

DEPARTMENT OF
MENTAL HEALTH

Date

JUL 25 2006

Page 1

Supersedes: None

1. **Purpose.** To set forth the Department of Mental Health (DMH) requirements for criminal background and traffic record checks for certain applicants, employees, and volunteers of DMH.
2. **Applicability.** Applies specifically to (1) applicants for employment, volunteers, and employees of DMH who provide direct services to children or youth; and/or (2) to those appointees, employees, and volunteers who would be required to drive motor vehicles to transport children or youth in the course of performing their duties. Also see Section 17 below for applicability to private providers of mental health services or mental health supports.
3. **Authority.** The Criminal Background Checks for the Protection of Children Act of 2004 provides that independent District Government Agencies that are subject to the Act shall be required to conduct criminal background checks and traffic record checks to investigate certain employees, volunteers, and persons being considered for DMH employment that provide direct services to children or youth. The Act also requires that each employee or volunteer occupying a covered position shall be required to submit to initial and periodic criminal background checks while employed by, or volunteering at independent District Government Agencies covered by the Act. The Criminal Background Checks Emergency Amendment Act of 2006 is also incorporated, and provides factors to consider to determine if a person poses a present danger to children or youth.
4. **Definitions.** When used in this policy, the following terms have the meaning ascribed:
- 4a. **DMH Component that Provides Direct Services to Children or Youth** – any organization of DMH, such as an office, unit or division that provides services that affect the health, safety, and welfare of children or youth, including individual and group counseling, therapy, case management, supervision, or mentoring. These services are provided either directly, or for the benefit of children or youth.
- 4b. **Applicant** - a person who has filed a written application for employment or resume with DMH for a position that provides direct services to children or youth; or a person who has made an affirmative effort through written application, resume, or a verbal request, to serve as a volunteer with DMH in a position that provides direct services to children or youth.
- 4c. **Appointee** – a person who has been made a tentative job offer to a covered position, compensated or voluntary, subject to the satisfactory completion of a criminal background check or traffic record check, or both.
- 4d. **Children** – persons twelve (12) years of age or under.
- 4e. **Covered Assignment** – tasks of a DMH volunteer that provides direct services to children or youth, or that require the volunteer to provide direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth.
- 4f. **Covered Position** - a compensated or voluntary position in DMH that provides direct services to children or youth, with duties and responsibilities that would require the employee to provide direct services that affect the health, safety, and welfare of children or youth or services for the benefit of children or youth.

4g. Employee – a person who is employed on a full-time, part-time, temporary, or contractual basis (e.g., consultant) by any DMH component that provides direct services to children or youth.

4h. Criminal Background Check – the investigation of a person's criminal history through the record system of the U.S. Federal Bureau of Investigation and the District of Columbia (DC) Metropolitan Police Department (MPD).

4i. Non-covered Duties and Responsibilities – duties and responsibilities of a DMH volunteer that do not include providing direct services to children or youth and would not require that the volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

4j. Non-covered Position – a position in DMH that does not require providing direct services to children or youth, and would not require that the employee or volunteer be subjected to the criminal background check and traffic records check requirements of the Act.

4k. Person Being Considered for Employment – a person who has been made a tentative offer of employment, compensated or voluntary, to a covered position, subject to the satisfactory completion of a criminal background check or a traffic record check, or both.

4l. Private provider – an organization that provides mental health services or mental health supports to children or youth that receives funding for such services from DMH, through the mental health rehabilitation services standards, contract or grant.

4m. Volunteer – any person who works without monetary or any other financial compensation, in a covered position that provides direct services to children or youth.

4n. Youth – persons between thirteen (13) and seventeen (17) years of age, inclusive.

5. Policy.

5a. Criminal background checks shall be required for the following persons:

(1) Each person being considered for employment for a position that has been identified and determined by DMH to be a covered position subject to the Act with duties and responsibilities that provide direct services to children or youth (See Section 6 below).

(2) Each person who has made an affirmative effort through a written application, resume, or verbal request to become a DMH volunteer whose duties and responsibilities would involve direct services to children or youth.

(3) Each DMH employee or volunteer occupying a covered position shall be required to submit to an initial criminal background check and, subsequent to that, to periodic criminal background checks while employed by, or volunteering at DMH.

5b. Traffic record checks shall be conducted on the following persons:

(1) Each DMH employee or volunteer who would be required to drive motor vehicles to transport children or youth in the course of performing his/her duties shall be required to submit to initial traffic record check and, subsequent to that, to periodic traffic record checks while employed by, or volunteering at DMH.

(2) Each appointee (compensated or voluntary) who would be required to drive motor vehicles to transport children or youth in the course of performing his/her duties.

5c. Any position subject to the traffic record check requirement shall also be subject to the criminal background check requirement.

6. Delegation of Authority and Responsibility.

6a. The DMH Director has delegated authority to the DMH Director, Division of Human Resources (DHR) to administer the Criminal Background and Traffic Record Check Program and to make determinations regarding the acceptability of applicants, employees, and volunteers to perform work in covered DMH positions.

6b. The DHR Director or designee, in conjunction with DMH program managers, shall determine which positions shall be covered under the Act.

6c. The DHR Director shall publish the list of DMH positions that are subject to a criminal background check or traffic record check, or both. This list shall be published on an annual basis.

6d. DMH program managers considering persons for a volunteer assignment designated as requiring a traffic record check or criminal background check, or both, shall inform the DHR Director of the tentative selection in order that a criminal background check or traffic record check, or both, may be conducted.

6e. Prior to a criminal background check being conducted, DHR shall inform each appointee, employee, or volunteer subject to the check where and when to report for fingerprinting, and provide each appointee, employee, or volunteer with a form to be utilized for this purpose. The DC MPD will conduct the fingerprinting and criminal background check.

6f. DHR shall provide the appointee, employee, or volunteer a traffic records check form (DMH Form 24) and a disclosure and authorization form (DMH Form 25) and ask that they complete and return the original forms along with picture identification to DHR who will forward the completed forms to the DC Department of Motor Vehicles.

6g. DHR shall not make a final offer of appointment for a compensated or volunteer position for which a criminal background check or traffic record check is required until after the criminal background check or traffic record check, or both have been conducted, and a determination is made that the appointee meets the requirements of the Act.

7. Recruitment for Covered Positions.

7a. Vacancy announcements for positions identified and designated as requiring a traffic record check or criminal background check, or both, shall include statements informing each applicant that:

(1) The position for which he or she is applying has been identified and designated as requiring a criminal background check or traffic record check, or both; and

(2) If tentatively selected for the position, a criminal background check or traffic record check, or both will be conducted. The vacancy announcement shall also state that a final job offer and appointment to the position will be contingent upon the appointee satisfying the requirements of the traffic record check or criminal background check, or both.

7b. In the case of non-competitive recruitment for a position requiring a criminal background check or traffic record check, or both, DHR shall inform the person being considered for employment, in writing, of the requirements of this policy.

7c. An appointee who provides false information in the course of applying for a covered position shall be subject to prosecution pursuant to Section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982.

8. Criminal Background Checks.

8a. All applicants, employees, and volunteers who are tentatively selected for, or who occupy a position covered under the Act will be given a criminal background check form (Exhibit 1) from DHR, and asked to present the original document, along with picture identification, to the Criminal Records Office, Metropolitan Police Department Headquarters.

- The Metropolitan Police Department will complete a Criminal History Report (PD70) and a letter containing any additional criminal history information obtained from other states and forward to DMH.

8b. An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a covered position shall be subject to an initial criminal background check upon the personnel action being effected and to periodic criminal background checks while detailed, temporarily promoted, or temporarily reassigned.

8c. A volunteer whose assignment changes from non-covered duties and responsibilities to covered duties and responsibilities shall be subject to an initial criminal background check upon being moved to the covered assignment and to periodic criminal background checks while in the covered assignment.

8d. Periodic criminal background checks for employees or volunteers shall be conducted when:

- (1) Information about the employee or volunteer, of a nature that will impact the employee's or volunteer's suitability to continue performing the duties of the covered position, is disclosed to DMH by a credible source(s), or is independently discovered by DMH.
- (2) Information about a criminal offense committed by the employee or volunteer is disclosed to DMH by a credible source(s) or is independently discovered by DMH.

8e. The information obtained from a criminal background check will not immediately disqualify or create a presumption against employment or volunteer status of an appointee, employee, or volunteer subject to the check, unless DHR determines that the individual poses a present danger to children or youth.

8f. Except as provided in 8g below, DHR shall consider the following factors to determine if an appointee/employee/volunteer subject to a criminal background check poses a present danger to children and youth that would make him or her ineligible for paid employment or voluntary service:

- (1) The specific duties and responsibilities necessarily related to the employment sought;
- (2) The bearing, if any, the criminal offense for which the appointee/employee/volunteer was previously convicted will have on his or her fitness or ability to perform one (1) or more of the duties or responsibilities of the position;
- (3) The time which has elapsed since the occurrence of the criminal offense;
- (4) The age of the person at the time of the occurrence of the criminal offense;
- (5) The frequency and seriousness of the criminal offense;
- (6) Any information produced by the appointee/employee/volunteer, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct since the occurrence of the criminal offense; and
- (7) The public policy that is beneficial generally for ex-offenders to obtain employment.

8g. Notwithstanding the factors listed in 8f above, DMH shall not employ or permit to serve as a volunteer, an appointee/employee/volunteer who has been convicted of, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor.

9. Criminal Background Check for Certain Applicants, Employees and Volunteers Providing Direct Services to Children or Youth (DMH Form 23) is utilized for the following purposes:

9a. To inform each appointee, employee, or volunteer subject to the check, where and when to report for fingerprinting.

9b. To authorize the MPD to conduct the criminal background check and confirm that the bearer has been informed that DMH is authorized to conduct a criminal background check.

9c. To affirm whether or not the bearer identified by name on the form has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the following felony offenses or their equivalent in another state or territory:

- (1) Murder, attempted murder, manslaughter or arson;
- (2) Assault, battery, assault and battery, assault with a dangerous weapon, mayhem, or threats to do bodily harm;
- (3) Burglary;
- (4) Robbery;
- (5) Kidnapping;
- (6) Illegal use or possession of a firearm;
- (7) Sexual offenses, including indecent exposure; promoting, procuring, compelling, soliciting, or engaging in prostitution; corrupting minors (sexual relations with children); molesting; voyeurism; committing sex acts in public; incest; rape;

sexual assault; sexual battery; or sexual abuse; but excluding sodomy between consenting adults;

- (8) Child abuse or cruelty to children; or
- (9) Unlawful distribution or possession of, or possession with intent to distribute, a controlled substance.

9d. To acknowledge that the appointee, employee or volunteer has been notified of his or her right to obtain a copy of the criminal background check report and to challenge the accuracy and completeness of the report;

9e. To acknowledge that DMH may choose to deny the appointee employment or a volunteer position or to terminate an employee or volunteer based on the outcome of the criminal background check;

9f. To provide any additional information that is required, such as name, social security number, date of birth, and gender; and

9g. To inform the appointee, employee or volunteer that providing a false statement on the form or forms or in the course of applying for a position shall be subject to prosecution pursuant to Section 404 of the District of Columbia Theft and White Collar Crimes Act of 1982.

9h. A volunteer may use the same successful criminal background check conducted on him or her for a period of two (2) years when applying for multiple volunteer positions, if the volunteer provides a signed affirmation stating whether or not he or she has been convicted of a crime, has pleaded nolo contendere, is on probation before judgment or placement of a case upon a stet docket, or has been found not guilty by reason of insanity, for any sexual offenses or intra-family offenses in the District of Columbia or their equivalent in any other state or territory, or for any of the felony offenses listed in Section 9c above, or their equivalent in any other state or territory, since the date of the most recent check.

10. Traffic Record Checks.

10a. All applicants, employees, and volunteers who are tentatively selected or who occupy a position that will require him or her to drive a motor vehicle to transport children or youth will be given a traffic records check form (Exhibit 2) and a disclosure and authorization for traffic record check form (Exhibit 3) from DHR, and asked to return the original documents, along with a picture identification, to DHR who will forward the package to the DC Department of Motor Vehicles (DMV). The DC DMV will conduct a five-year driver record history search, unless otherwise specified, and send the resulting driver records to the DMH, Division of Human Resources.

10b. An employee who is detailed, temporarily promoted, or temporarily reassigned from a non-covered position to a position that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the detail, temporary promotion, or temporary reassignment shall be subject to an initial traffic record check prior to the personnel action being effected and periodic checks thereafter.

10c. A volunteer whose assignment changes from non-covered duties and responsibilities to duties and responsibilities that will require him or her to drive a motor vehicle to transport children or youth in the course of performing the duties of the voluntary

assignment shall be subject to an initial traffic record check requirement upon being moved to the covered assignment, and periodic checks thereafter.

10d. Periodic traffic records checks for employees or volunteers shall be conducted when:

(1) Derogatory information about the driving record of an employee or volunteer, of a nature that will impact the employee's or volunteer's suitability to continue performing the duties of the covered position, is disclosed to DMH by a credible source(s), or is independently discovered by DMH.

(2) Information about a driving offense committed by the employee or volunteer, is disclosed to DMH by a credible source(s) or is independently discovered by DMH.

10e. Records of traffic infractions shall be judged on an individual basis for appointees/employees/volunteers whose duties would include driving a motor vehicle to transport children or youth. A pattern of disregard for existing traffic regulations, particularly where there has been a conviction for driving under the influence of intoxicants or drugs, may make the appointee/employee/volunteer ineligible for employment or voluntary service, if the appointee/employee/volunteer could be required to drive a motor vehicle to transport children or youth in the course of performing his or her duties.

11. Confidentiality of and Release of Records. Criminal background check and traffic record check records obtained under this policy are considered confidential and for the exclusive purpose of making employment related determinations. These records shall not be released or otherwise disclosed to any person, except when:

- Required as one component of an application for employment with a DMH component that provides direct services to children or youth;
- Requested by DMH during an official inspection or investigation;
- Ordered by a court;
- Authorized by the written consent of the person being investigated; or
- Utilized for an administrative action in a personnel proceeding, including but not limited to, disciplinary actions under Chapter 16 of the District Personnel Regulations.

12. Penalties for Disclosing Confidential Information.

An individual who discloses confidential information in violation of any of the provisions in this policy shall be guilty of a criminal offense and, upon conviction, shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one hundred eighty (180) days or both.

13. Use of Results of the Criminal Background Check or Traffic Records Check for Appointees.

13a. Upon receipt of the criminal background and/or traffic record check, DHR shall evaluate the reports and consider the factors in Section 8f and 10e above in determining an appointee's suitability for employment. Juvenile records shall not be considered. Possession of one (1) or more of the following criminal background characteristics may make the appointee ineligible for employment or voluntary service:

- (1) A felony conviction; or

- (2) A serious misdemeanor conviction; however,
- (3) An individual who has been convicted of, has pleaded nolo contendere, is on probation before judgement or placement of a case upon a stet docket, or has been found not guilty by reason of insanity for any sexual offenses involving a minor, will be disqualified.

13b. Based upon the outcome of the criminal background check or traffic records check and application of factors listed in Section 8f and 10e above, the DHR Director shall determine whether the appointee poses a danger to children or youth and whether a final offer of appointment should be made or denied.

13c. If the determination is that a final offer of appointment should be made to an appointee, a final offer letter will be issued to the appointee.

13d. If the determination is to deny the final offer of appointment, DHR shall do the following:

- (1) Send the appointee a written notification of the determination. The written notification shall inform the appointee of the specific basis for the determination and of his or her right to obtain a copy of the criminal background check report and/or traffic record report, and to challenge the accuracy and completeness of the report(s) or the basis for denying the final offer of appointment, in writing, within ten (10) days of receiving the written notification; and
- (2) Maintain a copy of the written notification.

14. Consequences for Employees and Volunteers who Fail a Periodic Criminal Background Check or Traffic Records Check.

14a. An employee who fails a periodic criminal background check or traffic records check may be subject to administrative action up to and including removal. In addition to or in the place of administrative action, and at DMH discretion, an employee who fails a periodic check may be reassigned to a non-covered position.

14b. A volunteer who fails a periodic criminal background or traffic records check may be terminated or moved to another volunteer assignment that does not include the provision of direct services to children or youth.

14c. In determining the type of action to be taken, DHR shall consider the factors in Section 8f and 10e above, except that employees and volunteers who have been convicted of, have pleaded nolo condere, are on probation before judgement or placement of a case upon stet docket, or have been found not guilty by reason of insanity for any sexual offenses involving a minor shall result in removal or termination of voluntary services.

14d. The employee or volunteer will be issued a written notification of determination. If the determination is to remove an employee or terminate voluntary services, DHR shall follow the procedures in Section 13d above.

15. Procedures for Challenging the Results of a Criminal Background Check or Traffic Records Check Report.

15a. In challenging the results of a criminal background check, traffic records check, the basis for denying the final offer, or removing an employee or terminating voluntary

services, the appointee, employee or volunteer may present information and documentation to the DHR Director to clarify any errors in the report resulting from mistakes in identity, and any mitigating circumstances that may exist concerning the report.

15b. Upon receiving a challenge to a criminal background check or traffic records check report, the DHR Director shall promptly make a determination on the case and notify the appointee, employee, or volunteer of the decision in writing. If employment is denied or terminated because the appointee, employee, or volunteer poses a present danger to children or youth, the written notification shall inform the individual in writing that he/she may appeal the denial to the Commission on Human Rights of the District of Columbia within thirty (30) days of the date of the written notification.

15c. If the determination is that a final offer of appointment should be made to an appointee, a final offer letter will be issued to the appointee.

15d. If the determination is to terminate employment, DHR will process the action to terminate the employment within ten (10) days of the determination.

16. **Reports.** The DMH Division of Human Resources will prepare a compliance report every six (6) months. Each report shall include:

16a. The number of initial criminal background checks and traffic record checks conducted for appointees, the number of appointees who were hired upon completion of the check, and the number rejected; and

16b. The number of periodic criminal background and traffic checks conducted for employees and volunteers and any administrative action initiated or taken upon completion of the periodic checks.

17. **Private Providers** who provide direct services to children or youth, shall develop mandatory criminal background and traffic record check requirements and procedures that are consistent with the requirements of the Criminal Background Checks for the Protection of Children Act of 2004, and the Criminal Background Checks Emergency Amendment Act of 2006.

Each provider should require that covered appointees, employees, and volunteers submit to criminal background and traffic record checks, as applicable. If they do not, the Mental Health Authority, as the regulatory authority, may take steps to require compliance, which may include, but are not limited to (1) the imposition of fines for civil infractions if applicable; (2) the termination of the contract or grant agreement funding the mental health services or supports; (3) withholding payment due under the contract or grant agreement until the provider is in compliance; or (4) placing a hold on new referrals of children or youth to the private provider.

Approved By:

Stephen T. Baron
Acting Director, DMH



(Signature)

07/25/06
(Date)