

a client's property or abuse or neglect of a client, may seek a rehabilitation review under s. HFS 12.12.

(c) Limitation of rehabilitation approval. A rehabilitation approval under this subsection does not of itself ensure that a person will receive agency regulatory approval or approval to operate or contract with an entity or employment at or a contractual relationship with an entity or permit a person to reside at an entity.

(3) OTHER CRIMES, ACTS OR OFFENSES SUBSTANTIALLY RELATED TO THE CARE OF A CLIENT. (a) Refusals. 1. Notwithstanding s. 111.335, Stats., the department may refuse to give regulatory approval to a person, a county department or a child-placing agency may refuse to license a foster home or treatment foster home under ss. 48.62 or 48.75, Stats., or refuse to approve an adoption home study, a school board may refuse to contract with a person under s. 120.13 (14), Stats., and an entity may refuse to employ, contract with or permit to reside at an entity a person specified under s. HFS 12.10 (1) (a) or (b), when an agency or entity determines the person has been convicted of a crime, act or offense not otherwise identified under sub. (1) or (2) which is substantially related to the care of a client.

2. Notwithstanding s. 111.335, Stats., the department may refuse to license a person to operate a day care center or a school board may refuse to contract with a person under s. 120.13 (14), Stats., a day care center that is licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats., may refuse to employ, contract with or permit to reside at the day care center at any time the department, a school board or a day care provider determines the person has been convicted or adjudicated delinquent on or after his or her 12<sup>th</sup> birthday for a crime, act or offense otherwise not identified under sub. (1) or (2) which is substantially related to the care of a client.

3. As applicable, an agency or entity under subd. 1. or 2, shall consider protection of the client first, and may, where appropriate, apply under sub. (5) (b) a less stringent measure than a refusal under this paragraph.

(b) Substantially related criteria. In determining whether a crime, act or offense or delinquency adjudication is substantially related to the care of a client under par. (a), the agency or entity shall consider at minimum all of the following:

1. All of the following related to the job:

a. The nature and scope of the job's client contact.

b. The nature and scope of the job's discretionary authority and degree of independence in judgment relating to decisions or actions which affect the care of clients.

c. The opportunity the job presents for the commission of similar offenses.

d. The extent to which acceptable job performance requires the trust and confidence of clients and their parent or guardian.

e. The amount and type of supervision received in the job.

2. All of the following related to the offense:

a. Whether intent is an element of the offense.

b. Whether the elements or circumstances of the offense are substantially related to the job duties.

c. The pattern of offenses.

d. The extent to which the offense relates to vulnerable clients.

f. Whether the crime involves violence or threat or harm.

g. Whether the crime is of a sexual nature.

3. All of the following related to the individual:

a. The number and type of offenses for which the individual has been convicted.

b. The length of time between the conviction and the employment decision.

c. The individual's employment history, including references, if available.

d. The individual's participation in or completion of pertinent programs of a rehabilitative nature.

e. The individual's probation or parole status.

f. The individual's ability to perform or continue to perform the job consistent with the safe and efficient operation of the program and the confidence of the clients served including as applicable, their parents or guardians.

g. The age of the individual on the date of conviction.

**Note:** A person refused employment or who has had his or her employment terminated and believes he or she may have been discriminated against, may file an appeal under s. 111.335, Stats., with the Equal Rights Division, Department of Workforce Development.

(4) **REPORTING.** Each child-placing agency and county department shall provide the department with information about each person who is denied a license or adoption home study approval for a reason specified in s. HFS 12.10 (2).

**Note:** Send information on denial or revocation of a foster home license or denial of an adoptive home study application for a reason as specified in s. HFS 12.10 (2) to: Bureau of Regulation and Licensing, Division of Children and Families, P.O. Box 8916, 1 West Wilson St., Madison, WI 53708-8916.

(5) LESS SERIOUS CRIMES, ACTS OR OFFENSES REQUIRING SPECIAL PRECAUTIONARY MEASURES. (a) Less serious crimes, acts or offenses. 1. Less stringent measures other than a bar on regulatory approval by an agency or prohibiting the contracting for day care services under s. 120.13 (14), Stats., by a school board, or a bar on employment, nonclient residency or other similar type of association by an entity may be imposed where the person has been convicted of a less serious crime, act or offense, including but not limited to those crimes identified in the crimes list in appendix A attached to this chapter, which are substantially related to the care of a client.

2. In determining whether a person's crimes, acts or offenses are substantially related to the care of a client, an agency or entity shall apply the criteria under sub. (3) (b).

(b) Less stringent measures. 1. An agency shall impose special precautionary measures identified under subd. 2., on persons seeking regulatory approval or to provide contracted day care services under s. 120.13 (14), Stats., or by the entity on persons having contact with clients who are either employed by the entity or are nonclient residents or have any other similar type of association with the entity if that person has committed a less serious crime, act or offense as described under par. (a).

2. Precautionary measures may include but are not limited to any of the following:

a. For licensure, certification or other similar regulatory function, conditions as appropriate, imposed on the regulatory applicant or regulated entity as part of regulatory approval or continued approval such as: prohibitions on certain activities or functions, no repeat of crimes, acts or offenses, submission of necessary and relevant statements from therapists or counselors on the person being fit and qualified for regulatory function or job task where appropriate, prescribed limited contact or supervised contact with clients.

b. Closer supervision or special supervision arrangements such as partnering with another person who does not have background history problems.

c. Medication monitoring.

d. Prior evaluation and recommendations from an appropriate professional such as a psychiatrist or psychologist.

e. Restrictions to certain on-premises activities, locations or time periods.

- f. No transporting of clients.
- g. Periodic alcohol or drug testing.

**HFS 12.12 REHABILITATION REVIEW. (1) ELIGIBILITY. (a) Request.** A person barred under s. HFS 12.10 (2) for any of the following may request a rehabilitation review under par. (e) if he or she meets the applicable criteria under par. (b), (c) or (d) for requesting a review:

1. The person has committed a serious crime, act or offense identified by the department under s. HFS 12.11 (2) or s. 48.685 (5) (bm) 4., Stats., for which rehabilitation review is required and does not have a pending charge for any criminal or municipal ordinance charges including traffic other than parking or speeding.
2. A unit of government or a state agency or other similar authority has made a finding that the person has abused or neglected a client or misappropriated the property of a client.
3. A determination has been made under s. 48.981 (3) (c) 4., Stats., or other similar authority that the person has abused or neglected a child.
4. In the case of a position for which the person must be credentialed by the department of regulation and licensing or other similar authority, the person's credential is not current or is limited so as to restrict the person from providing adequate care to a client.

**(b) Requester status criteria.** A person under par. (a) may request a rehabilitation review if that person meets all of the following conditions or conditions under par. (c) or (d):

1. The person has not committed a serious crime, act or offense that prohibits rehabilitation under s. HFS 12.11 (1).
2. The person does not have a charge pending for a serious crime, act or offense under s. HFS 12.11 (1) and (2).
3. If the person is a foster home license applicant under s. 48.62, Stats., or an applicant for an adoption home study, the person has not committed a serious crime, act or offense under s. 48.685 (5) (bm) 4., or a similar serious crime, act or offense in another jurisdiction or the background check request is not received within 5 years of a crime committed under s 48.685 (5) (bm) 4.
4. The person is not subject to a court order, injunction or temporary restraining order relating to the crime which is the basis for the review request.

5. The person is not a registered sex offender under s. 301.45, Stats., or under a similar authority.

6. The person is not currently serving a jail commitment or sentence including persons with work release privileges.

7. The person is not currently under the supervision of the department of corrections or other similar authority or on probation or parole.

8. The person has not requested a rehabilitation review until at least one year after the end of the period of the imposed incarceration, probation or parole.

9. The person has not requested a rehabilitation review for a similar type of regulatory approval or job function or activity within the last year.

**Note:** "Similar" in the previous paragraph means regulatory approval, job function or activity that could be categorized in a general way, such as: a review involving the question of direct client contact or that would involve a similar job function or activity that allows unsupervised client access or the review involved a family day care and now the applicant seeks a group day care license or the applicant sought a group home license and now seeks a child caring institution license.

(c) Eligibility criteria for existing entities, employees, contracted persons or persons residing at an entity. An agency need not bar and may continue the regulatory approval of an entity and an entity need not bar and may retain a person on staff or continue a contract for services with a person or permit a person to continue to reside at an entity beyond October 1, 1999, until a favorable rehabilitation review decision has been reached by the agency and all of the following are met:

1. The entity or person has submitted a completed rehabilitation review request form prior to October 1, 1999 to the agency that must review the rehabilitation request.

2. Except for par. (b) 7. and 8., the person shall show that he or she is otherwise eligible for rehabilitation review under par. (a).

3. The person shall have been operating the regulated or approved entity or been working for or under contract in the same capacity with the entity or residing at the entity prior to October 1, 1998.

4. If the person is awaiting rehabilitation review from an agency and the agency is unable to complete a rehabilitation review request for the person prior to October 1, 1999.

(d) Foster homes. An agency may allow a foster parent licensed under s. 48.62 or 48.75, Stats., to continue as a foster parent and may waive the foster parent's requirement to meet the criteria under par. (b) 6., 7., and 8., if that person is otherwise eligible for a rehabilitation review under par. (a), and all of the following conditions are met:

1. None of the children in foster home placement was a witness to or the victim of the underlying crime or act for which the foster parent was charged or convicted and is seeking a rehabilitation review.

2. The foster parent has submitted to the agency a completed rehabilitation review request form for agency rehabilitation review, and the agency is persuaded by clear and convincing information that not waiving the criteria under par. (b) 6., 7., and 8., would be contrary to the best interests of the children currently in foster home placement.

3. The agency has shown that the circumstances for waiver of the criteria under par. (b) 6., 7., and 8., do not pose any jeopardy to, and will not adversely impact the care of any foster child in placement and would not be contrary to the best interests of any foster child placed in the foster home.

4. The agency determined that continued licensure of the foster parent is appropriate and within 3 working days of this determination submitted to the department for its consideration and approval the information that forms the basis for this conclusion.

**Note:** Send agency approved determinations for Department review and approval to: Bureau of Program and Policies, Division of Children and Families, P.O. Box 8916, Madison, WI 53708-8916

5. The department, after reviewing the information under subd. 4., issued a written approval to the agency for continued licensure of the foster parent. If the department does not agree with the agency's findings and conclusions, the agency shall immediately request the foster parent to surrender the license or, as applicable and as necessary, shall deny or revoke the license of the foster parent.

**Note:** Send information on a denial or revocation (including voluntary surrender) of a foster home license or denial of an adoptive home study application for a reason specified in s. HFS 12.10 (2) to: Bureau of Regulation and Licensing, Division of Children and Families, P.O. Box 8916, 1 West Wilson St., Madison, WI 53708-8916.

(e) Rehabilitation request. 1. a. If the person is otherwise eligible, an agency shall provide information on eligibility criteria for a rehabilitation review to any person who is barred from regulatory approval under this chapter and to any non-client resident who is barred from residing at an entity. If the person is eligible to request a rehabilitation review, the agency shall provide to the person information on how to obtain the rehabilitation review request form.

b. If an entity wishes to employ a person or be able to contract for the person's services, but the person is barred under this chapter from being employed by or contracting with the entity, the entity shall provide information on eligibility criteria for a rehabilitation review to the person. If the person is eligible to request a rehabilitation review, the agency shall provide to the person information on how to obtain the rehabilitation review request form.

2. a. To initiate a rehabilitation review, an eligible person must obtain a rehabilitation review request form developed by the department and submit the completed form, including the requested supporting documents and information, to the agency which regulates the entity or, for day care providers under s. 120.13 (14), Stats., to the school board that contracts with a day care provider.

b. A person's submitted rehabilitation review request will not be reviewed unless and until all information requested on the form is provided.

(2) REVIEW PROCEDURES. (a) Processing rehabilitation review requests. Upon receipt of a person's completed rehabilitation review request, including supporting documentation and other requested information, the agency shall appoint a panel of at least 2 persons to review the information submitted.

(b) Rehabilitation request information review. 1. The agency rehabilitation request review panel shall review the rehabilitation review request form and accompanying documents. The panel may request additional information from the person or from other agencies or persons familiar with the person requesting the review.

2. The rehabilitation request review panel shall give the person an opportunity to appear before the review panel to answer any questions the review panel may have.

(c) Rehabilitation decision. Upon review of the information obtained, the agency review panel shall decide whether the information provided establishes by clear and convincing evidence that the person has demonstrated rehabilitation so that the bar to regulatory approval, employment, contracting or residency may be lifted and the person may be eligible for the position indicated in the rehabilitation review request form. The panel shall consider at least the following factors, as applicable:

1. Favorable personal reference checks and favorable comments from other persons and agencies identified in the written request.

2. Proof of successful completion of parole, probation, incarceration or work release privileges.

3. Proof that the person has not had subsequent contacts with law enforcement leading to probable cause and arrest or other regulatory enforcement agencies.

4. No information to indicate that the person has any pending or existing arrest warrants or civil judgements or other legal enforcement actions.

5. Aggravating or mitigating circumstances surrounding the crime, act or offense.

6. Evidence of rehabilitation, including public or community service, volunteer work, recognition by other public or private authorities for accomplishments or efforts.

7. Statements from therapists, counselors and other professionals.
8. Attempts or efforts at restitution.
9. Victim's impact statement, if appropriate.
10. Employment history, including demonstrated ability to develop positive social interaction and increased independence or autonomy of daily living.

(d) Rehabilitation review decision response. 1. a. The agency's review panel shall meet to review and issue a written decision within 90 working days of the agency's receipt of the requester's complete written request for rehabilitation review.

b. The review panel's decision shall be in writing and sent to the requester with a copy provided to the entity, as applicable.

2. If the agency finds sufficient evidence to support rehabilitation approval, the decision shall indicate, as applicable, whether the person is eligible for regulatory approval, employment, contracting or residency at an entity. The decision shall describe the scope of the rehabilitation approval with any conditions or limitations that may be prescribed, that is, whether the approval is only for certain job functions, activities or arrangements and for what type of entity or, if a regulatory approval, for what type of entity, and any conditions or limitations that may be prescribed for regulatory approval.

3. If the agency review panel's decision is to deny the rehabilitation request, the written response shall explain the reasons for denial and inform the applicant that he or she has the right to file an appeal under par. (e) on the decision as follows:

a. Any person who is permitted but fails under subd. 1., to demonstrate to the department or to a child-placing agency that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the secretary of health and family services or his or her designee. Any person adversely affected by a decision of the secretary or his or her designee under this paragraph has a right to a contested case hearing under ch. 227, Stats.

b. Any person who is permitted but fails under subd. 1., to demonstrate to the county department that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the director of the county department or his or her designee. Any person who is adversely affected by a decision of the director or his or her designee under this paragraph has a right to appeal the decision under ch. 68, Stats.

c. Any person who is permitted but fails under subd. 1., to demonstrate to the school board that he or she has been rehabilitated and should be considered eligible for regulatory approval or for employment at or contracting with or residency as a nonclient at an entity, may appeal to the superintendent of public instruction or his or her designee. Any person who is adversely affected by a decision of the superintendent or his or her designee under this paragraph has a right to a contested case hearing under ch. 227, Stats.

4. The agency's review panel shall send a completed copy of the department's required reporting form regarding any rehabilitation decision to the subunit of the department responsible for collecting that information.

**Note:** Send a written rehabilitation decision to: Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53701-7850.

5. The agency's review panel shall maintain on file a copy of the written decision under this paragraph along with any decisions from filed appeals that may result. The agency shall maintain on file the rehabilitation review request and all materials requested in that request and any other materials or information or notes obtained as a part of the rehabilitation review decision.

(e) Appeal. 1. A person aggrieved by an agency's decision under par. (d) that the person did not produce sufficient evidence to support rehabilitation approval may request a hearing of that decision by filing a written request for a hearing with the department of administration's division of hearings and appeals within 10 days after receiving the notice under par. (d).

2. The appellant shall bear the burden of proving by a preponderance of the evidence that the department abused its discretion in deciding that the person did not show sufficient evidence to support rehabilitation approval.

**Note:** Submit a request for a hearing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

(3) REHABILITATION APPROVAL COMPLIANCE. (a) Approval status. A person under sub. (1) (a) who has had his or her rehabilitation review request approved under sub. (2) (d), and subsequently was, as applicable, given regulatory approval or approval to be employed at or to contract with or reside at an entity, shall comply with all conditions and limitations as may be imposed with that approval. A person who has received rehabilitation approval and fails to comply with the conditions for rehabilitation approval or who subsequently commits a crime, act or offense that is cause for a bar under s. HFS 12.10 (2) shall, as provided under par. (b), have his or her rehabilitation approval withdrawn by the approving agency.

(b) Violation of rehabilitation approval. An entity or agency aware of any person who has violated his or her rehabilitation approval for a reason under par. (a) shall inform the agency that approved the person's rehabilitation. The applicable approving

agency or the department may immediately temporarily deny or rescind a rehabilitation approval of a person when the agency has knowledge that the person has done any of the following:

1. The person fails to comply with or abide by the conditions or limitations of an approval granted under sub. (2) (d).
2. The person is no longer eligible for regulatory approval or employment at, contracting with or residency at an entity under s. HFS 12.10 (2).
3. The person knowingly submitted false information or withheld pertinent information relevant to the rehabilitation request that otherwise would or could have affected the review panel's decision under sub. (2) (d) to approve the person's rehabilitation.

(c) Review. 1. The approving agency shall consider whether the new information received is valid and represents a risk of harm to the client and, if so, shall rescind rehabilitation approval, thereby re-imposing the person's bar to regulatory approval, employment or contracting with an entity or residency at an entity.

**Note:** If the new information does not represent a risk of harm to a client, the agency should work in concert with the entity and consider as necessary, any measures to ameliorate or mitigate the situation such as a change in job function or position or change in regulatory status of the entity regulated.

2. As applicable, an agency or entity that believes the new information on a person under subd. 1., represents a risk of harm to a client shall immediately take appropriate measures for the protection of clients. These measures may include a repeal of a regulatory approval, employment or contract termination, temporarily reassigning the person away from direct client duties, placing the person on leave or imposing a temporary regulatory condition limiting the person from having access to clients until any appeal filed under par. (d) is exhausted.

(d) Appeal rights. Any person who has had his or her rehabilitation approval withdrawn under par. (b) 1. or 3. may file an appeal of this decision as provided under sub. (2) (d) 3.

**Note:** Submit a request for hearing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

(e) Reporting. Any rehabilitation approval withdrawn by the approving agency which results in a bar under s. HFS 12.10 (2) shall be immediately reported to the subunit of the department responsible for collecting this information.

**Note:** Send reports of withdrawal of rehabilitation approval to: Office of Legal Counsel, Department of Health and Family Services, P.O. Box 7850, 1 West Wilson St., Rm 651, Madison, WI 53701-7850.

(4) SCOPE OF AGENCY REHABILITATION APPROVAL. (a) Approval limit. An agency may only grant rehabilitation approval within the scope of its regulatory authority and within the scope of client access or the job activity or function specified in the rehabilitation review request. An approval is not transferable outside the scope of the agency's regulatory authority or to other job functions or activities different from those specified in the rehabilitation approval by that agency.

Note: Examples of the above may include but are not limited to: An approval to be a foster parent by one county is not, unless approved by the other county, transferable to the other county, or an approval by the Department for a person to work as a shipping clerk in a hospital or nursing home would not be transferable to the function or activity of patient care unless a rehabilitation review approval specifically for patient care would be completed and approved by the regulatory agency subunit of the department responsible for review of rehabilitation requests for hospitals and nursing homes. A rehabilitation approval for employment at a childrens day care is not transferable to a child caring institution or to a hospital or nursing home.

(b) Approval transfer conditions. A rehabilitation review approval is transferable, without obtaining another rehabilitation review approval, under the following conditions:

1. The person's job title, function, duties and circumstances approved in the rehabilitation approval are the same or similar when moving from one entity to another of the same type and the receiving entity has determined that they do not pose a risk to clients.

2. A rehabilitation review application request approval regarding regulatory approval by an agency is transferable to another agency only with the approval of the receiving agency. If the regulatory agency is the department, it shall be the receiving regulatory subunit of the department that will decide whether a rehabilitation approval is transferable to that regulatory subunit.

(c) Applicant request to transfer rehabilitation approval. 1. Upon notification on the department's background information form that a regulatory, job or contract applicant or prospective nonclient resident has had a rehabilitation review under sub. (2) (d), an agency or entity shall request from the rehabilitation review agency a copy of the rehabilitation decision. If an approval, the agency or entity shall determine whether the approval is acceptable as applicable for the regulatory approval, job functions or activities for which the applicant is now applying or for purposes of nonclient residency at the entity.

2. An agency or entity shall verify with the department, whether as applicable, a prospective entity, job or contract applicant or nonclient resident has ever had a rehabilitation review and, if so, the date and status of that review and shall establish whether any new reason exists under sub. (1) (a) to request a rehabilitation review.

3. If a denial, the agency or entity shall determine whether as applicable the regulatory, job or contract applicant or prospective nonclient resident is eligible to seek another rehabilitation review as prescribed under sub. (1) (a), and shall so inform the applicant or nonclient resident.

## SUBCHAPTER III - BACKGROUND INFORMATION COLLECTION

### HFS 12.20 BACKGROUND INFORMATION GATHERING AND SCREENING.

(1) BACKGROUND INFORMATION FORM. (a) Agency responsibilities. 1. The department shall require any person who applies for regulatory approval to operate or continue the operation of an entity to complete the department's background information form provided by the department.

2. A county department or child placing agency shall require a person who applies for issuance or renewal of a license to operate a foster home or treatment foster home under s. 48.62 or 48.75, Stats., or who seeks adoption home study approval to complete the department's background information form provided by the county department or child-placing agency.

3. A school board shall require any person who proposes to contract with the school board under s. 120.13 (14), Stats., or to renew a contract under that subsection, to complete the department's background information form provided by the school board.

**Note:** For copies of DHFS - 64 either download a copy from the Department's internet website at: [www.dhfs.state.wi.us](http://www.dhfs.state.wi.us), then click on "News and Initiatives" or, you may request a master copy, for purposes of reproduction, of the DHFS - 64 form from the agency which regulates your entity.

(b) Entity responsibilities. Each entity shall have on file, except for subd. 2. as provided under sub. (2) (b) 1., a completed background information form and on file and an updated one every 4 years for the following:

1. Except as provided under sub. (2) (b) 1. and 4., for persons under age 18 in day care program licensed under s. 48.65, Stats., a person who is an employe, prospective employe, contractor or prospective contractor of the entity, who will be under the entity's control and who has, or is expected to have, access to the entity's clients. This does not include persons with whom the entity contracts or whom the entity employs to perform infrequent or sporadic services, including maintenance services and other services not directly related to the care of a client.

2. A person who is a nonclient resident or prospective at the entity, if the person has, or is expected to have, access to any client of the entity.

(c) Penalties for false information or failure to report. 1. Any person who knowingly and intentionally provides false information or omits information on the department's background information form under pars. (a) or (b) or who subsequently fails to report any information about a pending charge or conviction for a crime or other act or offense requested on the background information form as required under subd. 2., may be required to forfeit not more than \$1,000 and may as appropriate be subject to additional sanctions as determined by the agency, including one or more of the following:

- a. Denial or revocation of regulatory approval or approval or termination of contract by an agency.
- b. Denial of employment or contractual consideration by an entity.
- c. Termination of employment or contractual relationship by an entity.
- d. Special regulatory conditions or limitations placed upon the person by an agency, including restriction to off premises location during regulated business hours or restricted access to client conditions.
- e. Human services professional assessment of a person being fit and qualified before allowing the person to be on the premises.

2. A person under par. (a) shall report to the regulatory approving agency and under par. (b) to the entity by the next working day, information on any pending charge or conviction for a crime or other act or offense requested on the background information form.

3. a. An entity shall, as soon as possible, report to the agency which gave regulatory approval or approval or to the school board which the day care entity contracts with under s. 120.13 (14), Stats., when a signatory or other legal party to the entity application for regulatory approval or approval or under which a contract under s. 120.13 (14), Stats., is signed or who is a nonclient who resides at the entity has been charged with or has committed a crime, act or offense under s. HFS 12.10 (2).

b. An entity shall, as soon as possible, report to the agency which gave regulatory approval or approval or to the school board which the day care entity contracts with under s. 120.13 (14), Stats., when a new nonclient resides or is expected to reside at the entity.

4. An entity shall include in its personnel or operational policies a provision that requires employed staff or contracted persons or persons residing at an entity to notify the entity as soon as possible when the person has been charged with or has committed any crime, act or offense specified under s. HFS 12.10 (2).

(2) BACKGROUND INFORMATION FORM PROCESSING AND FILING. (a) Background information evaluation. 1. An agency or an entity upon review of the information provided on the department's background information form, shall comply as applicable with the provisions under s. HFS 12.10 (1) (a) and (b) and s. HFS 12.11 (1) and (2), and (3) and (5).

2. a. If upon review of a person's completed background information form and any other information that may be available, an entity finds that none of the items under s. HFS 12.10 (2) apply, the person has not committed a crime, act or offense identified under s. HFS 12.11 (1) and (2) or as otherwise may be applied under sub. (3), an entity

may employ or contract with a person, or a child-placing agency as provided for under subpar. d., may license a person as a foster home or treatment foster home provider or make a preadoptive placement of a child for not more than 60 days pending receipt and review of the information required under s. HFS 12.21 (1) (b) 1. a., and as applicable, information obtained either by the department or a school board for a day care program under s. HFS 12.21 (1) (a) 3. in order to determine compliance with s. HFS 12.10 (2) and s. HFS 12.11 (1) and (2) and, as may apply, under s. HFS 12.11 (3).

b. If the background information form completed by a person under sub. (1) (b) indicates that the person as a nonclient resident is not ineligible to be permitted to reside at an entity for a reason specified in ss. HFS 12.10 (2) and HFS 12.11 (1) and (2) or as otherwise may apply under HFS 12.11 (3), and if an entity otherwise has no reason to believe that the person is ineligible to be permitted to reside as a nonclient resident at an entity, the entity may permit the person to reside at the entity for not more than 60 days pending receipt of the information required under s. HFS 12.21 (1) (a) 1. in order to determine compliance with s. HFS 12.10 (2) and s. HFS 12.11 (1) and (2) and as may apply under s. HFS 12.11 (3).

c. Pending receipt and review on the information as provided in this subd. 2. a. and b., an entity shall provide supervision for a person who is employed, contracted with or who is not a client and is permitted to reside at an entity. Supervision shall include at minimum periodic direct observation of the person.

d. The department, a county department or a child placing agency may license a foster home or treatment foster home under s. 48.62 or 48.75, Stats., or approve an adoption home study, and a school board may contract with a person under s. 120.13 (14), Stats., conditioned on the receipt of the information specified in s. HFS 12.21 in order to determine that the person is not ineligible to be licensed, approved or contracted with for a reason specified under s. HFS 12.10 (2).

3. Where less serious crimes, acts or offenses are indicated on the person's background information form under s. HFS 12.11 (5), the agency or entity shall ensure appropriate that precautionary measures are taken to protect clients.

**Note:** For the Department and for county departments and child placing agencies that license foster or treatment foster homes under s. 48.62 and 48.75, Stats., or that approve adoptive parent applicant home studies, this may mean delaying issuance of a license or an adoption approval or placing conditions on a license or adoption approval as provided under s. HFS 12.11 (5) (b).

(b) Filing of background information form. 1. The entity shall send the signed background information form to the department for persons specified under sub. (1) (a) who are regulated by the department, persons specified under sub. (1) (b) 2., who are nonclient residents or prospective nonclient residents of an entity that is regulated by the department and persons who are under 18 years of age, but not under 12 years of age, and who are employes, prospective employes, contractors, or prospective contractors of a day care center that is licensed under s. 48.65, Stats., and other persons as the department may identify.

2. The entity shall send the background information form to the county department for persons specified under sub. (1) (a) who are licensed or adoptive parent applicants studied by a county department , persons specified under sub. (1) (b) 2. who are nonclient residents or prospective nonclient residents of an entity that is licensed or in a home studied for adoptive parent applicant approval by the county department, and other persons as the department may identify.

3. The entity shall send the background information form to the child-placing agency for persons specified under sub. (1) (a) who are licensed by a licensed child-placing agency or who are adoptive parent applicants studied, persons specified under sub. (1) (b) 2., who are nonclient residents or prospective nonclient residents of an entity that is licensed by a licensed child placing agency or in a home studied for adoptive parent applicant approval, and other persons as the department may identify.

4. The entity shall send the background information form to the school board for persons specified under sub. (1) (a) who are contracted by a school board , persons specified under sub. (1) (b) 2. who are nonclient residents or prospective nonclient residents of an entity that is contracted by a school board, or persons who are under 18 years of age, but not under 12 years of age, and who are employes, prospective employes, contractors, or prospective contractors of a day care center that is licensed under s. 48.65, Stats., that is contracted for under s. 120.13 (14), Stats., and other persons as the department may identify.

5. The entity shall maintain the background information forms for persons identified under sub. (1) (b) 1. on file for inspection by the agency.

(c) Confidentiality. Agencies and entities shall maintain on file all completed department background information forms required under this section and shall comply with applicable federal and state confidentiality laws.

**HFS 12.21 CRIMINAL AND OTHER BACKGROUND HISTORY INFORMATION SEARCH.** (1) INFORMATION GATHERING. (a) Agency responsibilities. 1. Subject to subds. 2. and 3. and par. (c), the department, a county department, a child-placing agency or a school board shall obtain all of the following information with respect to a person specified under s. HFS 12.10 (1) (a) and a nonclient resident or prospective resident specified under s. HFS 12.10 (1) (b):

a. A criminal history search from the records maintained by the department of justice and as applicable, where indicated and as may be available, a record search from the records maintained by a native American tribal court.

b. Information contained in the registry under s. 146.40 (4g), Stats., and ch. HFS 13 regarding any findings against the person.

c. Information maintained by the department of regulation and licensing regarding the status of the person's credentials, as applicable.

d. Information maintained by the department regarding any substantiated reports of child abuse or neglect against the person, if available.

e. Information maintained by the department under ss. 48.685 (2) (am) 5., 48.651 (2m), 48.75 (1m), 50.065 (2) (am) 5., Stats., and under s. 120.13 (14), Stats., regarding any denial to the person of a license, continuation or renewal of a license, certification or a contract, or approval to operate an entity for a reason specified in s. HFS 12.10 (2), along with any conditions imposed as applicable given for any regulatory approval and regarding any denial to the person of employment at , a contract with or permission to reside at an entity for a reason specified in s. HFS 12.10 (2).

2. If the information obtained under subd. 1.e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment or permission to reside as described in subd. 1.e., the department, a county department, a child-placing agency or a school board need not obtain the information specified in subd. 1. a. to d.

3. The department or a school board, as applicable, shall obtain the information specified under subd. 1. with respect to a person specified under par. (a) (intro.) who is under 18 years of age but not under 12 years of age and who is an employe, prospective employe, contractor, prospective contractor or who is otherwise a nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats.

(b) Entity responsibilities. 1. a. Subject to par. (a) 2. and 3. with respect to persons 18 years of age or older in a day care program, every entity shall obtain all of the information under par. (a) 1. with respect to a person specified under s. HFS 12.10 (1) (b) who is an employe, prospective employe, contractor or prospective contractor of the entity and who is expected to have access to the entity's clients.

b. Paragraph (a).1., does not apply with respect to a person with whom the entity contracts or whom the entity employs to perform infrequent or sporadic services, including maintenance services and other services that are not directly related to the care or treatment of a client.

2. a. If an entity takes an action specified in s. HFS 12.10 (1) (b) with respect to an employe, prospective employe, contractor or prospective contractor for whom, within the last 4 years, the information required under par. (a) 1. a. to c. and e. has been obtained either by another entity or by a temporary employment agency, the entity may obtain the information required under par. (a) 1. a. to c. and e. from that other entity or temporary employment agency, which shall provide the information if possible, to the entity. Information under par (a) 1. d. shall be obtained from the source specified in par. (a) 1. d.

b. If an entity cannot obtain the information required under par. (a) 1. a. to c. and e. from another entity or from a temporary employment agency or if an entity has reasonable grounds to believe that any information obtained from another entity or from a temporary employment agency is no longer accurate, the entity shall obtain that information from the sources specified in par. (a) 1. a. to c. and e. and from the source specified in par. (a) 1. d.

(c) Person under age 18. 1. Notwithstanding par. (a) 1. and (b) 1. a., an agency is not required to obtain the information specified under par. (a) 1. and an entity is not required to obtain the information specified in par. (b) 1. a., for a person under 18 years of age whose background information form under s. HFS 12.20 (1) (b) indicates that the person is not ineligible to be employed, contracted with or permitted to reside at an entity for a reason specified in s. HFS 12.10 (2), and for whom the department, county department, child placing agency, school board or an entity otherwise has no reason to believe the person is ineligible to be employed, contracted with or permitted to reside at an entity.

2. Subdivision. 1. does not apply with respect to a person under 18 years of age, but not under 12 years of age who is an employe, prospective employe, contractor, prospective contractor, nonclient resident or prospective nonclient resident of a day care center that is licensed under s. 48.65, Stats., or contracted for under s. 120.13 (14), Stats., and for whom the department or school board is required under par. (a) (intro.) to obtain the information specified in par. (a) 1. and 3.

3. Subdivision. 1., does not preclude an agency from obtaining at its discretion, the information specified in par. (a) 1. with respect to a person described under this paragraph who is a nonclient resident or a prospective nonclient resident of an entity.

(d) Out-of-state records search. If a person who is the subject of a search under par. (a) 1. or par. (b) 1. a. is not a resident of this state, or if at any time within the last 3 years preceding the date of the search that person has not been a resident of this state, the agency or entity shall make a good faith effort to obtain from the state in which the person is or was a resident within the past 3 years preceding the date of the search information that is equivalent to the criminal history information specified in par. (a) 1. a.

(e) Armed forces records search. If a person who is the subject of a search under par. (a) 1. or par. (b) 1. a. was in a branch of the U.S. armed forces, including any reserve component, within the last 3 years, the agency or entity shall make a good faith effort to obtain the discharge status of that person, either from the discharge papers issued to the person or from the armed forces branch in which the person served. If the discharge status is dishonorable or a general discharge, information on the nature and circumstances of the discharge shall be obtained.

(2) INITIATING BACKGROUND INFORMATION SEARCHES. (a) Agency responsibilities. 1. At least every 4 years, an agency shall request the information specified in sub. (1) (a) 1. for all persons who are regulated or approved to operate an entity and for all persons specified in s. HFS 12.10 (1) (b) who are nonclient residents at an entity and the department and school board shall request the information specified in sub. (1) (a) 1. for all persons under 18 years of age, but not under 12 years of age, who are employes or contractors, or are nonclient residents of a day care center licensed under s. 48.65, Stats., or a day care program contracted for under s. 120.13 (14), Stats.

2. a. Except as provided in subpar. b., an agency may charge an entity a fee for obtaining the information required under subd. 1. The fee may not exceed the reasonable cost of obtaining the information.

b. No fee may be charged to a nurse's assistant, as defined in s. 146.40 (1) (d), Stats., for obtaining or maintaining information if to do so would be inconsistent with federal law.

(b) Entity responsibility. At least every 4 years or at any time within that time period that an entity considers appropriate, the entity shall request the information specified in sub. (1) (a) 1. for all persons specified in s. HFS 12.10 (1) (b), who are employes or contractors of the entity and who have access to clients of the entity, other than for persons under 18 years of age, but not under 12 years of age, who are employes or contractors, or otherwise are nonclient residents of a day care center that is licensed under s. 48.65, Stats., or a day care program contracted for under s. 120.13 (14), Stats.

(c) Notwithstanding subs. (1) (b) 1. a. and (2) (b), if an agency has obtained the information required under sub. (1) (a) 1. or (2) (a) with respect to a person specified in sub. (1) (a) 1., and that person is also an employe, contractor or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (1) (b) 1. a. or (2) (b) with respect to that person.

(3) CRIMINAL BACKGROUND AND OTHER INFORMATION FILING. Agencies and entities shall maintain on file the most recent information under sub. (1) (a) 1. gathered as required under this section and shall comply with applicable federal and state confidentiality laws.

(4) PENALTIES FOR VIOLATIONS. An entity that violates any provision of this section, s. HFS 12.10 (2) (b) or s. HFS 12.20 (2) (a) 2. a. to c., may be required to forfeit not more than \$1,000. and may be subject to additional sanctions including:

(a) Submittal by the entity of a written corrective action plan specifying corrections to identified personnel screening practice deficiencies and implementation of the plan.

(b) As applicable, a department, county department or school board imposed corrective action plan specifying corrections to personnel screening practice deficiencies identified.

(c) At entity expense, attendance at department, county department or school board designated personnel screening training or other appropriate training.

(d) Specific conditions or limitations placed on a department, county department or child placing agency issued license, certification or registration or on a school board-issued contract.

(e) Issuance of department orders, sanctions or penalties on any department licensed, certified or registered entity, as described under s. 48.715, Stats., or as otherwise provided under ch. 50, Stats.

(f) Utilization by the entity, at entity expense, of a temporary employment agency for screening and hiring personnel.

(g) Denial, revocation or suspension of license, certification, registration or other approval issued by the department, a county department or a child-placing agency.

(h) Denial, nonrenewal or termination by a school board of a contract with a day care provider under s. 120.13 (14), Stats.

## APPENDIX A

### CRIMES LIST

#### PERMANENT BAR CRIMES

(See s. HFS 12.11 (1))

**Note:** This list reflects Wisconsin's crimes current as of 9/16/98. Also, remember that the substantial relatedness test must be applied for crimes not listed here under which a person was convicted to determine whether the nature of the act or offense has applicability in considering eligibility for regulatory approval, employment, contracting or nonclient residency with an entity. Additionally, you must determine whether the nature of the act or offense for a crime under which a person is convicted is comparable to a crime listed and if so, apply the sanction associated with that crime even though the crime under which the person is convicted may be a lesser crime.

#### **I. SERIOUS CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT THE PERSON IS PERMANENTLY BARRED, FOR ALL PROGRAMS, FROM BEING THE OPERATOR OF AN ENTITY OR A CAREGIVER OR A NONCLIENT RESIDENT AT AN ENTITY. ALL ARE FELONY CONVICTIONS.**

940.01	940.305	946.43	948.055
940.05	940.31	946.74	948.06
940.11	940.32	946.80-946.88	948.07
940.21	941.32	948.02(1)	948.08
940.22(2)	941.325	948.02(2)*	948.095
940.225(1)	941.327	948.02(3)	948.11
940.225(2)	943.02	948.025	948.12
940.225(3)	943.23(1g)(1m)(1r)	948.03(2)	948.13
940.285	943.32(2)	948.03(4)	948.21
940.29	944.205	948.04	948.30
940.295	946.01	948.05	948.35
			948.36

\*If person at time of assault was more than 4 years older than the child.

#### **II. ADDITIONAL SERIOUS CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT THE PERSON IS PERMANENTLY BARRED, ONLY FOR FOSTER CARE PROGRAMS, INCLUDING UNINCORPORATED FAMILY OPERATED GROUP HOMES LICENSED UNDER s. 48.625, STATS., OR ADOPTION HOME APPROVAL, FROM BEING THE OPERATOR OF AN ENTITY OR A CAREGIVER OR A NONCLIENT RESIDENT AT AN ENTITY. ALL ARE FELONY CONVICTIONS.**

940.02	940.20(1m)-	948.20
940.03	spouse	948.22
940.06	940.22(2)	948.23
940.08	940.23	948.24
940.19(2)-(6) –	941.20(2)(3)	948.31
spouse	941.21	948.40
940.20(1)-spouse	943.10(2)	948.51
	948.03	

948.60	948.62
948.605(3)	and all other ch.
948.61	948 felonies

**REHABILITATION REVIEW ELIGIBLE CRIMES**

(See s. HFS 12.11 (2))

**III. SERIOUS CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT THE PERSON IS BARRED, FOR ALL PROGRAMS, FROM BEING THE OPERATOR OF AN ENTITY OR A CAREGIVER OR A NONCLIENT RESIDENT AT AN ENTITY UNLESS HE OR SHE CAN DEMONSTRATE REHABILITATION. ALL ARE FELONY CONVICTIONS UNLESS STATUTE NUMBER IS FOLLOWED BY "M" FOR MISDEMEANOR.**

49.49			
346.63	940.295 F or M	943.10(2)	948.11M
346.67 F or M	940.30	943.12	948.20
940.02	940.32 M	943.201	948.21M
940.03	940.43 F or M	943.23	948.23
940.04	940.45 F or M	943.30	948.24
940.06	941.12	943.31	948.40
940.07	941.20(1)M	943.32(1)	948.51
940.08	941.20(2)	944.17M	948.55M
940.09	941.20(3)	944.20M	948.60
940.12	941.235M	944.21 F or M	948.605(3)
940.13	941.26	944.23M	948.61
940.15	941.28	944.30M	951.02 F or M
940.16	941.29	944.32	961 –
940.19(1)M	941.296	944.33 F or M	manufacture,
940.19(2)-(6)*	941.298	944.34	possession or
940.195 F or M	940.30	946.415	delivery of
940.20*	941.31	946.42	controlled
940.201	941.38(2)	946.44	substance*
940.203*	941.38(3)M	946.47	961.38M
940.205*	941.915 F or M	946.70	961.42M
940.207*	942.08M	946.74M	961.43*
940.22(3)	943.03	947.013 F or M	961.465*
940.23	943.04	947.015	961.46*
940.25	943.06	948.03(3)	961.46M
940.285 F or M	943.01(2)(c)	948.09M	961.465M
940.291M	943.10(1)	948.10M	961.49*
			961.455*
			961.492*
			961.575M

\* For foster care program including unincorporated family operated group homes licensed under s. 48.625, Stats., or adoption home study review, person must wait to apply for rehab review 5 years from date of crime.

**LESS SERIOUS CRIMES**

(See s. HFS 12.11 (5))

**IV. CRIMES BY STATUTE NUMBER FOR WHICH CONVICTION MEANS THAT LESSER SANCTIONS UNDER S. HFS 12.11(5) APPLY FOR ALL PROGRAMS. ALL ARE MISDEMEANOR CONVICTIONS.**

943.01(1)	943.50(4)(a)
943.20(3)(a)	

The rules contained in this order shall take effect as emergency rules on October 1, 1998.

WISCONSIN DEPARTMENT OF HEALTH  
AND FAMILY SERVICES

DATE: September 28, 1998

By:  EA Joe  
Joe Leean  
Secretary

SEAL: