

CRIMINAL BACKGROUND CHECK POLICY

Service Agreements approved by the Division of Vocational Rehabilitation include the requirement for service providers to conduct annual criminal background checks for all staff or others (subcontractors, unpaid staff, students or volunteers) involved in providing services, processing records or billing under this agreement. The service provider is also required to check the Sex Offender list for all staff or others working under this agreement. **Electronic signature of the service provider within the service provider portal on the CERTIFICATION REGARDING CRIMINAL BACKGROUND CHECKS** is an assurance that these steps have been completed.

The service provider is only required to send copies of the criminal background check to DVR for new personnel and/or sub contractor added to the service agreement and/or if criminal conviction has occurred since last contract renewal for any personnel and/or subcontractor listed on the service agreement. Copies of the criminal background checks will be attached to the service provider agreement.

The service provider should require its employees and subcontractors to inform the provider of any arrest or conviction within 48 hours of the arrest/conviction. The provider is required to notify DVR of any arrest and conviction for the offenses included below as soon as they are made aware of the arrest or conviction.

If a criminal conviction is determined to be substantially related to the work required in the service agreement, a mitigation plan will need to be developed by the service provider in conjunction with the local WDA Director.

The service provider is the employer of record for its staff and therefore is responsible for taking any necessary action to assure the safety of the DVR consumers receiving services from the provider. In the course of implementing this policy and practice, DVR will not require or request any service provider to participate in illegal hiring or firing practices. The service provider is the employer of record and as such, has final determination related to all hiring and firing decisions.

Wisconsin has laws governing who can provide certain services to “adults at risk” and to make assurances that both the provider and recipient of services are protected. WI DVR has used these laws, as well as Caregiver Law regulations issued by the state, as guidance in the development of a policy to review service provider applications where a criminal background has been discovered after a CBC has been completed.

Wis. Stat. § 55.01(1e): An "adult at risk" is "any adult who has a physical or mental condition that substantially impairs his or her ability to care for his or her needs who has experienced, is currently experiencing, or is at risk of experiencing abuse, neglect, or financial exploitation."¹

WI DVR has determined that due to the nature of the services provided to DVR Consumers that they can be considered “adults at risk”. Except for a person with a conviction not allowed under

the “Caregiver Law” Statutes (below), WI DVR may allow a person with a criminal conviction to provide services to DVR Consumers provided the consumer is adequately protected.

CONVICTIONS:

A conviction under the following charges in the **past 5 years** is considered to be substantially related to the service provider's duties and does not allow service to DVR consumers. Upon request, WI DVR will review the circumstances of the conviction for substantial relationship to the work required in the service agreement.

A conviction under the following charges that is **more than 5 years old** may be considered to be substantially related to the service provider's duties. Upon notification of such a conviction, WI DVR will review the circumstances of the conviction for substantial relationship to the work required in the service agreement., as well as any rehabilitation information provided by the person and the Provider.

I. Entities and Programs Serving Only Persons 18 Years of Age or Older

CONVICTIONS

Wis. Stats. Crime

940.01 First degree intentional homicide

940.02 1st degree reckless homicide

940.03 Felony murder

940.05 2nd degree intentional homicide

940.12 Assisting suicide

940.19 (2) through (6) Battery (felony)

940.22 (2) or (3) Sexual exploitation by therapist; duty to report

940.225 (1), (2), or (3) 1st, 2nd, or 3rd degree sexual assault

940.285 Abuse of vulnerable adults (misdemeanor or felony)

940.29 Abuse of residents of a penal facility

940.295 Abuse or neglect of patients and residents (misdemeanor or felony)

948.02 (1) 1st degree sexual assault of a child

948.025 Repeated acts of sexual assault of a child

948.03 (2) (a) Physical abuse of a child – intentional – cause great bodily harm

OTHER OFFENSES

— Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property

— Finding by a governmental agency of child abuse or neglect

For consumers *under the age of 18* the following charges in the **past 5 years** do not allow service to DVR consumers:

II. Entities and Programs Serving Any Clients Under the Age of 18

CONVICTIONS

Regulatory approval, employment as a caregiver, and non-client residency at and contracting with an entity are prohibited until rehabilitation approval is received, for all entities and programs that serve any clients who are under the age of 18.

(For additional federal foster care bars, see part III. below.)

Wis. Stats. Crime

940.01 First degree intentional homicide

940.02 1st degree reckless homicide

940.03 Felony murder

940.05 2nd degree intentional homicide

940.12 Assisting suicide

940.19 (2) through (6) Battery (felony)

940.22 (2) or (3) Sexual exploitation by therapist; duty to report

940.225 (1), (2), or (3) 1st, 2nd, or 3rd degree sexual assault

940.285 Abuse of vulnerable adults (misdemeanor or felony)

940.29 Abuse of residents of a penal facility

940.295 Abuse or neglect of patients & residents (misdemeanor or felony)

948.02 (1) or (2) 1st or 2nd degree sexual assault of a child

948.025 Repeated acts of sexual assault of same child

948.03 (2) (a), (b), or (c) Physical abuse of a child – intentional causation of bodily harm

948.05 Sexual exploitation of a child

948.055 Causing a child to view or listen to sexual activity

948.06 Incest with a child

948.07 Child enticement

948.08 Soliciting a child for prostitution

948.11 (2)(a) or (am) Exposing child to harmful material or harmful descriptions or narrations (felony)

948.12 Possession of child pornography

948.13 Child sex offender working with children

948.21 (1) Neglect of a child – resulting in death (felony)

948.30 Abduction of another's child; constructive custody

OTHER OFFENSES

— Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property

— Finding by a governmental agency of child abuse or neglect

In addition to those offenses listed above, a conviction under the following charges may be considered substantially related to the service provider's duties. Upon notification of such a conviction, WI DVR will review the circumstances of the conviction for substantial relationship to the work required in the service agreement.

Questionable Offenses related to:

- Dishonesty
- Fraud
- Worthless checks
- Sexually related crimes causing a listing on the published Sexual Predator list
- Assault/violence
- Illegal drugs
- OWI and
- Any other offenses that in your professional judgment would jeopardize the health, welfare, and safety of the consumer.
- Theft

MITIGATION PLAN

When any of the above offenses have been identified, the following steps will be taken:

1. The provider will notify the DVR WDA Director and Contract Specialist of the situation/offenses including a copy of the background check.
2. This notification will be reviewed by both DVR Bureau Directors to determine the action to be taken.
 - a. If a charge is listed in the care giver law within the **past five years** as described above, the person cannot work with DVR consumers, their records or billing information.
 - b. If a charge is deemed to be substantially related, a mitigation plan will be discussed and developed with the local WDA Director.
3. The plan will be submitted to the DVR Contract Specialist and reviewed by both DVR Bureau Directors in further consultation and with DWD legal assistance or the Deputy Administrator. Notification of a decision will be provided in writing to the provider. A possible outcome is a denial of the mitigation plan.
4. The DVR WDA Director will follow-up as determined by the approved mitigation plan with the provider to monitor the plan to assure the safety of the consumers and their information is maintained.