

Attachment I

Criminal History Evaluations for Legally-Exempt Providers

Article 23-A of the New York State Correction Law was enacted to prevent unfair discrimination in the licensure and employment of a person previously convicted of one or more criminal offenses. In order to make a fair and accurate determination of the person's appropriateness to care for children, the local district will obtain pertinent documentation from the legally-exempt child care provider and may interview the provider as needed.

The district will review the criminal history record of the provider, volunteers with regular and substantial contact with the children in care, employees and, for providers of legally-exempt family child care (other than in-home care), household members age 18 years or older. If the conviction is for a **felony or misdemeanor crime against children** (refer to Attachment H), the provider cannot be enrolled. Therefore, a criminal evaluation does not need to be conducted. A conviction for a **violent and other serious crime** (refer to Attachment H) creates a strong presumption against enrolling the legally-exempt provider. A provider convicted of a violent or other serious crime can request that the district consider and review any extenuating circumstances pertaining to the conviction and determine whether an exception could be made to the presumption against enrollment. This presumption could be overcome only upon a showing of some extraordinary circumstances justifying enrollment.

For **all other felony and misdemeanor convictions** the district must evaluate whether the criminal background poses an unreasonable risk to the safety and welfare of the child (ren). The district is authorized to reject or terminate the enrollment of a legally-exempt provider based on the outcome of the criminal history evaluation. This document describes the procedure for conducting the evaluation, so that this determination can be made.

Failure to cooperate with the criminal history evaluation will result in a denial or termination of the enrollment of a legally-exempt provider. Without an evaluation, the district will be unable to accurately assess the safety of the children either in their care or planning to be in their care.

The following issues may be reviewed as part of the criminal history evaluation:

What is the nature of the crime committed? How serious is the crime? Did the crime involve any violence?

A felony is a more serious crime than a misdemeanor. Felonies are classified from "A" to "E", with an "A" felony being the most serious. The explanation offered by the provider and the underlying facts of the criminal act are important pieces of information that need to be collected. The district will want to read all the background facts of the case and not just rely on the statutory definitions of the convictions themselves. Convictions of crimes as a juvenile (age 16 or less) are not allowed to be included in the evaluation of the criminal history. Sealed criminal convictions as a juvenile are not considered in the evaluation of an individual's criminal background. However, if there is independent knowledge of the events in question, for example the applicant recounts his history of fire setting or sexual abuse, that information could be used since it is separate and distinct from the sealed

criminal record. The review would be based on the underlying facts of the activity and not the fact that the person was convicted.

Did the crime involve a serious lack of good judgement or character?

An examination of the circumstances involved in the crime and the degree with which the person used their judgement should be assessed. Some circumstances when reviewed in light of a person's age and experience are better explained and understood than others. For example, a shoplifting crime committed by a teenager may be viewed differently than a crime where physical injury is inflicted on an animal or other children.

How old was the person when the crime was committed, and how long ago was the crime committed?

A review of the criminal history record and the determination of what action should be taken will consider the age of the person at the time of the commission of the crime. Also considered is the passage of time since the last involvement with the criminal justice system.

Was there a pattern of crimes committed?

Examine whether there were similar crimes committed repeatedly over time and if the crimes became more serious over time.

Are there circumstances and/or factors that indicate the incident is likely to be repeated?

Does the individual verbalize the belief that s/he would do it again or minimize the importance of committing a crime?

The district should take into consideration the number of convictions. **Where there is more than one conviction, each conviction should be evaluated separately.** The district should also evaluate the total effect of more than one conviction in assessing the risk the individual might pose to children.

What is the individual's explanation for the crime?

A person's explanation of his or her behavior will give the district insight into what motivates the person to act and the person's judgement abilities. If an individual asserts that the charges have been "taken care of" or have "been dropped", ask the individual to submit copies of any documentation that would support the disposition of the case. This includes:

- court papers
- probation reports
- police reports
- an explanation, in writing, why they should be permitted to provide care to children.

Was the individual truthful when providing information about his or her criminal history?

The enrollment form informs the provider that failure to truthfully and accurately provide information may constitute grounds for denial or termination of enrollment or for legal action.

If a provider has been deceitful in filling out the enrollment form or an individual has been deceitful in providing information, the deceit should be seen as painting part of the picture in assessing their character and ability to care for children. An assessment of the person's explanation for not advising the district of the existence of a criminal history should be made part of the record. The person may have believed that a sealed record or an arrest disposed of by an Adjournment in Contemplation of Dismissal constitutes a non-conviction and therefore did not answer accurately to the criminal conviction inquiry.

Was there any jail time served or community service performed?

The extent of the sentence may also reflect the court's perception of the seriousness of the crime. Receiving the maximum or minimum sentence for a crime may become a part of the district's analysis of the case. The individual must provide information and documentation that court ordered obligations have been completed. This should be part of the assessment as it speaks to the integrity and reliability of the provider.

What were the efforts and success at rehabilitation?

Rehabilitation *may* include a **certificate of relief from disabilities**, and documentation of successful job performance. A certificate of relief from disabilities is a document issued by the court (which sentenced the applicant) to relieve a first offender of any forfeiture or disability or to remove any bar to employment automatically imposed by law by reason of his/her conviction.

The certificate may create the presumption of rehabilitation in regard to the offense specified in the document and only that offense. However, the district may find a person with such a certificate unfit for employment, when all relevant factors are considered. A certificate of relief of disabilities is not considered as applicable in regard to the categories of crimes against children and other violent crimes.

Conversely, not all first offenders will have received a Certificate of Relief from Disabilities. The criminal history background is then evaluated through other types of documentation noted below.

Performance evaluations and references for jobs held subsequent to the last conviction which indicate a successful record of employment, especially in positions similar to the position for which the person is applying, may be considered an indicator of rehabilitation.

A **certificate of good conduct** should also be considered in the evaluation process. A certificate of good conduct is issued to reduce a sentence due to good conduct and the efficient and willing performance of duties assigned to the person while incarcerated.

Are they able to articulate how their circumstances have changed since the crime was committed?

The person may be able to point out things such as continuing education, volunteer experiences, life experiences, references, or performance evaluations. Collect any documents that show evidence of rehabilitation.

What is the relationship (if any) between the crime and the responsibilities involved in caring for children?

For example, a conviction for embezzlement would bear a direct relationship to a job handling money, but would not necessarily be directly related to the duties of a provider working with children. Many charges will not be as clear as this example; it is understood that judgement and consultation will be necessary to make some of the more difficult assessments and recommendations.

Will this person be closely monitored or supervised, or will they be providing independent care to a group of children?

The fact that a volunteer may not be given the responsibility to independently care for children may be considered in the assessment process. However, if there is any chance (no matter how remote) that a person could be alone with a child, then the safety of the child must be considered to be the first priority.