

Foster Care Applicants with Criminal Background Histories

All states have legislated that a foster care applicant will not be approved for a license if the applicant or a household member has a criminal conviction for specified violations. Such violations usually include felony convictions for child abuse or neglect, spousal abuse, crimes against children, or for crimes involving violence, sexual assault, or homicide. Special or extraordinary circumstances may allow a waiver to be granted if the waiver will not endanger a child's safety.

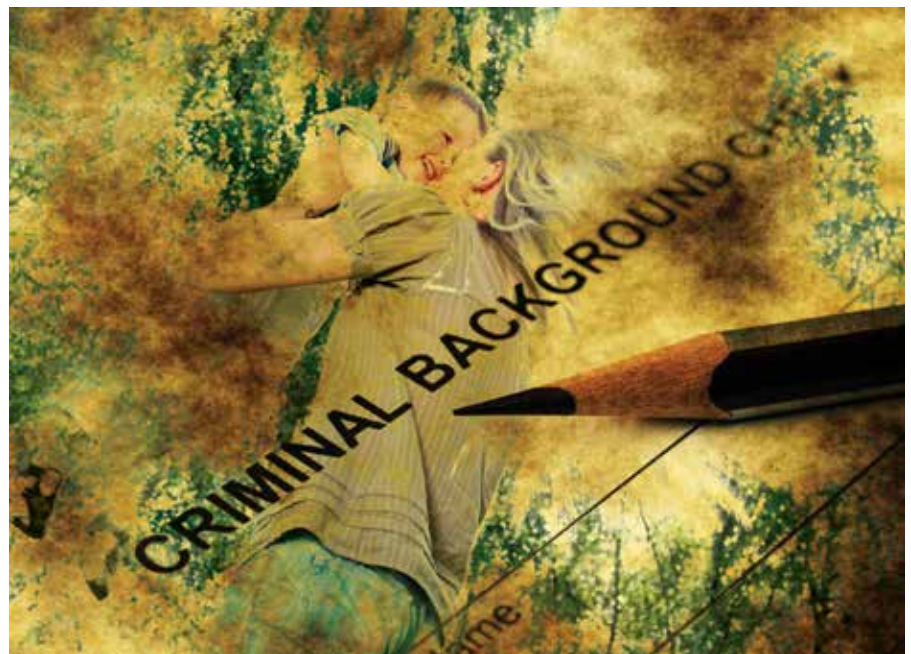
Exactly what specific factors and what process must agency staff consider in order to ensure that a waiver does not contravene the legislative intent or overall purpose of child safety? Specific guidelines are sparse in many states. There may be general language concerning the need to seek a waiver but little specificity about the nuts and bolts of the process. As West Virginia goes further than many states in articulating its waiver process, it is worthwhile to provide some substantive quotations from its policy manual.

Effective March 2015, the Bureau for Children and Families *Policy Manual*, Chapter 2000, *Crime Identification Bureau (CIB) Background Checks*¹ details what information must be included in a waiver request:

“8.2.1 Related to each conviction.

The waiver request must include the following information related to each conviction, indictment or charge:

- a. A copy of the signed and witnessed Statement of Criminal Record;
- b. The crime committed or alleged;
- c. The date(s) of the crime;



d. The date of conviction, indictment or charge.

8.2.2 Information for consideration and justification.

The waiver request must include information which will be used in considering potential risk to children and adults in care should the request be approved. The applicant must provide justification for the waiver and include the following supportive documentation:

A. The waiver request must include the waiver form with the following supporting documentation:

- 1) Description of the circumstances surrounding the crime;
- 2) If there was a victim of the crime and, if so, the age of the victim and the physical, emotional or financial harm

to the victim. The victim is not to be identified;

- 3) Dates of incarceration;
- 4) Statement or document from the probation or parole officer, or an officer of the court that the sentence has been successfully completed;
- 5) If the crime or alleged crime is driving or vehicular related, a driving record and copy of a current, valid driver's license must be submitted;
- 6) A statement regarding how circumstances have changed since the commission of the crime and the individual's motivation towards rehabilitation;
- 7) In the case of an individual seeking a waiver to remain during the time a charge or indictment is

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being resolved, a statement from the employer or head of the household that there is a plan in place which will reasonably assure the safety of children or adults in care.

B. The waiver request may also include:

- 1) Letter of recommendation from a probation or parole officer, or an officer of the court;
- 2) Employment, training and education history;
- 3) Documentation of participation in therapy or counseling programs;
- 4) Character references or statements of family support;
- 5) Documentation of involvement in community, religious, or volunteer activities;
- 6) Any other information the applicant would like to have considered.”

The word “specific” connotes clarity and exactness. Toward this end, the West Virginia *Policy Manual* further articulates the exact process to be followed:

“8.3.1 Each Region within the Department will establish written operating procedures for a local or regional review of waiver requests which must be performed in a timely manner in accordance with specific program policies.

8.3.2 The State Office CIB Committee will review waiver requests made by Licensed Child Placing and Residential Child Care Agencies. The Child Care Center Licensing Unit will review waiver requests of applicants in a licensed Child Care Center.

8.3.3 The Waiver Committees review the waiver requests and accompanying documentation to make a determination as to whether a waiver can be provided for the charges/convictions.

8.3.4 A determination must be made on the requests within 30 working days.


8.3.5 Waiver approvals must be documented in FACTS [Families and Children Tracking System] according to each program’s policies and procedures.

8.3.6 The staff person responsible for the applicant’s or agency’s record must inform the applicant or the agency in writing of the decision within five working days.

8.3.7 It is critical that staff involved in the waiver process carefully review all evidence submitted by providers prior to making a determination to grant or deny a waiver...”

The role of a licenser is one of rigorous gatekeeper, not merely enthusiastic promoter. Just because, by law

or regulation, a prior conviction or charge may not be an absolute bar to receiving a license, it may very well be a factor in disapproving the applicant. The mere passage of time is not proof of rehabilitation, nor does it affect the requirement to always be focused on child safety.

It is easier to make a generalized assessment—“Waiver granted” or “Waiver denied”—than it is to document exactly why the waiver should or should not be granted. From a legal perspective the waiver assessment process does not demand of agency employees that they be able to see into the future—it just demands that the process be objective, thorough, and documented. The vast number of possible placement scenarios underscores the need for specific guidelines so that a child is not inadvertently placed in an unsafe setting. 

Reference Note

1. <http://www.dhhr.wv.gov/bcf/Providers/Documents/CIB%20Policy.pdf>

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- Nearly one in three responding states have little or no workforce modernization strategies in place. With high rates of eligible retirements and difficulties in recruiting millennials to government, this will undoubtedly present a serious challenge to HHS agencies in the coming years.
- Cloud computing is here, with more than half of state agencies reporting that they are using cloud applications; security, however, is still cited as a top concern.
- The Internet of Things (IoT) is a rarely discussed concept among HHS agencies at this time with only

one state responding that they have an IoT road map and only one other reporting that formal discussions on IoT have begun. The interesting contrast on IoT comes when we look at another report that CompTIA compiles, an annual survey of state CIOs focused on all aspects of the state enterprise (2016 State CIO Survey: The Adaptable CIO, www.comptia.org/SLED). At the state level, almost one third of states have begun formal IoT discussions.

The great benefit of this type of survey is the trend data that are

developed when the survey is conducted annually over the course of several years. HSITAG and APHSA look forward to asking similar and new questions in next year’s survey in order to establish longitudinal trend data that allow us to observe changes over time in HHS agencies across the United States.

You can access the complete survey report and more information on HSITAG at www.comptia.org/HSITAG 

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