

**1080.0 EMPLOYMENT DISQUALIFICATION: CRIMINAL & MALTREATMENT HISTORY CHECKS** (Ark. Code Ann. § 21-15-101 et. Seq.)

**1080.1.0 Notification to Selected Applicants Prior to Job Offer**

The hiring supervisor shall inform a selected applicant that hiring and continued employment are contingent upon the favorable results of initial, periodic and random criminal and maltreatment record checks, and that the applicant has the right to obtain a copy of the reports from the registries.

**NOTE:** Maltreatment record checks are not required for financial or information technology positions.

**1080.2.0 Notification to Incumbent Staff**

1080.2.1 Division/office directors or their designees shall inform all incumbent employees in designated positions that continued employment is contingent upon the favorable results of periodic and random criminal and maltreatment record checks and that the employee has the right to obtain a copy of the reports.

1080.2.2 Division/office directors/designees shall inform all incumbent employees in designated financial or information technology positions that continued employment is contingent upon the favorable results of periodic and random criminal record checks and that the employee has the right to obtain a copy of the report.

1080.2.3 Employees in designated positions or designated financial or information technology positions must immediately notify their supervisor when arrested for any offense and inform the supervisor regarding the outcome of the arrest. Failure to notify their supervisor when arrested for any offense and inform the supervisor regarding the outcome of the arrest will result in disciplinary action up to and including termination in accordance with DHS Policy 1084, Employee Discipline: Conduct/Performance.

**1080.3.0 CRIMINAL RECORD CHECK**

1080.3.1 Division/office directors or their designees shall obtain criminal record checks for all incumbent employees in financial and information technology positions.

1080.3.2 All employees in positions requiring criminal background checks will have a criminal background check every five years.

1080.3.3 The DHS criminal record check process shall include a review of state records, and national records when applicable. Division/office directors or their designees will provide the DHS-1114 forms to applicants selected for a job offer and to incumbent staff for completion in a confidential manner, and will monitor their submission to and return from the Arkansas State Police (ASP) and, if appropriate, the FBI. If a national record check is required, the applicant must also complete an FBI fingerprint card at a duly authorized location.

Divisions/offices may order the DHS-1114 forms through the DHS form supply system. Division/office directors must designate specific contact persons to receive and control the use of the DHS-1114, the uniquely coded FBI fingerprint cards, and the resultant reports from both law enforcement agencies.

#### **1080.4.0 Exemption from National Criminal Record Check**

Only a state records check is required, if the hiring official can verify either A or B below:

- A. The applicant for a designated position has been employed by a state division/office in a designated position for 60 days continuously prior to the date of the application, or for designated financial or information technology position has been employed by a state division/office in a designated financial or information technology position within 60 days continuously prior to the date of the application.
- B. Residence: The applicant has maintained residence continuously in the State of Arkansas for the last five years.

**NOTE:** Examples of evidence that can be used to verify employment or residence are listed below.

- A. Employment records
- B. Payroll check stubs
- C. Tax records
- D. Rent/house payment records
- E. Utility bills
- F. School records, etc.

#### **1080.5.0 CENTRAL REGISTRY CHECK**

1080.5.1 Division/office directors or their designees shall obtain central registry checks for all employees in designated positions every five years.

1080.5.2 Division/office directors or their designees will provide the required central registry check forms to applicants selected for a job offer and to incumbent staff for completion in a confidential manner. The forms will be sent to 1) the Child Maltreatment Central Registry, 2) the Adult and Long-Term Care Facility Resident Maltreatment Central Registry and 3) the Certified Nursing Assistant/Employment Clearance Registry for central registry checks.

#### **1080.6.0 Employment Disqualification**

1080.6.1 Upon receipt of a completed criminal history report from the ASP, the division/office director will determine if an applicant or employee is disqualified from employment in designated positions based solely upon the record of offenses. For employees who do not require a federal criminal record check, this will be the final determination. For those employees requiring a federal record

check, this will be an initial determination. A final determination will be made when the results of the federal record check are received.

1080.6.2 If an applicant has been named as an offender or perpetrator in a true, substantiated, or founded report from a central registry check, the applicant shall be immediately disqualified.

**1080.7.0 Mandatory Discharge**

If an incumbent employee has been named as an offender or perpetrator in a true, substantiated, or founded report from a central registry check, the employee shall be immediately discharged. The termination is non-grievable.

**1080.8.0 Police or Central Registry Record Considered Accurate**

The **correctness** of the record as reported by the ASP, FBI or central registry will not be an issue for review by DHS. Any errors or omissions in the record must be addressed under procedures listed in the following Section “Challenge to Criminal or Central Registry Record.”

**1080.9.0 Challenge to Criminal or Central Registry Record**

A person may, as permitted by the enabling legislation of each registry, challenge the completeness or accuracy of criminal or maltreatment history information issued by the ASP/FBI/Central Registry. The process for the applicant or employee to challenge the record is as follows:

1080.9.1 Any challenges to the accuracy or completeness of the criminal history report shall be directed to the Arkansas State Police/State Identification Bureau (501) 618-8500, #1 State Police Plaza Drive, Little Rock, Arkansas 72209; or to the Federal Bureau of Investigation.

1080.9.2 Any challenges to the accuracy of the maltreatment report shall be directed to the appropriate central registry.

1080.9.3 If a registry corrects a report, a corrected report shall be promptly submitted to the requesting supervisor. If the division director/designee determines, based on the corrected report, that the incumbent should not be disqualified, the employee shall be reinstated to the employee’s former position or, if that position is no longer available, the first available position, equivalent to the position the employee held prior to discharge. The reinstatement will be without back pay or back benefits. An applicant who is determined to have been disqualified due to an inaccurate or incomplete report shall be eligible for consideration for employment in future positions.

**NOTE:** Challenges to the records, requests for waivers, and appeals of disqualification are to be pursued simultaneously. The Department will comply with time frames established in this policy regardless of any challenges or appeals pending.

## **1080.10.0 Request for Waiver of Disqualification**

1080.10.1 General Provisions: Determination of employment disqualification based on a person's criminal/maltreatment record check may be waived by the DHS Director/designee upon request by:

- A. Supervisor or other managerial employee in the Department
- B. An affected applicant for employment
- C. An incumbent employee in a designated, or designated financial or information technology position who is discharged or subject to discharge

1080.10.2 A waiver may be granted upon a preponderance of the evidence that the person is rehabilitated such that the public interest is not threatened by the person's employment.

1080.10.3 Evidence of rehabilitation may include the following:

- A. The age at which the crime or act was committed
- B. The circumstances surrounding the crime or act
- C. The length of time since the crime or act occurred
- D. The person's subsequent work history
- E. The person's employment references
- F. The person's character references
- G. Any other evidence demonstrating the rehabilitation of the person

## **1080.11.0 Waiver Procedure**

1080.11.1 Upon receiving notification of an employment disqualification from the division/office director or designee, the hiring official shall advise the applicant or employee of the results.

1080.11.2 Within five days of receipt of the disqualification information, the applicant or employee must submit a letter to the DHS Director or designee requesting a waiver of employment disqualification and attach any documents and statements as listed in Section 1080.10.3. Incumbent employees may submit a waiver request and supporting documents with their Criminal Records Check Form, DHS-1114, or all three central registry check forms.

1080.11.3 The DHS Director or designee shall consider each application for a waiver. The decision shall be made solely from the documentation. The DHS Director or designee will not make an independent investigation of the applicant's allegations.

1080.11.4 If the employment disqualification is waived, the DHS Director or designee may:

- A. Grant the waiver for the specific position originally applied for if still under recruitment
- B. Grant the waiver for a specific class or series of classes within the division
- C. Grant the waiver for a specific individual

1080.11.5 The waiver must identify the specific position and/or classification(s) for which the waiver is granted.

1080.11.6 Any waiver granted under this section is specific to the position and/or classification identified. Separate waivers must be requested for employment in different divisions and non-waived classifications.

1080.11.7 Incumbent employees who are terminated under this policy and subsequently granted a waiver shall be reinstated to their former, or if filled, equivalent positions without back pay.

1080.11.8 If the employment disqualification is not waived, this agency decision is final.

**1080.12.0 Eligibility to Apply for Alternate Position**

The discharge of incumbents will be a non-disciplinary termination without prejudice and will not bar the employee from other employment with the Department in non-designated positions. This discharge is non-grievable.

**1080.13.0 Confidentiality**

All reports obtained under these regulations are confidential and are restricted to the exclusive use of the Arkansas Crime Information Center, the ASP, the FBI, DHS and the person who is the subject of the report. The information contained in reports shall not be released or otherwise disclosed to any other person or division/office except by court order and is specifically exempt from disclosure under the Arkansas Freedom of Information Act (A.C.A. § 25-19-101, et seq.).

**1080.14.0 Record Retention**

HR/SS shall maintain on file, subject to inspection by the Arkansas Crime Information Center and the ASP, evidence that criminal and maltreatment record checks have been initiated on all applicable employees. Each division/office will maintain a copy of the results.

**1080.15.0 Originating Section/Department Contact**

Office of Finance and Administration  
Human Resources/Support Services Section  
DHS Recruitment  
P.O. Box 1437/Slot Number W301  
Little Rock, AR 72203-1437  
Telephone: 682-5835

**Replacement Notation:** This policy replaces DHS 1080 dated June 01, 2010.