

Article 8.

Miscellaneous.

§ 108A-150. Criminal history record checks required for child care institutions.

(a) Application. – This section applies to a child care institution as defined by Title IV-E of the Social Security Act. The requirement for a criminal history record check applies to all current employees and volunteers, applicants for employment, and all individuals wishing to volunteer in a child care institution.

(b) Requirement. – An offer of employment by a child care institution, or by a contract agency of a child care institution, is conditioned on consent to a State and national criminal history record check of the applicant. Acceptance of an individual who wishes to volunteer in a child care institution is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. A child care institution shall not employ an applicant, or allow an individual to volunteer, who refuses to consent to a criminal history record check required by this section.

(c) Process. – Within five business days of making the conditional offer of employment, or formally discussing a volunteer opportunity, a child care institution, or a contract agency of a child care institution, shall submit a request to the Department of Public Safety under G.S. 143B-972 to conduct a State and national criminal history record check as required by this section. The Department of Public Safety shall return the results of the national criminal history record check to the Department of Health and Human Services, Criminal Records Check Unit.

(d) Factors. – If an applicant's or individual's criminal history record check reveals one or more convictions of a relevant offense listed under subsection (e) of this section, the conviction shall not automatically bar employment. The Department of Health and Human Services, Criminal Records Check Unit, shall consider all of the following factors in determining whether to recommend the applicant be hired or the individual be allowed to volunteer:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a relevant offense.

Once the Department of Health and Human Services, Criminal Records Check Unit, considers the relevant offense listed in subsection (e) of this section, and the factors listed in this subsection, the Department of Health and Human Services, Criminal Records Check Unit, shall inform the child care institution, or a contract agency of a child care institution, whether an applicant should be hired, or an individual should be allowed to volunteer. The Department shall not provide the results of the criminal history record check to the child care institution or a contract agency of a child care institution.

(e) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes;

Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(f) **Penalty for Furnishing False Information.** – Any applicant for employment, or individual who wishes to volunteer, who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) **Conditional Employment.** – A child care institution may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

- (1) The child care institution shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 143B-972.
- (2) The child care institution shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(h) **Notification of Results.** – Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the child care institution as to whether the information received may affect the employability of the applicant or ability of the individual to volunteer. In no case shall the results of the national criminal history record check be shared with the child care institution or the contract agency of a child care institution. Child care institutions shall make available upon request verification that a criminal history record check has been completed on all staff and volunteers. All criminal history information is confidential and may not be disclosed.

(i) **Immunity.** – The Department of Health and Human Services, Criminal Records Check Unit; a child care institution; a contract agency of a child care institution; and an officer or employee of any of these entities acting in good faith and in compliance with this section shall be immune from civil liability for denying employment to an applicant, or the opportunity for an individual to volunteer, based on information provided in the criminal history record check. A child care institution, or contract agency for a child care institution, and officers and employees shall be immune from civil liability for failure to check an applicant's, employee's, or volunteer's

history of criminal offenses if the applicant's, employee's, or volunteer's criminal history record check is requested and received in compliance with this section. (2019-240, s. 25(a).)