

## **DDP CRIMINAL HISTORY BACKGROUND CHECK POLICY**

Effective 8/06 (replaces 7/03 policy)

### PREFACE:

Hiring a person convicted of a felony offense is a very serious matter. This policy was developed in response to concerns that DDP, up until now, had no statewide policy governing the hiring of convicted felons. The 8/1/06 DDP criminal background check policy is subject to modification as providers, DDP staff and others gain experience following implementation.

### REQUIREMENTS:

Staff employed by agencies contracting with the DDP for the provision of direct care services are required to have a criminal background check completed by the Montana Department of Justice (MT DOJ). Other positions requiring background checks include professional therapy staff who are subject to a background check at the time of initial certification or licensure. Background checks are reviewed again for therapy staff during their renewal of certification or licensure.

Certain providers of waiver services do not have direct contact with service recipients, and thus, do not require background checks. Examples of these services include businesses supplying adaptive equipment, or construction firm workers hired to build a wheelchair ramp. The background check requirement may not apply to certain categories of workers providing waiver-reimbursed services who are not employees of the agency with a DDP contract, but who may have contact with service recipients. Examples include workers who provide homemaker services (e.g., employees of Kleen King or Merry Maids). The same situation applies to some respite workers (e.g., AUncle Joe≅) not employed by the contracting agency. In both these examples, the service recipient retains the right to request a criminal background check.

The DDP Waiver 5 Freedom of Choice form (W-5) gives service recipients the option of requesting the results of an MT DOJ public criminal history background check for designated categories of workers. The W-5 form will be updated to reflect changes in the 8/06 DDP background check policy. The cost of the requested background check is paid by the agency under contract with the DDP and deducted from the recipient's cost plan. Background checks are not a waiver service category, so the expenditure would be reported under the category of either homemaker and/or respite services in the last two examples from the preceding paragraph.

DDP background check requirements by waiver service category are outlined in the Montana DD Services and Background Check Requirements effective 8/06 document. Background check requirements are referenced in DD waiver language, the Administrative Rules of Montana (ARMs), DDP contract language and in the Montana Code Annotated (MCA).

TYPES OF BACKGROUND CHECKS:

There are two types of background checks available from the Montana Department of Justice: name-based or fingerprint-based.

A name-based search is a search against the criminal history record file of the MT DOJ using a person's name and a numeric identifier such as date of birth or social security number. Name-based searches are notorious for "false-positives" and "false-negatives". A false- positive occurs when a record is returned on a person with the same name and numeric identifier provided in the request but who is not the subject of inquiry. A false-negative occurs when no match is erroneously returned because the name or numeric identifier (DOB or SSN) in the record does not match the name and numeric identifier used in the inquiry. Currently, many DDP-funded providers request the MT DOJ to complete name based background checks for their employees. In this case, the results of the search would be sent to the recipient or the recipient’s designee. Results of name-based checks are generally returned to the requestor within three days of MT DOJ’s receipt of information.

Fingerprint-based checks are preferable. Automated fingerprint identification systems (AFIS) are used in fingerprint-based searches. The AFIS uses the fingerprint image from the request and compares it against fingerprint images from known criminal offenders in the MT DOJ repository. An AFIS match is a positive biometric match. A fingerprint card (FD-249) is used by the local law enforcement agency. The results are sent to the MT DOJ for analysis and a written report is then sent to the waiver recipient or the recipient’s designee. Results of fingerprint-based checks are generally returned to the requestor within ten days of MT DOJ’s receipt of information.

COSTS:

*Costs of the requested background check is paid by the agency under contract with the DDP. The Developmental Disabilities Program will provide reimbursement for the background check when individuals Self-Directing with Employer Authority request a background check. To receive reimbursement, an invoice with the receipt for payment for the background check attached must be submitted to the DDP. (clarification 02/08/2016)*

The current (as of 8/06) fee schedule for non-criminal justice requests for criminal history record information in the State of Montana:

Name-based public criminal record check	\$ 10.00
Fingerprint-based public criminal record check	\$ 10.00

The Montana public criminal history record does not include information on protection orders, wants/warrants, traffic offenses (except felony DUI), investigative information, intelligence information or out-of-state record information. The public criminal history record does note whether the individual is registered as a sex or violent offender in the State of Montana.

Questions regarding MT DOJ public criminal history background checks should be directed to Kristy Hartnett, Lead Worker of the MT DOJ Criminal Justice Information Service Bureau at 444-1978 (email address- [khartnett@mt.gov](mailto:khartnett@mt.gov))

#### OTHER CRIMINAL HISTORY RESOURCES:

The State of Montana Government website has extensive criminal background information available to the public. This information is accessible at [www.mt.gov/services/allservices.asp](http://www.mt.gov/services/allservices.asp) under the Family, Health and Safety section. Links include the following:

1. Look up records of convicted felons.
2. Search for sexual and violent offenders.
3. Download the sexual and violent offender database.
4. Find information on a licensed professional (includes debarment).
5. Check status of a physician=s license.
6. View child support payment information
7. View Montana parole violators at large.

#### **POLICY GOVERNING THE EMPLOYMENT OF PERSONS WITH A HISTORY OF CRIMINAL CONVICTION BY A PROVIDER OF DEVELOPMENTAL DISABILITIES SERVICES FUNDED BY THE STATE OF MONTANA**

The employment by provider entities of persons convicted of the following crimes in Montana or of similar crimes in other states or foreign jurisdictions are subject to the prohibitions and restrictions of this policy. A person convicted of any crime listed below may not be considered for employment in any capacity by a provider entity, effective 8/1/06. Persons convicted of other criminal offenses should be carefully considered before being hired. In the event such an applicant is hired, the provider will maintain a written record in the employee personnel file documenting the reason(s) why this employee does not pose an undue risk to other employees and service recipients within the agency. This documentation is subject to review by the DDP as part of ongoing quality assurance activities.

#### **HOMICIDE**

1. deliberate homicide
2. mitigated deliberate homicide

#### **ASSAULT**

1. assault
2. aggravated assault

3. intimidation
4. mistreating prisoners
5. partner or family member assault
6. criminal endangerment
7. assault on peace officer or judicial officer
8. assault on minor
9. assault with a weapon
10. stalking
11. malicious intimidation or harassment relating to civil or human rights

#### KIDNAPPING

1. kidnapping
2. aggravated kidnapping

#### SEXUAL CRIMES

1. sexual assault
2. sexual intercourse without consent
3. deviate sexual conduct
4. incest

#### OFFENSES AGAINST THE FAMILY

1. aggravated promotion of prostitution
2. endangering welfare of children
3. unlawful transactions with children
4. sexual abuse of children
5. ritual abuse of minor

#### ARSON

1. arson

#### OFFENSIVE, INDECENT, AND INHUMANE CONDUCT

1. cruelty to animals

#### WEAPONS

1. carrying concealed weapons
2. carrying a concealed weapon while under the influence
3. carrying concealed weapon in prohibited place

4. possession of a destructive device
5. firing firearms

#### OFFENSES INVOLVING DANGEROUS DRUGS

1. criminal distribution of dangerous drugs
2. criminal possession with intent to distribute
3. criminal distribution of dangerous drugs on or near school property
4. criminal production or manufacture of dangerous drugs

#### PRE-RELEASE WORKERS

Effective 8/1/06, participants in pre-release programs are not eligible to be considered for employment in agencies funded by the Developmental Disabilities Program

**Questions or comments regarding the 8/1/06 DDP Background Check Policy should be directed to Jeff Sturm, DDP Program Director at 444-2695 (email address- [jesturm@mt.gov](mailto:jesturm@mt.gov)).**