

ACF Administration for Children and Families	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES	
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Note: This Instruction supersedes ACF-PI-HS-08-04

PROGRAM INSTRUCTION

TO: All Head Start and Early Head Start Grantees

SUBJECT: Criminal Record Checks

INSTRUCTION:

What is a “criminal record”?

A criminal record is a summary of an individual’s contacts with law enforcement. Such records are maintained and updated on the local, state and federal levels by various law enforcement agencies.

What are the current “criminal record check” requirements for all Head Start and Early Head Start agencies?

In accordance with Section 648A(g)(3) of the Head Start Act, 42 U.S.C. 9843A(g)(3), Head Start and Early Head Start agencies must obtain before employment for all prospective Head Start and Early Head Start employees the results from at least one of the following:

A State criminal record check which covers all jurisdictions where the grantee provides Head Start services to children; or

A Tribal criminal record check which covers all jurisdictions where the grantee provides Head Start services to children; or

A Federal criminal record check conducted by the Federal Bureau of Investigation (FBI); or

Another criminal record check as provided by Section 648A(g)(3)(A)-(C).

American Indian and Alaska Native (AIAN) Head Start grantees may choose whichever of the above four options they determine is most appropriate for a pre-employment criminal record check for a particular individual. Non-AIAN Head Start grantees will need to choose between a State or Federal criminal record check. One of these requirements must be met *before* an individual may begin work (i.e. is employed) with the Head Start program.

Grantees may be subject to additional criminal record check requirements under state or tribal law. If one of the Head Start Act criminal record check requirements described above has been met, and the additional state, or tribal requirement *does not* have to be met (under state or tribal law or regulation) before the individual begins work as a probationary employee, the individual may begin work with the Head Start program as a probationary employee pending completion of the additional state or tribal requirements.

What is a Head Start agency required to consider when a prospective employee has a criminal record?

Under the existing regulation at 45 C.F.R. § 1301.31(b)(3) a grantee must consider the relevancy of each arrest, conviction, and pending criminal charge when determining how to act on an employment application. Adoption of the requirements in Section 648A(g)(3) does not alter that requirement. Head Start agencies are reminded that state laws and regulations may impact the decision to hire a person with a criminal record. For example, if a state law provides that a person who has been convicted of a certain crime cannot work in a child care program, then the grantee would be bound to reject the application of the individual convicted of that crime.

Please direct any questions on this Instruction to your OHS Regional Office.

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