

Permission to Work with Children

Child Welfare Licensing requirements state, “Any person who is required to have a criminal check under the law and who pleads guilty or nolo contendere to, or is found guilty of any of the offenses listed in the licensing standards unless the conviction is vacated or reversed, shall be presumed to be disqualified to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, student intern, or employee in a child welfare agency after the completion of his or her term of confinement, probation, or parole supervision. This presumption may be rebutted in the following manner:

The agency must petition the board to make a determination that the applicant does not pose a risk of harm to any person.

The agency shall bear the burden of making such a showing; and

The board in its discretion may permit an applicant to be an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency notwithstanding having been convicted of an offense listed upon making a determination that the applicant does not pose a risk of harm to any person served by the facility.

In making this determination, the board shall consider the following factors:

- 1) The nature and severity of the crime;
- 2) The consequences of the crime;
- 3) The number and frequency of crimes;
- 4) The relation between the crime and the health, safety, and welfare of any person, such as:
 - a. The age and vulnerability of victims of the crime;
 - b. The harm suffered by the victim;
 - c. The similarity between the victim and persons served by a child welfare agency;
 - d. The time elapsed without a repeat of the same or similar event;
 - e. Documentation of successful completion of training or rehabilitation pertinent to the incident; and
 - f. Any other information that bears on the applicant's ability to care for children or any other relevant information.

The board's decision to disqualify a person from being an owner, operator, volunteer, foster parent, adoptive parent, member of an agency's board of directors, or an employee in a child welfare agency under this section shall constitute the final administrative agency action and shall not be subject to review.

The DCFS Director will review all available information concerning the request to ensure that enough documentation is available to comply with the above requirements.

Prohibitive offenses

No person shall be eligible to have direct and unsupervised contact with children if that person has pled guilty or nolo contendere to or has been found guilty of the following offenses:

- Capitol Murder
- Murder in the first degree and murder in the second degree
- Manslaughter
- Negligent homicide
- Kidnapping
- False imprisonment in the first degree and false imprisonment in the second degree
- Permanent detention of restraint
- Battery in the first degree, battery in the second degree and battery in the third degree
- Aggravated assault
- Assault in the first degree and assault in the second degree
- Terroristic threatening in the first degree and terroristic threatening in the second degree
- Any sexual offense
- Permitting abuse of a child
- Endangering the welfare of a minor in the first degree and endangering the welfare of a minor in the second degree
- Contributing to the delinquency of a minor
- Engaging children in sexually explicit conduct for use in visual or print medium, transportation of minors for prohibited sexual conduct, use of a child or consent to use of a child in sexual performance and producing, directing, or promoting sexual performance by a child
- Incest
- Interference with visitation
- Interference with custody
- Engaging in conduct with respect to controlled substances
- Distribution to minors
- Public display of obscenity
- Prostitution
- Promoting prostitution in the first degree, promoting prostitution in the second degree and promoting prostitution in the third degree
- Computer child pornography
- Computer exploitation of a child in the first degree
- Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy
- Any felony or any misdemeanor involving violence, threatened violence, or moral turpitude
- Any former or future law of this or any other state or of the federal government which is substantially equivalent to one of the aforementioned offenses.

No child in the custody of any state agency shall be placed in a foster/adopted home if the criminal record check reveals felony conviction of any adult in the home for:

- Child abuse or neglect
- Spousal abuse
- Crimes against children, including child pornography
- Crimes involving violence, including rape, sexual assault or homicide, not including any other physical assault or battery
- Physical assault, battery, or a drug related offence committed in the past 5 years

The following list of offenses (even if expunged) constitutes an **absolute disqualification** for employment in a licensed child welfare agency. The Board does not have authority to grant alternative compliance to any person convicted of any of the following offenses:

Absolute Disqualification:

- Capital murder
- Murder 1st degree
- Murder 2nd degree
- Kidnapping
- Rape
- Sexual assault 1st and 2nd degree
- Incest
- Arson
- Endangering the welfare of an incompetent person 1st degree
- Felony adult abuse
- Endangering the welfare of a minor 1st and 2nd degree

Moral Turpitude

Office of Chief Counsel shall be consulted when determining what criminal offenses constitute moral turpitude.

One of the listed prohibiting criminal offenses is “Any felony or misdemeanor involving violence, threatened violence, or moral turpitude.”

The Board has determined that there are five offenses that are not considered moral turpitude, if there is only one (1) conviction:

- Misdemeanor hot check
- Animal control violations that do not include animal cruelty.
- Violation of municipal ordinances.
- Shoplifting
- Traffic Violations

If the person has more than one (1) conviction of one of these charges, or any combination of these charges, they must petition the Board for a determination that they do not pose a risk of harm to other persons. Any of the above offenses must be included in a petition to the Board if another prohibiting offense is brought to the Board.

Court Dispositions

- Probation or Parole: No person who is currently confined, on probation, or on parole may be considered for permission to work with children.
- Expungement/Sealed: (OCC opinion 5/21/10) If a criminal record check on an individual indicates that the person was convicted of a prohibiting offense, but the record was expunged, the offense will not be considered as a prohibiting offense unless the conviction is for an offense listed in “Absolute Disqualification”.
- Pardon by the Governor: (OCC opinion 3/21/08) A pardon by the governor is the same as an expungement.
- Diversion (ACT 345): (OCC opinion 10/12/07) If the person completes the probationary period without infractions, the guilty plea is removed from their record and it is as if they were never convicted.
- Nol Pros: A nol-pros is not a conviction, a guilty plea, or nolo contender plea, so here is no offense.