

EXPANDED CRIMINAL HISTORY CHECK
INFORMATION

[I.C. 20-26-2-1.5; I.C. 20-26-5-10]

EXPANDED CRIMINAL HISTORY CHECK (ECHC) means one of the two following items:

- 1) Search of records maintained by all Indiana counties where the applicant has lived; Search of all counties out-of-state where the applicant has lived; AND Check of all 50 states' sex offender registry or check of national sex offender registry.

OR

- 2) Search of national criminal history background check (FBI); AND Check of all 50 states' sex offender registry or check of national sex offender registry.

NEW EMPLOYEES

New law requires the school corporation policy on criminal history information to require an ECHC to be done on ALL applicants for employment [both certificated and noncertificated positions] whose job will likely cause the person to have direct ongoing contact with children before employment or within three months after the applicant is hired.

- The applicant is responsible for all costs associated with acquiring the ECHC.
- The applicant cannot be required by the school corporation to get an ECHC more than once in a five-year period.

The Indiana State Police can still provide services to get the information needed to comply with the new law. It will do a national criminal history check which includes all states. This criminal history check includes only felony arrests and/or dispositions (i.e. conviction, acquittal, etc.) The cost is \$32.25 for an employee check and \$28.25 for a volunteer check.

This can be done online at the Indiana State Police website through the INnkless link. This check does require the applicant to be fingerprinted but the website gives the sites which will do the fingerprinting. You sign the applicant up for a site, the applicant goes there and the site personnel send in the fingerprints for the criminal history check. The check is sent back to the State Police and will be checked to see if the applicant qualifies for employment. If the applicant does not qualify for employment, the State Police will tell you that the applicant does not qualify for employment. But it will not tell you the crime the applicant was convicted of; that will be the responsibility of the school corporation to ask those questions. There are 21 crimes for which a person may be disqualified. These crimes are listed in I.C. 20-26-5-11, a copy of which is attached.

The sex offender registry for all states and the national registry can be accessed online at www.insor.org, and then hit on the Links tab on the left-hand side of the website. This takes you a list of the links to the national sex offender registry and each state sex offender registry.

VOLUNTEERS; CONTRACTED SERVICES

The policy may require an ECHC to be done on volunteers, employees of an entity who contracts with the school corporation, and any person who has a contract to provide services to a school corporation wherein the services provided by any of the above-mentioned individuals would cause the individual to have direct, ongoing contact with children. So, your current policy and/or practices on getting criminal history checks with respect to these individuals are still good.

The limited criminal history checks may still be done on these individuals or the school corporation may also do ECHCs on these individuals per policy. It is best to have the individual get the limited criminal history check as it contains more information than if the employer gets this check. The cost for the individual to get this check is \$10.00.

FOR YOUR INFORMATION

The Indiana Department of Education and the Indiana State Police are working on information and forms for schools to use in registering for the INkless database and for registering employees who have been convicted of a crime listed in I.C. 20-28-5-8. I.C. 20-28-5-8 now requires the superintendent to report any final action taken against an employee who has engaged in any of the crimes listed in I.C. 20-28-5-8(c). Subsection (e) of this statute requires DOE to develop and maintain a database on the employees who have been reported to the department under this law. This statute is also included with these materials.

This information and the forms should be sent out to all school corporations from the department by Friday, June 12, 2009.

There are also other companies that may be used to do the ECHCs for your applicants. This author is aware of two such companies – Safe Hiring Solutions and First Advantage.

SAMPLE POLICY

An updated version of a criminal history check policy is included at the end of these materials.

RELEVANT INDIANA CRIMINAL HISTORY STATUTES

I.C. 20-26-2-1.5 [NEW SECTION --EFFECTIVE JULY 1, 2009]:

"Expanded criminal history check" means a criminal history background check of an individual that includes:

(1) a:

(A) search of the records maintained by all counties in Indiana in which the individual who is the subject of the background check resided;

(B) search of the records maintained by all counties or similar governmental units in another state, if the individual who is the subject of the background check resided in another state; and

(C) check of:

(i) sex offender registries in all fifty (50) states; or

(ii) the national sex offender registry maintained by the United States Department of Justice; or

(2) a:

(A) national criminal history background check (as defined in I.C. 10-13-3-12); and

(B) check of:

(i) sex offender registries in all fifty (50) states; or

(ii) the national sex offender registry maintained by the United States Department of Justice.

I.C. 20-26-5-10 [AMENDED -- EFFECTIVE JULY 1, 2009]:

(a) A school corporation, including a **charter school and an accredited nonpublic school**, shall adopt a policy concerning criminal history information for individuals who:

(1) apply for:

(A) employment with the school corporation; or

(B) employment with an entity with which the school corporation contracts for services;

(2) seek to enter into a contract to provide services to the school corporation; or

(3) are employed by an entity that seeks to enter into a contract to provide services to the school corporation;

if the individuals are likely to have direct, ongoing contact with children within the scope of the individuals' employment.

(b) A school corporation, including a **charter school and an accredited nonpublic school**, shall administer a policy adopted under this section uniformly for all individuals to whom the policy applies. A policy adopted under this section **must** require **that the school corporation, charter school, or accredited nonpublic school conduct an expanded criminal history check** concerning each applicant for noncertificated employment or certificated employment before or not later than three (3) months after the applicant's employment by the school corporation, **charter school, or accredited nonpublic school**.

Each individual hired for noncertificated employment or certificated employment may be required to provide a written consent for the school corporation, **charter school, or accredited**

nonpublic school to request an **expanded criminal history** check concerning the individual before or not later than three (3) months after the individual's employment by the school corporation. The school corporation, **charter school, or accredited nonpublic school** may require the individual to provide a set of fingerprints and pay any fees required for **the expanded criminal history** check.

Each applicant for noncertificated employment or certificated employment may be required at the time the individual applies to answer questions concerning the individual's **expanded criminal history check**. The failure to answer honestly questions asked under this **subsection** is grounds for termination of the employee's employment.

The applicant is responsible for all costs associated with obtaining the **expanded criminal history check**. **An applicant may not be required by a school corporation, charter school, or accredited nonpublic school to obtain an expanded criminal history check more than one (1) time during a five (5) year period.**

(c) Information obtained under this section must be used in accordance with **law**.

I.C. 20-28-5-8 [AMENDED --EFFECTIVE JULY 1, 2009]:

(a) This section applies when a prosecuting attorney knows that a licensed employee of a public school or a nonpublic school has been convicted of an offense listed in subsection (c). The prosecuting attorney shall immediately give written notice of the conviction to the following:

(1) The state superintendent.

(2) Except as provided in subdivision (3), the superintendent of the school corporation that employs the licensed employee or the equivalent authority if a nonpublic school employs the licensed employee.

(3) The presiding officer of the governing body of the school corporation that employs the licensed employee, if the convicted licensed employee is the superintendent of the school corporation.

(b) The superintendent of a school corporation, presiding officer of the governing body, or equivalent authority for a nonpublic school shall immediately notify the state superintendent when the individual knows that a current or former licensed employee of the public school or nonpublic school has been convicted of an offense listed in subsection (c), **or when the governing body or equivalent authority for a nonpublic school takes any final action in relation to an employee who engaged in any offense listed in subsection (c).**

(c) The department, after holding a hearing on the matter, shall permanently revoke the license of a person who is known by the department to have been convicted of any of the following felonies:

(1) Kidnapping (I.C. 35-42-3-2), if the victim is less than eighteen (18) years of age.

(2) Criminal confinement (I.C. 35-42-3-3), if the victim is less than eighteen (18) years of age.

(3) Rape (I.C. 35-42-4-1), if the victim is less than eighteen (18) years of age.

(4) Criminal deviate conduct (I.C. 35-42-4-2), if the victim is less than eighteen (18) years of age.

(5) Child molesting (I.C. 35-42-4-3).

(6) Child exploitation (I.C. 35-42-4-4(b)).

(7) Vicarious sexual gratification (I.C. 35-42-4-5).

- (8) Child solicitation (I.C. 35-42-4-6).
 - (9) Child seduction (I.C. 35-42-4-7).
 - (10) Sexual misconduct with a minor (I.C. 35-42-4-9).
 - (11) Incest (I.C. 35-46-1-3), if the victim is less than eighteen (18) years of age.
 - (12) Dealing in or manufacturing cocaine or a narcotic drug (I.C. 35-48-4-1).
 - (13) Dealing in methamphetamine (I.C. 35-48-4-1.1).
 - (14) Dealing in a schedule I, II, or III controlled substance (I.C. 35-48-4-2).
 - (15) Dealing in a schedule IV controlled substance (I.C. 35-48-4-3).
 - (16) Dealing in a schedule V controlled substance (I.C. 35-48-4-4).
 - (17) Dealing in a counterfeit substance (I.C. 35-48-4-5).
 - (18) Dealing in marijuana, hash oil, or hashish (I.C. 35-48-4-10(b)).
 - (19) Possession of child pornography (I.C. 35-42-4-4(c)).**
- (d) A license may be suspended by the state superintendent as specified in I.C. 20-28-7-7.
- (e) The department shall develop a data base of information on school corporation employees who have been reported to the department under this section.**

IC 20-26-5-11

Use of information; notice of conviction of certain offenses

- (a) This section applies to:
- (1) a school corporation; and
 - (2) an entity:
 - (A) with which the school corporation contracts for services; and
 - (B) that has employees who are likely to have direct, ongoing contact with children within the scope of the employees' employment.
- (b) A school corporation or entity may use information obtained under section 10 of this chapter concerning an individual's conviction for one (1) of the following offenses as grounds to not employ or contract with the individual:
- (1) Murder (IC 35-42-1-1).**
 - (2) Causing suicide (IC 35-42-1-2).**
 - (3) Assisting suicide (IC 35-42-1-2.5).**
 - (4) Voluntary manslaughter (IC 35-42-1-3).**
 - (5) Reckless homicide (IC 35-42-1-5).**
 - (6) Battery (IC 35-42-2-1) unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.**
 - (7) Aggravated battery (IC 35-42-2-1.5).**
 - (8) Kidnapping (IC 35-42-3-2).**
 - (9) Criminal confinement (IC 35-42-3-3).**
 - (10) A sex offense under I.C. 35-42-4.**
 - (11) Carjacking (IC 35-42-5-2).**
 - (12) Arson (IC 35-43-1-1), unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.**
 - (13) Incest (IC 35-46-1-3).**
 - (14) Neglect of a dependent as a Class B felony (IC 35-46-1-4(b)(2)), unless ten (10) years have elapsed from the date the individual was discharged from probation,**

imprisonment, or parole, whichever is later.

(15) Child selling (IC 35-46-1-4(d)).

(16) Contributing to the delinquency of a minor (IC 35-46-1-8), unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(17) An offense involving a weapon under I.C. 35-47 or I.C. 35-47.5, unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(18) An offense relating to controlled substances under I.C. 35-48-4, unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(19) An offense relating to material or a performance that is harmful to minors or obscene under I.C. 35-49-3, unless ten (10) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(20) An offense relating to operating a motor vehicle while intoxicated under I.C. 9-30-5, unless five (5) years have elapsed from the date the individual was discharged from probation, imprisonment, or parole, whichever is later.

(21) An offense that is substantially equivalent to any of the offenses listed in this subsection in which the judgment of conviction was entered under the law of any other jurisdiction.

(c) An individual employed by a school corporation or an entity described in subsection (a) shall notify the governing body of the school corporation, if during the course of the individual's employment, the individual is convicted in Indiana or another jurisdiction of an offense described in subsection (b).

CRIMINAL HISTORY INFORMATION

[The language in italics is optional language that may be adopted at the discretion of the local school board.]

[The language that is not in italics is required language.]

To help ensure a safe environment and as required by state law, the _____ School Corporation will obtain for each individual hired for employment that is likely to have direct, ongoing contact with children as a result of the individual's position an expanded criminal history check. The expanded criminal history check will be obtained by the Corporation prior to the individual's employment and no later than three (3) months after the individual's employment begins. The individual will be responsible for the cost to the School Corporation for obtaining the expanded criminal history check.

Each individual hired may will be questioned about the individual's expanded criminal history check. Failure to answer honestly any questions related to the expanded criminal history check may be cause for termination of the applicant.

Any volunteer who may have direct, ongoing contact with children when performing services for the school, must provide to the Corporation a limited criminal history check [an expanded criminal history check] prior to beginning volunteer work for the Corporation. The volunteer will be responsible for all costs associated with obtaining the limited criminal history check [an expanded criminal history check]. However, the School Corporation will pay the costs by way of reimbursement for volunteers who are selected for service.

Any entity which has a contract to provide services to the Corporation and whose employees have direct, ongoing contact with children when performing those services for the school, must provide to the Corporation limited criminal histories [expanded criminal history checks] for such employees. The entity and/or the entity's employees are responsible for all costs associated with obtaining the limited criminal histories [expanded criminal history checks]. An individual who is working for such an entity may also be required to provide the individual's limited criminal history [expanded criminal history check] to the school corporation upon its request to do so or to provide consent to the school corporation for it to request a limited criminal history [an expanded criminal history check] of the individual.

Any information obtained from any type of criminal history check is confidential and shall not be released or disseminated.

All school employees and individuals or entities who have contracts for services with the Corporation are required by state law to report convictions of certain crimes enumerated in state law to the Corporation. The superintendent or designee is responsible for implementing regulations to notify the employees, including volunteers, and the entities for contracted services of this duty. *In addition to the crimes listed in the state law, the notice shall also include the convictions of the "attempted" crimes listed in the law.*

LEGAL REFERENCE: I.C. 20-26-5-10
I.C. 20-26-5-11