

# Criminal Records Check Clearance

## What Exactly Does It Mean?

February 24, 2015  
Webinar



Georgia Department of Early Care and Learning

# Presenter

Christie Bearden  
Legal Services Supervisor

# Criminal Records Check Process – Review

## What You Must Do:

- Register the individual with COGENT
  - <https://www.ga.cogentid.com>
  - Reason code: DECAL Daycare Director/Employee
- Pay the fee
- Have your fingerprints scanned
- Mail in a legible, signed and notarized Records Check Application to DECAL

# Criminal Records Check Process – Review

## What We Do:

- DECAL scans, enters and uploads each application into our system;
- DECAL matches each application with a history report;
- DECAL reviews the criminal history report;
- DECAL determines whether each applicant is either “satisfactory” or “unsatisfactory,” or if we need more information to make a determination; and
- DECAL issues a fitness determination letter to the applicant and the facility.

# What is a fitness determination letter?

- A fitness determination letter is issued based upon a review of an individual's history report
- There are three main types of fitness determination letters:
  - Unsatisfactory "pending"
  - Unsatisfactory
  - Satisfactory

# Unsatisfactory “pending” fitness determination – 21 day letter

- Is issued when there is an unresolved matter regarding an individual’s report
- Indicates that that individual should contact the DECAL Records Unit to determine what additional information is needed
- Means that individual cannot reside in or be present at a licensed child care facility while children are present for care unless a satisfactory determination letter is later issued by the department

# Unsatisfactory fitness determination

- Is issued when an individual's report reveals criminal record that includes a covered crime
- An unsatisfactory fitness determination can be appealed
- Means that individual cannot reside in or be present at a licensed child care facility while children are present for care unless a satisfactory determination letter is later issued by the department

# Satisfactory fitness determination

- Is issued when an individual's report **DOES NOT** reveal a criminal record that includes a covered crime listed in Georgia law
- Means that individual can reside in or be present at a licensed child care facility while children are present for care unless an unsatisfactory determination letter is later issued by the department

# How to read a criminal history report

- The same law applies to DECAL when the agency reviews a national criminal history report and to a Director when s/he reviews a local criminal history report for a provisional employee
- The covered crimes are outlined by law and can be found at O.C.G.A. Section 20-1A-30.

# How to read a criminal history report - Continued

## ● Covered Crimes Include

- Any felony
- Battery when the victim is a minor
- Simple battery when the victim is a minor
- Contributing to the delinquency of a minor
- Any sexual offense
- Criminal attempt to commit any of the above
- Any offense in another state that would be covered above if it occurred in Georgia.

# How to read a criminal history report - Continued

- An individual will be deemed “**unsatisfactory**” if there is one of the following dispositions associated with the arrest of a covered crime:
  - A conviction
  - A plea of nolo contendere
  - “First Offender” status that has not yet been completed
  - An arrest and charge for a covered crime that has not yet been heard by a judge and for which the statute of limitations has not yet run.

# How to read a criminal history report - Continued

- An individual will be deemed “**satisfactory**” when a review of a criminal history report reveals any or all of the following
  - No arrests at all
  - Arrests for crimes other than the covered crimes
  - Arrests for one or more covered crimes, but the individual was not convicted of that crime (the charges were either dropped, reduced, expunged or dismissed)
  - Arrest for one or more covered crimes where the court granted “First Offender” status and the terms of that program were successfully completed

# A Satisfactory Determination Letter

## What Exactly Does It Mean?

- A satisfactory determination letter is based upon the department's review of a national criminal history report.
- This report is generated on the date listed in the determination letter.
- Any activity that occurs after the date listed on the letter was not considered when the determination was made.

# A Satisfactory Determination Letter What Exactly Does It Mean?

- An individual with a current valid satisfactory determination letter can reside in or be present at a licensed child care facility while children are present for care

# A Satisfactory Determination Letter

## What Exactly Does It Mean?

- A current valid satisfactory determination letter means
    - there was no conviction of a covered crime on the national criminal history report reviewed by DECAL
    - there was no arrest for a covered crime that has not been heard by a judge on the report
    - any unresolved matters on the report were resolved
- OR**
- an unsatisfactory determination was reversed by an Administrative Law Judge at the Office of State Administrative Hearings

# A Satisfactory Determination Letter

## What Exactly Does It Mean?

- A current valid satisfactory determination letter
  - is portable for one year from the “as of” date on the letter
  - is valid for 5 years from the “as of” date at the place where the individual was working at the one year anniversary of the fingerprint date, so long as the individual was continuously employed at that location.
  - becomes invalid once an individual is arrested for a covered crime or an unsatisfactory determination letter is issued by the department

# A Satisfactory Determination Letter

## What it does NOT mean:

- A satisfactory determination letter
  - is not a guarantee for employment
  - is not a letter of endorsement
  - is not a testament of an individual's character or employability
  - does not necessarily mean that an individual has never been arrested

# “As of” date on a Satisfactory Determination Letter

  
**BRIGHT FROM THE START**  
Georgia Department of Early Care and Learning  
2 Martin Luther King Jr. Drive, SE, Suite 754, East Tower, Atlanta, Georgia 30334  
(404) 656-5957

**Nathan Deal**  
GOVERNOR

**Amy M. Jacobs**  
COMMISSIONER

Date

Name, Director  
License Number - Center Name  
Center address  
City, GA Zip  
County County  
Region Region

Dear Director:

As of Cogent Report Date, Name of Individual has received a satisfactory determination by Bright from the Start: Georgia Department of Early Care and Learning in accordance with O.C.G.A. § 20-1A-30 et seq. This determination allows Name of Individual to be present in a child care facility while children are present for care.

This determination can be transferred from one facility another within one year from Cogent Report Date and expires no later than five years from Cogent Report Date.

At the time of your next inspection, your consultant will review this letter. You must keep this letter in Name of Individual's employee file.

If you have additional questions please contact the Records Unit at 1 (855) 884-7444.

Sincerely,

Ira M. Sudman  
Chief Legal Officer

# FREQUENTLY ASKED QUESTIONS



**Q: A potential employee presented a satisfactory determination letter from DECAL at her interview. Does this letter mean that I have to hire this candidate?**

**A: NO**

- a satisfactory determination letter only means that the individual meets the legal requirements discussed earlier in this presentation
- a satisfactory determination is not an endorsement of the candidate's character or employability
- a satisfactory determination is not a guarantee of employment
- a child care facility hires a candidate based upon its own employment criteria

**Q: Does a satisfactory determination letter from DECAL mean that an individual's criminal history is completely clear?**

**A: NOT NECESSARILY**

- There are many crimes that can appear on a criminal history that will not trigger an unsatisfactory criminal history determination.
- Only covered crimes discussed earlier will cause someone to be deemed unsatisfactory.

# Q: Can I receive a copy of my employee's report from DECAL?

## A: NO

- DECAL can only discuss or release criminal history with that individual
- DECAL cannot share criminal history information with an employer or director or even a spouse.

# Q: Can the employee request a copy of their own report?

## A: YES

- We are allowed to release a copy of a criminal history to the individual about whom it was run if the report is still available.
- Before we can release the report, we must verify the identity of the requestor.

# Q: How can I know what is on someone's criminal history?

- A center can require that an employee run a local background check as a condition of employment.

**Q: If I receive a copy of an employee's local criminal history and I think they are satisfactory, but they received an unsatisfactory determination from DECAL, which status should I go by?**

- Always abide by the determination issued by DECAL if there is a conflict.
- Contact your consultant or the Criminal Records Unit if you have questions.
- Although we cannot discuss details found on a criminal history report, we can review a file to verify that the correct determination was made.

**Q: A potential employee presented a satisfactory determination letter from DECAL at her interview. The letter has an “as of” date from 10 months ago. Is this letter still good?**

**A: YES AND NO**

- The letter is portable (ie, can be moved from one facility to another) for up to one year from the “as of” date listed on the determination letter.
- BUT the letter only refers to criminal history that was on the report issued on the “as of” date
- a facility can require that a potential employee submit to a new fingerprint scan as a condition of employment

**Q: A potential employee presented a satisfactory determination letter from DECAL at her interview. The letter has an “as of” date from more than 12 months ago, but was issued by DECAL less than 12 months ago. Is this letter still good?**

**A: NO**

- The important date to review when determining whether a letter is portable is the “as of” date listed in the body of the letter.
- The “as of” date tells us when the criminal history report was generated, and the letter is only portable (ie, can be moved from one facility to another) for up to one year from that “as of” date.
- If the “as of” date is more than a year ago, s/he will need to get a new fingerprint clearance.

# Q: When does a fitness determination letter expire?

## A: IT DEPENDS

- A fitness determination letter is voided when an individual is arrested for a covered crime or when a new fitness determination letter is issued for that person
- The letter expires 5 years from the “as of” date at the facility at which the individual was working one year from the “as of” date.
- The letter is no longer valid if the individual moves to a new facility after one year from the “as of” date.

**Q: One of my employees was arrested this weekend for a covered crime. What should I do?**

**A:**

- Report the arrest to your DECAL consultant
- DECAL will conduct an investigation about the report and issue an unsatisfactory determination letter if appropriate
- If an unsatisfactory determination letter is issued, the employee cannot be present at the child care facility until the matter is resolved

Q: If a potential employee has a felony on her history but it was dismissed, is this ok?

**A: YES**

- A dismissed charge cannot be held against someone, so this is OK.

**Q: If someone was arrested for a felony but was convicted of a misdemeanor, do we treat this as a felony or a misdemeanor when making a determination?**

**A: IT DEPENDS**

- A misdemeanor conviction **in Georgia** is treated as a misdemeanor regardless of the severity of the original charge.
- Although a misdemeanor conviction in any state **other than Georgia** is still a misdemeanor conviction, we must review the elements of the criminal act committed. If the criminal act committed in another state would be a felony or other covered crime in Georgia, we must make an unsatisfactory determination for that person.

**Q: One of my employees has a felony conviction on her local report, but has a satisfactory determination letter from DECAL. How can this happen?**

**A:** A satisfactory determination letter can be issued for someone with a felony conviction showing on his/her local report if any of the following are true:

- The felony conviction was expunged;
- The individual was granted a pardon for the covered crime;
- The individual was granted and successfully completed the terms of a First Offender program; or
- The unsatisfactory determination issued because of this felony conviction was appealed and reversed by an Administrative Law Judge.

**Q: Are only crimes against children considered when making a determination?**

**A: No, many crimes not related to children are included in the list of covered crimes, including:**

- Any felony
- Any sexual offense
- Criminal attempt to commit any of the above
- Any offense in another state that would be covered above if it occurred in Georgia.

**Q: Are only felony convictions considered when making a determination?**

**A: No, some misdemeanors are included in list of covered crimes. These misdemeanors include:**

- Battery when the victim is a minor
- Simple battery when the victim is a minor
- Contributing to the delinquency of a minor
- Any sexual offense
- Criminal attempt to commit any of the above
- Any misdemeanor conviction in another state that would be a felony if it occurred in Georgia.

# QUESTION & ANSWER PERIOD



# Contact Us

Bright from the Start: Georgia Department of

Early Care and Learning

2 Martin Luther King Jr. Drive, SE

Suite 670, East Tower

Atlanta, GA 30334

404-657-5562

[www.dec.al.ga.gov](http://www.dec.al.ga.gov)

Records Check Unit:

**1-855-884-7444**