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Health Care Worker Background Check – Disqualifying Crimes

As reviewed in the three previous newsletters on March 27, April 3 and April 17 the **Illinois Department of Public Health (IDPH)** adopted sweeping amendments to the employee Health Care Worker Background Check Rules. The new adopted regulations will **phase in the fingerprinting of all new unlicensed employees**. It is expected that the Department will begin phasing in the fingerprint check program for **new unlicensed employees sometime this summer**, most likely starting with the ten northern counties that had participated in the federal fingerprint pilot project two years ago. Training will be done by IDPH with the facilities in each area prior to the fingerprint program being implemented.

In the [March 27th](#) newsletter we provided an overview of the changes with these proposed regulations. In the [April 3rd](#) newsletter we examined some of the operational implications for facilities, including **those workers who do and do not need a fingerprint check and how facilities should use the Health Care Worker Registry**. In the [April 17th](#) newsletter, we reviewed **the fingerprinting process and documentation requirements**. This week we conclude with a review of **disqualifying offenses and waivers**.

Disqualifying Offenses and Waivers

Although the list of disqualifying offenses remains the same, the new regulations essentially create three categories of disqualifying offenses:

- Crimes like murder and sexual assault which will **never be waived**;
- Non-violent offenses over five to nine years ago **will be automatically waived** (No waiver request will be needed. Employers will be notified of the automatic “rehabilitation waiver” by IDPH at the same time they are notified of the results of the fingerprint check. Employees receiving an automatic waiver will not have to request a waiver and can continue working); and
- Non-violent offenses over one to ten years ago **for which a waiver request will need to be submitted to IDPH**. During the time a waiver request is being made, the employee cannot work in a long term care facility in a position that has access to residents or records. The law requires **IDPH** to make a waiver request decision within 30 days after **a completed waiver request is submitted**.

The three categories of offenses have been organized into separate appendices in the newly amended rules and are more user-friendly for referencing than they have been in the past.

1. Section 955.270(e) - No Waiver Possible:

“Waivers will not be granted to individuals who have been convicted of committing or attempting to commit one or more of the offenses listed in Section 955.Appendix A.

Section 955.APPENDIX A Disqualifying Offenses That Will Not Be Granted a Waiver

<u>Illinois Compiled Statutes Citation</u>	<u>Offense</u>	<u>Additional Offense Added Effective</u>
[720 ILCS 5/8-1.1]	Solicitation of Murder	1/1/98
[720 ILCS 5/8-1.2]	Solicitation of Murder for Hire	1/1/98
[720 ILCS 5/9-1]	First Degree Murder	

<u>Illinois Compiled Statutes Citation</u>	<u>Offense</u>	<u>Additional Offense Added Effective</u>
[720 ILCS 5/9-1.2]	<u>Intentional Homicide of an Unborn Child</u>	
[720 ILCS 5/9-2]	<u>Second Degree Murder</u>	
[720 ILCS 5/9-2.1]	<u>Voluntary Manslaughter of an Unborn Child</u>	
[720 ILCS 5/9-3]	<u>Involuntary Manslaughter and Reckless Homicide</u>	
[720 ILCS 5/9-3.1]	<u>Concealment of Homicidal Death</u>	
[720 ILCS 5/9-3.2]	<u>Involuntary Manslaughter and Reckless Homicide of an Unborn Child</u>	
[720 ILCS 5/9-3.3]	<u>Drug Induced Homicide</u>	
[720 ILCS 5/10-1]	<u>Kidnapping</u>	
[720 ILCS 5/10-2]	<u>Aggravated Kidnapping</u>	
[720 ILCS 5/11-6]	<u>Indecent Solicitation of a Child</u>	<u>1/1/98</u>
[720 ILCS 5/11-9.1]	<u>Sexual Exploitation of a Child</u>	<u>1/1/98</u>
[720 ILCS 5/11-9.5]	<u>Sexual misconduct with a person with a disability</u>	<u>7-24-06</u>
[720 ILCS 5/11-19.2]	<u>Exploitation of a Child</u>	<u>1/1/98</u>
[720 ILCS 5/11-20.1]	<u>Child Pornography</u>	<u>1/1/98</u>
[720 ILCS 5/12-3.3]	<u>Aggravated Domestic Battery</u>	<u>1-1-2004</u>
[720 ILCS 5/12-4]	<u>Aggravated Battery</u>	<u>1/1/98</u>
[720 ILCS 5/12-4.1]	<u>Heinous Battery</u>	
[720 ILCS 5/12-4.2]	<u>Aggravated Battery With a Firearm</u>	
[720 ILCS 5/12-4.2-5]	<u>Aggravated battery with a machine gun or a firearm equipped with any device or attachment designed or used for silencing the report of a firearm</u>	<u>1-1-2004</u>
[720 ILCS 5/12-4.3]	<u>Aggravated Battery of a Child</u>	
[720 ILCS 5/12-4.4]	<u>Aggravated Battery of an Unborn Child</u>	
[720 ILCS 5/12-4.6]	<u>Aggravated Battery of a Senior Citizen</u>	
[720 ILCS 5/12-4.7]	<u>Drug Induced Infliction of Great Bodily Harm</u>	
[720 ILCS 5/12-13]	<u>Criminal Sexual Assault</u>	
[720 ILCS 5/12-14]	<u>Aggravated Criminal Sexual Assault</u>	
[720 ILCS 5/12-14.1]	<u>Predatory Criminal Sexual Assault of a Child</u>	
[720 ILCS 5/12-15]	<u>Criminal Sexual Abuse</u>	
[720 ILCS 5/12-16]	<u>Aggravated Criminal Sexual Abuse</u>	
[720 ILCS 5/12-19]	<u>Abuse and Criminal Neglect of a LTC Facility Resident</u>	
[720 ILCS 5/12-21]	<u>Criminal abuse or neglect of an elderly person or person with a disability</u>	
[720 ILCS 5/16-1.3]	<u>Financial exploitation of an elderly person or a person with a disability</u>	
[720 ILCS 5/18-2]	<u>Armed robbery</u>	
[720 ILCS 5/18-4]	<u>Aggravated Vehicular Hijacking</u>	<u>1/1/98</u>
[720 ILCS 5/18-5]	<u>Aggravated Robbery</u>	<u>1/1/98</u>

2. Section 955.275 Rehabilitation Waivers

- a. *“The Department may consider the results of a fingerprint-based criminal history records check for a rehabilitation waiver, if sufficient time has passed since the last disqualifying conviction. A rehabilitation waiver may be granted without a waiver application being submitted by the student, applicant, or employee.*
- b. *For an applicant to be considered for a rehabilitation waiver, the Department will have received from him or her criminal history records check that meets the requirements of Section 955.115 and 955.165 of this Part.*

A waiver without a waiver application shall not be granted unless the student, applicant, or employee has met the following time frames:

- 1) Single disqualifying misdemeanor conviction – 5 years after conviction date;
- 2) Two disqualifying misdemeanor convictions – 7 years after conviction date;
- 3) Three or more disqualifying misdemeanor convictions – 9 years after conviction date;
- 4) Single disqualifying felony conviction – 7 years after conviction date;
- 5) Two disqualifying felony convictions – 9 years after conviction date; and
- 6) Three or more felony convictions shall not be considered for a rehabilitation waiver.

d. A waiver without a waiver application may be granted to an individual who has been convicted of committing or attempting to commit one or more of the offenses listed in Section 955. Appendix B of this Part if the time frames listed in subsection (c) have been met.

f. In cases where a rehabilitation waiver is granted, a letter shall be sent to the applicant notifying the applicant that he or she has received a rehabilitation waiver. The waiver will be recorded in the Health Care Worker Registry. If a rehabilitation waiver is not granted, the individual may apply for a waiver by submitting a completed waiver application pursuant to Section 955.260 of this Part.”

Section 955.APPENDIX B Disqualifying Offenses That May be Considered for a Rehabilitation Waiver

<u>Illinois Compiled Statutes Citation</u>	<u>Offense</u>	<u>Additional Offense Added Effective</u>
[720 ILCS 5/16-1]	Theft (as a misdemeanor)	
[720 ILCS 5/16-2]	Theft of lost or mislaid property.	1-1-2004
[720 ILCS 5/16A-3]	Retail Theft (as a misdemeanor)	
[720 ILCS 5/19-4]	Criminal Trespass to Residence	
[720 ILCS 5/24-1.5]	Reckless Discharge of a Firearm	1/1/98
[225 ILCS 65/10-5]	Practice of nursing without a license	1-1-2004
[720 ILCS 115/53]	Cruelty to Children	1/1/98
[720 ILCS 250/4]	Receiving Stolen Credit Card or Debit Card	1-1-2004
[720 ILCS 250/5]	Receiving a Credit or Debit Card with Intent to Use, Sell, or Transfer	1-1-2004
[720 ILCS 250/6]	Selling a credit card or debit card, without the consent of the issuer.	1-1-2004
[720 ILCS 250/8]	Using a Credit or Debit Card With the Intent to Defraud	1-1-2004
[720 ILCS 250/17.02]	Fraudulent use of electronic transmission.	1-1-2004

3. Section 270 Department Review of Waiver Application

Finally there is the category of disqualifying offenses for which an individual may apply for a waiver, providing the time frames for applying for a waiver have been met. These time frames are not as lengthy as those for the Rehabilitation Waivers:

“Waivers will not be granted to individuals who have not met the following time frames:

- 1) Single disqualifying misdemeanor conviction – no earlier than 1 year after conviction date;
- 2) Two disqualifying misdemeanor convictions – no earlier than 3 years after conviction date;
- 3) Three or more disqualifying misdemeanor convictions – no earlier than 5 years after conviction date;
- 4) Single disqualifying felony conviction – no earlier than 3 years after conviction date;
- 5) Two to three disqualifying felony convictions – no earlier than 5 years after conviction date; and
- 6) More than three disqualifying felony convictions – no earlier than 10 years after the most recent conviction.”

An individual can also apply for a waiver if he or she committed any of the crimes listed in the Rehabilitation Waiver section but did not meet the longer time frames, but were within the time frames for a waiver application listed above. The following additional disqualifying offenses are eligible for a waiver if the time frames are met and if a waiver request is made and approved:

Section 955.APPENDIX C Disqualifying Offenses That May be Considered for a Waiver by the Submission of a Waiver Application

<u>Illinois Compiled Statutes Citation</u>	<u>Offense</u>	<u>Additional Offense Added To Act Effective</u>
<u>[720 ILCS 5/10-3]</u>	<u>Unlawful Restraint</u>	
<u>[720 ILCS 5/10-3.1]</u>	<u>Aggravated Unlawful Restraint</u>	
<u>[720 ILCS 5/10-4]</u>	<u>Forcible Detention</u>	
<u>[720 ILCS 5/10-5]</u>	<u>Child Abduction</u>	
<u>[720 ILCS 5/10-7]</u>	<u>Aiding and Abetting Child Abduction</u>	
<u>[720 ILCS 5/12-1]</u>	<u>Assault</u>	
<u>[720 ILCS 5/12-2]</u>	<u>Aggravated Assault</u>	
<u>[720 ILCS 5/12-3]</u>	<u>Battery</u>	
<u>[720 ILCS 5/12-3.1]</u>	<u>Battery of an Unborn Child</u>	
<u>[720 ILCS 5/12-3.2]</u>	<u>Domestic Battery</u>	
<u>[720 ILCS 5/12-4.5]</u>	<u>Tampering with Food, Drugs or Cosmetics</u>	<u>1/1/98</u>
<u>[720 ILCS 5/12-7.4]</u>	<u>Aggravated Stalking</u>	<u>1/1/98</u>
<u>[720 ILCS 5/12-11]</u>	<u>Home Invasion</u>	<u>1/1/98</u>
<u>[720 ILCS 5/12-21.6]</u>	<u>Endangering the life or health of a child.</u>	<u>1/1/98</u>
<u>[720 ILCS 5/12-32]</u>	<u>Ritual Mutilation</u>	<u>1/1/98</u>
<u>[720 ILCS 5/12-33]</u>	<u>Ritual Abuse of a Child</u>	<u>1/1/98</u>
<u>[720 ILCS 5/16-1]</u>	<u>Theft</u>	
<u>[720 ILCS 5/16-2]</u>	<u>Theft of lost or mislaid property.</u>	<u>1-1-2004</u>
<u>[720 ILCS 5/16A-3]</u>	<u>Retail Theft</u>	
<u>[720 ILCS 5/16G-15]</u>	<u>Identity Theft</u>	<u>1-1-2004</u>
<u>[720 ILCS 5/16G-20]</u>	<u>Aggravated Identity Theft</u>	<u>1-1-2004</u>
<u>[720 ILCS 5/17-3]</u>	<u>Forgery</u>	<u>1/1/98</u>
<u>[720 ILCS 5/18-1]</u>	<u>Robbery</u>	
<u>[720 ILCS 5/18-3]</u>	<u>Vehicular Hijacking</u>	<u>1/1/98</u>
<u>[720 ILCS 5/19-1]</u>	<u>Burglary</u>	<u>1/1/98</u>
<u>[720 ILCS 5/19-3]</u>	<u>Residential Burglary</u>	
<u>[720 ILCS 5/19-4]</u>	<u>Criminal Trespass to Residence</u>	
<u>[720 ILCS 5/20-1]</u>	<u>Arson</u>	
<u>[720 ILCS 5/20-1.1]</u>	<u>Aggravated Arson</u>	
<u>[720 ILCS 5/20-1.2]</u>	<u>Residential Arson</u>	<u>1-1-2004</u>
<u>[720 ILCS 5/24-1]</u>	<u>Unlawful Use of a Weapon</u>	
<u>[720 ILCS 5/24-1.1]</u>	<u>Unlawful Use or Possession of Weapons by Felons or Persons in the Custody of the Department of Corrections Facilities.</u>	<u>1-1-2004</u>
<u>[720 ILCS 5/24-1.2]</u>	<u>Aggravated Discharge of a Firearm</u>	
<u>[720 ILCS 5/24-1.2-5]</u>	<u>Aggravated discharge of a machine gun or a firearm equipped with a device designed or used for silencing the report of a firearm.</u>	
<u>[720 ILCS 5/24-1.5]</u>	<u>Reckless Discharge of a Firearm</u>	<u>1/1/98</u>
<u>[720 ILCS 5/24-1.6]</u>	<u>Aggravated Unlawful Use of a Weapon</u>	<u>1-1-2004</u>
<u>[720 ILCS 5/24-3.2]</u>	<u>Unlawful Discharge of Firearm Projectiles</u>	<u>1-1-2004</u>

<u>[720 ILCS 5/24-3.3]</u>	<u>Unlawful Sale or Delivery of Firearms on the Premises of any School</u>	<u>1-1-2004</u>
<u>[720 ILCS 5/33A-2]</u>	<u>Armed Violence</u>	<u>1/1/98</u>
<u>[225 ILCS 65/10-5]</u>	<u>Practice of nursing without a license</u>	<u>1-1-2004</u>
<u>[720 ILCS 150/4]</u>	<u>Endangering life or health of a child</u>	<u>1/1/98</u>
<u>[720 ILCS 150/5.1]</u>	<u>Permitting sexual abuse of a child</u>	<u>1-1-2004</u>
<u>[720 ILCS 115/53]</u>	<u>Cruelty to Children</u>	<u>1/1/98</u>
<u>[720 ILCS 250/4]</u>	<u>Receiving Stolen Credit Card or Debit Card</u>	<u>1-1-2004</u>
<u>[720 ILCS 250/5]</u>	<u>Receiving a Credit or Debit Card with Intent to Use, Sell, or Transfer</u>	<u>1-1-2004</u>
<u>[720 ILCS 250/6]</u>	<u>Selling a credit card or debit card, without the consent of the issuer.</u>	<u>1-1-2004</u>
<u>[720 ILCS 250/8]</u>	<u>Using a Credit or Debit Card With the Intent to Defraud</u>	<u>1-1-2004</u>
<u>[720 ILCS 250/17.02]</u>	<u>Fraudulent use of electronic transmission.</u>	<u>1-1-2004</u>
<u>[720 ILCS 550/5]</u>	<u>Manufacture, delivery, or possession with intent to deliver, or manufacture, cannabis.</u>	
<u>[720 ILCS 550/5.1]</u>	<u>Cannabis Trafficking</u>	
<u>[720 ILCS 550/5.2]</u>	<u>Delivery of Cannabis on School Grounds</u>	<u>1/1/98</u>
<u>[720 ILCS 550/7]</u>	<u>Delivering cannabis to a person under 18</u>	<u>1/1/98</u>
<u>[720 ILCS 550/9]</u>	<u>Calculated Criminal Cannabis Conspiracy</u>	
<u>[720 ILCS 570/401]</u>	<u>Manufacture or delivery, or possession with intent to manufacture or deliver, a controlled substance other than methamphetamine, a counterfeit substance, or a controlled substance analog.</u>	
<u>[720 ILCS 570/401.1]</u>	<u>Controlled substance Trafficking</u>	
<u>[720 ILCS 570/404]</u>	<u>Distribution, advertisement, or possession with intent to manufacture or distribute a look-alike substance</u>	
<u>[720 ILCS 570/405]</u>	<u>Calculated Criminal Drug Conspiracy</u>	
<u>[720 ILCS 570/405.1]</u>	<u>Criminal drug conspiracy</u>	
<u>[720 ILCS 570/407]</u>	<u>Delivering a controlled, counterfeit or look-alike substance to a person under 18</u>	
<u>[720 ILCS 570/407.1]</u>	<u>Engaging or Employing Person Under 18 to deliver a controlled, counterfeit or look-alike substance</u>	
<u>[720 ILCS 646]</u>	<u>Violations under the Methamphetamine Control and Community Protection Act</u>	<u>9/11/05</u>

This new employee fingerprint program is not yet in effect and will gradually be phased in statewide over the next year. You will be informed by IDPH and your associations regarding the timetable for replacing your UCIA name-based background check with the livescan vendor fingerprint program in your area. As with the federal pilot project, it can be expected that IDPH will be conducting training sessions in your area just prior to implementing the program. **Until such time, facilities should continue to do UCIA background checks as required under current law and regulations.**

At some point in the future, we will review how to make a waiver application. But we all need a break from these rules right now. Anyone needing details on how to apply for a waiver can contact Jonna Veach at IDPH at Jonna.Veach@illinois.gov.