

Joint Committee on Administrative Rules
ADMINISTRATIVE CODE

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER d: LICENSING ADMINISTRATION
PART 385 BACKGROUND CHECKS
SECTION 385.APPENDIX A CRIMINAL CONVICTIONS PREVENTING LICENSURE,
EMPLOYMENT, RESIDENCE IN A FAMILY HOME IN WHICH A CHILD CARE
FACILITY OPERATES, OR PLACEMENT WITH RELATIVES

Section 385.APPENDIX A Criminal Convictions Preventing Licensure, Employment, Residence in a Family Home in Which a Child Care Facility Operates, or Placement with Relatives

- a) Criminal Convictions Preventing Licensure, Employment, or Residence in a Family Home in Which a Child Care Facility Operates
 If any person subject to background checks has been included in the Illinois Sex Offender Registry or convicted of committing or attempting to commit one or more of the following serious criminal offenses under the Criminal Code of 2012 [720 ILCS 5] or under any earlier Illinois criminal law or code or an offense in another state, the elements of which are similar and bear a substantial relation to any of the criminal offenses specified below, this conviction will serve as a bar to: receiving a license or permit to operate as a child care facility and renewal of an existing license to operate a child care facility; residing in a family home in which a child care facility operates; obtaining employment or continuing in employment in a licensed child care facility which allows access to children as part of the duties; and obtaining a contract or agreement providing services on behalf of the Department that allows unsupervised access to children.

In addition to the list of crimes in this Appendix A, no applicant may receive a license from the Department to operate a foster family home, and no adult person may reside in a foster family home licensed by the Department, who has been convicted of committing or attempting to commit any of the offenses listed in 89 Ill. Adm. Code 402.Appendix A (Criminal Convictions Which Prevent Licensure), which is a more inclusive list of crimes.

The offenses that serve as a bar to licensure, residence in a family home in which a child care facility operates, employment that allows access to children in any child care facility subject to licensing, or providing services that allow unsupervised access to children include:

OFFENSES DIRECTED AGAINST THE PERSON

HOMICIDE

- *Murder*
- *Solicitation of murder*
- *Solicitation of murder for hire*
- *Intentional homicide of an unborn child*
- *Voluntary manslaughter of an unborn child*
- *Involuntary manslaughter*
- *Reckless homicide*
- *Concealment of a homicidal death*
- *Involuntary manslaughter of an unborn child*
- *Reckless homicide of an unborn child*
- *Drug induced homicide [225 ILCS 10/4.2(b)]*

KIDNAPPING AND RELATED OFFENSES

- *Kidnapping*
- *Aggravated kidnapping*
- *Aggravated unlawful restraint*
- *Forcible detention*
- *Child abduction*
- *Aiding and abetting child abduction*
- *Harboring a runaway [225 ILCS 10/4.2(b)]*

SEX OFFENSES UNDER ARTICLE 11 OF THE CRIMINAL CODE OF 1961 OR 2012, EXCEPT OFFENSES DESCRIBED IN SECTIONS 11-7, 11-8, 11-12, 11-13, 11-35, 11-40 AND 11-45

- *Indecent solicitation of a child*
- *Indecent solicitation of an adult*
- *Public indecency*
- *Sexual exploitation of a child*
- *Custodial sexual misconduct*
- *Presence within school zone by child sex offenders*
- *Approaching, contacting, residing, or communicating with a child within a public park zone by child sex offenders*
- *Sexual relations within families*
- *Prostitution*
- *Soliciting for a prostitute*

- *Soliciting for a juvenile prostitute*
- *Solicitation of a sexual act*
- *Pandering*
- *Keeping a place of prostitution*
- *Keeping a place of juvenile prostitution*
- *Patronizing a prostitute*
- *Patronizing a minor engaged in prostitution*
- *Pimping*
- *Juvenile pimping*
- *Exploitation of a child*
- *Obscenity*
- *Child pornography*
- *Harmful material*
- *Tie-in sales of obscene publications to distributors*
- *Posting of identifying information on a pornographic internet site [720 ILCS 5/Art. 11]*

BODILY HARM

- *Heinous battery*
- *Aggravated battery with a firearm*
- *Aggravated battery of a child*
- *Tampering with food, drugs, or cosmetics*
- *Hate crime*
- *Stalking*
- *Aggravated stalking*
- *Threatening public officials*
- *Home invasion*
- *Vehicular invasion*
- *Drug induced infliction of great bodily harm*
- *Criminal sexual assault*
- *Aggravated criminal sexual assault*
- *Predatory criminal sexual assault of a child*
- *Criminal sexual abuse*
- *Aggravated sexual abuse*
- *Criminal transmission of HIV*

- *Criminal abuse or neglect of an elderly or disabled person*
- *Child abandonment*
- *Endangering the life or health of a child*
- *Ritual mutilation*
- *Ritualized abuse of a child*
- *Any violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646] [225 ILCS 10/4.2(b)]*

Final approval for licensure shall not be granted if the record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children, or for a crime involving violence, including rape, sexual assault or homicide, but not including other felony convictions for physical assault or battery, or if there is a felony conviction for physical assault, battery or a drug-related offense committed within the past 5 years. [20 ILCS 505/5(v-1) and (v-2)]

Waiver of Convictions for Placement with Relatives

Criminal convictions that were waived by the Director for the initial placement in accordance with provisions in Section 7(b) of the Children and Family Services Act [20 ILCS 505/7(b)] and 89 Ill. Adm. Code 301. Appendix A(b) and (c) are deemed waived for a final placement decision. If additional criminal convictions appear as a result of the fingerprint results, a new waiver request shall be submitted to the Director or designee.

b) Additional Convictions that Bar Licensure of or Employment in a Child Care Facility

In addition to the requirements of subsection (a), no new applicant and, on the date of licensure renewal, no current licensee may operate or receive a license from the Department to operate, no person may be employed by, and no adult person may reside in a child care facility licensed by the Department who has been convicted of committing or attempting to commit any of the following offenses or an offense in any other jurisdiction the elements of which are similar to and bear a substantial relationship to any of the following offenses:

OFFENSES DIRECTED AGAINST THE PERSON

BODILY HARM

- *Felony aggravated assault*
- *Vehicular endangerment*
- *Felony domestic battery*
- *Aggravated battery*
- *Heinous battery*
- *Aggravated battery with a firearm*
- *Aggravated battery of an unborn child*

- *Aggravated battery of a senior citizen*
- *Intimidation*
- *Compelling organization membership of persons*
- *Abuse and gross neglect of a long term care facility resident*
- *Felony violation of an order of protection*

OFFENSES AFFECTING PUBLIC HEALTH, SAFETY, AND DECENCY

- *Felony unlawful use of weapons*
- *Aggravated discharge of a firearm*
- *Reckless discharge of a firearm*
- *Unlawful use of metal piercing bullets*
- *Unlawful sale or delivery of firearms on the premises of any school*
- *Disarming a police officer*
- *Obstructing justice*
- *Concealing or aiding a fugitive*
- *Armed violence*
- *Felony contributing to the criminal delinquency of a juvenile*

DRUG OFFENSES

- *Possession of more than 30 grams of cannabis*
- *Manufacture of more than 10 grams of cannabis*
- *Cannabis trafficking*
- *Delivery of cannabis on school grounds*
- *Unauthorized production of more than 5 cannabis sativa plants*
- *Calculated criminal cannabis conspiracy*
- *Unauthorized manufacture or delivery of controlled substances*
- *Controlled substance trafficking*
- *Manufacture, distribution or advertisement of look-alike substances*
- *Calculated criminal drug conspiracy*
- *Street gang criminal drug conspiracy*
- *Permitting unlawful use of a building*
- *Delivery of controlled, counterfeit, or look-alike substances to persons under age 18, or at truck stops, rest stops, or safety rest areas, or on school property*

- *Using, engaging, or employing persons under 18 to deliver controlled, counterfeit, or look-alike substances*
 - *Delivery of controlled substances*
 - *Sale or delivery of drug paraphernalia*
 - *Felony possession, sale, or exchange of instruments adapted for use of a controlled substance or cannabis by subcutaneous injection*
 - *Felony possession of a controlled substance [225 ILCS 10/4.2(b-1)]*
- c) In addition to any other provision of this Section, for applicants with access to confidential financial information or who submit documentation to support billing, no applicant whose initial application was considered after July 31, 2012 may receive a license from the Department or a child care facility licensed by the Department who has been convicted of committing or attempting to commit any of the following felony offenses:
- 1) *financial institution fraud under Section 17-10.6 of the Criminal Code of 2012;*
 - 2) *identity theft under Section 16-30 of the Criminal Code of 2012;*
 - 3) *financial exploitation of an elderly person or a person with a disability under Section 17-56 of the Criminal Code of 2012;*
 - 4) *computer tampering under Section 17-51 of the Criminal Code of 2012;*
 - 5) *aggravated computer tampering under Section 17-52 of the Criminal Code of 2012;*
 - 6) *computer fraud under Section 17-50 of the Criminal Code of 2012;*
 - 7) *deceptive practices under Section 17-1 of the Criminal Code of 2012;*
 - 8) *forgery under Section 17-3 of the Criminal Code of 2012;*
 - 9) *State benefits fraud under Section 17-6 of the Criminal Code of 2012;*
 - 10) *mail fraud and wire fraud under Section 17-24 of the Criminal Code of 2012;*
 - 11) *theft under Section 16-1(1.1) through (11) of the Criminal Code of 2012. [225 ILCS 10.4.2(b-1.5)]*
- d) Exception Applicable to Child Care Facilities Other than Foster Family Homes Notwithstanding subsection (a), *the Department may issue a new child care facility license or may renew the existing child care facility license of an applicant, or an applicant who has an adult residing in a home child care facility who was convicted of an offense described in subsection (b), or the Department may approve the*

employment of a person by a child care facility who was convicted of an offense described in subsection (b), provided that all of the following requirements are met:

- 1) *The relevant criminal offense or offenses occurred more than 5 years prior to the date of application or renewal, except for drug offenses. The relevant drug offense must have occurred more than 10 years prior to the date of application or renewal, unless the applicant or prospective employee has passed a drug test, arranged and paid for by the child care facility, no less than 5 years after the offense;*
- 2) *The Department must conduct a background check and assess all convictions and recommendations of the child care facility in accordance with Section 385.60(d), (e) and (f) and determine if a waiver is applicable in accordance with subsection (d)(1);*
- 3) *The applicant meets all other requirements and qualifications to obtain a license to operate the pertinent type of child care facility. [225 ILCS 10/4.2 (b-2)]*

(Source: Amended at 37 Ill. Reg. 12827, effective July 30, 2013)