

ARKANSAS DIVISION OF WORKFORCE SERVICES

Policy Number:

Policy Title: **Criminal Background Checks**

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POLICY

Pursuant to Ark. Code Ann. § 11-10-302(a), the Director of Arkansas Division of Workforce Services (ADWS) shall establish a criminal background investigation policy.

It is the policy of ADWS that:

A State Criminal Background Check (State CBC) shall be required for all Applicants for hire, promotion, transfer, or demotion both prior to an offer of employment for a position and as a condition of continued employment.

A State CBC shall also be required for an employee of a Contractor of ADWS who may have access to view confidential information as defined under Ark. Code Ann. §11-10-314 or access to an area in which such confidential information may be located.

Additionally, pursuant to Ark. Code Ann § 11-10-302 and IRS Publication 1075, a Federal Background Check (Federal CBC) with fingerprinting shall be required for an Employee, Applicant, or employee of a Contractor who may have access to Federal Tax Information (FTI). FTI may only be re-disclosed to Contractors after obtaining written approval from the Office of Safeguards.

DEFINITIONS

Access: when an individual: (1) enters a restricted or locked area, room, container, or system containing federal tax information or other confidential information; or (2) obtains, acquires, receives, examines, uses, or gains knowledge of federal tax information or other confidential information, by physical, electronic, or any other methods.

Applicant(s): A person applying for employment with ADWS, including a current employee who has applied for a different position within ADWS.

Contractor: A person, business, or sub-contractor engaged to provide goods or services to ADWS or in any other business activity with ADWS under a contract or other agreement.

Criminal Background Check (CBC): A state and/or federal criminal history report, that includes the following:

- **Federal CBC**- A federal criminal history report that includes a national CBC and a Federal Bureau of Investigation (FBI) fingerprint CBC conducted through and produced by the Arkansas State Police or a harvester.
- **State CBC**- A state criminal history report conducted through and produced by the Arkansas State Police.
- Citizenship/residency validation conducted through E-Verify to ensure the Applicant is eligible to legally work in the United States.

Disqualifying Conviction: A criminal conviction that disqualifies any person from ADWS employment.

1. A misdemeanor of a financial nature, including misdemeanors that involve theft, fraud, misrepresentation, failure to pay fines, failure to appear or any other financial related conviction, within five (5) years of the date of the CBC;
2. Any felony within fifteen (15) years of the date of the CBC;
3. Any felony due to theft, dishonesty, fraud, misrepresentation, possession or distribution of stolen property;
4. Capital murder, as prohibited in § 5-10-101;
5. Murder in the first degree, murder in the second degree, or manslaughter as prohibited in §§ 5-10-102, 103, and 104;
6. Kidnapping, as prohibited in § 5-11-102;
7. Rape, as prohibited in § 5-14-103;
8. Sexual assault in the first degree or second degree, as prohibited in §§ 5-14-124 and 5-14-125;
9. Endangering the welfare of a minor in the first degree or endangering the welfare of a minor in the second degree, as prohibited in §§ 5-27-205 and 5-27-206;
10. Incest, as prohibited in § 5-26-202;
11. Arson, as prohibited in § 5-38-301;
12. Endangering the welfare of an incompetent person in the first degree, as prohibited in § 5-27-201;
13. Adult abuse that constitutes a felony, as prohibited in § 5-28-103;
14. Robbery or Aggravated Robbery, as prohibited in §§ 5-12-102 and 5-12-103;
15. Battery in the First Degree or Second Degree, as prohibited in §§ 5-13-201 and 5-13-202;
16. A felony violation of the Arkansas Tax Procedure Act, as prohibited in § 26-18-201 et seq.;

17. Soliciting money or property from incompetents, as prohibited in § 5-27-229;
18. Embezzlement pursuant to §§ 5-36-102-103;
19. Theft of property, as prohibited in § 5-36-103;
20. Theft of property lost, mislaid, or delivered by mistake, as prohibited in § 5-36-105;
21. Theft by receiving, as prohibited in § 5-36-106;
22. Theft of leased, rented, or entrusted personal property, as prohibited in § 5-36-115;
23. Shoplifting, as prohibited in § 5-36-116;
24. Theft of public benefits, as prohibited in § 5-36-202;
25. Theft of wireless service, as prohibited in § 5-36-303;
26. Any offense involving theft detection devices, as prohibited in §§ 5-36-401 - 5-36-405;
27. Facilitating theft of wireless service by a manufacture, distribution, or possession of devices for theft of wireless services, as prohibited in § 5-36-304;
28. Forgery, as prohibited in § 5-37-201;
29. Falsifying business records, as prohibited in § 5-37-202;
30. Defrauding secured creditors, as prohibited in § 5-37-203;
31. Fraud in insolvency, as prohibited in § 5-37-204;
32. Issuing a false financial statement, as prohibited in § 5-37-205;
33. Receiving deposits in a failing financial institution, as prohibited in § 5-37-206;
34. Fraudulent use of a credit card or debit card, as prohibited in § 5-37-207;
35. Criminal impersonation, as prohibited in § 5-37-208;
36. Criminal possession of a forgery device, as prohibited in § 5-37-209;
37. Obtaining signature by deception, as prohibited in § 5-37-210;
38. Defrauding judgment creditors, as prohibited in § 5-37-211;
39. Unlawfully using slugs, as prohibited in § 5-37-212;
40. Criminal simulation, as prohibited in § 5-37-213;
41. Use of false transcript, diploma, or grade report from postsecondary educational institution, as prohibited in § 5-37-225;
42. Financial identity fraud, as prohibited in § 5-37-227;
43. Any offense as prohibited in the Arkansas Hot Check Law, § 5-37-301 et seq.;
44. Theft of communication services, as prohibited in § 5-37-402;
45. Criminal mischief in the first degree, as prohibited in § 5-38-203;
46. Residential or commercial burglary, as prohibited in § 5-39-201;
47. Breaking or entering, as prohibited in § 5-39-202;
48. Computer fraud, as prohibited in § 5-41-103;
49. Computer trespass, as prohibited in § 5-41-104;
50. Any offense involving computer crime, as prohibited in §§ 5-41-201 - 5-41-206;
51. Criminal use of property or laundering criminal proceeds, as prohibited in § 5-42-204;
52. Any offense involving corruption in public office, as prohibited in §§ 5-52-101

- 5-52-108;
53. Tampering with a public record, as prohibited in § 5-54-121;
 54. Criminal acts constituting Medicaid fraud, as prohibited in § 5-55-111;
 55. Any offense involving illegal food coupons, as prohibited in §§ 5-55-201 - 5-55-205;
 56. Engaging in a continuing criminal gang, organization, or enterprise, as prohibited in § 5-74-104;
 57. Criminal attempt, criminal complicity, criminal solicitation, or criminal conspiracy, as prohibited in §§ 5-3-201, 5-3-202, 5-3-301, and 5-3-401, to commit any of the offenses listed in this subsection.
 58. Any offense involving attempting to or receiving unemployment insurance benefits through fraud pursuant to § 11-10-519 regardless of whether an overpayment of an ADWS benefit is established pursuant to § 11-10-532(a).

Employee: A person working for ADWS in a full-time, part-time, or extra-help capacity.

Federal Tax Information (FTI): FTI includes tax return or return information received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source.

FTI Position: Any position within ADWS that requires the employee to access or view FTI as a part of the employee's job duties.

Hiring Official: A person authorized to make the hiring decision for a vacant ADWS position.

HRA- Human Resources Administrator or the Director's designee.

PROCEDURES

Requesting Criminal Background Checks

The HRA is responsible for requesting criminal background checks on behalf of ADWS and coordination of internal activities relating to such checks, including the processing of any adverse information that may be received.

For all positions, a State CBC would be required for any new system access if one has not been completed within the last ten years.

Confidentiality

All CBC results are confidential and will not be disclosed. Any employee who discloses such results will be subject to immediate termination and will be

immediately suspended pending the results of an investigation. Any ADWS Employee who violates will be guilty of a Class A offense pursuant to ADWS Disciplinary Policy and will be immediately terminated from employment.

A. All Applicants

All job announcements and applications for ADWS positions shall inform Applicants that ADWS will require a CBC and a citizenship/residency validation conducted through E-Verify prior to employment or as a condition of continued employment. All ADWS Applicants and current Employees, upon request, must sign a consent form to be considered for hire.

The Hiring Official will provide the consent form to the Applicant at the time of interview. The Hiring Official will forward the signed consent form to the HRA. The Hiring Official will maintain all signed consent forms of Applicants interviewed until the hiring process has been completed. The Hiring Official will destroy all background check consent forms of the Applicants not selected after a final hiring decision has been made.

Upon ADWS' decision to make an offer of employment to an Applicant, a State CBC will be conducted. No Employee or Applicant is eligible for employment or continued employment if they have a conviction for a Disqualifying Conviction defined above or if they have a conviction of an equivalent crime or one similar in nature to a Disqualifying Conviction in another state or federal jurisdiction.

If the State CBC reveals no Disqualifying Conviction, the HRA will notify the Hiring Official the Applicant is eligible for hire. If a Disqualifying Conviction is revealed, an Applicant is disqualified from employment with ADWS.

The Hiring Official will be notified of the final results of the background check. If the Applicant does not challenge the results through the Arkansas State Police or request an exemption pursuant to this Policy, the Applicant will be disqualified from consideration for the position.

The cost of any background check conducted pursuant to this Policy shall be paid by ADWS.

B. Applicants for FTI Positions

In addition to a State CBC, FTI positions require a Federal CBC that includes:

1. a Federal CBC.
2. An FBI fingerprint check
3. Citizenship/residency validation conducted through E-Verify

If an Applicant for an FTI position is selected for hire, the HRA will direct the Applicant to the Arkansas State Police or a Harvester/Live Scan site to complete an FBI fingerprint background check.

An Applicant or Employee will not be eligible for access to FTI and will be terminated from employment if ADWS identifies one of the following and an exemption is not granted:

1. Disqualifying Conviction;
2. Misdemeanor Conviction of an offense of dishonesty or fraud within seven years of the date of the background investigation; or
3. Any felony conviction.

If a Disqualifying Conviction is revealed in a Federal CBC for an FTI position, an Applicant is disqualified from employment with ADWS. The HRA will notify the Applicant of the right to challenge the results of the Federal CBC through the Arkansas State Police or request an exemption as described in this Policy.

C. Current Employees

A current ADWS Employee applying for a different position will be subject to the same requirements as any other Applicant.

If the results of a CBC reveal a Disqualifying Conviction, the HRA will notify the Employee of the right to challenge the results in accordance with Ark. Code Ann. § 12-12-1013 through the ASP and Arkansas Crime Information Center (ACIC) or request an exemption.

The Hiring Official will be notified of the final results of the CBC. The Employee will be provided a copy of the state background check results upon request with identification verification. Federal background check results will not be available through the HRA.

D. Continuing Employment

As a condition of continued employment, all ADWS Employees shall be subject to additional CBCs and other background checks, as required for the position. CBCs or other background checks may be performed at random, as a result of accessing or gaining access to FTI or may be done as an investigation of alleged wrongdoing by an Employee.

As a condition of continued employment, all employees in FTI positions must complete a new Federal CBC at least once every five years.

If the results of a CBC or other required background checks reveal a Disqualifying

Conviction, the HRA will notify the Employee of the right to challenge the results in accordance with Ark. Code Ann. § 12-12-1013 through the ASP and ACIC or request an exemption.

The Employee's Supervisor will be notified of the final results of the CBC. The Employee will be provided a copy of the state background check results upon request with identification verification. Federal background check results will not be available through the HRA.

Non-Consent to CBC: If an Employee does not consent to a CBC pursuant to this Policy, such Employee will be deemed ineligible for continued employment with ADWS and will be immediately terminated from employment.

Notice of Conviction: Employees that are convicted of a felony, a misdemeanor of an offense of dishonesty or fraud, or a Disqualifying Conviction or one similar in nature to a Disqualifying Conviction in another state or federal jurisdiction must notify their supervisor within 72 hours of the date of the conviction. Failure to provide notification is grounds for immediate termination.

Notice of Arrest: Any Employee who is arrested and charged with committing a criminal offense in any jurisdiction, must notify their supervisor within 72 hours of the arrest. Failure to provide notification is grounds for immediate termination.

Leave Without Pay- Current employees who have adverse background check results will be placed on Leave Without Pay (LWOP) until they have successfully challenged the results or have obtained an exemption from the Director. If they have not successfully challenged the results or obtained an exemption within ten days of notification, the employee will be terminated.

If an Employee cannot present a corrected background check and has a Disqualifying Conviction, the Employee is subject to immediate termination.

E. Contractors

For all Positions

Any employee or applicant for employment with a Contractor of ADWS shall authorize the Director of ADWS or the Director's designee to perform CBCs and as defined by this Policy.

ADWS will conduct the CBC required on the Contractor's employee at the expense of ADWS. ADWS reserves the right to make any final determination regarding eligibility for access for any employee of a Contractor. ADWS will notify the Contractor of any final determination denying access to its employee. ADWS will not provide a copy or disclose any of the content of the CBC to the Contractor or

Contractor's employee, except to notify them that the employee has been denied access and that a copy of their CBC may be obtained from the State Police.

The Contractor and its employees must notify ADWS of any arrest or conviction in the manner set out in of this Policy.

For FTI Positions

Employees or Applicants who may be authorized to access or view FTI as part of the Applicant or Employee's job duties shall be subject to all provisions of this Policy related to FTI Positions.

A Contractor is not required to disqualify from employment such employees or applicants; however, those employees or applicants will not be allowed access to any FTI information held by ADWS, or any physical location or system where FTI information is stored, retained, or accessed. Such employees or applicants will not be allowed physical access to any area of the Contractor's premises where ADWS FTI information is available for access or viewing.

CHALLENGES AND EXEMPTIONS OF DISQUALIFYING CONVICTIONS AND CBC RESULTS

A. CBC Challenges

Any Applicant or Employee with adverse Federal CBC information associated with a fingerprint check may challenge the results by contacting the Arkansas State Police or the FBI.

For Employees

- a. A current Employee with a CBC that reflects an adverse history will be notified of the results by the ADWS Human Resources Administrator (HRA). The Employee will be notified at that time of their right to challenge the results. The Employee must submit challenge information within seven (7) days of receipt of the notice. For good cause, the ADWS HRA may authorize an Employee an additional seven (7) working days to challenge the adverse criminal history.
- b. Following the challenge period and with written confirmation from the Applicant that the Permanently Disqualifying Conviction or Disqualifying Conviction has been removed from the Employee's

record, the ADWS HRA will obtain a new CBC for the Applicant, at which time the results of the CBC will be considered final. If the Applicant is not successful in the challenge within the period or does not request and receive an exemption of the Disqualifying Conviction, the Applicant will be ineligible for employment.

- c. The ADWS HRA will not accept a judge's order or a letter from a court stating the intent to expunge or seal a record. It is the responsibility of the Employee to work with the Arkansas State Police and Arkansas Crime Information Center to ensure that updated results are entered into their system within the challenge period so that a new CBC can be run for ADWS to determine eligibility of employment.

For Applicants

- a. An Applicant whose CBC reflects adverse criminal history will immediately be notified of the right to challenge the information. Notice shall be sent to the Applicant in writing by Certified Mail, Restricted Delivery. Information challenging the adverse criminal history must be received within 7 days of the date of the notice. For good cause, the ADWS HRA may authorize an Applicant an additional seven (7) working days to challenge the adverse criminal history.
- b. Following the challenge period and with written confirmation from the Applicant that the Permanently Disqualifying Conviction or Disqualifying Conviction has been removed from the Employee's record, the ADWS HRA will obtain a new CBC for the Applicant, at which time the results of the CBC will be considered final. If the Applicant is not successful in the challenge within the period or does not request and receive an exemption of the Disqualifying Conviction, the Applicant will be ineligible for employment in the position.

B. Exemption Requests for Disqualifying Convictions-

1. All Employees and Applicants may request an exemption for a Disqualifying Conviction. If the CBC reveals a Disqualifying Conviction, the ADWS Director or the Director's Designee may determine that an Applicant or Employee should not be disqualified or terminated upon the

request of:

- a. A supervisor or other managerial employee in ADWS;
 - b. An affected Applicant; or
 - c. An incumbent Employee who is subject to discharge.
2. A request for an exemption must be made to the ADWS HRA in writing within five (5) days of the receipt of notification by the ADWS HRA.
 3. If the crime is a misdemeanor and more than five (5) years have lapsed since the conviction, ADWS is not required to discharge an incumbent Employee if a request for an exemption is timely made and if the exemption is ultimately granted.
 4. If the exemption is not granted and the exemption request is for an Employee, ADWS shall immediately discharge the incumbent Employee.
 5. If the exemption is not granted and the exemption request is for an Applicant, ADWS will not hire the Applicant.
 6. If an incumbent Employee was immediately discharged but was subsequently granted an exemption, the incumbent Employee shall be immediately reinstated but is not entitled to retroactive relief, including back pay.

C. An Exemption of a Disqualifying Conviction may be granted

1. An exemption may be granted if the Disqualifying Conviction has been subject to pardon, expungement, sealing, or other official treatment that exonerates the Applicant or Employee or vacates the conviction
2. An exemption may be granted upon a preponderance of the evidence that the Applicant or Employee is rehabilitated such that the public interest is not threatened by the Applicant's or Employee's employment with ADWS.
3. Evidence of rehabilitation may include, but not be limited to the following:
 - a. The person's 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;
 - d. Subsequent work history;
 - e. Employment references;
 - f. Character references; and
 - g. Other evidence demonstrating the rehabilitation of the Applicant or Employee.