

## **CRIMINAL HISTORY RECORD CHECKS AND SAFETY ASSESSMENTS**

When a criminal history record check results in a finding that there has been a charge and/or conviction for a crime, a “safety assessment” is required.

***Law and regulation mandate safety assessments in which the following must be considered:***

- Whether the subject of the charge or conviction resides in the household
- The extent to which such person may have contact with the foster or other children residing in the household
- The status and nature of the criminal charge or conviction

***Additional guidelines for consideration:***

**Situations may arise where a safety assessment is required after a child is already placed in a foster home. For example, when:**

- an adult spouse of a foster parent comes into the home and applies for certification or approval;
- a person who resides in the home turns 18 years of age after the initial or any subsequent certification or approval, including any foster child residing in the home;
- a person who is 18 years of age or older has come to reside in the foster home after initial or any subsequent certification or approval, including any foster child residing in the home;
- the home has been approved on an expedited basis as an emergency approved relative or certified on an expedited basis as an emergency certified (non-relative) foster home; or
- a notice of arrest is received due to DCJS having “search and retain” of the fingerprints.

Deciding whether or not to remove a child who is already residing in the foster home as a result of a safety assessment is arguably a more difficult decision to make because such a decision must always be weighed against the negatives associated with moving a child. Consider the following:

- If the person lives in the household, the degree of *unsupervised* access to or contact with the child
- The length of time the child has been in the home
- The influence the person may have on the child’s care and/or upbringing
- The counterbalancing strengths found in the household that meet the child’s specific needs
- Any counterbalancing strong ties with relatives
- The degree of bonding between child and foster or adoptive parents, including how well the child seems to be doing in the home
- The foster or adoptive parents’ prior “track record” with any other placements they may have had

**Regardless of whether there is a child placed in the home, consider the following:**

- The nature of the charge or conviction, how serious a crime it was, and whether it involved violence or force
- The circumstances of the crime and the person’s explanation of such

- The relationship between the type of crime and its relationship to child caring responsibilities
- How recent the crime is, particularly the length of time following any prison or jail time that the person has spent (productively) in the community (generally give less weight to older convictions)
- The age of the person at the time of the occurrence of the criminal offense (generally give less weight to crimes committed at relatively young ages)
- Any factors that demonstrate good conduct or rehabilitation, such as returning to school, employment, volunteer activities, etc.
- The number of crimes committed and any patterns that emerge
- The penalties imposed as a result of the conviction(s)

In situations where there are no children in the home (applicants, or certified or approved persons without placements), you may want to weigh the factors listed above more heavily, since it is preferable to minimize the risk to the child, and not placing a child where household members have been convicted will accomplish this.

**All necessary steps to protect the health and safety of the child must be taken, including, when appropriate, the removal of any foster child from the home. In all situations, the safety and well-being of the child should always be the primary concern, but this concern must be balanced with the rights of those individuals who have criminal conviction records.**

**The following provisions of *Article 23 - A of the Correction Law* should also help guide your decision and must be applied when deciding whether to deny an application for certification / recertification or approval / reapproval, or to revoke certification or approval:**

**Sec. 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited**

No application for any license or employment, and no employment or license held by an individual to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the applicant; or
- (2) the issuance of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

**Sec. 753. Factors to be considered concerning a previous criminal conviction; presumption**

1. In making a determination pursuant to section 752 of this chapter, the public agency or private employer shall consider the following factors:

- (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses
  - (b) The specific duties and responsibilities necessarily related to the license or employment sought or held
  - (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities
  - (d) The time that has elapsed since the occurrence of the criminal offense or offenses
  - (e) The age of the person at the time of occurrence of the criminal offense or offenses.
  - (f) The seriousness of the offense or offenses
  - (g) Any information produced by the person, or produced on his or her behalf, in regard to his or her rehabilitation and good conduct
  - (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public
2. In making a determination pursuant to section 752 of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.