

CRIMINAL RECORD CHECK PROGRAM

Frequently Asked Questions

Beginning July 1, 2018 **changes in three criminal record check laws** become effective. The three laws are for Adult Care Homes, KSA 39-970; Home Health Agencies, KSA 65.5117 and HCBS, KSA 39-2009. Immediately below this box are highlights of those changes.

1. What changes become effective 7/1/2018?

- New Prohibited Offense List which is now identical for Adult Care Homes, Home Health Agencies and HCBS Providers.
- HCBS Providers will see that some prohibiting offenses are now only prohibiting for six years.
- Waivers may be requested for certain offenses after five years have passed since completion of *all court imposed conditions.*
- Exceptions will no longer be granted for HCBS because of the Waiver option above.
- Adult Care Homes and Home Health Agencies will no longer receive criminal history information with clearance letters for those individuals who do not have prohibiting offenses. Instead the clearance letters will be available online from the facility's employee listing.

2. When will the fingerprint based national criminal background checks begin?

Rules and regulations are being drafted in the area of waivers for certain offenses and the implementation of the amendments which may be completed over a period of time for different categories of employers. This allows for a staggered implementation. Additional information will become available and posted to the HOC webpage advising of the implementation schedule.

3. What is a "criminal record check" and why is it a law?

The criminal record check is a review of the information on file with the Kansas Bureau of Investigation (KBI). The KBI collects information from police arrest reports, prosecution data, court determinations and Department of Corrections. Much of this information is stored electronically by the KBI, but some is on paper. The laws were established to prevent persons with serious criminal histories from working in any facility licensed under the Kansas Adult Care Home Act, Kansas Home Health Licensure Law and the HCBS Program.

4. Is there a difference between the criminal record information obtained through KBI's online service and the information accessed from KBI through KDADS?

YES. The law specifies that KDADS accesses criminal history information through KBI records. Under these laws, certain juvenile convictions would constitute a prohibition of employment, which is one reason applicable facilities are required to access information from KBI through KDADS. These laws allow KDADS access to juvenile record. Most other sources that may be accessed, including KBI's online service, would not allow access to juvenile records.

5. Is criminal record information obtained from a private contractor allowed as a substitute for criminal records requested through KDADS?

NO. The statute requirement is specific and cites KDADS as the conduit for the information. There is no provision to allow the use of criminal record information from a private contractor.

6. When a notice of employment prohibition is received, is the prohibited employee permitted to continue working until a replacement has been hired? Can a prohibited individual continue working at the facility or on the grounds as long as there is no direct care or contact with the residents?

NO. Compliance with the law indicates that *"no person shall knowingly operate and adult care home if, in the adult care home there works any person who . . ."*

The law provides for civil liability protections *"no adult care home, the operator or employees of an adult care home or an employment agency or an independent contractor shall be liable for civil damages resulting from any decision to employ, to refuse to employ or to discharge from employment any person based on such adult care*

home's compliance with the provisions of this section if such adult care home or employment agency acts in good faith to comply with this section."

7. What is the criminal record check requirement for employment (staffing) agencies in the State of Kansas?

All three laws (KSA 39-970, 65-5117 and 39-2009) address this. "*. . . shall receive from any employment agency or independent contractor that provides employee to work . . . written certification that such employees are not prohibited from working . . .*"

8. The laws refer to "anyone who works" in an adult care home . . . center, facility, hospital or for a provider of services . . . home health agency . . . what about the person who mows the lawn, or a contractor who does plumbing or painting, does the law apply to them?

This is interpreted to mean anyone who regularly works, not including the incidental or emergency repair person or episodic contract labor.

9. Is there a list of offenses which prohibit employment?

YES. The list of offenses which prohibit employment is available online at www.kdads.ks.gov/hoc