ALABAMA DEPARTMENT OF HUMAN RESOURCES SOCIAL SERVICES DIVISION ADMINISTRATIVE CODE

CHAPTER 660-5-46
CRIMINAL HISTORY BACKGROUND INFORMATION CHECKS

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.

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