human Resources, or a licensed child placing agency, including all officers and agents of the entity. You are required to provide full, complete, and accurate information on your criminal conviction history upon application for a license or employment. This information shall be used to determine your suitability to provide care to

children, the elderly, or disabled individuals. Unless a criminal history background information check report and suitability determination have previously been obtained, you must complete a written request and consent for a criminal history background information check with fingerprints at the time of application for employment. Refusal to complete these documents or providing false information shall result in refusal of employment, approval, or licensure. The term conviction includes a determination of guilt by a trial, by a plea of guilty, or a plea of nolo contendere. You are required to notify your employer, licensing agency, or entity where you are performing volunteer work of any criminal conviction occurring subsequent to the date of completion of this notice. Any individual determined to have submitted false information shall be referred to the district attorney or law enforcement for investigation and possible prosecution. An individual who intentionally falsifies or provides any misleading information on the statement is guilty of a Class A misdemeanor, punishable by a fine of not more than two thousand dollars ($2,000) and imprisonment for not more than one year.

(2) Convictions for any of the following crimes shall make an individual unsuitable for employment, volunteer work, approval, or licensure:

(a) Murder, manslaughter, or criminally negligent homicide.

(b) A sex crime. "A sex crime includes the following:

1. Enticing a child to enter a vehicle, room, house, office, or any other space for immoral purposes, as proscribed by Section 13A-6-69 of the Code of Ala. 1975.

2. Incest, when the offender is an adult and the victim is a minor, as proscribed by Section 13A-13-3 of the Code of Ala. 1975.

3. Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or Section 13A-6-44 of the Code of Ala. 1975.

4. Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or Section 13A-12-112 of the Code of Ala. 1975.

5. Rape in the first or second degree, as proscribed by Section 13A-6-61 or Section 13A-6-62 of the Code of Ala. 1975.

6. Sexual misconduct, as proscribed by Section 13A-6-65 of the Code of Ala. 1975.

7. Sexual torture, as proscribed by Section 13A-6-65 of the Code of Ala. 1975.

8. Sexual abuse in the first or second degree, as proscribed by Section 13A-6-66 or Section 13A-6-67 of the Code of Ala. 1975.

9. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or Section 13A-6-64 of the Code of Ala. 1975.

10. Soliciting a child by computer for the purposes of committing a sexual act and transmittal of obscene material to a child by computer as proscribed by Sections 13A-6-110 and 13A-6-111 of the Code of Ala. 1975.

11. Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197 of the Code of Ala. 1975.

12. Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs (i) to (x), inclusive.

13. A crime listed in the Community Notification Act, Chapter 20 of Title 15 of the Code of Ala. 1975.

(c) A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.

(d) A crime committed against a child.

(e) A crime involving the sale or distribution of a controlled substance.

(f) Conviction for a crime listed in the federal Adoption and Safe Families Act as prohibiting a person from being a foster parent or adoptive parent shall be deemed to make the convicted person unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent.

(g) Conviction for a violation or attempted violation of an offense committed outside the State of Alabama or under federal law is a sex crime or any other crime listed in this notice if the offense would be a crime listed in this notice in Alabama.

(i) The Adoption and Safe Families Act(42 U.S.C. Section 67(a)(20)) provides that convictions which disqualify a person from being a foster or adoptive parent include the following:

(I) a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children(including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery; or

(II) a felony conviction for physical assault, battery, or a drug-related offense committed within the past five years from the date of application.

(ii) For the purposes of this section "crime involving violence" includes murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling. Other offenses are included as "crimes involving violence" if (A)the offense has an element the use, attempted use or threatened use of physical force against the person of another, or (B)the conduct set forth(i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives(including any explosive material or destructive device) or, by Its nature, presented a serious potential risk of physical injury to another. "Crime involving violence" also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.

(3) CRIMINAL HISTORY STATEMENT

(a) Have you ever had a suitability determination made by the Department of Human Resources in connection with a previous criminal history information background check? Yes (__) No (__).

(b) Have you ever been convicted of a crime? Yes (__) No (__). If yes, state the date, crime, location, punishment imposed, and whether the victim was a child or an elderly or disabled individual.

_____
_____
"Date _____ Signature _____."

(4) An individual who fails or refuses to provide a statement shall not be employed, allowed to work or volunteer, or issued a license or approval as defined in this chapter. Upon receipt of a signed criminal history statement which does not indicate conviction for a crime prohibiting employment under the suitability criteria, an employer, including the Department of Human Resources, may employ an applicant or allow a volunteer or contract provider to work provisionally pending receipt of a suitability determination from the Department of Human Resources.

(5) No later than the five business days after employment or a reasonable time after completion of application for a license or approval, an employer, the Department of Human Resources, or child placing agency shall mail or deliver a request for a criminal history background information check to the Department of Public Safety accompanied by the following:

(a) Two complete sets of fingerprints, properly executed by a law enforcement agency or an individual properly trained in fingerprinting techniques.

(b) Written consent from the applicant, employee, or volunteer for the release of the criminal history background information to the Department of Human Resources.

(c) The fee.

(6) Upon receipt of a suitability determination from the Department of Human Resources that a person or entity is suitable for employment, volunteer work, licensure, or approval based on the criminal history background information check, an employer, a child care facility, adult care facility, a child placing agency, or the Department of Human Resources may make its own determination of employment, licensure, or approval. This chapter shall not create any right to employment, work, approval, or licensure. Upon receipt of a determination from the Department of Human Resources that an individual is unsuitable for employment, licensure, approval, or volunteer work, an employer, the child care facility, adult care facility, child placing agency, or Department of Human Resources shall terminate the individual from employment or volunteer work or shall not employ or use the individual. Termination of employment may be delayed by the employer to allow the individual to challenge either the accuracy or completeness of the criminal history information background report or the suitability determination made by the Department of Human Resources. The Department of Human Resources or child placing agency shall suspend or revoke a license or approval or deny a license or approval application to an individual receiving an unsuitability determination. As an alternative to termination of employment, the Department of Human Resources may transfer a permanent Merit System employee to an available position for which the employee is qualified where unsupervised access to children, the elderly, or persons with disabilities shall not be an essential function of the job.

(7) If a review of a criminal history background information check or other information received reveals that the person has submitted false information, the employer, child care facility, adult care facility, child placing agency, or Department of Human Resources shall terminate the employee or volunteer. The Department of Human Resources or child placing agency shall revoke the approval or license of a person or entity when the person or entity submits false information in a review of criminal history

background information check or other information. The Department of Human Resources shall be notified of the false information and shall refer the case to an appropriate law enforcement agency or district attorney for investigation and prosecution.

(8) Only one criminal history background information check shall be required on an individual regardless of subsequent changes in employment or licensing or approval status. Subsequent criminal history background information checks may be conducted by the employer or licensing or approval entity. The licensing or approval entity shall pay the cost for subsequent criminal history background information checks. If the statement signed by the applicant or employee states that a criminal history background information check has been performed and suitability determination issued on the individual, the employer or licensing agency may request at the time of application only a suitability determination from the Department of Human Resources on the check previously performed, within five business days of employment, or completion of license or approval application, submitting the same kind of information and consent for the request for suitability determination as required by the written consent for a criminal history background information check.

(9) Upon being notified that an individual has already had a criminal history background information check performed by the Department of Education pursuant to the Alabama Child Protection Act, Chapter 22A of Title 16 of the Code of Ala. 1975, the Department of Human Resources shall request and the Department of Education shall provide criminal history background reports and reports on subsequent convictions, or convictions entered into the automated system subsequent to the initial report, to the Department of Human Resources without the payment of an additional fee, provided there are no violations of federal laws.
Author: Dianne Wright, James E. Long
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660-5-46-.06 Responsibilities Of The Applicant And Individual To Provide Information.

(1) An applicant, licensee, volunteer, or employee, upon request, shall submit the following items:

(a) Two functional, acceptable fingerprint cards, bearing the fingerprints of the individual, properly executed by a law enforcement agency or individual properly trained in fingerprinting techniques.

(b) Written consent authorizing the release of any criminal history background information to the Department of Human Resources.

(c) A written statement signed by the applicant, volunteer, or employee indicating whether he or she has ever been convicted of a crime, and if so, fully disclosing all convictions. The statement shall include a notice and questionnaire in the form required in rule 660-5-46-.05.

(d) The fee of an applicant.

(e) An applicant, licensee, volunteer, or employee shall notify the prospective or current employer, licensing agency, or entity for whom volunteer work is being performed of any criminal convictions occurring subsequent to the date of completion of the notice.

Author: Dianne Wright, James E. Long
Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.
History: **New Rule:** Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.07 Fees.

(1) A nonrefundable fee to be paid for the criminal history background information check shall conform to the guidelines promulgated pursuant to 42 U.S.C. §5119, the National Child Protection Act of 1993, and state law.

(2) The Department of Public Safety may charge a fee in the amount prescribed in Chapter 2, commencing with Section 32-2-61, of Title 32 of the Code of Ala. 1975, for the cost of processing the request. The Department of Public Safety shall charge no larger fee for requests than charged for requests received from those entities. The fee charged for criminal history background information checks shall not exceed the statutory and regulatory amounts set under existing guidelines and no additional administrative fees, except for the cost of mailings, shall be charged which would increase the cost of the criminal history background information check.

(3) An applicant for employment shall be responsible for the cost of the criminal history background information check. An applicant shall not be required to pay the fee until the prospective employing entity is prepared to consider the applicant and request a criminal history background information check. The chief executive officer of the prospective employing entity may pay the fee of an applicant.

(4) For any volunteer or applicant for a volunteer position, the fee for the criminal history background information check may be paid by the volunteer or by the entity requesting volunteer work.

(5) An applicant for a license or approval shall pay the fee for the criminal history background information check at the time the application for the license is submitted; except as provided herein, the Department of Human Resources may pay the fee for adult and child foster care applicants and child adoption applicants.

(6) For an employing entity that requests a criminal history background information check on a current employee, the employing entity shall pay the fee for the criminal history background information check. The employee may be required to pay the fee or a portion thereof provided there shall be no violation of federal minimum wage requirements.

(7) A fee paid for which a criminal history background information check is not performed shall be refunded to the applicant, the individual, or the entity requesting the criminal history background information check.
Author: Dianne Wright, James E. Long
Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.
History: **New Rule:** Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.08 Responsibilities Of The Department Of Public Safety And The Department Of Human Resources.

(1) Criminal history background information checks shall be performed by the Department of Public Safety upon request by an employer, child care facility, adult care facility, or child placing agency authorized to make a request, or the Department of Human Resources. The Department of Public Safety shall provide a criminal history background check within a reasonable time of the receipt of the request. National criminal history background checks shall be requested by the Department of Public Safety from the Federal Bureau of Investigation within a reasonable time of the request. The Department of Public Safety, upon receipt of the criminal history background report from the Federal Bureau of Investigation, shall forward the report to the Department of Human Resources within a reasonable period.

(2) Criminal history background information reports shall be sent directly from the Department of Public Safety to the Department of Human Resources within a reasonable time from the receipt of the report from the Federal Bureau of Investigation. A copy of a criminal history report from the Department of Public Safety and

Federal Bureau of Investigation shall be sent by the Department of Human Resources to the applicant or employee by certified mail or personal service. The Department of Human Resources shall review the criminal history record information report and determine whether the applicant, employee, or volunteer meets the suitability criteria for employment or licensure based on the criminal history background information check. The Department of Human Resources shall issue a written suitability determination to the applicant or employee and to the licensing entity or chief executive officer of the child care facility or adult care facility requesting the criminal history background information check. The Department of Public Safety shall notify the Department of Human Resources of a subsequent conviction, or convictions entered into the automated system subsequent to the initial report, for a crime committed on an individual for whom a criminal history background information report has been sent. The Department of Human Resources shall include the conviction in an amended or subsequent suitability determination.

(3) A person may contest the accuracy or completeness of the Alabama criminal history background information check pertaining to him or her with the Department of Public Safety according to procedures established by that agency. The person or his or her legal counsel may review at the Department of Human Resources a copy of the Alabama criminal history background information report from the Department of Public Safety. If, upon review by the Department of Public Safety, the information is determined to be incorrect or incomplete, the information shall be corrected appropriately, and the Department of Human Resources shall be provided with the corrected information.

(4) The Department of Human Resources shall issue a suitability determination and maintain a confidential file on individuals for whom a criminal history background information report or report updates have been received. The Department of Human Resources may issue a suitability determination based upon the criminal history report on file without the requirement of a new criminal history background information check. If no report or if only an incomplete criminal history report can be located in the files of the Department of Human Resources, the individual shall be required to submit to a new criminal history background information check.

(5) Within 30 days of the date of notification, an individual determined unsuitable for approval, licensure, employment, or volunteer work by the Department of Human Resources based upon a disqualifying conviction may request in writing reversal of the determination of unsuitability if the conviction is not for a sex crime or a crime committed against a child, an elderly individual, or an individual with disabilities. An individual with a conviction excluded by federal law from being approved as a foster or adoptive parent, as any other child care or adult care provider, or volunteer may not be considered for reinstatement. In

the case of a felony conviction, 10 years shall have lapsed since the sentence was served or the probation or parole ended, whichever is later, with no subsequent conviction. In the case of a misdemeanor conviction, five years shall have lapsed since the sentence was served, or the probation or parole ended, whichever is later, with no subsequent conviction. The individual shall affirmatively demonstrate to the Department of Human Resources successful rehabilitation by clear and convincing evidence. In determining whether an individual has affirmatively demonstrated successful rehabilitation, all of the following shall be considered:

(a) Nature and responsibility of the position which the convicted person would hold or has held.

(b) Nature and seriousness of the offense committed.

(c) Circumstances under which the offense occurred.

(d) Date of the offense.

(e) Age of the person when the offense was committed.

(f) Whether the offense was an isolated or repeated incident.

(g) Social conditions which may have contributed to the offense.

(h) An available probation or parole record, report, or recommendation.

(6) Evidence of rehabilitation, including good conduct in prison or in the community, counseling or psychiatric treatment received, acquisition of additional academic or vocational schooling, successful business or employment history, and the recommendation of his or her supervisors.

(7) The Department of Human Resources and the Department of Public Safety may adopt rules and regulations to implement the procedures and requirements of this chapter pursuant to the Administrative Procedure Act, Section 41-22-1, et seq., of the Code of Ala. 1975.
Author: Dianne Wright, James E. Long
Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.
History: **New Rule:** Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.09 Confidentiality Of Information.

(1) All reports of criminal history background information received by the Department of Human Resources from the Department of Public Safety shall be confidential and marked confidential with no further disclosure and shall not be made available for public inspection.

(2) All criminal history background information reports shall be excluded from any requirement of public disclosure as a public record.

(3) Without additional public disclosure, the following release of the criminal history background information report shall not be construed to violate this section:

(a) Showing the report to the applicant or current employee.

(b) Release of the report to a court of competent jurisdiction in the event of litigation brought by the applicant or employee.

(c) Release of the report to a court of competent jurisdiction upon a finding that the information is material to the issues of the case before the court.

(d) Use of the report in preparation, investigation, and presentation during a criminal prosecution, or in any administrative proceeding involving the challenge to a suitability determination, or revocation of a license or denial of an application for a license by the Department of Human Resources.

(e) Release to anyone with the written consent of the employee or volunteer.

(4) A person having access to criminal history background information reports and releasing the reports pursuant to this chapter shall be required to maintain a register consistent with the National Child Protection Act of 1993, Public Law 103-209, 42 U.S.C. §5119, et seq.

(5) Nothing in this chapter shall be construed to prohibit the distribution of employment or licensing status information to an interested party.

Author: Dianne Wright, James E. Long

Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.

History: New Rule: Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.10 Penalties.

(1) A person convicted of the following actions under this chapter shall be guilty of a Class A misdemeanor:

(a) Violating the confidentiality of records.

(b) Violating lawfully adopted policies pursuant to this chapter.

(c) Knowingly, willfully, and intentionally making or transmitting a false or misleading report or information concerning past convictions as required under this chapter.

(d) Knowingly, willfully, and intentionally failing to report subsequent convictions as required by this chapter.

(2) A person who knowingly submits false information concerning past convictions on an application for employment or other form required for disclosure of criminal convictions may be subject to loss of employment and to the loss of any license issued by the Department of Human Resources or child placing agency.
Author: Dianne Wright, James E. Long
Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.
History: New Rule: Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.11 Liability.

Nothing in this chapter is intended to create or establish new causes of action in any court. Nothing in this chapter shall be construed as a waiver of any sovereign or qualified immunity.
Author: Dianne Wright, James E. Long
Statutory Authority: 42 U.S.C. §5119, et seq.; 42 U.S.C. §671(g)(20); Ala. Act No. 2000-775; Code of Ala. 1975, §§38-7-1, et seq., 38-2-6, 15-20-20, et seq.
History: New Rule: Filed August 4, 2000; effective September 8, 2000; operative November 1, 2000.

660-5-46-.12 Hearings.

Administrative hearings will be offered and, if requested, held with regard to criminal convictions in either of the following situations.

(a) Where a determination of unsuitability has been made based upon an out-of-state or federal conviction determined to fall within the list of disqualifying convictions in Rule 660-5-46-.03(29) and (30); or

(b) Where a request for reversal of a determination of unsuitability has been denied.

Author: James E. Long
Statutory Authority: Code of Ala. 1975, §38-13-7(f).
History: New Rule: Filed October 7, 2002; effective November 11, 2002.