

CABINET FOR HEALTH AND FAMILY SERVICES
Office of Human Resource Management
(New Administrative Regulation)

900 KAR 1:050. Child and adult protection employees subject to state and national criminal background checks.

RELATES TO: KRS 18A.095, 194A.005(1), 194A.062, 194A.065(1)

STATUTORY AUTHORITY: KRS 194A.062(2), (5)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.062(2) requires front-line staff, as defined in KRS 194A.065(1), to submit to national and state fingerprint-supported criminal background checks performed by the Department of Kentucky State Police and the Federal Bureau of Investigation. KRS 194A.062(5) requires the cabinet to promulgate an administrative regulation to implement this requirement. This administrative regulation establishes requirements for fingerprint-based state and national criminal background checks for prospective and current front-line child and adult protection employees.

Section 1. Definitions.

- (1) "Cabinet" is defined by KRS 194A.005(1).
- (2) "Disqualifying offense" means a conviction, plea of guilty, Alford plea, or plea of nolo contendere to any felony, misdemeanor during the preceding seven (7) years, or offense, the nature of which indicates that the employee constitutes an unreasonable and immediate risk to the health or safety of vulnerable children or adults, as determined by the cabinet.
- (3) "Front-line staff" is defined by KRS 194A.065(1).
- (4) "Rap back service" means a notification program in which the cabinet or responsible agency, upon approval to participate in the program, will be informed if an individual who has undergone a fingerprint-based criminal background check in accordance with the requirements of this administrative regulation, and whose fingerprints are retained by the Department of Kentucky State Police or the Federal Bureau of Investigation, is subsequently arrested.
- (5) "Responsible agency" means an office or department within the cabinet, or an entity under contract with the cabinet, that employs or offers a job to an individual for a front-line staff position.

Section 2. Requirement for Criminal Background Checks.

- (1) As a condition of initial application for employment or continued employment either directly or by contract in a position that is equivalent to being front-line staff, the cabinet or responsible agency shall require a prospective or current front-line staff employee, including contract staff, to submit to a fingerprint-based state and national criminal background check:
 - (a) After the individual is offered a job but before he or she begins working; and
 - (b) At least one (1) time during each ten (10) year period for a current employee or contract staff.
- (2) The responsible agency that requests a fingerprint-based state and national criminal background check on behalf of a prospective or current employee shall incur all fees included in the actual cost of each background check requested, including the rap back service.
- (3) The cabinet or responsible agency shall not employ directly or by contract an individual for a front-line staff position if the individual:
 - (a) Refuses to consent to a fingerprint-based state and national criminal background check; or
 - (b) Is found to have a disqualifying offense.

(4) The cabinet or responsible agency shall notify each prospective or current employee determined to have a disqualifying offense.

Section 3. Disqualification for Other Criminal Offenses or Factors. The cabinet or responsible agency shall not be obligated to employ or offer employment to an individual with a criminal offense not specifically listed in Section 1(2) of this administrative regulation or other factor that bears upon the fitness of the individual to work in a front-line staff position.

Section 4. Challenges to Criminal History Record Information. An individual subject to a criminal background check required by KRS 194A.062(2) and this administrative regulation shall have the right to request and inspect his or her criminal history record and to request correction of any inaccurate information.

Section 5. Rehabilitation Review.

(1) A prospective or current cabinet employee found to have a disqualifying offense upon completion of the criminal background check shall be eligible for consideration of rehabilitation under an independent review process.

(2) A prospective or current cabinet employee may submit a written request for a rehabilitation review to the Office of Human Resource Management no later than fourteen (14) calendar days from the date of notice of a disqualifying offense issued pursuant to Section 2(4) of this administrative regulation.

(3) A current cabinet employee who requests a rehabilitation review may be retained on staff if the employee is assigned duties that do not include unsupervised contact with a child or vulnerable adult.

(4) The request for a rehabilitation review shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;
2. The number of years since the occurrence of the disqualifying offense;
3. The age of the offender at the time of the disqualifying offense;
4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and
5. Any other circumstances surrounding the offense;

(b) Official documentation showing that all fines, including court-imposed fines or restitution, have been paid or documentation showing adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to perform the employment responsibilities and duties competently and safely.

(5) A rehabilitation review shall be conducted by a committee of three (3) employees of the Office of Human Resource Management.

(6) The committee shall consider the information required under subsection (4) of this section, and shall also consider mitigating circumstances including:

(a) The amount of time that has elapsed since the disqualifying offense;

(b) The lack of a relationship between the disqualifying offense and the:

1. Position for which the prospective employee has applied; or
2. Cabinet employee's current position; and

(c) Evidence that the prospective or current cabinet employee has pursued or achieved rehabilitation with regard to the disqualifying offense.

(7) No later than thirty (30) calendar days from receipt of the written request for the rehabilitation review, the Office of Human Resource Management shall send the

committee's determination on the rehabilitation waiver to the prospective or current employee.

(8) The prospective or current employee may appeal the results of a rehabilitation review to the Personnel Board in accordance with KRS 18A.095.

Section 6. Pardons and Expungement. An applicant or current employee who has received a pardon for a disqualifying offense or has had the record expunged may be employed in a front-line staff position.

(48 Ky.R. 3139; eff. 2-16-2023.)

TRESA STRAW, Executive Director

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: April 25, 2022

FILED WITH LRC: April 26, 2022 at 12:25 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on July 25, 2022, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by July 18, 2022, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until July 31, 2022. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

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