

Vulnerable Persons Act - DHS

27-1-110. Employment of personnel - screening of applicants - disqualifications from employment.

(1) The general assembly hereby recognizes that many of the individuals receiving services from persons employed by the state department pursuant to this title or title 26, C.R.S., are unable to defend themselves and are therefore vulnerable to abuse or assault. It is the intent of the general assembly to minimize the potential for hiring and employing persons with a propensity toward abuse, assault, or similar offenses against others for positions that would provide them with unsupervised access to vulnerable persons. The general assembly hereby declares that, in accordance with section 13 of article XII of the state constitution, for purposes of terminating employees in the state personnel system who are finally convicted of criminal conduct, offenses involving moral turpitude include, but are not limited to, the disqualifying offenses specified in subsection (7) of this section.

(1.5) For purposes of this section, unless the context otherwise requires:

(a) "Contracting employee" means a person who contracts with the state department and who is designated by the executive director of the state department or the executive director's designee as serving in a contract position involving direct contact with vulnerable persons.

(b) "Conviction" means a verdict of guilty by a judge or jury or a plea of guilty or nolo contendere that is accepted by the court or adjudication for an offense that would constitute a criminal offense if committed by an adult. "Conviction" also includes having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.

(c) "Direct contact" means providing face-to-face care, training, supervision, counseling, consultation, or medication assistance to vulnerable persons, regardless of the level of supervision of the employee. "Direct contact" may include positions in which persons have access to or unsupervised time with clients or patients, including but not limited to maintenance personnel, housekeeping staff, kitchen staff, and security personnel.

(d) "Employee" means an employee of the state department who is under the state personnel system of the state of Colorado.

(e) "Executive director" means the executive director of the state department.

(f) "State department" means the department of human services.

(g) "Vulnerable person" means any individual served by the state department who is susceptible to abuse or mistreatment because of the individual's circumstances, including but not limited to the individual's age, disability, frailty, mental illness, developmental disability, or ill health.

(1.7) The employment screening and disqualification requirements in this section apply to the following facilities or programs operated by the state department:

(a) Any facility operated by the state department for the care and treatment of persons with mental illness pursuant to article 10 of this title;

- (b) Any facility operated by the state department for the care and treatment of the developmentally disabled pursuant to article 10.5 of this title;
 - (c) Vocational rehabilitation services provided pursuant to article 8 of title 26, C.R.S.;
 - (d) Any direct services identified and provided by the state department in which employees have direct contact with vulnerable persons in a state-operated facility or in a vulnerable person's home or residence;
 - (e) State and veterans nursing homes operated pursuant to article 12 of title 26, C.R.S.;
 - (f) Any facility directly operated by the state department in which juveniles who are in the custody of the state department reside, including detention or commitment centers;
 - (g) Any secure facility contracted for by the state department pursuant to section 19-2-403, C.R.S., in which juveniles who are in the custody of the state department reside.
- (2) Prior to the state department's permanent employment of any person in a position that would require that person to have direct contact with any vulnerable person, the executive director or any division head of the state department shall make an inquiry to the director of the Colorado bureau of investigation to ascertain whether such person has a criminal history. Such person's employment shall be conditional upon a satisfactory criminal background check. Any criminal background check conducted pursuant to this subsection (2) shall include but need not be limited to arrests, conviction records, and the disposition of any criminal charges. The state department shall require said person to have his or her fingerprints taken by a local law enforcement agency. The local law enforcement agency shall forward those fingerprints to the Colorado bureau of investigation for the purpose of fingerprint processing utilizing the files and records of the Colorado bureau of investigation and the federal bureau of investigation. The state department shall pay for the costs of criminal background checks conducted pursuant to this section out of existing appropriations.
- (3) The executive director or any division head shall contact previous employers of any person who is one of the top three finalists for a position that would require that person to have direct contact with any vulnerable person, for the purpose of obtaining information and recommendations that may be relevant to such person's fitness for employment. Any previous employer of an applicant for employment who provides information to the executive director or a division head or who makes a recommendation concerning such person shall be immune from civil liability unless the information is false and the previous employer knows such information is false or acts with reckless disregard concerning the veracity of such information.
- (4) Any local agency or provider of services pursuant to this title or title 26, C.R.S., may investigate applicants for employment.
- (5) The executive director, any division head, or any local agency or provider who relies on information obtained pursuant to this section in making an employment decision or who concludes that the nature of any information disqualifies the person from employment as either an employee or a contracting employee shall be immune from civil liability for said decision or conclusion unless the information relied upon is false and the executive director, division head, or local agency or provider knows such information is false or acts with reckless disregard concerning the veracity of such information.

(6) The executive director may promulgate such rules as are necessary to implement the provisions of this section.

(7) (a) If the criminal background check conducted pursuant to subsection (2) or (9) of this section indicates that a prospective employee or prospective contracting employee was convicted of any of the disqualifying offenses set forth in paragraph (b) or (c) of this subsection (7), said person shall be disqualified from employment either as an employee or as a contracting employee in a position involving direct contact with vulnerable persons. A person who is disqualified as a result of this section shall not be hired or retained by the state department in a position involving direct contact with vulnerable persons nor be eligible to contract for or continue in a contract position designated by the executive director or the executive director's designee as involving direct contact with vulnerable persons.

(b) Except as otherwise provided in paragraph (d) of this subsection (7), a person shall be disqualified from employment either as an employee or as a contracting employee regardless of the length of time that may have passed since the discharge of the sentence imposed for any of the following criminal offenses:

(I) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(II) Any felony offense involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(III) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(IV) Any felony offense of child abuse, as defined in section 18-6-401, C.R.S.;

(V) Any felony offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described in subparagraph (I), (II), (III), or (IV) of this paragraph (b).

(c) Except as otherwise provided in paragraph (d) of this subsection (7), a person shall be disqualified from employment either as an employee or as a contracting employee if less than ten years have passed since the person was discharged from a sentence imposed for conviction of any of the following criminal offenses:

(I) Third degree assault, as described in section 18-3-204, C.R.S.;

(II) Any misdemeanor, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(III) Violation of a protection order, as described in section 18-6-803.5, C.R.S.;

(IV) Any misdemeanor offense of child abuse, as defined in section 18-6-401, C.R.S.;

(V) Any misdemeanor offense of sexual assault on a client by a psychotherapist, as defined in section 18-3-405.5, C.R.S.;

(VI) Any misdemeanor offense in any other state, the elements of which are substantially similar to the elements of any of the offenses described in subparagraph (I), (II), (III), (IV), or (V) of this paragraph (c).

(d) If a person was adjudicated a juvenile delinquent for the commission of any disqualifying offense set forth in either paragraph (b) or (c) of this subsection (7) and more than seven years have elapsed since the commission of the offense, the person may submit a written request to the executive director as provided in subsection (11) of this section for reconsideration of the disqualification.

(8) (a) Any employee who is employed in a position involving direct contact with vulnerable persons and who is arrested, charged with, or issued a summons and complaint for any of the disqualifying offenses set forth in paragraph (b) or (c) of subsection (7) of this section shall inform his or her supervisor of the arrest, charges, or issuance of a summons and complaint before returning to work. Any employee who fails to make such a report or disclosure may be terminated from employment. The state department or any facility operated by the state department shall advise its employees and contracting employees in writing of the requirement for self-reporting of the disqualifying offenses set forth in paragraph (b) or (c) of subsection (7) of this section.

(b) An employee who is charged with any of the disqualifying offenses set forth in paragraph (b) of subsection (7) of this section shall be suspended until resolution of the criminal charges or completion of administrative action by the state department. An employee who is charged with any of the disqualifying offenses set forth in paragraph (c) of subsection (7) of this section may be suspended at the discretion of the state department until resolution of the criminal charges or completion of administrative action by the state department. The employee shall inform his or her supervisor of the disposition of the criminal charges. Any employee who fails to report such information may be terminated from employment. Upon notification to the state department that the employee has received a conviction for any of the disqualifying offenses described in paragraph (b) or (c) of subsection (7) of this section, the employee shall be terminated from employment. Nothing in this paragraph (b) shall prohibit the state department from taking administrative action if the employee's conduct would justify disciplinary action under section 13 of article XII of the state constitution for failure to comply with standards of efficient service or competence or for willful misconduct, willful failure, or inability to perform his or her duties.

(9) The general assembly recognizes that the state department contracts with persons to serve in positions that involve direct contact with vulnerable persons in state-operated facilities or to provide state-funded services that involve direct contact with vulnerable persons in the homes and residences of such vulnerable persons. In order to protect vulnerable persons who come into contact with these contracting employees, the executive director or the executive director's designee shall designate those contract positions that involve direct contact with vulnerable persons that shall be subject to the provisions of this subsection (9). In any contract initially entered into or renewed on or after July 1, 1999, concerning a contract position that has been designated as involving direct contact with vulnerable persons, the state department shall include the following terms and conditions:

(a) That the contracting employee shall submit to a criminal background check as described in subsection (2) of this section for state employees;

(b) That the contracting employee shall report any arrests, charges, or summonses for any of the disqualifying offenses specified in paragraph (b) or (c) of subsection (7) of this section to the contracting employee's supervisor at the state department before returning to work;

(c) That the contracting employee may be suspended or terminated, at the discretion of the state department, prior to the resolution of the criminal charges for any of the disqualifying offenses specified in paragraph (b) or (c) of subsection (7) of this section;

(d) That, upon notification to the state department that the contracting employee has received a conviction for any of the disqualifying offenses described in paragraph (b) or (c) of subsection (7) of this section, the contracting employee's position with the state department shall be terminated.

(10) An employee or contracting employee who is disqualified due to conviction of any of the disqualifying offenses set forth in paragraph (b) or (c) of subsection (7) of this section may submit a written request to the executive director for reconsideration of the disqualification. Reconsideration under this subsection (10) may only be based on a mistake of fact such as an error in the identity of the person for whom the criminal background check was performed. If the executive director determines that there was a mistake of fact involving the identity of the person, the executive director shall issue a finding that the disqualifying factor is not a bar to the person's employment either as an employee or as a contracting employee.

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(11) (a) An employee or contracting employee who is disqualified for conviction of an offense specified in paragraph (c) of subsection (7) of this section may submit a written request to the executive director for reconsideration of the disqualification and a review of whether the person poses a risk of harm to vulnerable persons. In reviewing a disqualification, the executive director shall give predominant weight to the safety of vulnerable persons over the interests of the disqualified person. The final determination shall be based upon a review of:

- (I) The seriousness of the disqualifying offense;
- (II) Whether the person has a conviction for more than one disqualifying offense;
- (III) The vulnerability of the victim at the time the disqualifying offense was committed;
- (IV) The time elapsed without a repeat of the same or similar disqualifying offense;
- (V) Documentation of successful completion of training or rehabilitation pertinent to the disqualifying offense;
- (VI) Any other relevant information submitted by the person.

(b) The decision of the executive director shall constitute final agency action.

(12) Nothing in this section shall be construed to preclude the state department or the director of any facility operated by the state department from adopting a policy regarding self-reporting of arrests, charges, or summonses or a policy regarding disqualification from employment that includes other offenses not set forth in paragraph (b) or (c) of subsection (7) of this section.

Source: L. 93: Entire section added, p. 1705, § 1, effective June 6. L. 94: (2) amended, p. 2710, § 282, effective July 1. L. 99: Entire section amended, p. 917, § 1, effective July 1. L. 2002: (7)(b)(II) amended, p. 1190, § 35, effective July 1; (7)(b)(I) amended, p. 1541, § 280, effective October 1. L. 2003: (7)(c)(III) amended, p. 1018, § 32, effective July 1. L. 2006: (1.7)(a) amended, p. 1406, § 69, effective August 7.

Cross references: For the legislative declaration contained in the 1994 act amending this section, see section 1 of chapter 345, Session Laws of Colorado 1994. For the legislative declaration contained in the 2002 act amending subsection (7)(b)(I), see section 1 of chapter 318, Session Laws of Colorado 2002.

