

TITLE 89: SOCIAL SERVICES
CHAPTER III: DEPARTMENT OF CHILDREN AND FAMILY SERVICES
SUBCHAPTER d: LICENSING ADMINISTRATION

PART 385
BACKGROUND CHECKS

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AUTHORITY: Implementing and authorized by the Child Care Act of 1969 [225 ILCS 10]; Section 5(a)(3)(A) and (F) and (v) of the Children and Family Services Act [20 ILCS 505]; and Section 55a(34) of the Civil Administrative Code [20 ILCS 2605] Adam Walsh Child Protection and Safety Act (P.L. 109-248).

SOURCE: Emergency rules adopted at 10 Ill. Reg. 19123, effective October 29, 1986, for a maximum of 150 days; adopted at 11 Ill. Reg. 6398, effective March 31, 1987; amended at 13 Ill. Reg. 5917, effective May 1, 1989; emergency amendment at 20 Ill. Reg. 3930, effective March 1, 1996, for a maximum of 150 days; modified in response to Joint Committee on Administrative Rules objection at 20 Ill. Reg. 5712; emergency expired July 28, 1996; amended at 21 Ill. Reg. 4444, effective April 1, 1997; emergency amendment at 28 Ill. Reg. 1167, effective January 1, 2004, for a maximum of 150 days; emergency expired May 29, 2004; amended at 28 Ill. Reg. 13432, effective September 30, 2004; amended at 33 Ill. Reg. 4117, effective February 27, 2009; amended at 36 Ill. Reg. 2136, effective January 30, 2012; amended at 37 Ill. Reg. 12827, effective July 30, 2013; amended at 39 Ill. Reg. 5384, effective March 25, 2015; amended at 45 Ill. Reg. 12963, effective September 28, 2021.

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Section 385.10 Purpose

The purpose of this Part is to ensure the safety and well being of children cared for in an unlicensed relative home or in any facility subject to licensing by the Department of Children and Family Services by requiring that the operators of child care facilities and other persons subject to background checks, as defined in the Child Care Act of 1969 [225 ILCS 10/4.2] and Section 385.20, be screened for a history of child abuse or child neglect, prior criminal convictions, or pending criminal charges.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

Section 385.20 Definitions

"Access to children" means a child care facility employee's duties that require the employee to be present in a licensed child care facility during the hours that children are present in the facility. In addition, any person who is permitted to be alone outside the visual and auditory supervision of facility staff with children receiving care in a licensed child care facility is subject to the background check requirements of this Part.

"Adult" means any person who is 18 years of age or older.

"Assistant" or "child care assistant" means a person whose credentials have been evaluated and approved by the DCFS Licensing Division for the purpose of assisting a licensed home caregiver in the operation of the day care home, group day care home, or foster family home.

"Authorization for background check" means a complete, signed form prescribed by the Department which authorizes a background check as defined in this Part and submission of fingerprints, if required. An authorization for a background check may be used for the initial and all subsequent background checks required to determine compliance with the requirements of this Part.

"Background check" means:

a criminal history check via fingerprints of persons age 18 and over that are submitted to the Illinois State Police (ISP) and the Federal Bureau of Investigation (FBI) for comparison to their criminal history records or the National Crime Information Database (NCID) when applicable for prospective foster and adoptive parents; and

a check of the Child Abuse and Neglect Tracking System/Statewide Automated Child Welfare Information System (CANTS/SACWIS) and other state child protection systems, and the National Registry to determine whether an individual is currently alleged or has been indicated as a perpetrator of child abuse or neglect; and

a check of the Illinois and National Sex Offender Registries.

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"Child" means any person under 18 years of age. (Section 2.01 of the Child Care Act)

"Child Care Act" means the Illinois Child Care Act of 1969 [225 ILCS 10].

"Child care facility" means any person, group of persons, agency, association or organization, whether established for gain or otherwise, who or which receives or arranges for care or placement of one or more children, unrelated to the operator of the facility, apart from the parents, with or without the transfer of the right of custody, in any facility as defined in the Child Care Act, established and maintained for the care of children. "Child care facility" includes a relative who is licensed or who applies for a license as a foster family home under Section 4 of the Child Care Act. (Section 2.05 of the Child Care Act) A child care facility also means those facilities described in the Child Care Act, including any child care institution, maternity center, child welfare agency, day care center, day care agency, group home, foster family home, day care home, group day care home, partially exempt secure child care facility, or youth emergency shelter.

"Conditional employee" means an individual (including any volunteer, unlicensed contractual employee, substitute or assistant) who has applied for and been conditionally selected to perform child care functions or administrative, professional, or support functions that allow access to children and who has commenced such duties while awaiting the results of the background check required by this Part.

"Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense, rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury. (Section 2-5 of the Criminal Code of 2012 [720 ILCS 5/2-5])

"Denial of application for license" means the refusal to grant a license or permit to a person, group of persons, agency, association or organization that applied for a license to operate a child care facility.

"Department" or "DCFS" means the Illinois Department of Children and Family Services. (Section 2.02 of the Child Care Act)

"Director" means the Director of the Illinois Department of Children and Family Services.

"Employee" means any staff person employed by a child care facility, including any volunteer, unlicensed contractual employee, substitute, or assistant and other support staff who have access to children.

"Final placement decision" means the decision made by the Department, within 90 days, including background check results, after the initial placement of a child with a relative, to leave or remove the child in the relative home based on the evaluation

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of the results of the criminal background check of the relative and household members and based on the best interests of the child.

"Governing body" means the board of directors of a corporation; otherwise, the term means the owners or other persons, agency, association or organization legally responsible for the operation of the child care facility.

"Illinois Sex Offender Registry" means the registry of any person convicted of a felony sex crime or an attempt to commit a felony sex crime operated and maintained by the Illinois State Police.

"License" means a document issued by the Department that authorizes child care facilities to operate in accordance with applicable standards and the provisions of the Child Care Act.

"License applicant" means, for purposes of background checks, the operator or person with direct responsibility for daily operation of the facility to be licensed. (Section 4.4 of the Child Care Act)

"Licensing entity" means the Department or a supervising agency recommending the license or processing the employment application.

"Licensing representative" means a person authorized by the Department under the Child Care Act to examine facilities for licensure.

"Member of the household" means a person of any age whose legal residence is at a licensed foster home, day care home or group day care home, or any adult who stays in the home on a regular or part-time basis, including paramours.

"Minor traffic violation" means a traffic violation under the laws of the State of Illinois or any municipal authority therein or another state or municipal authority that is punishable solely as a petty offense. (Section 6-601 of the Illinois Driver Licensing Law [625 ILCS 5/6-601])

"Multi-function agency" means an agency, association, or other organization that operates a child care facility, child welfare agency, or day care agency in addition to other services not subject to licensure under the Child Care Act. A child care facility, child welfare agency, or day care agency may consist of distinct units, divisions, or departments of a multi-function agency. In a multi-function agency, only the persons with direct authority for the operations of the child care facility and those who have access to children, as defined in this Section, are subject to the background check requirements of this Part.

"National Crime Information Database" or "NCID" means the National Crime Information Center and its incorporated criminal history databases.

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"National Registry" means an electronic national registry of substantiated cases of child abuse and neglect supplied by the states, created by the U.S. Secretary of Health and Human Services in consultation with the U.S. Attorney General.

"National Sex Offender Registry" means an electronic national registry, operated and maintained by the United States Department of Justice, of any person convicted of a felony sex crime or an attempt to commit a felony sex crime in any state.

"Non-Licensed Service Provider" *means an individual or entity that contracts with the Department to provide child welfare services that enable the Department to perform its duties under the Abused and Neglected Child Reporting Act [325 ILCS 5], the Child Care Act, and the Children and Family Services Act [20 ILCS 505]. [225 ILCS 10/2.28]* It also includes a person who provides child care in their home to a child for whom the Department is legally responsible on a weekly basis, such as weekly or several times per week, and caring for no more than 3 children under the age of 12 or receives only children from a single household for less than 24 hours per day. The three children include the family's own children or adopted children and any other persons under the age of 12, whether related or unrelated to the service provider. (See 89 Ill. Adm. Code 377.3(d))

"Operator" means any person responsible for the day-to-day management of the child facility.

"Parental involvement" means parental assistance with a child care program such as participation in field trips, parties, attendance on special days for special events, or parental support and cooperation in the classroom.

"Persons subject to background checks" means:

the operators of the child care facility;

all current and conditional employees of the child care facility;

all direct child welfare agency employees (see 89 Ill. Adm. Code 412);

any person who is used to replace or supplement staff;

any person who has access to children, as defined in this Section;

any person, including non-licensed service providers, who provides services that allow unsupervised access to children if the requirement for background checks is a condition of a contract or agreement or is required otherwise under 89 Ill. Adm. Code 357 (Purchase of Service); and

volunteers who have unsupervised contact with children.

If the child care facility operates in a family home, the license applicants and all members and prospective members of the household age 13 and over are

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subject to background checks, even if these members of the household are not usually present in the home during the hours the child care facility is in operation.

Non-licensed service providers who, on a regular basis, provide care in the provider's home to a child for whom the Department is legally responsible and all members of the household age 13 or over are subject to background checks.

For a final placement decision in a relative home, the relative and all members of the household age 18 and over are subject to criminal background checks (see 20 ILCS 505/5(v-1)).

"POS" means point of service.

"Presumption of Unsuitability" means a licensee, applicant for licensure, or a member of the applicant's or licensee's household that has been:

indicated as a perpetrator of neglect and/or abuse that resulted in a 20- or 50-year retention; or

indicated as a perpetrator on two separate child protection investigations, each with 5-year retentions.

"Replacement or supplemental staff" means any paid or unpaid individual who is used to perform essential staff duties as evidenced by being counted in the staff-child ratio or being allowed to be alone with children in a licensed child care facility outside the visual or auditory supervision of facility staff.

"SACWIS" means the Statewide Automated Child Welfare Information System operated by the Department, replacing CANTS.

"Seasonal child care program" means a child care facility that operates a seasonal program that is subject to licensing by the Department.

"State Central Register" means the child abuse and neglect data system maintained by the Department pursuant to the Abused and Neglected Child Reporting Act [325 ILCS 40].

"Supervising agency" means a licensed child welfare agency, a licensed day care agency, a license-exempt agency, or the Department.

"Work-Study student" means a fulltime or parttime undergraduate, graduate or professional student participating in the Federal Work-Study Program administered through their school's financial aid office.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

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Section 385.30 Applicability of This Part

a) Applicability

All licensed child care facilities shall submit completed, signed authorizations for background checks for all persons subject to background checks as defined in Section 385.20.

b) License Renewals

A child care facility license shall not be renewed until the results of the background check, as defined in Section 385.20, have been received for the operator of the child care facility. However, if complete, signed authorizations have been submitted and fingerprints have been obtained for all persons subject to these background checks, renewal of the license shall not be delayed pending receipt of the results of the criminal background check for other persons subject to background checks.

c) Scope of Background Checks

1) All persons subject to background checks, as defined in Section 385.20, shall be processed in accordance with this Part. All persons age 18 and over shall submit to fingerprinting via the fingerprint vendor stipulated by the Department for a criminal history check. Fingerprints shall be submitted for the purpose of searching for criminal history through the Illinois and national fingerprint databases.

2) Foreign nationals shall submit to their prospective employer (if seeking employment) or licensing representative (if seeking a license to operate a child care facility) a copy of their valid passport and current visa. A copy of the valid passport and current visa shall be attached to the authorization for background check.

3) In addition, each owner of a for-profit corporation, as a condition of license renewal, must *certify under penalty of perjury that he or she is current or not more than 30 days delinquent in complying with a child support order. Failure to so certify may result in a denial of the license application, refusal to renew the license, or revocation of the license.* [5 ILCS 100/10-65(c)]

4) Fingerprints for the following persons age 18 and over shall be submitted to the Federal Bureau of Investigation (FBI) for a search of its records for evidence of prior criminal activity:

A) all applicants for foster family home licensure and members of the household;

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- B) all relative caregivers and members of the household prior to a final placement decision in a relative home [20 ILCS 505/5(v-1)]; and
 - C) a non-licensed service provider and all members of the non-licensed provider's household age 18 and older who have access to children as defined in Section 385.20;
- 5) For *prospective foster or adoptive parents or other adult living in the home who resided in another state in the preceding 5 years, the Department shall request a check of that other state's child abuse and neglect registry and the National Sex Offender Registry.* [20 ILCS 505/5(v-2)]

d) A Condition of Employment

As a condition of employment in a licensed child care facility in a position that allows access to children, all persons subject to background checks, as defined in Section 385.20, shall complete and sign authorizations for background checks and submit to fingerprinting, when required. This applies to all current and conditional employees and volunteers subject to background checks, as defined in Section 385.20, and to any individual used as replacement or supplemental staff in the direct care and supervision of children.

e) Child Care Facilities and Non-Licensed Service Providers that Operate Within a Family Home

When a licensed child care facility or non-licensed service provider operates in a family home, adult members of the household age 18 and older shall be fingerprinted to be screened for prior criminal convictions and current pending criminal charges in accordance with the requirements of this Part. All household members age 13 and over shall be screened for a history of child abuse or neglect and for inclusion in the Illinois Sex Offender Registry. These background checks are required even if members of the household usually are not present in the home during the hours of operation.

f) Programs Operated Under the Auspices of Child Welfare or Day Care Agencies

The background check requirements of this Part apply to:

- 1) employees of a child welfare agency who are involved in the placement in, licensure of, or supervision of foster family or adoptive homes, relative homes, group homes, child care institutions, youth emergency shelters, or independent living arrangements;
- 2) employees of a child welfare agency or day care agency who are involved in the licensure or supervision of licensed day care homes; and

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- 3) persons used as replacement or supplemental staff identified in subsection (f)(1) or (2).

g) Service Providers

As a condition of a contract or agreement, or as otherwise required under 89 Ill. Adm. Code 357 (Purchase of Service), the Department will require a person who provides services that allow unsupervised access to children, including non-licensed service providers, to authorize a background check under this Part.

h) Issuance of Permits

A permit may be issued when:

- 1) the facility operator has cleared a full and complete background check as defined in Section 385.20;
- 2) if a for-profit corporation or other for-profit legal entity, the owner has certified that the owner is current or not more than 30 days delinquent in complying with a child support order;
- 3) all persons subject to background checks have been fingerprinted when required, as verified by a fingerprint receipt, and have obtained all required CANTS/SACWIS and Illinois and National Sex Offender Registry clearances; and
- 4) the facility is in compliance with all other applicable licensing requirements for issuance of a permit.

i) Work-Study Students

No criminal history check is required unless work-study students are used as replacement or supplemental staff, as defined in Section 385.20. However, CANTS/SACWIS and Illinois Sex Offender Registry checks must be completed for all work-study students.

j) Parental Involvement

Parental involvement in a child care facility program does not require a background check. Nothing in this Part is intended to prohibit a parent from being left alone unsupervised with only their own children. When a required staff position is filled by a parent, the parent shall meet all standards that apply to an employed person in that position.

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Child care facilities shall be responsible for ensuring that persons subject to criminal background checks make themselves available for fingerprinting when scheduled by the Department or its authorized representatives. Failure of a person subject to criminal background checks to appear for fingerprinting may result in the denial of a license application or refusal to renew or revocation of an existing license unless the child care facility can demonstrate that it took reasonable measures to insure cooperation with the fingerprinting process. Adequate cause for failure to appear for fingerprinting includes, but is not limited to:

- 1) death in the family of the person;
- 2) serious illness of the person or illness in the person's immediate family; or
- 3) weather or transportation emergencies.

l) Limitations on Criminal Offenders

Persons age 18 and over who have been convicted of committing or attempting to commit the offenses in Section 385.60(a) or (b) (when applicable) and when the Department becomes aware of persons age 13 and over who have been tried as an adult and convicted for the crimes identified in Section 385.60(a) or (b) shall not:

- 1) receive a license from the Department to operate a child care facility or have such a license renewed;
- 2) be an employee, non-licensed contractual provider, or volunteer at a child care facility licensed by the Department in a position which allows access to children;
- 3) be a member of the household in a family home in which a child care facility operates; or
- 4) obtain a contract or agreement from the Department to provide services which allow access to children if the requirement for such background checks is a condition of the contract or agreement.

m) Limitations on Perpetrators of Child Abuse/Neglect

Persons who have been indicated as the perpetrator of any of the child abuse/neglect allegations identified in Section 385.50(a) are presumed to be unfit for service that allows access to children. These indicated perpetrators are limited in the same manner as the criminal offenders in subsection (l) unless the Director or designee has waived in writing the presumption of unsuitability. These waivers may be requested in writing in accordance with Section 385.50(b). Prior to requesting a waiver, the Department or POS licensing staff must obtain written consents from the applicant/perpetrator to review the full child protection record.

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n) No Charge for Background Checks

There is no charge to license applicants or licensed child care facilities for the background checks which are required by this Part.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

Section 385.40 Authorization for Background Checks

a) Persons Required to Authorize Background Checks

- 1) All providers (including non-licensed service providers, contractors, child care staff, and volunteers) are required to authorize background checks (as defined in Section 385.20) and shall authorize those checks as a condition of employment. Documentation shall be provided at the time of initial application for licensure and at the time of license renewal.
- 2) Each owner of a child care facility must certify, under penalty of perjury on forms prescribed by the Department, *that he or she is current or not more than 30 days delinquent in complying with a child support order. Failure to so certify may result in a denial of the license application, refusal to renew the license, or revocation of the license.* (Section 10-65(c) of the Illinois Administrative Procedure Act [5 ILCS 100/10-65(c)])

b) Contents of Authorization

The authorization required by this Section shall be on forms prescribed by the Department and shall include:

- 1) identifying information consisting of name, address, Social Security number, date of birth, height, weight, hair and eye color, previous names and addresses;
- 2) a certification under penalty of perjury identifying any prior criminal convictions other than a minor traffic violation, as defined by this Part, and of any pending criminal charges;
- 3) authorization for the Department to release the results of the background check to the governing body or employer or, in the case of a group home or a child care facility operating in a family home, to the supervising agency for the child care facility; and
- 4) a disclaimer that the individual signing the authorization for background check has a right to make a written request for, and to receive a copy of, the background check results.

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c) Employees Absent from Active Duty

For purposes of this Part only, employees who have been separated from a child care facility licensed by the Department for six months or longer (for reasons other than vacation, sabbatical leave, sick leave or maternity leave) shall no longer be considered current employees. Upon their return to active duty, the individuals shall be required to again authorize a background check pursuant to this Part.

d) Transfers Between Licensed Facilities

A facility that hires an employee who has cleared a full and complete background check, as defined in Section 385.20, at a facility licensed by the Department shall submit a new signed authorization of background check for the employee. An employee who has cleared a background check as described in this subsection does not need to be fingerprinted again unless the Department specifically requests new prints.

e) Operation of Seasonal Programs

A check of the CANTS/SACWIS, the Illinois and National Sex Offender Registries must be completed when child care facilities hire staff to operate seasonal programs and discharge or lay off the staff until the beginning of the next season, when the time period between the end of one seasonal program and the beginning of the next program is more than six months before the individual begins his or her duties for the next season.

f) Commingling Not Permitted

If a child care facility operates within the same building as other agencies or organizations or is part of a multi-function agency that offers services which are not subject to Department licensing, the child care facility shall develop a plan to limit access to children receiving care in the licensed facility by individuals who are not subject to the background check requirements of this Part. The plan shall be approved in writing by the governing body and the Department.

g) Conditional Employment

Individuals hired to begin employment who have authorized the background check required by this Part may be employed by a child care facility on a conditional basis pending the outcome of the required background check. The form authorizing such a background check shall be submitted to the Department.

h) Limitations on the Use of Conditional Employees

Conditional employees shall not be left alone with children outside the visual and auditory supervision of staff until they have cleared all required background checks.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

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Section 385.50 Child Abuse or Child Neglect

a) Indicated Reports of Child Abuse/Neglect

An individual who is a household member and identified as a perpetrator of child abuse/neglect in a single child protection investigation that does not rise to the level of a presumption of unsuitability can be assessed and recommended for waiver at the supervisory level. An individual who is a household member and identified as a perpetrator of child abuse/neglect in child protection reports that create a presumption of unsuitability (a single indicated report resulting in 20 or 50 year retention or two indicated reports each with a five year retention period) shall require a waiver through the Director or designee in order to be cleared.

b) Assessment of Indicated Reports

1) A household member, employee, applicant for employment, volunteer or non-licensed contractual provider indicated as a perpetrator in a child protection investigation that does not rise to the level of a presumption of unsuitability shall be assessed in order to determine a recommendation to grant or deny a waiver for licensure or employment. The assessment shall include the Department or POS licensing staff obtaining a written consent and reviewing the child protection records, as well as the following details:

- A) the nature of the abuse or neglect with which the individual was identified, including whether the abuse or neglect resulted in serious injury or death to a child or children;
- B) the circumstances surrounding the commission of the abuse or neglect, including the age of the perpetrator and the children, that would demonstrate unlikelihood of repetition;
- C) the amount of time that has elapsed since the abuse or neglect occurred and whether prior incidents of child abuse or child neglect have been indicated against the individual;
- D) whether the abuse or neglect involved single or multiple child victims;
- E) the relationship of the incident of child abuse or neglect to the individual's current or conditional job responsibilities within the child care facility;
- F) whether the individual has been convicted of a criminal offense which might have bearing on the individual's ability to function in a child care facility as licensee or employee;

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- G) evidence of rehabilitation such as employment, education, participation in therapy since the indicated incident of abuse or neglect; and
 - H) three positive character references.
- 2) When a household member, employee, applicant for employment, volunteer or non-licensed contractual provider has been indicated as a perpetrator in a child protection investigation that equates to a presumption of unsuitability, the licensing entity or employer may request a review of the denial and request a waiver of the presumption of unsuitability. Requests for a waiver of presumption of unsuitability shall be in writing and postmarked within 30 days after notice is received by the licensing entity or employer. The Department or Purchase of Service Agency shall review the child protection reports that led to the indicated findings that equate to a presumption of unsuitability, before making a decision in requesting a waiver for a presumption of unsuitability.
- 3) The Director of the Department or the Director's designee shall review any materials submitted on the individual's behalf and may waive the presumption that the individual is unsuitable for licensure or employment. When the Director or designee determines there is good cause for waiving the presumption of unsuitability, the hiring or licensing decision shall be made in accordance with the totality of the requirements of this Part and the applicable licensing standards.
- c) Notification of Hiring Decision
- A child care facility shall notify the Department in writing of its decision regarding the employment of a person, or retention of an employee, who has been indicated as a perpetrator of child abuse/neglect. The decision of the employer is final. Employment decisions may not be appealed to the Department.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

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Section 385.60 Criminal Convictions and Pending Criminal Charges

- a) Convictions that are Bars to Licensure/Employment
 - 1) Persons convicted of crimes or convicted of attempting to commit crimes identified in Section 4.2(b) of the Child Care Act shall not receive a license to operate a child care facility or gain employment in a licensed child care facility.
 - 2) When a licensee is convicted of crimes that are non-waivable bars to licensure, or convicted of attempting to commit these crimes, action shall be taken by the supervising licensing entity:
 - A) to begin the revocation process or the process to refuse to renew the license; or
 - B) to refuse to issue a full license, subsequent to a permit.
 - 3) When an employee in a licensed child care facility is convicted of non-waivable bars to employment or is convicted of attempting to commit one of these crimes, the facility can no longer employ that person and remain in compliance with the Child Care Act. This includes persons who have been:
 - A) declared a sexually dangerous person under the Sexually Dangerous Persons Act [725 ILCS 205] or identified as a sex offender in the Illinois Sex Offender Registry operated by the Illinois State Police;
 - B) convicted of committing or attempting to commit any of the offenses specified in this Part that are defined by the Criminal Code of 2012 [720 ILCS 5] or any earlier Illinois criminal law or code (see Section 4.2 of the Child Care Act); or
 - C) convicted of committing or attempting to commit an offense in another state, the elements of which are similar to, and bear a substantial relationship to, any of the criminal offenses specified in Section 4.2(b) of the Child Care Act.
- b) Special Provisions for Foster Family Homes

In addition to the provisions set forth in subsection (a), no applicant may be licensed by the Department to operate a foster family home, and no person may reside in a foster family home licensed by the Department, who has been convicted of committing or attempting to commit any of the offenses listed in Section 4.2 of the Child Care Act, and Section 5(v-1) of the Children and Family Services Act [20 ILCS 505], or who is included in the Illinois or National Sex Offender Registry (unless the offender is a ward of the State of Illinois placed in the foster home by the Department or its contractual agent).

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c) Assessment of Criminal Convictions

Except as specified in subsections (a) and (b), an individual convicted of a crime will not automatically be prohibited from licensure, renewal of a license, or employment in a child care facility, from residing in a family home in which a child care facility operates. The following shall be considered:

- 1) the nature of the crime for which the individual was convicted;
- 2) the circumstances surrounding the commission of the crime, including the age of the individual, that would demonstrate a low likelihood of repetition;
- 3) the period of time that has elapsed since the crime was committed;
- 4) the number of crimes for which the individual was convicted;
- 5) evidence of rehabilitation such as successful participation in therapy since conviction;
- 6) commutation of the sentence by the Governor or granting of a pardon;
- 7) overturn of the conviction upon appeal;
- 8) three character references;
- 9) the relationship of the crime to the capacity to care for children or to have access to children cared for in a child care facility;
- 10) whether the employee/foster parent disclosed a criminal background and the circumstances of the conviction and, if not, why; and
- 11) the development of a supervisory or monitoring plan that the Department has approved.

d) Assessment of Pending Criminal Charges

- 1) When an employer receives notice that an employee has a pending charge for a crime listed as a barring offense, the employer shall immediately inform the employee and take action to develop a protective plan to ensure the employee does not have unsupervised access to children. The employer shall request a written consent from the employee to allow the employer to have full access to current pending charges. The employee shall have responsibility to gain disposition on pending charges that would be a bar, if convicted, before a decision is made related to employment.

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- 2) When the supervising agency of a licensed facility receives notice that a licensee or household member has a pending charge for a crime listed as a barring offense, the supervising agency shall take steps necessary to develop a protective plan to ensure the safety, health and welfare of children served. The licensee shall be responsible to see disposition is received on pending charges that would be a bar to licensure, if convicted.
 - 3) For pending charges that are not bars to employment or licensure, the following areas shall be assessed in determining whether disposition is needed, before action is taken on employment or a license:
 - A) the seriousness and nature of the charges that are pending, including a determination of whether the charges are among those listed in Section 4.2(b), (b-1), (b-1.5), or (c) of the Child Care Act that serve as a bar to licensure or employment in a position that allows access to children;
 - B) the circumstances surrounding the incident that led to the criminal charge;
 - C) the relationship of the charges to the ability to care for children or to have access to children and confidential information in a child care facility;
 - D) whether the individual has ever been convicted of or charged with crimes of a similar nature; and
 - E) three positive character references and other information submitted by or on behalf of the appellant or any other person, especially about the suitability of the individual to care for children.
- e) Notification of Hiring Decision

A child care facility shall notify the Department in writing of its decision to employ a person, or retain an employee, with a criminal history. The decision of the employer is final. Employment decisions may not be appealed to the Department.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

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Section 385.70 Disposition of Background Checks

a) Notice of Findings

When the subject of the background check is the director, administrator or other chief executive officer of the facility, the Department will notify in writing the presiding officer of the governing body of the results of the check, and the presiding officer shall take those actions required by this Part. In the case of a group home or a child care facility that operates in a family home, the Department will notify in writing the supervising agency for the facility of the results of the check.

b) Child Care Facility Decision Regarding Employment

It shall be the responsibility of the governing body or operator of the facility to determine whether to hire or continue the employment of a conditional employee or to reassign the individual in question to a position that does not allow access to children, to provide the individual an opportunity for a review in accordance with the facility's personnel policies, and to notify the Department in writing of its employment decision within 30 days after receipt of the information from the Department. The decision of the employer is final, subject to review under the personnel policies of its governing body. These hiring decisions may not be appealed to the Department.

c) Request for Subsequent Background Check

The employer of a person who has been relieved of child-related duties pursuant to this Part may request another background check if the circumstances leading to the relieving of child care duties have changed. A change of circumstances may include, but is not limited to:

- 1) pending criminal charges have been dismissed or have resulted in an acquittal or conviction for a lesser charge;
- 2) a conviction is reversed on appeal;
- 3) the indicated finding of abuse or neglect is expunged, amended to another allegation, or amended to "unfounded";
- 4) a pending child protection investigation of abuse or neglect is "unfounded";
or
- 5) the records of the circuit court or local or State Police, if relied upon to reach the decision, have been amended.

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d) Delinquent Child Support

If a license applicant has been denied, or the Department has refused to renew, a license because the applicant is more than 30 days delinquent in child support, the applicant may reapply after submitting proof that the child support has been paid in full or that a payment schedule has been arranged with the Department of Healthcare and Family Services (Title IV-D support cases) or the court of jurisdiction (all other child support cases).

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

Section 385.80 Appeal of Decision to Deny License or Permit Based on Background Check Information

a) Notice of Decision to Deny Licensure Based Upon Background History

- 1) When an application for licensure is denied due to criminal background history or identification as an indicated perpetrator of abuse/neglect, the supervising agency shall send notice to the applicants for licensure of the denial, including the reason for denial. The initial notice of denial shall provide the applicant the opportunity to request a review of the decision by Central Office of Licensing Review Committee. When there is a request for a review of the decision, the Central Office shall send a notice of decision that the request was granted or denied. When the request for review of the decision is denied, the notice shall provide an opportunity for the applicant to appeal the decision to the DCFS Administrative Hearings Unit for its review and determination.
- 2) When there is no request for a review of the decision by the Central Office of Licensing Review Committee, the assigned licensing unit shall send a second and final notice of denial, which provides an opportunity for the applicant to appeal to the Administrative Hearings Unit for review and determination.

b) What May Be Appealed Under This Part

A license applicant may appeal:

- 1) the denial of an initial license based upon a background check conducted in accordance with this Part; or
- 2) the denial of a permit based upon a background check conducted in accordance with this Part.

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c) What May Not Be Appealed Under This Part

The DCFS Chief Administrative Law Judge will decide whether an issue is appropriate for a fair hearing under subsection (b). Issues inappropriate for a fair hearing under this Part include, but are not limited to:

- 1) a decision based upon a background check conducted pursuant to this Part that revealed that the license applicant has a criminal conviction that bars licensure or employment or residence in a licensed child care facility pursuant to Section 4(a) and (b) of the Child Care Act, unless the licensing applicant can establish that an exception, as provided in Section 4(b)(2) of the Act, may exist (see Appendix A); or
- 2) a decision based upon a background check conducted pursuant to this Part that revealed that the license applicant has a criminal conviction that bars licensure of or residence in a foster family home pursuant to Section 4(c) of the Child Care Act, unless the licensing applicant can establish that an exception, as provided in Section 4(d) of the Act, may exist.

d) Appeal Request

- 1) An individual requesting an opportunity for an appeal pursuant to subsection (b) shall submit the request, in writing, to the:

Administrative Hearings Unit
Department of Children and Family Services
406 E. Monroe St., Station #15
Springfield, Illinois 62701

- 2) All such requests must be postmarked within 10 days after the date of written notice of the denial of an application for license or permit.

e) Review of File

- 1) After the Administrative Hearings Unit has received the individual's request for an appeal, the Administrator of the Unit shall notify the Department that the individual has filed an appeal and the Department will send to the Administrator a copy of the notice of denial of the application for a license or permit. The notice of denial shall be prima facie evidence that the Department had a basis for refusing to issue the license or permit.
- 2) The Administrator shall ask both the Department and the individual to submit any documents, records, statements, or other materials pertinent to the Department's denial of the application for licensure to create an appeal file. The Administrator shall further advise the Department and the individual of the intent to examine the appeal file, including all materials submitted for the appeal file, to determine whether a genuine issue of material fact exists. Within 10 business days after the date of the

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Administrator's request for materials, both the Department representative and the individual shall submit to the Administrative Hearings Unit any and all documents, records, statements, materials, or evidence to establish that the Department's decision to deny the license because of the background check was either correct or incorrect.

- 3) At least 10 business days after the Administrator's request for materials, the Administrator shall examine the entire appeal file, including all materials submitted by both parties, and shall determine if a genuine issue of material fact exists.
- 4) If the Administrator determines that no genuine issue of material fact exists, the Administrator shall dismiss the appeal. The letter dismissing the appeal shall be the final administrative decision of the Department.

f) The Appeal Process

The individual shall be notified, in writing, of the date, time and location of the appeal hearing. The individual may be represented by counsel and may present evidence and/or witnesses. The individual shall be required to produce evidence that the person identified in the background report is not the individual in question or that the background check report is inaccurate. If the issue is delinquency in the payment of child support, the individual shall provide evidence that the child support has been paid in full or that a payment schedule has been arranged with the Department of Healthcare and Family Services (Title IV-D cases) or a court of jurisdiction (all other child support cases). Evidence to be considered shall be limited to:

- 1) When the appeal involves an indicated CANTS/SACWIS report, written statements from the administrator of the child protection division for the Department that the individual named in the report is not the individual in question or that the record has been expunged or amended; or
- 2) When the appeal involves a criminal history record, evidence shall be limited to written statements from a law enforcement agency or clerk of the court: that the subject of the criminal history record provided to the Department is not the individual in question, was never convicted of the crimes as alleged in the criminal history record, or was granted a full pardon by the Governor indicating that the person did not commit the crime; the crime was amended or expunged; or the information in the criminal history record concerning the existence of the conviction was erroneous; or
- 3) When the appeal involves delinquent child support, written statements from the Department of Healthcare and Family Services or the clerk of the court, as applicable, that child support has been paid in full or a payment schedule arranged or that the payment record was incorrect.

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g) Final Administrative Decision

The administrative law judge conducting the appeal must conclude that, when all the evidence presented pursuant to this Part and the applicable licensing standards are considered, there is clear and convincing evidence that the individual is not the person named in the indicated report/criminal history record or that the individual is suitable for service that allows access to children. If the appeal is addressing the issue of delinquent child support, the individual must submit proof that the record was in error or that he or she has paid the delinquency or made arrangements for payment of delinquent child support. The final administrative decision is made by the Director and, subject to review by a court of competent jurisdiction.

h) Record of Appeal

A written record shall be made of any reviews conducted pursuant to this Section, and that record shall contain copies of all documents relied upon in making the determination of fitness or unfitness for licensure.

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

Section 385.90 Records to be Maintained by the Child Care Facility

- a) The governing body or operator of a child care facility shall maintain a copy of the authorization for background checks required by Sections 385.40 and 385.50 as part of the personnel records of the facility for a period of five years from the date of termination of the employment of the employee.
- b) The background check record of any conclusions or recommendations resulting from the review of the findings of that check by the governing body or operator of the child care facility shall be maintained for five years after termination of the employment in a separate, confidential file apart from other personnel records. Access to those records shall be permitted for the following:
- 1) the subject of an individual record;
 - 2) the governing body or operator of the child care facility;
 - 3) Department licensing staff;
 - 4) Department staff authorized, in writing, by the Director to conduct background checks pursuant to this Part;
 - 5) persons who are authorized, in writing, by the governing body or operator of the child care facility and whose duties are related to the background checks or its findings;

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- 6) Department representatives who have the Director's written authorization specifying the statutory authority or administrative rules under which the access is granted; and
- 7) other persons who are lawfully entitled to the information (e.g., persons with a valid subpoena, law enforcement personnel, or the attorneys of the individual in question).

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

Section 385.100 Confidentiality of Background Check Information

Any employee of the Department of Children and Family Services, the Illinois State Police, or a child care facility receiving confidential information under this Section who gives or causes to be given any confidential information concerning any criminal convictions or child abuse or neglect information of a child care facility applicant, or child care facility employee, shall be guilty of a Class A misdemeanor unless release of such information is authorized by Sections 4.1 and 4.3 of the Child Care Act of 1969 [225 ILCS 10/4.1 and 4.3].

(Source: Added at 21 Ill. Reg. 4444, effective April 1, 1997)

Section 385.110 Severability of This Part

If any court of competent jurisdiction finds that any rule, clause, phrase, or provision of this Part is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portions of this Part.

(Source: Renumbered from Section 385.70 at 21 Ill. Reg. 4444, effective April 1, 1997)

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Section 385.APPENDIX A Criminal Convictions Preventing Licensure, Employment, Residence in a Family Home in Which a Child Care Facility Operates, or Placement with Relatives

No applicant may receive a license from the Department, and no person may be employed by a child care facility licensed by the Department, who has been declared a sexually dangerous person under the Sexually Dangerous Persons Act [725 ILCS 205, Art. 105] or convicted of committing or attempting to commit any of the following offenses stipulated under the Criminal Code of 1961 or the Criminal Code of 2012:

Lifetime Bars (Non-Waivable)

- (1) *murder;*
- (1.1) *solicitation of murder;*
- (1.2) *solicitation of murder for hire;*
- (1.3) *intentional homicide of an unborn child;*
- (1.4) *voluntary manslaughter of an unborn child;*
- (1.5) *involuntary manslaughter;*
- (1.6) *reckless homicide;*
- (1.7) *concealment of a homicidal death;*
- (1.8) *involuntary manslaughter of an unborn child;*
- (1.9) *reckless homicide of an unborn child;*
- (1.10) *drug-induced homicide;*
- (2) *a sex offense under Article 11, except offenses described in Sections 11-7, 11-8, 11-12, 11-13, 11-35, 11-40, and 11-45;*
- (3) *kidnapping;*
- (3.1) *aggravated unlawful restraint;*
- (3.2) *forcible detention;*
- (3.3) *harboring a runaway;*
- (3.4) *aiding and abetting child abduction;*
- (4) *aggravated kidnapping;*
- (5) *child abduction;*
- (6) *aggravated battery of a child as described in Section 12-4.3 or 12-3.05(b)(1);*
- (7) *criminal sexual assault;*
- (8) *aggravated criminal sexual assault;*
- (8.1) *predatory criminal sexual assault of a child;*
- (9) *criminal sexual abuse;*
- (10) *aggravated sexual abuse;*
- (11) *heinous battery as described in Section 12-4.1 or Section 12-3.05(a)(2);*
- (12) *aggravated battery with a firearm as described in Section 12-4.2 or Section 12-3.05(e)(1), (e)(2), (e)(3), or (e)(4);*
- (13) *tampering with food, drugs, or cosmetics;*
- (14) *drug induced infliction of great bodily harm as described in Section 12-4.7 or Section 12-3.05(g)(1);*
- (15) *hate crime;*
- (16) *stalking;*

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- (17) *aggravated stalking;*
- (18) *threatening public officials;*
- (19) *home invasion;*
- (20) *vehicular invasion;*
- (21) *criminal transmission of HIV;*
- (22) *criminal abuse or neglect of an elderly person or person with a disability as described in Section 12-21 or Section 12-4.4a(e);*
- (23) *child abandonment;*
- (24) *endangering the life or health of a child;*
- (25) *ritual mutilation;*
- (26) *ritualized abuse of a child;*
- (27) *an offense in any other jurisdiction the elements of which are similar and bear a substantial relationship to any of the offenses listed in this section. [225 ILCS 10/4.2(b)]*

Financial-type Crimes

Effective July 19, 2019, for applicants with access to confidential financial information or who submit documentation to support billing, the Department may, in its discretion, deny or refuse to renew a license to an applicant who has been convicted of committing or attempting to commit any of the following felony offenses:

- (1) *financial institution fraud under Section 17-10.6 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (2) *identity theft under Section 16-30 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (3) *financial exploitation of an elderly person or a person with a disability under Section 17-56 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (4) *computer tampering under Section 17-51 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (5) *aggravated computer tampering under Section 17-52 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (6) *computer fraud under Section 17-50 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (7) *deceptive practices under Section 17-1 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (8) *forgery under Section 17-3 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (9) *State benefits fraud under Section 17-6 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (10) *mail fraud and wire fraud under Section 17-24 of the Criminal Code of 1961 or the Criminal Code of 2012;*
- (11) *theft under Section 16-1(b)(1.1) through (11) of the Criminal Code of 1961 or the Criminal Code of 2012. [225 ILCS 10/4.2(b-1.5)]*

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Waivable Bars (Not Including Foster Homes)

No new applicant and, on the date of licensure renewal, no current licensee may operate or receive a license to operate, no person may be employed by, and no adult person may reside in a child care facility licensed by the Department who has been convicted of committing or attempting to commit any of the following offenses or an offense in any other jurisdiction the elements of which are similar and bear a substantial relationship to any of the following offenses (unless waived as provided in this section):

(I) BODILY HARM

- (1) Felony aggravated assault;*
- (2) Vehicular endangerment;*
- (3) Felony domestic battery;*
- (4) Aggravated battery;*
- (5) Heinous battery;*
- (6) Aggravated battery with a firearm;*
- (7) Aggravated battery of an unborn child;*
- (8) Aggravated battery of a senior citizen;*
- (9) Intimidation;*
- (10) Compelling organization membership of persons;*
- (11) Abuse and criminal neglect of a long term care facility resident;*
- (12) Felony violation of an order of protection.*

(II) OFFENSES AFFECTING PUBLIC HEALTH, SAFETY, AND DECENCY

- (1) Felony unlawful use of weapons;*
- (2) Aggravated discharge of a firearm;*
- (3) Reckless discharge of a firearm;*
- (4) Unlawful use of metal piercing bullets;*
- (5) Unlawful sale or delivery of firearms on the premises of any school;*
- (6) Disarming a police officer;*
- (7) Obstructing justice;*
- (8) Concealing or aiding a fugitive;*
- (9) Armed violence;*
- (10) Felony contributing to the criminal delinquency of a juvenile.*

(III) DRUG OFFENSES

- (1) Possession of more than 30 grams of cannabis;*
- (2) Manufacture of more than 10 grams of cannabis;*
- (3) Cannabis trafficking;*
- (4) Delivery of cannabis on school grounds;*
- (5) Unauthorized production of more than 5 cannabis sativa plants;*
- (6) Calculated criminal cannabis conspiracy;*
- (7) Unauthorized manufacture or delivery of controlled substances;*

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- (8) *Controlled substance trafficking;*
- (9) *Manufacture, distribution, or advertisement of look-alike substances;*
- (10) *Calculated criminal drug conspiracy;*
- (11) *Street gang criminal drug conspiracy;*
- (12) *Permitting unlawful use of a building;*
- (13) *Delivery of controlled, counterfeit, or look-alike substances to persons under age 18, or at truck stops, rest stops, or safety rest areas, or on school property;*
- (14) *Using, engaging, or employing persons under 18 to deliver controlled, counterfeit, or look-alike substances;*
- (15) *Delivery of controlled substances;*
- (16) *Sale or delivery of drug paraphernalia;*
- (17) *Felony possession, sale, or exchange of instruments adapted for use of a controlled substance, methamphetamine, or cannabis by subcutaneous injection;*
- (18) *Any violation of the Methamphetamine Control and Community Protection Act [720 ILCS 646]. [225 ILCS 10/4.2(b-1)]*

For the offenses described in Waivable Bars (Not Including Foster Homes), *the Department may make an exception and, for child care facilities other than foster family homes, issue a new child care facility license to, or renew the existing child care facility license of, an applicant, a person employed by a child care facility, or an applicant who has an adult residing in a home child care facility, provided that all of the following requirements are met:*

- (1) *The relevant offense occurred more than 5 years prior to the date of application or renewal, except for drug offenses. The relevant drug offense must have occurred more than 10 years prior to the date of the application or renewal, unless the applicant passed a drug test, arranged and paid for by the child care facility, no less than 5 years after the offense;*
- (2) *The Department conducts a background check and assesses all convictions and recommendations of the child care facility to determine if hiring or licensing the applicant is in accordance with Department administrative rules and procedures; and*
- (3) *The applicant meets all other requirements and qualifications for licensure. [225 ILCS 10/4.2(b-2)]*

In evaluating whether to grant the exception, the Department must carefully review any relevant documents to determine whether the applicant, despite the disqualifying convictions, poses a substantial risk to State resources or clients. In making this determination, the following guidelines shall be used:

- (1) *the age of the applicant when the offense was committed;*
- (2) *the circumstances surrounding the offense;*
- (3) *the length of time since the conviction;*
- (4) *the specific duties and responsibilities necessarily related to the license being applied for and the bearing, if any, that the applicant's conviction history may have on his or her fitness to perform these duties and responsibilities;*
- (5) *the applicant's employment references;*
- (6) *the applicant's character references and any certificates of achievement;*

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- (7) *an academic transcript showing educational attainment since the disqualifying conviction;*
- (8) *a Certificate of Relief from Disabilities or Certificate of Good Conduct; and*
- (9) *anything else that speaks to the applicant's character. [225 ILCS 10/4.2(e)]*

Additional Foster Home Restrictions

No applicant may receive a license from the Department to operate a foster family home, and no adult person may reside in a foster family home licensed by the Department, who has been convicted of committing or attempting to commit any of the following offenses stipulated under the Criminal Code of 1961, the Criminal Code of 2012, the Cannabis Control Act [720 ILCS 550], the Methamphetamine Control and Community Protection Act, and the Illinois Controlled Substances Act [725 ILCS 70]:

(I) OFFENSES DIRECTED AGAINST THE PERSON

(A) KIDNAPPING AND RELATED OFFENSES

- (1) Unlawful restraint.*

(B) BODILY HARM

- (2) Felony aggravated assault;*
- (3) Vehicular endangerment;*
- (4) Felony domestic battery;*
- (5) Aggravated battery;*
- (6) Heinous battery;*
- (7) Aggravated battery with a firearm;*
- (8) Aggravated battery of an unborn child;*
- (9) Aggravated battery of a senior citizen;*
- (10) Intimidation;*
- (11) Compelling organization membership of persons;*
- (12) Abuse and criminal neglect of a long term care facility resident;*
- (13) Felony violation of an order of protection.*

(II) OFFENSES DIRECTED AGAINST PROPERTY

- (14) Felony theft;*
- (15) Robbery;*
- (16) Armed robbery;*
- (17) Aggravated robbery;*
- (18) Vehicular hijacking;*
- (19) Aggravated vehicular hijacking;*
- (20) Burglary;*
- (21) Possession of burglary tools;*
- (22) Residential burglary;*

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- (23) *Criminal fortification of a residence or building;*
- (24) *Arson;*
- (25) *Aggravated arson;*
- (26) *Possession of explosive or explosive incendiary devices.*

(III) OFFENSES AFFECTING PUBLIC HEALTH, SAFETY, AND DECENCY

- (27) *Felony unlawful use of weapons;*
- (28) *Aggravated discharge of a firearm;*
- (29) *Reckless discharge of a firearm;*
- (30) *Unlawful use of metal piercing bullets;*
- (31) *Unlawful sale or delivery of firearms on the premises of any school;*
- (32) *Disarming a police officer;*
- (33) *Obstructing justice;*
- (34) *Concealing or aiding a fugitive;*
- (35) *Armed violence;*
- (36) *Felony contributing to the criminal delinquency of a juvenile.*

(IV) DRUG OFFENSES

- (37) *Possession of more than 30 grams of cannabis;*
- (38) *Manufacture of more than 10 grams of cannabis;*
- (39) *Cannabis trafficking;*
- (40) *Delivery of cannabis on school grounds;*
- (41) *Unauthorized production of more than 5 cannabis sativa plants;*
- (42) *Calculated criminal cannabis conspiracy;*
- (43) *Unauthorized manufacture or delivery of controlled substances;*
- (44) *Controlled substance trafficking;*
- (45) *Manufacture, distribution, or advertisement of look-alike substances;*
- (46) *Calculated criminal drug conspiracy;*
- (46.5) *Street gang criminal drug conspiracy;*
- (47) *Permitting unlawful use of a building;*
- (48) *Delivery of controlled, counterfeit, or look-alike substances to persons under age 18, or at truck stops, rest stops, or safety rest areas, or on school property;*
- (49) *Using, engaging, or employing persons under 18 to deliver controlled, counterfeit, or look-alike substances;*
- (50) *Delivery of controlled substances;*
- (51) *Sale or delivery of drug paraphernalia;*
- (52) *Felony possession, sale, or exchange of instruments adapted for use of a controlled substance, methamphetamine, or cannabis by subcutaneous injection;*
- (53) *Any violation of the Methamphetamine Control and Community Protection Act.*

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Waiver Conditions for Foster Homes

The Department may make an exception and issue a new foster family home license or may renew an existing foster family home license of an applicant who was convicted of an offense described in the section titled Additional Foster Home Restrictions, provided all of the following requirements are met:

- (1) The relevant criminal offense or offenses occurred more than 10 years prior to the date of application or renewal;*
- (2) The applicant had previously disclosed the conviction or convictions to the Department for purposes of a background check;*
- (3) After the disclosure, the Department either placed a child in the home or the foster family home license was issued;*
- (4) During the background check, the Department had assessed and waived the conviction in compliance with the existing statutes and rules in effect at the time of the hire or licensure;*
- (5) The applicant meets all other requirements and qualifications to be licensed as a foster family home under this Act and the Department's administrative rules;*
- (6) The applicant has a history of providing a safe, stable home environment and appears able to continue to provide a safe, stable home environment. [225 ILCS 10/4.2(d)]*

In evaluating whether to grant the exception, the Department must carefully review any relevant documents to determine whether the applicant, despite the disqualifying convictions, poses a substantial risk to State resources or clients. In making this determination, the following guidelines shall be used:

- (1) the age of the applicant when the offense was committed;*
- (2) the circumstances surrounding the offense;*
- (3) the length of time since the conviction;*
- (4) the specific duties and responsibilities necessarily related to the license being applied for and the bearing, if any, that the applicant's conviction history may have on his or her fitness to perform these duties and responsibilities;*
- (5) the applicant's employment references;*
- (6) the applicant's character references and any certificates of achievement;*
- (7) an academic transcript showing educational attainment since the disqualifying conviction;*
- (8) a Certificate of Relief from Disabilities or Certificate of Good Conduct; and*
- (9) anything else that speaks to the applicant's character. [225 ILCS 10/4.2(e)]*

(Source: Amended at 45 Ill. Reg. 12963, effective September 28, 2021)

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Section 385.APPENDIX B Matrix of Persons Subject to Background Checks Under Part 385 (Repealed)

(Source: Repealed at 45 Ill. Reg. 12963, effective September 28, 2021)

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