

Chief Judge Directive 12-06
SENATE BILL 94
11th JUDICIAL DISTRICT
Gateway Youth and Family Services

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SENATE BILL 94 ELEVENTH JUDICIAL DISTRICT POLICY

Self-Reporting of Any Arrests

Effective Date:	July 1, 2012
Revision Date:	June 14, 2012
Review Date:	July 1, 2013

POLICY FOR SELF-REPORTING OF ANY ARREST

1. Purpose

To ensure the safety of any at-risk youth in the Eleventh Judicial District (Policy Number VI-2.4 Section B Self-Reporting for current Employees per C.R.S. 27-1-110).

2. Goals

To ensure that the self-reporting component of Policy Number VI-2.4 is complied with for any person who receives wages or reimbursement for services rendered from Senate Bill 94 funds in the event of arrest. These individuals are considered to be in positions of trust for at-risk and vulnerable youth.

3. Procedure

A. All current and certified employees and/or contracting employees in direct contact with vulnerable persons are required to self-report the following:

- a. All arrests, charges or summons and/or complaints for any of the disqualifying offenses as set forth in Policy VI-2.4, section (A.8.a).
- b. All arrests, charges or summons and/or complaints for any of the disqualifying offenses as set forth in Policy VI-2.4, section (A.8.b).
- c. Any employee who fails to make such a report or disclosure may be terminated from employment.

B. In addition to the self-reporting requirements of the C.R.S. 27-1-110, the Colorado Department of Human Services Executive Management Team has included the following self-reporting requirements for all employees within the Department (or paid wages or reimbursements through Senate Bill 94 funding) in the following areas:

- a. All arrests, charges, or summons for the following categories of offenses:
 - 1) Any alcohol or drug related offenses;
 - 2) Traffic offenses that may result in the loss or suspension of a driver's license.
- b. All convictions of any felony or misdemeanor offense.

- c. Any employee who fails to self-report may be subject to corrective or disciplinary action up to and including termination.

The self-reporting process is as follows:

- a. C.R.S. 27-1-110 offenses
 - 1) The employee must provide charging documents of arrests and/or charges listed in Policy VI-2.4(A.8.a.) and (A.8.b.) to their supervisor before returning to work. The SB94 Coordinator shall be notified within 24 hours or by the next business day.
 - 2) The supervisor will review the case as indicated in Policy VI-2.4 under "The self-reporting of offenses process shall be as follows: (page 3).
- b. Non C.R.S. 21-1-110 Offenses
 - 1) The employee must provide charging documents of arrests and/or charges listed in Policy VI-2.4 (B.2.a.) and (B.2.b.) to their supervisor before returning to work. The SB Coordinator shall be notified within 24 hours or by the next business day.
 - 2) The supervisor will review the case as indicated in Policy VI.2.4 under "The self-reporting of offenses process shall be as follows" (page 3).
- C. The results of the above reviews and any supporting documents will be presented to the Senate Bill 94 Coordinator before any Senate Bill 94 funds shall be paid in wages or reimbursements to the employee or vendor.

Court Order Issued By:

/s/ Charles Barton
Eleventh Judicial District, Chief Judge

06-27-2012

DEPARTMENT OF HUMAN SERVICES Office of Human Resources	POLICY NUMBER: VI-2.4 PAGE: 1 of 5 SUPERSEDES: 07/01/99
CHAPTER: Benefits & Risk Management	EFFECTIVE DATE: 03/01/2000 DISTRIBUTION DATE- 03/01/2000 SCHEDULED REVIEW DATE: 03/01/2001 REVISED DATE: 12/22/99
SUBJECT: Background Investigation	RELATED MANDATES, STATUTES, STANDARDS, OR EXECUTIVE ORDERS:
APPROVED BY /s/ Marva Livingston Hammons, Executive Director	March 1, 2000

BACKGROUND/PURPOSE

Colorado Revised Statute (C.R.S.) 27-1-110 mandates that prior to the department's hiring of a state employee and/or a contracting employee who will have direct contact with vulnerable persons, applicants will have to successfully pass a criminal background check related to specific criteria as outlined in the statute. In addition, current employees in a position involving direct contact with vulnerable persons must report to their supervisor if they are arrested, charged with, or served a summons for any of the disqualifying criteria as referenced in the statute.

POLICY

It is the vision of the Colorado Department of Human Services to be the nation's leader in helping individuals, families, and communities to be safe and independent; therefore, this policy, in concert with and in addition to C.R.S. 27-1-110, intends to protect vulnerable individuals receiving services from the Colorado Department of Human Services (CDHS) from persons, with a propensity toward abuse, assault or similar offenses against others. C.R.S. 27-1-110 itself does not preclude the Department or the Director of any facility operated by the Department from adopting additional standards regarding disqualification from employment that includes issues of moral turpitude and/or offenses not set forth in this statute; **therefore this policy does include additional department-wide requirements intended to further protect vulnerable individuals and as determined by the Executive Management Team (EMT) of the Colorado Department of Human Services.**

PROCEDURES

A. Applicants

Prior to the Department's employment of any person in a position that would require that person to have direct contact with any vulnerable person, the Department shall make an inquiry through the Director of the Colorado Bureau of Investigation (CBI) to ascertain whether such person has a criminal history. **The Department shall also complete all additional screening processes which it has deemed necessary to further protect vulnerable persons. Such person's employment shall be conditional upon a satisfactory background check.**

1. The top three finalists for a direct contact position shall be referred from Personnel to the Background Investigation Unit (BIU) to have a name search conducted through CBI records.
2. Previous employers of any person who is one of the top three finalists for a position that would have direct and/or unsupervised contact with vulnerable persons must be contacted for the purpose of obtaining information and recommendations that may be relevant to such person's fitness for employment.
3. The BIU shall notify Personnel when candidates have cleared the name check. Personnel shall refer the candidates to the Appointing Authorities at that time for interviews.
4. **After a candidate has been selected from among the top three, the Department shall require the prospective employee to complete and pass a drug screen at a designated facility. Drug screen results will be forwarded directly from the designated collection site to the CDHS Background Investigation Unit. Anyone who fails a drug screen shall be barred from re-applying for a direct contact position within CDHS for a minimum of six months.**
5. The successful candidate shall also have his/her fingerprints taken by a local law enforcement agency and returned to the Background Investigations Unit (BIU). The BIU shall forward those fingerprints to the CBI for the purpose of fingerprint processing utilizing the files and records of the CBI and the Federal Bureau of Investigation (FBI).

6. **The Department may also include additional standardized background screening processes as deemed necessary to protect vulnerable persons and/or the business of the Department.**
7. All costs of criminal background checks **and/or other background screening processes** will be billed back to the individual agencies.
8. If the criminal background check indicates that a prospective employee or prospective contracting employee was convicted of any of the disqualifying offenses as set forth below, said person shall be disqualified from employment either as an employee or as a contracting employee in a position involving direct contact with vulnerable persons.
 - a. A person shall be disqualified from employment either as an employee or as a contracting employee regardless of the length of time that may have passed since the discharge of the sentence imposed for any of the following criminal offenses:
 - 1) A crime of violence, as defined in Section 16-11-309, C.R.S.;
 - 2) Any felony offense involving unlawful sexual behavior, as defined in Section 18-3-412.5, C.R.S.;
 - 3) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;
 - 4) Any felony offense of child abuse, as defined in Section 18-6-401, C.R.S.;
 - 5) Any felony offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described in subparagraph 1), 2), 3), or 4) of this paragraph a.
 - b. A person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:
 - 1) Third degree assault, as described in Section 18-3-204, C.R.S.;
 - 2) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in Section 18-6-800.3, C.R.S.;
 - 3) Violation of a restraining order, as described in Section 18-6-803.5, C.R.S.;
 - 4) Any misdemeanor offense of child abuse, as defined in Section 18-6-401, C.R.S.;
 - 5) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in Section 18-3-405.5, C.R.S.;
 - 6) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described in subparagraph 1), 2), 3), 4), or 5) of this paragraph b.
 - c. If a person was adjudicated a juvenile delinquent for the commission of any disqualifying offenses set forth in either paragraph (8.a.) or (8.b.) and more than seven years have elapsed since the commission of the offense, the person may submit a written request as provided for in section (D) of this policy, "Requests for Reconsideration."

B. Self-Reporting for Current Employees

1. After July 1, 1999, C.R.S. 27-1-110 requires all current employees and/or contracting employees in direct contact with vulnerable persons to self-report as follows:
 - a. All arrests, charges or summons and/or complaints for any of the disqualifying offenses as set forth in (A.8.a) above.
 - b. All arrests, charges or summons and/or complaints for any of the disqualifying offenses as set forth in (A.8.b) above.
 - c. Any employee who fails to make such a report or disclosure may be terminated from employment.
2. **In addition to the self-reporting requirements of C. R. S. 27-1-110, the Colorado Department of Human Services' Executive Management Team has included the following self-reporting requirements for ALL employees within the Department in the following areas:**
 - a. **All arrests, charges, or summons for the following categories of offenses:**
 - 1) **Any alcohol or drug related offenses;**
 - 2) **Traffic offenses that may result in the loss or suspension of a driver's license.**
 - b. **All convictions of any felony or misdemeanor offense.**
 - c. **Any employee who fails to self-report may be subject to corrective or disciplinary action up to and including termination.**

3. The self-reporting process shall be as follows:

a. C.R.S. 27-1-110 OFFENSES:

- 1) The employee must provide charging documents of arrests and/or charges listed in (A.8.a) and (A.8.b.) to their supervisor before returning to work.
- 2) The supervisor will immediately send copies of the report to the Appointing Authority and the Director of the Background Investigations Unit.
- 3) **Appointing Authorities shall contact the director of the BIU to discuss/qualify/validate charges.**
- 4) An employee who is charged with any of the disqualifying offenses set forth in (A.8.a.) shall be suspended until resolution of the criminal charges or completion of administrative action by the Department.
- 5) An employee who is charged with any of the disqualifying offenses set for in (A.8.b.) may be suspended at the discretion of the Appointing Authority until resolution of the criminal charges or completion of administrative action, **The Appointing Authority shall consult with the BIU when determining if the employee should be suspended and/or reassigned pending disposition.**
- 6) The employee shall inform his or her supervisor of the disposition of the criminal charges. Any employee who fails to report such information may be terminated from employment.
- 7) Upon notification that the employee has received a conviction for any of the disqualifying offenses described in paragraph (A.8.a.) or (A.8.b.) of this policy, the employee shall be terminated from employment by the Appointing Authority.

b. NON C.R.S. 27-1-110 OFFENSES

- 1) **The employee must provide charging documents of arrests and/or charges for offenses listed in (B.2.a.) and (B.2.b.) above to their supervisor before returning to work.**
- 2) **The supervisor will immediately send copies of the report to the Appointing Authority and the Director of the Background Investigations Unit.**
- 3) **Before any employment actions are taken, the following must occur:**
 - a) **The Appointing Authority shall contact the Director of the Background Investigations Unit. A staffing between the Appointing Authority, the District Personnel Director, and the Director of the Background Investigations Unit will be arranged to determine the job-relatedness and/or relevance of the charges to job performance.**
 - b) **If job relevance is established, then an R-6-10 hearing shall be convened by the Appointing Authority to determine the significance of the offense related to the employee's job.**
 - c) **If there is a proposed action, the Appointing Authority shall again consult with the District Personnel Director, the Director of the Background Investigations Unit, and the Attorney General's Office to discuss issues of applicability, consistency and uniformity.**

C. Backgrounds for Contracting Employees

Where the Department contracts with persons to serve in positions that involve direct contact with vulnerable persons in state-operated facilities or to provide state-funded services that involve direct contact with vulnerable persons in the homes and residences of such vulnerable persons, those contract positions shall be subject to the provisions of this policy. In any contract initially entered into or renewed on or after July 1, 1999, the Department shall include the following terms and conditions:

1. That the contracting employee shall submit to a criminal background check as described in section (A.) of this policy for state employees;
2. That the contracting employee shall report any arrests, charges, or summonses for any of the disqualifying offenses specified in (A.8.a) or (A.8.b) or **(B.2.a) or (B.2.b)** to the contracting employee's supervisor at the Department before returning to work;
3. That the contracting employee. may be suspended or terminated, at the discretion of the Department, prior to the resolution of the criminal charges for any of the disqualifying offenses specified in paragraph (A.8.a.) or (A.8.b.);

4. **That contracting employees and their supervisors shall comply with (B.3.b.) in regard to self-reporting non-C.R.S. 27-1-110 offenses.**
5. That, upon notification to the Department that the contracting employee has received a conviction for any of the disqualifying offenses described in (A.8.a.) or (A.8.b.), the contracting employee's position with the Department shall be terminated.

D. Requests for Reconsideration

1. A prospective employee or contracting employee who is disqualified due to conviction of any of the disqualifying offenses set forth in paragraph (A.8.a.) or (A.8.b.) may submit a written request for reconsideration of the disqualification. Reconsideration may only be based on a mistake of fact such as an error in the identity of the person for whom the criminal background check was performed. If it is determined that there was a mistake of fact involving the identity of the person, a finding shall be made that the disqualifying factor is not a bar to the person's employment either as an employee or as a contacting employee.
2. A current employee or contacting employee who has self-reported and who is disqualified for conviction of an offense specified in paragraph (A.8.b) may submit a written request for reconsideration of the disqualification and review of whether the person poses a risk of harm to vulnerable persons. In reviewing a disqualification, predominate weight shall be given to the safety of vulnerable persons over the interests of the disqualified person. The final determination shall be based upon a review of:
 - a. the seriousness of the disqualifying offense;
 - b. whether the person has a conviction for more than one disqualifying offense;
 - c. the vulnerability of the victim at the time the disqualifying offense was committed;
 - d. the time elapsed without a repeat of the same or similar disqualifying offense;
 - e. documentation of successful completion of training or rehabilitation pertinent to the disqualifying offense;
 - f. any other relevant information submitted by the person.
3. Requests for reconsideration should be submitted to the CDHS Background Investigation Unit at 1600 West 24th Street, Pueblo, Colorado 81003. The supervisor of that unit shall coordinate the review and shall provide a formal response of outcome.
4. The decision of the Executive Director or designee shall constitute final agency action.

E. Scope

The employment screening and disqualification requirements in this policy apply to the following facilities or programs operated by the Department:

1. Any facility operated by the Department for the care and treatment of the mentally ill pursuant to Article 10 of Title 27.
2. Any facility operated by the Department for the care and treatment of the developmentally disabled pursuant to Article 10.5 of Title 27.
5. Vocational Rehabilitation serviced provided pursuant to Article 8 of Title 26, C.R.S.
6. State and Veterans Nursing Homes operated pursuant to Article 12 of Title 26, C.R.S.
7. Any facility directly operated by the Department in which juveniles who are in the custody of the Department reside, including detention or commitment centers.
8. Any secure facility contracted for by the Department pursuant to Section 19-2-403, C.R.S., in which juveniles who are in the custody of the Department reside.

F. Definitions

Contracting employee: a person who contracts with the Department and who is designated by the Executive Director of the Department or the Executive Director's designee as serving in a contract position involving direct contact with vulnerable persons.

Conviction: a verdict of guilty by a judge or jury or a plea of guilty or *nolo contendere* that is accepted by the court or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence, deferred adjudication, except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence, or deferred adjudication.

Department: the Colorado Department of Human Services.

Direct contact: providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to vulnerable persons, regardless of the level of supervision of the employee. "Direct contact" may include positions in

which persons have access to or unsupervised time with clients or patients, including but not limited to maintenance personnel, housekeeping staff, kitchen staff, and security personnel.

Drug Screen: the process as defined by the CDHS and State Substance Abuse Policy.

Employee: an employee of the Department who is under the State Personnel System of the State of Colorado.

Executive Director: the Executive Director of the Department.

Vulnerable person: any individual served by the Department who is susceptible to abuse or mistreatment because of the individual's circumstances, including but not limited to the individual's age, disability, frailty, mental illness, developmental disability, or ill health.