

Criminal Records Check Requirements

Summer 2014



Georgia Department of Early Care and Learning

Bright from the Start: Georgia Department of Early Care and Learning

www.dec.al.ga.gov

The Basis of the New Requirement



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Criminal Records Check Requirements - What Changed?

- January 1, 2014 a new law went into effect.
- New law requires/allows:
 - All employees hired **on** or **after** January 1, 2014 must complete a national fingerprint based criminal background check BEFORE they can be present at a facility while children are present for care;
 - All employees hired **before** January 1, 2014 have until January 1, 2017, to complete a national fingerprint based criminal background check;
 - All employees must complete the national fingerprint based criminal record check every five years thereafter; and
 - A new category of employee called provisional employee. (see later slide)

Defining an Employee

- Employee is defined as a person:
 - Who performs duties for the facility with or without compensation
 - AND
 - Who has personal contact with child(ren) in care
 - OR
 - Who resides at the facility

Who needs a criminal records check?

- Traditional employee 17 years of age or older (they get a pay check); or
- Resides at the facility and is 17 years of age or older; or
- Anyone present at the facility, who performs duties for the facility with or without compensation that involves personal contact between that person and any child being cared for and who is 17 years of age or older; or
- Anyone who is 17 years of age or older and employed by a Center and who also has a child in care at the Center; or

Who needs a criminal records check?

(continued)

- Anyone who is 17 years of age or older and an independent contractor hired by the Center to offer consistent supplemental educational or physical activities for children in care; or
- Anyone who is 17 years of age or older and a student-in-training; or
- Volunteers and Provisional Employees 17 years of age or older, who perform consistent services for the Center and have personal, direct, or indirect contact with children at the Center

How much does it cost and who pays for it?

- The cost to complete a National Fingerprint Background Check is \$52.75.
- The law is silent on who is responsible for paying this fee.
- It is up to each center to decide if the applicant or the business will pay for this expense.
- DECAL cannot help in paying this expense.

BRIGHT FROM THE START
 Georgia Department of Early Care and Learning
 RECORDS CHECK APPLICATION FOR LICENSED FACILITIES

TO BE COMPLETED BY APPLICANT: COGENT Registration ID: _____
 (Please read instructions on back before completing this application.)

1. APPLICANT/ EMPLOYEE TYPE: ☐ Owner (present in facility) ☐ Director ☐ Employee /Resident ☐ Temporary/Substitute Caregiver ☐ Independent Contractor ☐ Volunteer ☐ Student-In-Training
2. PROGRAM TYPE: ☐ Family Day Care Home ☐ Group Day Care Home ☐ Child Care Learning Center ☐ Licensed Head Start Program

3. PRINT FULL NAME: _____
 LAST FIRST MIDDLE MAIDEN DATE OF BIRTH

GENDER RACE SOCIAL SECURITY NUMBER PLACE OF BIRTH

HEIGHT WEIGHT EYE COLOR HAIR COLOR () HOME TELEPHONE NUMBER

() CELL PHONE NUMBER PERSONAL E-MAIL ADDRESS

HOME ADDRESS: STREET CITY STATE ZIP

MAILING ADDRESS: STREET/P.O. BOX CITY STATE ZIP

4. IDENTIFICATION #: _____; OR _____ AND _____ AND _____
 PRIMARY SECONDARY SUPPORTING #1 SUPPORTING #2

5. I hereby authorize Bright from the Start: Georgia Department of Early Care and Learning ("Department") to receive any criminal history record information pertaining to me which may on file with any criminal justice agency in the United States and its territories. I further authorize the Department to release a fitness determination to the child care provider named below. I understand that this authorization is valid for up to and including 180 days from the date of signature and that Georgia law authorizes the Department to require additional fingerprint records checks when the department has reason to believe that I have a criminal record that renders me ineligible to have contact with children in the center or during the course of a child abuse investigation.

 NOTARY SIGNATURE* APPLICANT'S SIGNATURE

6. TO BE COMPLETED BY FAMILY DAY CARE HOME PROVIDER, FACILITY DIRECTOR OR HEAD START PROGRAM ADMINISTRATOR:

NAME OF PROVIDER, FACILITY OR PROGRAM ADMINISTRATOR LICENSE, REGISTRATION OR APPLICATION NUMBER

FACILITY STREET ADDRESS CITY, STATE, ZIP

MAILING ADDRESS CITY, STATE, ZIP

7. My signature indicates that I am the Director, Provider or Program Administrator and that I have verified the above information on the applicant.

 SIGNATURE* DATE TELEPHONE NUMBER

*The person that signs as the Director, Provider or Program Administrator cannot

How do I comply with the law?

- **Step 1: Complete a records check application**
 - The records check application, created by DECAL must be completed in its entirety, notarized, and submitted to DECAL by every director and employee;
 - The completed records check application authorizes DECAL to receive and render a fingerprint records check determination.
 - The application can be found on DECAL's website:
<http://www.dec.al.ga.gov/documents/attachments/CriminalRecordCheckApplication.pdf>

How do I comply with the law? *(continued)*

- Step 2: Register with Cogent (Livescan) and pay the \$52.75.
 - To register with Cogent, go to: <http://www.ga.cogentid.com>
 - DECAL has created step-by-step instructions to help you with this process. Go to:
<http://www.dec.al.ga.gov/documents/attachments/LivescanFingerPrintInstructions.pdf>
 - NOTE: Cogent is a third party vendor and is not part of DECAL.
 - Select the appropriate reason code, in most cases **DECAL – Daycare Director/Employee**. Selecting an incorrect code could cause you to have to repeat the process, including paying again.

How do I comply with the law? *(continued)*

● Step 3: You're Ready To Fingerprint

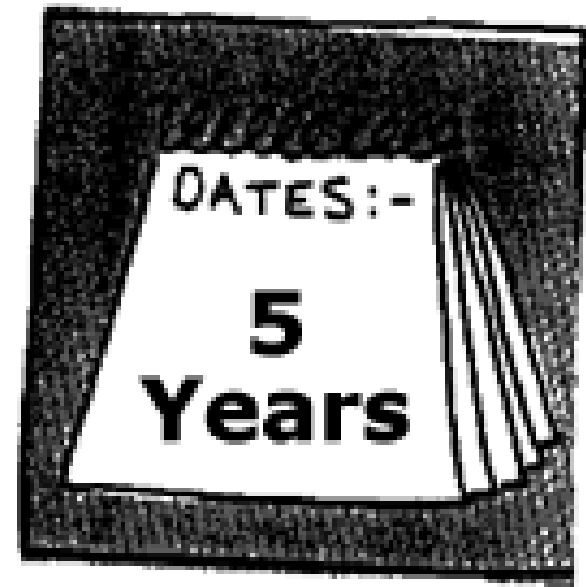
- After registering with Cogent, go to the most convenient fingerprint location with the following documents:
 - Your Cogent registration confirmation number;
 - A copy of your valid and unexpired picture identification document;
 - Method of Payment (especially if you chose the money order option)

Do I have to get my fitness determination today?

- All directors and employees **hired on or after January 1, 2014** will be required to undergo a national fingerprint background check and obtain a satisfactory determination from the Department.
- All employees **hired prior to January 1, 2014** will have to undergo a national fingerprint background check and obtain a satisfactory determination from the Department **by January 1, 2017**.
- The Department recommends that **all employees** hired before January 1, 2014 undergo a national fingerprint background check **as soon as possible** and **not wait until January 1, 2017**.

How long is my fitness determination good for?

Beginning January 1, 2019,
every director and employee
must have a satisfactory
records check determination
on file that has been issued
within the past five years; a
new fingerprint background
check will be required every
five years.



I submitted fingerprints. Now what?

- The Georgia Bureau of Investigation (GBI) will send DECAL a copy of the applicant's criminal history record (RAP sheet) which we will use to make a "fitness" determination.
- Based on the record, DECAL will issue the applicant and the facility either:
 - A **satisfactory** determination, a written declaration that the person for whom a fingerprint records check determination was performed has no criminal record.
 - An **unsatisfactory** determination, a written declaration that the person for whom a fingerprint records check determination was performed has a criminal record or an unresolved matter.

I submitted fingerprints. Now what?

- **Until a fitness determination is issued**, the applicant is cannot be present at the facility while children are present for care.
- If an applicant receives a satisfactory determination, they can immediately be present at a facility while children are present for care.
- If an applicant receives an unsatisfactory determination, that individual cannot be present in a facility while children are present for care, unless DECAL issues a subsequent satisfactory determination in writing.

How do I receive my results?

- All satisfactory fitness determinations are sent to the center and the applicant through e-mail.
- The e-mail for the center will be the one on file with Child Care Services. The e-mail for the applicant will be supplied by the applicant on the application.
- All unsatisfactory determinations will be sent by certified mail to both the center and the applicant. The center will also be notified by e-mail.

How soon can I expect my results?

- Once **ALL** the required steps are completed, the applicant and the center should receive a fitness determination within five to seven business days.
- If seven business days have passed **AND** the applicant has completed **ALL** required steps, contact the Records Check Unit at **1-855-884-7444**.
- Not completing ALL the required steps **WILL** delay receiving a fitness determination.

What is a Criminal Record?

A criminal record is defined as:

- (A) Conviction of a crime;
- (B) Arrest, charge, and sentencing for a crime where:
 - (i) A plea of nolo contendere was entered to the charge;
 - (ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

What is a Criminal Record? *(continued)*

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17

What Is A Crime?

A crime is defined as:

- (A) Any felony;
- (B) A violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor;
- (C) A violation of Code Section 16-5-23.1, relating to battery, when the victim is a minor;
- (D) A violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor;
- (E) A violation of Chapter 6 of Title 16, relating to all sexual offenses;
- (F) A violation of Code Section 16-4-1, relating to criminal attempt; or
- (G) Any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

Can an applicant request that the unsatisfactory determination be reversed?

- Yes, an applicant can ask the Office of State Administrative Hearings (court) to reverse DECAL's unsatisfactory determination.
- To begin this process, the applicant must submit a request for a hearing to DECAL within 10 days of receiving an unsatisfactory determination letter.
- The court will schedule and notify the applicant of a hearing date and, subsequently, of their decision.
- The applicant shall **NOT be present** in a child care facility while children are present for care unless and until the court overturns DECAL's decision.

I'm changing centers. Do I need a new fitness determination letter?

- Not Necessarily. A satisfactory determination letter issued by the Department may be taken by a director or employee to a new facility, as long as:
 - It was issued within the immediate preceding 12 months from the Cogent report date; and
 - The Center does not know or reasonably should not know that the individual's satisfactory status has changed.

Provisional Employees: who are they and what do they need to do?

● A Provisional Employee

- An individual other than a director whose duties involve personal contact with any child being cared for at the facility and who is hired for a limited period of employment
- Must obtain a local, name-based criminal records check within the immediate preceding 10 days of the hire date (GCIC check run under purpose code “W” from a local law enforcement office)

Provisional Employees: who are they and what do they need to do? *(continued)*

- May be employed for a period of not more than 21-calendar days (3 weeks). The 21-calendar days will be determined from the hire date listed on the employment application. **This 21- day period can be extended if the provisional employee meets the requirements listed on the next slide.**
- May become a permanent employee if a satisfactory fitness determination is made by DECAL.

If a Provisional Employee does not become a permanent employee within 21 days, what happens?

- After the 21-day period has expired and the center decides not to hire the individual as a permanent employee, the provisional employee can no longer be present at a child care facility while children are present for care.
- If the provisional employee has **PROPERLY** submitted the notarized application **and** registered with and completed the Cogent process within the 21 days from hire, then the provisional employee may remain at the facility until a fitness determination has been made.

If a Provisional Employee does not become a permanent employee within 21 days, what happens? *(continued)*

- If the provisional employee has not **PROPERLY** submitted the notarized application **and** registered with and completed the Cogent process within the 21 days from hire, the provisional employee can no longer be present at a child care facility while children are present for care.

Who determines if a Provisional Employee is satisfactory or unsatisfactory?

- The director shall make a fitness determination using the definition of a crime (refer to earlier slide) for provisional employees.
- This fitness determination shall be based on a local background check that had been run under purpose code “W” from a local law enforcement office within the immediate preceding 10 days of the hire date.

Who determines if a Provisional Employee is satisfactory or unsatisfactory? *(continued)*

- The director of the center shall make a written fitness determination and place it in the employee's file.
- The written determination by the director can be as simple as writing "ok" or "satisfactory" or "sat" on the local criminal history report or as formal as a separate memo detailing the determination. All determinations should be dated and initialed by the director.

FREQUENTLY ASKED QUESTIONS



Do medical professionals and therapists need a background check?

It depends...

- A background check is *NOT necessary* if the medical professional was **hired by the parent AND is providing services for that parent's child only.**
- A background check *IS necessary* if the medical professional was **hired or retained by the center.**

Does a parent volunteer need a background check?

- Any volunteer, including a parent volunteer, who performs consistent* services for the Center shall be considered an Employee and must have a satisfactory criminal background determination.

*** Consistent = Any repeated arrangement that occurs more than once within a fiscal quarter (every three months).**

Does an independent contractor need a background check?

- Recreational independent contractors

- karate instructors
- ballet teachers
- Spanish teachers, etc.

who offer consistent supplemental educational or physical activities for children in care require national fingerprint based background check clearance.

Does a student-in-training need a background check?

- Student-in-Training is defined as a student enrolled in an educational course of study that requires or permits the student to observe and participate in the care of children at a Center during a limited period of time, i.e., one quarter, one trimester, or one semester, provided that they are under the direct supervision of Center personnel at all times.
- Students-in-Training are required to have a national fingerprint based background check.
- Sixteen-year-old or younger Students-in-Training are exempt from criminal record check requirements.

Do I have to use the COGENT LiveScan system?

- Yes, using this system is currently the only way that DECAL can properly receive the applicant's criminal history.
- DECAL no longer uses fingerprint cards. **Do not** go to the local police department to obtain your fingerprints.

My fingerprints were rejected. Now what?

- If the applicant's fingerprints were rejected because they were not readable, the applicant will receive a letter requiring the applicant to reprint at no charge.
- If the GBI determines that the applicant's fingerprints were unreadable, then the applicant's background check will be run solely on a name-based search. Note: this may be a lengthy process and not subject to the five to seven day normal turnaround.
- If the applicant receives a rejected letter because the applicant used the wrong reason code, the applicant will probably have to undergo the process again AND pay an additional \$52.75.

What is the correct reason code?

- When registering with the COGENT LiveScan system for fingerprinting, select the correct reason code, which in most cases will be:
DECAL – Daycare Director/Employee
- Failure to select the correct reason code could result in having to initiate the process again with an additional \$52.75 charge.

My determination was not e-mailed to me. Why not?

- As noted earlier, the e-mail used for the center will be the one on file with Child Care Services. The e-mail for the applicant will be provided by the applicant on the application.
- If the applicant does not provide a personal e-mail address on the application, the fitness determination letter will be mailed to their home address.
- It is the center's responsibility to update their e-mail address with their consultant. The Records Check Unit cannot change the e-mail address on file nor e-mail a determination to a different e-mail address.

Why was my application rejected?

- It was **incomplete**. ALL fields must be filled out and legible.
- It was **not signed**. The applicant must sign the application to authorize agency review of criminal history.
- It was **not notarized**. The application must be notarized.
- It contained a **notary conflict**. Under Georgia law, a notary cannot also sign somewhere else on the document.

If I were employed before 01/01/2014 and my local background check used purpose code “E”, what should I do?

- Immediately submit to a national fingerprint background check
- If the employee’s background check was run under the wrong purpose code (anything other than purpose code “W”), the employee must immediately undergo a national fingerprint based background check.
- Any such employee cannot be present at a child care facility while children are present for care until they receive a satisfactory fitness determination based upon a national fingerprint based background check.

Does an employee have to undergo a national fingerprint based background check on their 17th birthday?

Yes. Georgia law requires that the moment an employee turns 17 years of age, they must undergo a national fingerprint based background check and receive a satisfactory fitness determination before being present in a center while children are present for care.

I had a background check by another state.
Will that be acceptable in Georgia?

No, DECAL cannot accept a background check performed by another state.

Is Georgia Department of Education clearance acceptable?

- Yes, DECAL can accept a current and valid fitness determination rendered by the Georgia Department of Education.
- If the applicant is no longer employed by the Georgia Department of Education, DECAL can only accept a fitness determination rendered by the Georgia Department of Education in the prior 12 months.

Can applications be faxed to DECAL?

DECAL prefers that applications are mailed to the Department to ensure that the applications can be read. This will help reduce the number of applications returned and speed up the overall process.

QUESTIONS & ANSWERS



Contact Information

Bright from the Start: Georgia Department of
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Records Check Unit:
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