**Child Care Criminal Background Check Statute**

**Link to statute:** [**Child Care Statute**](https://advance.lexis.com/container?config=014CJAA5ZGVhZjA3NS02MmMzLTRlZWQtOGJjNC00YzQ1MmZlNzc2YWYKAFBvZENhdGFsb2e9zYpNUjTRaIWVfyrur9ud&crid=c6ed645b-61d2-4bb2-beac-803ee6154639&prid=d046c855-a2d0-49f4-a263-4bb3928bae20)

**Excerpt from Statute:**

71-3-507. Criminal history violation information required of persons having access to children -- Review of records and registries -- Verification -- Exclusion from access to adults.

**(a)** **(1)** The following shall complete a disclosure form in a manner approved by the department disclosing criminal records, juvenile records histories and the status of such person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, the state's sex offender registry and status as an indicated perpetrator of abuse or neglect in the records of the department of children's services and the department of human services, or in any jurisdiction, and shall agree to release all such records to the childcare agency and to the department to verify the accuracy of the information contained on the disclosure form:

**(A)**  A person applying to work with children as a paid employee, director or manager with a childcare agency as defined in § 71-3-501, with any detention center or temporary holding resource as described in § 37-5-109, or with the department in any position in which any significant contact with children is likely in the course of the person's employment; or who applies for any license, that is not the renewal of an existing license or otherwise seeks to be an operator, as defined by the rules of the department, of a childcare agency as defined in § 71-3-501 and who has significant contact with children in the course of such role and is not otherwise exempted from the application of this section by rules of the department;

**(B)**  A person who is a new substitute staff person, paid or unpaid, and who is to be used by the childcare agency to meet childcare standards and who serves as a substitute for more than thirty-six (36) hours in any one (1) calendar year; or

**(C)**  A person fifteen (15) years of age or older who resides in a childcare agency that is being licensed initially or who moves into a childcare agency following initial licensure.

**(2)**

**(A)**  Persons subject to the requirements of subdivision (a)(1) shall also supply a fingerprint sample in a manner prescribed by the department and by the Tennessee bureau of investigation (TBI), and shall submit to a fingerprint-based background review of criminal history records, and juvenile records that are available to the TBI, to be conducted by the TBI, and shall submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, and on the state sex offender registry, and, pursuant to § 71-3-515, a review of the person's status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, as well as equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years and a review of any available juvenile records in juvenile court.

**(B)**  All persons subject to the requirements of subdivision (a)(1), and all persons applying to work with the department in any position in which any significant contact with children is likely in the course of the person's employment with the department, shall have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records and juvenile records reviews required by subdivision (a)(2)(A) completed as required by this section prior to assuming any role described in subdivision (a)(1) or prior to employment with the department; and if the person is fifteen (15) years of age or older and:

**(i)**  The person is a resident of a childcare agency, the person must have the fingerprint-based background review, including juvenile records available to the TBI, and the registry and perpetrator records reviews, and if determined necessary by the department juvenile court records reviews, required by subdivision (a)(2)(A) completed prior to the granting of any license that is not the renewal of an existing license to the childcare agency in which the person resides at the time of initial application; or

**(ii)**  If the person is to become a resident of the childcare agency, the person must have the reviews required by subdivision (a)(2)(B)(i) completed prior to the person's becoming a resident of the childcare agency.

**(C)**  The person or entity with which a person subject to subdivision (a)(1) will be or is associated shall be responsible for obtaining and submitting the fingerprint sample, as directed by the department, and any information necessary to process the fingerprint-based background reviews and reviews required by this section prior to the person's assumption of any role described in subdivision (a)(1). If the person is not employed directly by a licensed child care agency but is employed by a substitute pool or staffing agency and assigned to work as a substitute employee at a licensed child care agency, then the substitute pool or staffing agency is responsible for obtaining and submitting the fingerprint sample, as directed by the department, and any information necessary to process the fingerprint-based background reviews and reviews required by this section prior to the person's assumption of any role described in subdivision (a)(1) at a licensed child care agency.

**(3)**  The disclosure forms shall include at a minimum the following information:

**(A)**  The social security number of the applicant, substitute or resident;

**(B)**  The complete name of the applicant, substitute or resident;

**(C)**  Disclosure of information relative to any violations of the law, including pending criminal or juvenile charges of any kind, and any conviction or juvenile adjudication involving a sentence or suspended or reduced sentence, and a release by the person of all records involving the person's criminal and juvenile background history and records relative to the person's status on the department of health's vulnerable persons registry maintained pursuant to title 68, chapter 11, part 10, on the state's sex offender registry and the status of the person as an indicated perpetrator of abuse or neglect of a child or adult as determined by any agency of this state or any other jurisdiction;

**(D)**  A space for the person to state any circumstances that should be considered in determining whether to allow the person who has a criminal, juvenile, registry or abuse or neglect records history to be employed or to provide substitute services or to remain as a resident in the agency; and

**(E)**  A listing of the residences of the applicant, substitute, or resident for the past five (5) years.

**(4)**  The form shall notify the person that falsification of required information may subject the person to criminal prosecution, and that the person's employment, licensing, or other status or circumstances in the child care agency or the department is dependent upon the person's criminal and available juvenile records history status, the person's status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, and on the state's sex offender registry, and, pursuant to § 71-3-515, the person's status as an indicated perpetrator of abuse or neglect of children or adults as contained in the records of the department of children's services and the department of human services, or in the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years.

**(5)**  A copy of the disclosure form shall be maintained in the childcare agency's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant for a license or as operator or for employment with the department.

**(6)**  The child care agency, substitute pool, or staffing agency shall notify the department within thirty (30) days of an employee leaving employment.

**(b)**

**(1)**  The disclosure form and information contained on the form obtained pursuant to this section, together with the fingerprints of the person, shall be submitted by the child care agency for its applicants, licensees, operators, substitutes, or residents, and by the department for its applicants, to the appropriate department staff or state contractors providing fingerprinting services, in the format required by the department and the TBI. The child care agency shall attest on the disclosure form that the person is required to undergo a criminal background check or state registry review, and is either a resident or has been selected by the child care agency to fill a position as an employee or substitute who will work directly with children. A substitute pool or staffing agency assigning persons to work as substitute employees at a licensed child care agency shall submit the disclosure form for such persons and shall also attest on the disclosure form that the person is required to undergo the criminal background check or state registry review, and has been selected by the substitute pool or staffing agency to fill a position as an employee or substitute who will work directly with children. The department or contractor shall transmit the necessary information to the TBI for completion of the fingerprint-based background review of criminal records and juvenile records that are available to the TBI.

**(2)**  The TBI shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal or juvenile history involving the person to the department, which shall inform the childcare agency and the person regarding the person's ability to assume a position for which a background review is required by this section.

**(3)**  The results of the inquiry to the TBI shall be documented in the records of the childcare agency for the person for whom the background check is sought, and the department shall also maintain a record of the results of all persons for whom a criminal background history is received.

**(4)**  The department shall notify in writing the appropriate district attorney general of any falsification of the information on the disclosure form.

**(5)**

**(A)**  The department shall pay to the TBI or state contractors providing fingerprinting services the cost of obtaining, handling, and processing the criminal history background fingerprint check requested by the agency or by the department as set forth in § 38-6-109. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

**(B)**  The department shall only be responsible for payment of one (1) processing fee that is required by the TBI. If the fingerprint sample is rejected and if any further costs are required to process the fingerprint, the child care agency is responsible for any further costs, regardless of the number of efforts required to obtain a valid fingerprint sample. The child care agency, substitute pool, or staffing agency will be responsible for repayment to the department for any processing fees if it submits a person's discussion form more than one (1) time for the criminal history background check within a thirty (30) day period, or if it submits a person for a criminal history background check who is not a resident or a person who has been selected by the child care agency, substitute pool, or staffing agency to fill a position as an employee, or substitute who will work directly with children.

**(c)**

**(1)**  All persons subject to subsection (a), and employees of the department's licensing division, shall also be subject to a review by the department of their status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, and on the state's sex offender registry and a review conducted pursuant to § 71-3-515, of their status in the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults or in the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years and a review of any available juvenile records in juvenile court.

**(2)**  The department shall conduct the review for license applicants and operators.

**(3)**  The results of the inquiry to the registries and the departments' records shall be maintained in the person's records at the agency and with the department.

**(d)**

**(1)**  The child care agency or the department shall not permit a person to assume any role described in subdivision (a)(1) prior to the completion of a review of the criminal history and juvenile records available to the TBI and the juvenile court, including the fingerprint-based background review, review of the department of health's vulnerable persons registry and the state's sex offender registry, and, pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, or in the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years, and juvenile court records reviews. The reviews must demonstrate that the person is not subject to a criminal history, a juvenile history, or a history on the registries or in the records of the department of children's services or the department of human services or the equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years that would, as described in this part, disqualify or otherwise exclude the person from any role described in subdivision (a)(1).

**(2)**  The criminal history, juvenile records, and administrative registry review provided for in subdivision (d)(1) shall additionally be completed at least once every five (5) years.

**(e)** **(1)**  **(A)**  **(i)** Whether obtained by use of the procedures established in this section or whether information is obtained by any other means, no person shall be employed with, be a licensee or operator of, provide substitute services to, or have any access whatsoever to children in a childcare agency as defined by this part, nor shall the person be employed with the department in a position having significant contact with children, whose criminal or available juvenile background records, registry or perpetrator records demonstrate that the person has been convicted of, pled guilty or no contest to an offense or lesser included offense, is the subject of a juvenile petition or finding that would constitute an offense or lesser included offense, or whose criminal or juvenile background history report or other information demonstrates the existence of a pending warrant, indictment, presentment or petition, involving:

**(a)**  The physical, sexual or emotional abuse or neglect of a child;

**(b)**  A crime of violence against a child or any person;

**(c)**  Any offense determined by the department, pursuant to properly promulgated rules, to present a threat to the health, safety or welfare of children;

**(d)**  The identification of the person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, or on the state's sex offender registry, or, whose status, pursuant to a review under § 71-3-515, of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, reviews of equivalent administrative registries in any jurisdiction in which the person has resided in the past five (5) years, or reviews of available juvenile court records, demonstrate a history that would require the person's exclusion under this part.

**(ii)**  No person who is currently charged with or who has been convicted of or pled guilty to a violation of § 39-13-213, § 55-10-101, § 55-10-102 or § 55-10-401, or any felony involving use of a motor vehicle while under the influence of any intoxicant, may, for a period of five (5) years after the date of the conviction or felony plea, be employed as or serve as a driver transporting children for a childcare agency.

**(B)**

**(i)**  Upon receipt from the department of the criminal and juvenile fingerprint-based background report or other information regarding the criminal, juvenile, vulnerable persons, sex offender or perpetrator records histories of a person about whom this information was obtained, the department shall notify the childcare agency and the person of the person's clearance to assume a position with the childcare agency or that the person must be excluded from positions or circumstances with the agency described in subdivision (a)(1) or from any access to children.

**(ii)**  The childcare agency, and the department for its employees, shall immediately exclude any person from employment, from substitute services or from any access whatsoever to children in the childcare agency or, if a resident of a childcare agency, the agency shall exclude the resident from access to children in the childcare agency, if the criminal, juvenile, registry, perpetrator records history or other information regarding the person place the person within the prohibited categories established in subdivision (e)(1)(A). The department shall deny the license or operator status of any such person. If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), the person shall remain excluded or that person's license or operator status shall be denied until it is determined by the department that there is a basis for an exception from the exclusion.

**(iii)**  The failure of a childcare agency to exclude a person with a prohibited criminal, juvenile, vulnerable persons or sex offender registry or perpetrator records history at a childcare agency from employment with the agency, or from the provision of substitute services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident or any other person in a childcare agency to children being cared for by the agency, shall subject the childcare agency to immediate suspension of the agency's license by the department.

**(C)**  The child care agency, substitute pool, or staffing agency shall immediately notify the department on the same business day of an arrest, pending indictment, or other information regarding a person who is an employee, substitute, volunteer, or resident which places the person within the prohibited categories established in subdivision (e)(1)(A) if the child care agency, substitute pool, or staffing agency knows or reasonably should know of such arrest, pending indictment, or other information. The child care agency, substitute pool, or staffing agency shall immediately exclude the person if the person must be excluded from positions or circumstances described in subdivision (a)(1) or from any access to children.

**(2)**  Any person who is excluded pursuant to this section or whose license or operator status is denied or revoked based upon the results of a disclosure form statement, fingerprint-based background, criminal or juvenile records history, registry or perpetrator history review pursuant to this part, or other records review, may appeal the exclusion to the department within ten (10) days of the mailing date of the notice of such exclusion to the subject person.

**(3)**  If timely appealed, the department shall provide an administrative hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3, in which the appellant may challenge the accuracy of the determination.

**(4)**  The appellant may not collaterally attack the factual basis of an underlying exclusionary record except to show that the appellant is not the person identified on the record. Further, except to show that the appellant is not the person identified on the record, the appellant may not collaterally attack or litigate the facts that are the basis of a reported pending criminal or juvenile charge except to show that the charge was, or since the report was generated, has been dismissed, nolled, has resulted in an acquittal or has been expunged.

**(f)**

**(1)**  The department may by rule provide for a review process that utilizes an advisory group of law enforcement personnel, persons experienced in child protective services, persons experienced in child development issues and childcare providers, or other persons it determines are appropriate, to consider and, if appropriate, recommend to the department exemptions from the exclusions established by this section, or for any other exclusions of persons established pursuant to the department's rules, that are based on the person's criminal background or juvenile background history or from the records of the person maintained in the vulnerable persons or sex offender registries or contained in the indicated perpetrator records of the departments of children's services or human services.

**(2)**  Any exemption granted must be based upon extenuating circumstances that would clearly warrant the exemption, and this determination shall be made in writing in the record of the department and of the childcare agency and shall be open to public inspection.

**(3)**  If an exemption rule is promulgated by the department under this part or by any state agencies utilizing the methods authorized by subsection (g) or (h), the person who is not granted an exemption from the exclusion upon review of the person's criminal, juvenile, registry or other records history pursuant to this part may have this issue considered in an administrative appeal as provided by subsection (e).

**(g)** **(1)**  **(A)** A child care agency as defined in § 37-5-501 or § 71-3-501, a child care program as defined in § 49-1-1102, the department of children's services, the department of education, the department of human services, the department of mental health and substance abuse services, the department of intellectual and developmental disabilities and any other state agency or any person or entity that contracts with the state may require the persons set forth in subdivisions (g)(1)(A)(i)-(iii) to undergo a background or records review of any kind, to complete a disclosure form stating the person's criminal and juvenile records history and agree to release all records involving the person relating to the criminal, juvenile and perpetrator records history of the person to the entities described in this subdivision (g)(1)(A), and, if further required by the requesting entity, to supply a fingerprint sample and submit to a fingerprint-based review of criminal and juvenile records available to the TBI to be conducted by the TBI. The person may also be required to submit to a review of the person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, and on the state's sex offender registry, and pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse or neglect of children or adults, and, if determined necessary by the agency, department or contractor, a review of any available juvenile records in juvenile court. The results of these inquiries shall be maintained in the person's records. Failure or refusal of a person to submit to or complete the disclosures, background and records reviews required by the entities in this subdivision (g)(1)(A) shall result in the immediate exclusion of the person from any position or status for which these reviews are required by this section:

**(i)**  A person applying to work or substitute, or currently working, in any capacity as a paid employee, licensee or operator, substitute or volunteering, with children with the entities in subdivision (g)(1)(A) or who otherwise has access to children in those entities;

**(ii)**  An applicant for a foster parent position or an applicant to be an adoptive parent, or a current foster parent or a current prospective adoptive parent with the department of children's services; or

**(iii)**  A person fifteen (15) years of age or older who resides in a childcare agency licensed pursuant to this part or title 37, chapter 5, part 5, and who is not otherwise required by subdivision (a)(1), or who is not otherwise required by any other law.

**(B)**  Nothing in this subsection (g) shall be construed to mean that any other law that mandates that fingerprint-based background, registry or any records review be conducted on applicants for employment, licensee, operator, substitute, volunteer or agency resident status is made voluntary, repealed or superseded in any manner by this subsection (g), and this section is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required background, registry or records checks.

**(2)**  The disclosure form shall contain the information described in subdivisions (a)(3) and (a)(4).

**(3)**  A copy of the disclosure form shall be maintained in the requesting entity's records of the persons for whom the background check is sought.

**(4)**

**(A)**  The fingerprints of the person shall be submitted by the entity authorized by this subsection (g) to do so, to the TBI in the format required by the bureau.

**(B)**  The TBI shall compare the information received and the fingerprints of the person with the computer criminal history files, and juvenile history files available to and maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases to verify the accuracy of the criminal or juvenile violation information pursuant to § 38-6-109, and shall report the existence of any criminal or juvenile history involving the person to the requesting entity; and if the report was made to an entity that is licensed by any state agency, the bureau shall also send a copy of the report showing the criminal or juvenile history to the state agency.

**(C)**

**(i)**  For a person who was not subject to a fingerprint-based or other records screening prior to assuming a role described in subdivision (g)(1)(A), that person's existing status in the role shall be conditional upon the satisfactory outcome of any requested fingerprint-based background review, criminal, and available juvenile records review, and upon vulnerable persons and sex offender registries and department of children's services and department of human services perpetrator records, reviews, and, if determined necessary by the entity, a review of any available juvenile records in juvenile court, that may be conducted pursuant to this section; provided, however, that if a person is initially applying to assume any type of role described in subdivision (g)(1)(A), and an entity described in subdivision (g)(1)(A) utilizes this subsection (g) as a pre-employment screening procedure, the person shall not assume the role until satisfactory completion of the reviews.

**(ii)**  In either circumstance in subdivision (g)(4)(C)(i), the criminal and available juvenile history and fingerprint-based background review, the vulnerable persons and sex offender registry review and any review of the perpetrator records of the departments of children's services and human services must demonstrate that the person is not subject to a criminal or juvenile history or a history on these registries or in such records that would, as described in this part, disqualify or otherwise exclude that person from any role described in subdivision (g)(1)(A). If the fingerprint-based background or records review, or any other information from any other source confirms that subsection (e) is applicable, that person shall not be permitted to have further contact with children in such role, except as otherwise permitted by this section.

**(iii)**  A person's employment or contract status shall not remain in a conditional status for a position with any state agency for which federal law or regulations do not permit the state agency to license or approve the position until all necessary licensing requirements are met, unless specifically authorized by state or federal law or regulation to the contrary.

**(iv)**  The employment status of persons for whom a post-employment fingerprint-based background, registry or record review was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a childcare agency for whom these reviews were conducted after license approval, and who were not otherwise subject to pre-status applicant or access reviews and to the exclusionary provisions provided in this section, shall be governed by any regulations that may govern their status in a regulated entity or by applicable employment law.

**(D)**  The results of the inquiry to the TBI or other registry or records review shall be documented in the records of the entity requesting the reviews. If the entity is regulated by, or is a contractor to, this state, the entity shall immediately report exclusionary results of the criminal and juvenile history background, registry or perpetrator records reviews to its regulatory or contracting state agency.

**(E)**  If the information submitted on the disclosure form appears to have been falsified, the entity requesting the background check, or if the entity is regulated by or has a contract with this state, the regulatory or contracting agency shall notify the district attorney general of the falsification in writing.

**(F)**  Any costs incurred by the TBI in conducting the investigations of the applicants shall be paid by the entity that requests the investigation and information. Payment of the costs is to be made in accordance with §§ 38-6-103 and 38-6-109.

**(h)** **(1)**  **(A)** As a supplemental method of criminal and juvenile background history review for any applicants for employment, for license or operator status, or for substitute or volunteer status with childcare agencies or childcare programs, or with the state agencies or their contractors, as listed in subdivision (g)(1) or with the entities that the state agencies may regulate, or for residents of new childcare agencies, or for current employees, licensees, operators, substitutes or volunteers of childcare agencies or for current residents of childcare agencies, those entities listed in subdivision (g)(1) that have an agreement for access to the TBI's criminal and available juvenile history database may require such persons to submit a disclosure form as set forth in subdivisions (a)(3) and (a)(4), a copy of which shall be maintained with the requesting entity's records, and agree to release all records involving the person relating to the criminal and available juvenile history of the person.

**(B)**  Those entities with the agreement in subdivision (h)(1)(A) may then access directly the TBI's Tennessee crime information computer (TCIC) system and conduct a name search of Tennessee criminal and available juvenile history records by using only the information contained on the disclosure form completed pursuant to subdivision (h)(1)(A), or by using any other information available to the searching entity.

**(2)**  If information obtained by this method indicates that there exists, or may exist, a criminal or juvenile record on the person, the entity conducting the search may further review the criminal and juvenile record history with the person and, as appropriate, with the entity with whom the person who is the subject of the review is associated, to obtain further verification. The requesting entity, at its own cost, may also request fingerprint samples as otherwise authorized by this section and submit the fingerprints for a complete Tennessee and federal criminal and available juvenile history background review pursuant to this section and § 38-6-109.

**(3)**  The results of the search shall be maintained in the records of the person about whom the search was made and shall be subject to review by the regulating entities.

**(4)**  Nothing in this subsection (h) shall be construed to mean that any other law that mandates that criminal and juvenile background reviews be conducted on applicants for employment, for license or operator status, for substitute or volunteer service positions or for resident status is made voluntary, repealed or superseded in any manner by this subsection (h), and this subsection (h) is supplementary to, and is not in lieu of, any mandatory provisions for such other statutorily required criminal and juvenile background reviews.

**(i)**  Subsections (e) and (f), including, but not limited to, the exclusion of persons from providing care or being licensed for the care of children or having access to children upon determination of the criminal, available juvenile, registry or perpetrator records background of such persons, the suspension of operations of or the denial or regulation of any license, certification or approval of any entities that fail to exclude persons with an exclusionary history, and the exemptions from the exclusionary provisions shall be applicable to those persons having exclusionary backgrounds or histories determined by the processes established by subsections (g) and (h) or by any other means.

**(j)**  Any person disqualified by a state agency from care for or access to children based upon the results of any fingerprint-based, criminal, juvenile, registry, perpetrator records or other records review conducted under subsections (g) and (h), or by any other means may, as provided in subdivisions (e)(2)-(4), appeal that determination to a state agency that has made the request.

**(k)**  Nothing in this section shall be construed to prevent the exclusion of any person from providing care for, from being licensed or certified or approved for the care of children pursuant to this part or from having access to a child in a child caring situation if a criminal or juvenile proceeding background history or other record that would require the person's exclusion under this part is discovered and verified in any other manner other than through a procedure established pursuant to this section. All procedures, rules and appeal processes established pursuant to this section for the protection of children and the due process rights of excluded persons shall also be applicable to those persons.

**(*l*)**  It is unlawful for any person to falsify any information required on the disclosure form required by this section. A person who knowingly fails to disclose on the disclosure form required information or who knowingly discloses false information or who knowingly assists another to do so commits a Class A misdemeanor.

History

Acts 2000, ch. 981, § 8; 2001, ch. 453, §§ 9-14; 2006, ch. 808, § 1; 2008, ch. 922, §§ 1-3; 2009, ch. 410, § 2; 2010, ch. 1100, § 136; 2012, ch. 575, § 1; 2013, ch. 101, § 2; 2015, ch. 22, §§ 1, 2; 2016, ch. 839, §§ 1-12.

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**Child Care Criminal Background Check Rules**

**Link to Child Care Rules:** [**Child Care Rules**](https://advance.lexis.com/container?config=014CJAA5ZGVhZjA3NS02MmMzLTRlZWQtOGJjNC00YzQ1MmZlNzc2YWYKAFBvZENhdGFsb2e9zYpNUjTRaIWVfyrur9ud&crid=c6ed645b-61d2-4bb2-beac-803ee6154639&prid=d046c855-a2d0-49f4-a263-4bb3928bae20)

**Excerpt from Child Care Rules:**

1240-04-01-.07 CRIMINAL BACKGROUND CHECK AND STATE REGISTRY/RECORDS REVIEW PROCEDURES.

(1) Criminal Background and Abuse Registry Disclosures and Reviews; Fingerprinting Requirements.

(a) The following persons are required to have a background check no more than ninety (90) days before having access to any child care agency:

1. Any person who owns or operates a child care agency;

2. Any person who applies to work in a child care agency as an employee, director or manager;

3. Any person who will provide substitute services to a child care agency for more than thirty-six (36) hours in a calendar year and who is counted in the adult:child ratio; and

4. Any person who is fifteen (15) years of age or older who will reside in a child care agency.

(b) New background checks are required for all staff and residents when a child care agency moves from one class of care to another, such as when a family home becomes a group home or when a child care agency is sold and staff remain employed by the new owner or any time a child care agency is issued a license that is not the renewal of an existing license. This requirement does not apply to background checks completed within the last ninety (90) days.

(c) Background checks are required for all staff at least every five (5) years.

(d) Requirements for disclosure of criminal/juvenile and state register history and fingerprinting, are provided by T.C.A. § 71-3-507 and as required by the Child Care and Development Block Grant Act.

(2) Responsibility for Providing Fingerprint Sample; Prohibition of Contact with Children Prior to Completion of Criminal History Review.

(a) The general requirements regarding responsibility for providing background checks and prohibition of contact with children prior to completion of criminal history review are provided at T.C.A. § 71-3-507.

(b) The Department will pay for the costs of performing one background check per person per child care agency per year.

(c) The child care agency shall be responsible for costs associated with the background check if:

1. The fingerprint sample is rejected and the fingerprint sample must be resubmitted;

2. The child care agency submits a second fingerprint sample for an individual more than one (1) time within a thirty (30) day period; or

3. The child care agency submits a fingerprint sample for a person who is not a resident or a person who has been selected by the child care agency, substitute pool, or staffing agency to fill a position as an employee, or substitute who will work directly with children.

(3) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Children.

(a) No person shall be employed, be a licensee or operator, or provide substitute services, reside, or have any access to children in a child care agency if the criminal background check identifies an excludable criminal offense for which the person has:

1. Been convicted of, or pled guilty or no contest to (or to a lesser included offense);

2. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

3. Been named in a pending warrant, indictment, presentment, or petition.

(b) An excludable criminal offense involves:

1. The physical, sexual or emotional abuse or neglect of a child;

2. A crime of violence against a child or any person;

3. Any offense, including a lesser included offense, involving the manufacture, sale, distribution or possession of any drug; or

4. Any offense that presents a threat to the health, safety or welfare of children.

5. The criminal offenses for which a person will be excluded from a child care agency include but are not limited to the following offenses as well as their lesser included offenses (and including convictions for equivalent offenses in other states or jurisdictions):

(i) Aggravated arson (T.C.A. § 39-14-302);

(ii) Aggravated assault (T.C.A. § 39-13-102);

(iii) Aggravated child abuse (T.C.A. § 39-15-402);

(iv) Aggravated child neglect (T.C.A. § 39-15-402);

(v) Aggravated cruelty to animals (T.C.A. § 39-14-212);

(vi) Aggravated kidnapping (T.C.A. § 39-13-304);

(vii) Aggravated rape (T.C.A. § 39-13-502);

(viii) Aggravated rape of a child (T.C.A. § 39-13-531);

(ix) Aggravated robbery (T.C.A. § 39-13-402);

(x) Aggravated sexual battery (T.C.A. § 39-13-504);

(xi) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

(xii) Aggravated vehicular homicide (T.C.A. § 39-13-218);

(xiii) Arson (T.C.A. § 39-14-301);

(xiv) Assault (T.C.A. § 39-13-101);

(xv) Carjacking (T.C.A. § 39-13-404);

(xvi) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

(xvii) Criminal attempt, under T.C.A. § 39-12-101, to commit any criminal offense that requires exclusion from child care;

(xviii) Criminal exposure to HIV (T.C.A. § 39-13-109);

(xix) Criminal homicide (T.C.A. § 39-13-201);

(xx) Criminally negligent homicide (T.C.A. § 39-13-212);

(xxi) Cruelty to animals (T.C.A. § 39-14-202);

(xxii) Custodial interference (T.C.A. § 39-13-306);

(xxiii) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

(xxiv) Domestic assault (T.C.A. § 39-13-111);

(xxv) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

(xxvi) Especially aggravated burglary (T.C.A. § 39-14-404);

(xxvii)Especially aggravated kidnapping (T.C.A. § 39-13-305);

(xxviii)Especially aggravated robbery (T.C.A. § 39-13-403);

(xxix) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

(xxx) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

(xxxi) False imprisonment (T.C.A. § 39-13-302);

(xxxii)First degree murder (T.C.A. § 39-13-202);

(xxxiii)Incest (T.C.A. § 39-13-302);

(xxxiv)Indecent exposure (T.C.A. § 39-13-511);

(xxxv)Involuntary labor servitude (T.C.A. § 39-13-307);

(xxxvi)Kidnapping (T.C.A. § 39-13-105);

(xxxvii)Rape (T.C.A. § 39-13-503);

(xxxviii)Rape of a child (T.C.A. § 39-13-522);

(xxxix)Reckless endangerment (T.C.A. § 39-13-103);

(xl) Reckless homicide (T.C.A. § 39-13-215);

(xli) Robbery (T.C.A. § 39-13-401);

(xlii) Second degree murder (T.C.A. § 39-13-210);

(xliii) Sexual battery (T.C.A. § 39-13-505);

(xliv) Sexual battery by an authority figure (T.C.A. § 39-13-527);

(xlv) Sexual exploitation of a minor (T.C.A. § 39-17-1003);

(xlvi) Solicitation of a minor (T.C.A. § 39-13-528);

(xlvii) Stalking (T.C.A. § 39-17-315);

(xlviii) Statutory rape (T.C.A. § 39-13-506);

(xlix) Statutory rape by an authority figure (T.C.A. § 39-13-532);

(l) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

(li) Vehicular assault (T.C.A. § 39-13-106);

(lii) Vehicular assault while intoxicated (T.C.A. § 39-13-106);

(liii) Vehicular homicide (T.C.A. § 39-13-213);

(liv) Voluntary manslaughter (T.C.A. § 39-13-211);

(lv) Weapons offenses (unlawful possession, carrying, use, etc.).

(c) No person may be employed as a driver or serve as a driver for a child care agency if the person:

1. Is currently charged with; or

2. Has been convicted of, or pled guilty to, within the last five (5) years any of the following criminal offenses:

(i) Vehicular homicide;

(ii) Accidents involving death or personal injury;

(iii) Accidents involving damage to a vehicle;

(iv) Driving under the influence of an intoxicant, drug or drug producing stimulant; or

(v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(4) Exclusion from access to Child Care based on a listing on a state registry.

(a) No person shall be employed, be a licensee or operator, provide substitute services, reside, or have any access to children in a Child Care agency if the results of the state registry review identify the person as being:

1. Listed on the Vulnerable Persons Registry;

2. Listed on the Sexual Offender Registry; or

3. Substantiated in the records of the Department of Children’s Services as a perpetrator of abuse or neglect of a child.

(5) Requirements for Supplemental Background Checks Subsequent to Licensing, Employment or Residence in a Child Care Agency, are provided by T.C.A. § 71-3-507.

Authority: T.C.A. §§ 4-5-202; 55-50-102(11) and (20); 71-1-105(5) and (12); 71-3-501, et seq.; 71-3- 502(a)(2); 71-3-507; 71-3-508(c); Acts 2003, ch. 412, §§ 1(c), 2, and 3; and 49 Code of Federal Regulations Part 571. Administrative History: Original rule certified June 10, 1974. Amendment filed March 16, 1978; effective April 17, 1978. Repeal and new rule filed December 6, 1983; effective January 5, 1984. Amendment filed October 9, 1987; effective January 27, 1988. Repeal and new rule filed April 22, 1992; effective June 6, 1992. Amendment filed November 21, 2002; effective February 4, 2003. Amendment by Acts of 2003, Public Chapter 412, §§ 1(c) and 3 filed June 25, 2003; effective July 1, 2003. Amendment filed September 29, 2003; effective December 13, 2003. Amendment filed October 21, 2004; effective January 4, 2005. Amendments filed May 1, 2018; effective July 30, 2018.