

STATE OF CONNECTICUT
DEPARTMENT OF MENTAL RETARDATION
Human Resources
ADVISORIES

Advisory No. **II-D-Ad-1**

Issue Date: March 15, 2001

Subject: **Criminal History Review and Verification**

Effective Date: July 1, 2001

Designated Area of Responsibility: **Human Resources**

A. Purpose

The purpose of this advisory is to promote the careful review and documentation of a formal criminal background check no later than the date of hire for all direct service employees who work directly with consumers or their families either in the Department of Mental Retardation or any of the private sector agencies licensed by the department or who provide services under contract with the department.

The department recommends that employers make reasonable efforts to obtain screening results before permitting a new employee to work with consumers, especially in unsupervised settings.

The department further recommends that:

1. No new employee work directly with consumers or their families if the employer has reasonable cause to believe that the results of screening or review will disqualify the employee from continued employment.
2. Personnel files for direct service employees contain formal documentation that upon initial employment or initiation of services a fingerprint-based criminal history review was conducted. Administrative files should contain the results of the criminal background review.
3. The background review, at a minimum, include convictions within the State of Connecticut.
4. Agencies establish policies and procedures that require all employment applications to request information regarding past criminal convictions. The policies and procedures should specify what actions the employer will take if it is determined that the information provided on the application is false.
5. Results of the criminal history screening be reviewed to evaluate the potential for harm to the health or safety of consumers. The hiring decision rests with agency.

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6. A decision to hire an applicant with a history of a conviction for a crime against persons be approved in writing by the Executive Director or designee. The administrative file should document the rationale for approval and should note any special restrictions or requirements for supervision necessary to assure the safety of consumers.

The department further recommends that the agency director (or designee) gives very special consideration to any decision to hire a prospective employee who has been convicted of one or more crimes identified below. The purpose of such a review is to evaluate the potential for harm to consumers. Such review and any resulting actions must comply with CGS Sections 46a-79 and 46a-80. These statutes pertain to the employment of criminal offenders and the denial of employment based upon prior conviction of a crime.

In the event that a prospective employee has been convicted of one or more crimes, the agency director or designee should review the following factors prior to making a decision to hire or not to hire the applicant.

1. Applicant's age at the time the offense was committed.
2. Mitigating factors at the time the offense was committed (substance abuse, self defense, etc.).
3. Number of offenses for which the individual was convicted.
4. Efforts and success at rehabilitation.
5. The amount of time that has elapsed since the crime was committed.
6. The likelihood the offense will be repeated.
7. Individual's employment related references (history) since committing the offense.
8. The relationship between the job applied for and the offense committed.
9. The training, structure, and supervision available on the job.

If an individual for whom special consideration, as outlined above, is employed, the agency should maintain documentation that the applicable questions and issues raised in the special considerations section were successfully addressed.

Criminal Offenses that Should Require Special Review.

The categories of criminal offense identified below generally represent felonies that include crimes against persons or crimes that hold potential for harm to consumers and families given the responsibilities of direct service personnel within programs operated, licensed or funded by DMR . Careful review of all convictions should be conducted prior to hiring any individual who will have direct contact with clients of the department in order to evaluate the potential for harm based upon past conduct.

List of Criminal Offenses Requiring Special Review:

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Arson	Assault and Related Offenses
Burglary and Related Offenses	Child Pornography
Conspiracy	Cruelty to Persons
Domestic Violence	Drug Offenses
Forgery and Related Offenses	Fraud
Harassment	Homicide
Kidnapping and Related Offenses	Larceny, Robbery and Related Offenses
Manslaughter	Perjury and Subordination
Sexual Offense	Stalking
Threatening	Unlawful Restraint
Weapons Violations	

B. Applicability

This advisory shall apply to all public DMR-operated programs and private sector programs licensed or funded by the Department of Mental Retardation to provide residential, day program, and family and individual support services to clients of the department.

This advisory is **not** applicable to individual consumers (clients of DMR) who may utilize departmental resources to directly hire or contract for personal services. The department does, however, strongly recommend that consumers using self directed supports (self determination) adhere to all of the required and recommended employment practice standards issued by the department in order to better assure that individuals providing personal services are qualified and meet accepted standards.

The Department of Mental Retardation may, during the course of an investigation or review, request documentation that all agency policies and procedures were followed for any employee. It is not expected that routine review of personnel records will be instituted by the department.

C. References

1. CGS 17a-210(a)
2. CGS 46a-79
3. CGS 46a-80
4. DMR Employment Practice Standards Employer Handbook

D. Attachments

1. CGS 46a-79
2. CGS 46a-80

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ATTACHMENTS TO DMR ADVISORY II-D-Ad-1
Criminal History Review and Verification

CGS Sec.46a-79: State Policy re: Employment of Criminal Offenders. The General Assembly finds that the public is best protected when criminal offenders are rehabilitated and returned to society prepared to take their places as productive citizens and that the ability of returned offenders to find meaningful employment is directly related to their normal functioning in the community. It is therefore the policy of this state to encourage all employers to give favorable consideration to providing jobs to qualified individuals, including those who may have criminal conviction records.

CGS Sec.46a-80: Denial of Employment Based on Prior Conviction of Crime. Dissemination of Arrest Record Prohibited. . (a) Except as provided in subsection (b) of this section and subsection (b) of section 46a-81, and notwithstanding any other provisions of law to the contrary, a person shall not be disqualified from employment by the State of Connecticut or any of its agencies, nor shall a person be disqualified to practice, pursue or engage in any occupation, trade, vocation, profession or business for which a license, permit, certificate or registration is required to be issued by the State of Connecticut or any of its agencies solely because of a prior conviction of a crime.

- (b) A person may be denied employment by the state or any of its agencies, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, profession or business by reason of the prior conviction of a crime if after considering (1) the nature of the crime and its relationship to the job for which the person has applied; (2) information pertaining to the degree of rehabilitation of the convicted person; and (3) the time elapsed since the conviction or release, the state, or any of its agencies determines that the applicant is not suitable for the position or employment sought or the specific occupation, trade, vocation, profession or business for which the license, permit, certificate or registration sought.
- (c) If a conviction of a crime is used as a basis for rejection of an applicant, such rejection shall be in writing and specifically state the evidence presented and reasons for rejection. A copy of such rejection shall be sent by registered mail to the applicant.
- (d) In no case may records of arrest, which are not followed by a conviction, or records of convictions, which have been erased, be used, distributed or disseminated by the state or any of its agencies in connection with an application for employment or for a permit, license, certificate or registration.