

**EVALUATING LEGALLY-EXEMPT PROVIDERS
WITH CRIMINAL CONVICTION RECORDS**

The purpose of these attachment is to provide guidance to social services districts, which have the responsibility for the care and protection of children, in evaluating persons who have a criminal conviction record and who wish to enroll as an eligible provider for payment for child care services under the New York State Child Care Block Grant subsidy program. These guidelines are aimed at assisting governmental agencies and authorized agencies to determine whether a person with a criminal conviction history should be permitted to care for or work with children.

A. Initial Evaluation of Enrollee

Upon learning from an individual in the sworn criminal records statement that the enrollee has been convicted of a crime, a discussion should ensue concerning:

1. the nature of the incident(s) which resulted in the criminal conviction;
2. the penalties imposed as a result of the conviction; and
3. the length of time which has elapsed since the conviction. The time a person has spent in jail should not be counted in figuring the time period. The critical factor is time spent in the community after the conviction (i.e., non-prison time), so that the person has had adequate opportunity to demonstrate that he/she has been rehabilitated.

You must, if the enrollment form requires an explanation of the circumstances which led to the conviction, ensure that the enrollee's written response is complete and is consistent with your understanding of what occurred. Also, you should compile a written summary for your child care file of your discussion concerning the criminal conviction wherever the enrollment form does not require an explanation of the circumstances which led to the conviction.

B. Assessment of Enrollee

The following review criteria and guidelines refer to employment and licensure as stated in Article 23-A of the Correction Law and New York State Office of Children and Family Services Guidelines. However these guidelines must also be used in reviewing the enrollment forms for legally-exempt providers with criminal conviction records. Therefore, the terms "employment and licensure" are replaced with the term "enrollment", where applicable.

The social services district must decide on the basis of the available information whether to enroll the provider. In making such a determination you must comply with the provisions of Article 23-A of the Correction Law. You may deny enrollment to a provider who has a criminal conviction record or whose employee(s) or volunteer(s) (other than the parent of a child in the program) has a criminal conviction record if either of the following standards are met:

1. there is a direct relationship between one or more of the criminal offenses and the provision of child care as a legally exempt provider; or
2. the granting of the enrollment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

In making a determination of whether either of these two standards exist, Section 753 of the Correction Law requires you to consider the following eight factors:

FACTORS (SECTION 753)	GUIDELINES (Office of Children and Family Services)
(a) The public policy of the state is to encourage the licensure and employment of persons previously convicted of one or more crimes.	(a) Article 23-A of the Correction Law was enacted to prevent unfair discrimination in the licensure and employment of a person previously convicted of a crime. You may not deny enrollment of a provider by reason of the provider (or an employee or volunteer) having been previously convicted of one or more criminal offenses, unless you also make a decision that at least one of the previously mentioned standards are met. This Article expresses a policy of the State to encourage the licensure and employment of a person with a conviction record.
(b) The specific duties and responsibilities necessarily related to the license, employment, or enrollment sought.	(b) You should determine the degree to which the position entails supervision of, interaction with, and an opportunity to be with children on a regular and substantial basis.
(c) The bearing, if any, the criminal convictions has on a person's fitness to perform one or more such duties or responsibilities of the position.	(c) For example, a conviction for embezzlement would bear a direct relationship to a job handling money, but would not necessarily be directly related to the duties of a teacher's aide working with children. However, a conviction for assaulting minors would clearly be directly related to child care responsibilities.

(d) The time which has passed since the occurrence of the criminal offense or offenses.

(d) The time a person has spent in jail should not count in figuring the time period. Time spent in the community (non-prison time) which is calculated by the time that has passed since the date of the conviction minus time served in prison subsequent to the conviction is the critical factor. Generally, less weight may be given the older the conviction.

(e) The age of the person at the time of the occurrence of the criminal offense or offenses.

(e) Criminal offense(s) or acts committed when a person is relatively young may generally be given less weight.

(f) The seriousness of the offense or offenses for which the person was convicted.

(f) A felony is a more serious crime than a misdemeanor. Felonies are classified from "A" to "E", with an "A" felony being the most serious. You should also consider whether the crime for which the individual was convicted involved violence. For example, robbery always involves the use or threat of force in taking something from a person as opposed to larceny which involves the taking of property, without force, such as shoplifting.

You should also take into account the number of convictions. Where there is more than one conviction, you should evaluate each conviction separately. You should also evaluate the total effect of more than one conviction in assessing the risk such individual might pose, specifically to children, and to the personnel and property of the agency.

(g) Any information produced by the person or produced on his or her behalf showing his or her rehabilitation or good conduct.

(g) This would include a certificate of relief from disabilities, and documentation of successful job performance. A certificate of relief from disabilities is a document issued by the court which sentenced the individual or the State Board of Parole to relieve a first offender of any forfeiture or disability, or to remove any bar to employment automatically imposed by law by reason of his/her conviction.

The certificate should create a presumption of rehabilitation in regard to the offense specified in the certificate. It should be noted that a presumption of rehabilitation only applies to the offense for which the certificate was issued (you still may find a person with such certificate unfit for employment or enrollment, when you consider all the relevant factors). Performance evaluations and references for jobs held subsequent to the last conviction which indicate a successful record of employment especially in positions similar to the position for which the person is applying, may be considered an indicator of rehabilitation. Also, you should consider a certificate of good conduct. A certificate of good conduct is issued to reduce a sentence due to good conduct and the efficient and willing performance of duties assigned to the person while incarcerated.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

(h) Since our primary interest is the protection of children, you must give the safety and welfare of children careful consideration.

C. List of Crimes Considered Directly Related to Employment, Licensure, or Enrollment

The following list includes the crimes identified by the Office of Children and Family Services which should be considered to have a direct relationship to the specific employment or enrollment sought or would involve an unreasonable risk to property or to the safety or welfare of children or the general public. A criminal conviction for any of the crimes found in the following list creates a strong presumption against enrolling the individual in question. This presumption could then be overcome only upon a showing of some extraordinary circumstance justifying employment or enrollment.

CRIME TO BE CONSIDERED	PENAL LAW SECTIONS
Homicide and related offenses	125.10 through 125.27, inclusive
Sex offenses:	
Sexual Misconduct	130.20
Rape	130.25, 130.30, 130.35
Sodomy	130.40, 130.45, 130.50
Sexual Abuse	130.55, 130.60, 130.65, 130.70
Kidnapping and related offenses	135.10, 135.20 and 135.25
Criminal possession of a controlled substance as a felony	220.05 through 220.21, inclusive.
Criminal sale of a controlled substance	220.31 through 220.43 inclusive
Criminal sale of marijuana as a felony	221.50 and 221.55
Promoting prostitution as a felony	230.25, 230.30 and 230.32
Obscenity offenses	235.05, 235.06 and 235.07

CRIME TO BE CONSIDERED (Continued)	PENAL LAW SECTIONS (Continued)
Disseminating indecent materials to minors	235.21
Incest	255.25
Abandonment of a child	260.00
Endangering the welfare of a child	260.10
Promoting sexual performance by a child	263.05, 263.10 and 263.15
Criminal possession of a weapon as a felony	265.02, 265.03, and 265.04

Furthermore, all criminal convictions should be carefully reviewed against the guidelines. For instance, convictions not included on the list of crimes to be considered which involve assault, reckless endangerment, coercion, burglary, arson and robbery should be very carefully reviewed. Also, a misdemeanor conviction for possession of a controlled substance might not be considered directly related to positions involving the care of children; however, numerous convictions for such crimes could indicate that the person has a significant problem that could present an unreasonable risk to children.

D. Enrollment of Legally-Exempt Provider Decision

Decisions to enroll a provider with a criminal conviction record must be made on a case-by-case basis utilizing the aforementioned criteria. Before enrolling a person with a conviction record, especially one included in the above list, you should carefully analyze whether the relevant factors enable you to conclude that there is not a direct relationship between one or more of the criminal conviction(s) and the person's child care responsibilities and/or there is not an unreasonable risk to the property or to the safety and welfare of the children or the general public. Furthermore, you should prepare a written assessment based on the criteria contained in these guidelines specifying why the decision was made to enroll a provider with a criminal conviction history.

If a person with a criminal conviction record is denied enrollment such person may, pursuant to Section 754 of the Correction Law, request a statement setting forth the reasons for the denial of his enrollment. If such a request is made the Correction Law requires this statement be provided to the person within 30 days.

All information regarding an individual's criminal conviction record must be maintained in a confidential manner.

Such information shall not be made public and shall only be shared with the individual it relates to, and those persons involved in the decision-making process concerning the selection and enrollment of the provider.

It must be recognized that an individual's sworn statement disclosing no criminal conviction record is just one component of the inquiry and evaluation which must occur during the enrollment process. Such review and statement should therefore be viewed as an aid in making the best possible decision and not as the solution to preventing abuse/maltreatment of children in your care. Just as the Child Abuse Prevention Act of 1985 requires that guidelines be implemented to assist in evaluating individuals with a criminal conviction record, the Act also requires you to review and evaluate an individual's background and information supplied by the individual. Additionally, individuals should be advised that a false answer to questions concerning the individual's past criminal convictions may be reason for termination of enrollment as a legally-exempt provider.

Decisions concerning whether a particular applicant should be enrolled rest with you, and knowledge that an individual has a criminal conviction record needs to be carefully weighed. The safety and well being of the children should be the primary concern, balanced with the rights of those individuals who have criminal conviction records. You must carefully consider all of the above factors to make the most responsible and fair decisions.

This guideline is effective January 1, 1986. Additionally, as provided in Section 425.3 of the Social Services Law this guideline shall not supersede similar guidelines developed by local governmental agencies prior to January 1, 1986.