



ACA PUBLIC POLICY



Guidance for Camps and Other Youth-Serving Organizations: Developing Criminal Background Thresholds

Updated January 2012

Definition

A criminal background threshold is the statement your organization makes about what kind of criminal record someone might have in their past yet still be eligible for employment or volunteering in your organization. You may decide to set different threshold levels for different positions in your organization.

Introduction

Many youth serving organizations will find this scenario familiar:

While reviewing employment or volunteer applications for the upcoming camp season, one of the criminal background checks you had performed on an applicant is returned to you with evidence of a criminal conviction. What do you do, what are the proper steps you should take?

The aim of this document is to provide guidance to organizations to help them develop a criminal background threshold policy—before they ever even begin their hiring process. Developing a threshold policy will allow you comply with the law and protect the safety of everyone participating in your programs.

Rationale

There are several reasons to develop a threshold policy for all of the various positions at your organization:

1. To protect the safety and well-being of everyone involved in your programs.
2. To ensure compliance with federal, state, and local laws and regulations.
3. To support the concept of giving ex-offenders “second-chances” where appropriate.
4. To adhere to ACA-accreditation standards.

Although some organizations have set policies not to hire anyone with a criminal record of any kind, the American Camp Association’s (ACA) guidance is to establish a criminal background threshold for each position within your organization. Some states have already enacted laws regarding thresholds for individuals who work with children and vulnerable adults. At the same time, there are anti-discrimination laws that must be considered. Just one example is within Title VII of the Civil Rights Act of 1964, which prohibits employers from having a policy against employing individuals with criminal records that may lead to racial discrimination.

Protecting the safety of those in your care must be your top priority. Serving *in loco parentis*, or “in the place of a parent,” camps and other youth-serving organizations need to use all the information at their disposal to screen applicants that will have access to children, youth, or vulnerable adults. As ACA CEO Peg Smith stated in a letter to the Equal Opportunity Employment Commission (EEOC) in August 2011, “The evidence for the need to protect this ‘innocent and vulnerable’ population is overwhelming.”

It is not advisable, therefore, for individuals with certain types of criminal records to work or volunteer for your organization. For example, the duties and responsibilities of a camp counselor position would not be suitable for someone whose criminal record contained multiple offenses against children. Therefore, by adhering to any relevant laws and establishing a threshold of unacceptable crimes for each staff or volunteer position, you will be able to more effectively use information obtained from criminal background checks in your hiring decisions.

A threshold policy should always be developed working in conjunction with your legal counsel.

Steps in Developing a Criminal Background Threshold

Step 1: Seek counsel from an employment attorney who can help you to identify and understand all local, state, and federal laws that apply to your organization's hiring practices.

Federal Laws on Criminal History Thresholds

Currently, there is no federal law prohibiting the hiring of individuals with criminal conviction histories for all positions that work with children. However, some laws *proposed* at the federal-level have considered making individuals whose records check reveals a felony conviction for child abuse or neglect, spousal abuse, a crime against children, or a violent crime, including rape, sexual assault, or homicide, ineligible from serving in a position with any contact with children. Many such restrictions typically *do exist* at the state and local levels, but can vary widely both in terms of which types of organizations they apply to (e.g. schools, day-care centers, camps), as well as which "barrier" or "threshold" crimes would make an individual ineligible to work at these places.

Since criminal background check laws vary so widely among different states, it is important for youth-serving organizations to be familiar with state and local regulations regarding criminal background thresholds in the jurisdiction in which their organization operates. ACA maintains a database of regulatory and licensing authorities in each state that can provide the most up-to-date information on obtaining and using criminal background checks.

(<http://www.acacamps.org/publicpolicy/regulations>)

State Laws on Criminal History Thresholds

Laws vary greatly by state. For example, laws in certain states, including California, New York, and New Jersey, mandate that all camp counselors, staff (paid or volunteer), and operators undergo a criminal history record check and/or a check of the state sex offender registry. These particular state statutes, however, do not explicitly lay out any criminal background thresholds or restrictions on hiring for other camp positions.

Similar statutes in other states, such as Texas, *do* provide a list of the criminal convictions and deferred adjudications that make it illegal for a person to be present at a youth camp. Moreover, under Texas state law, should a camp choose to hire a staff or volunteer with such a criminal record, the camp management must have on file a written evaluation showing that the person has been deemed suitable for the position despite the criminal record.

As another example, in Colorado, licenses may not be granted or can be revoked from any family child care home, foster care home, child care center, residential child care facility, secure residential treatment center, or child placement agency if they employ an individual with a record of certain criminal offenses. And, in Virginia, adults convicted of specific crimes are forever prohibited from working or engaging in any volunteer activity on public or private elementary or secondary school or child day center property.

Thus, it is imperative that you work with your legal counsel to identify and understand all of the relevant laws for your organization—including all hiring and anti-discrimination laws.

Step 2: Consider the appropriate thresholds for each of the different positions at your organization. Different positions might have different requirements.

For example, for a position that is responsible for transporting children (such as your camp bus driver), you might potentially set a threshold that excludes individuals with a record of serious moving violations and DUIs. For all positions, it is reasonable to set a threshold that bars anyone with crimes against children.

Federal and state thresholds that are applicable to camps, as well as to places such as schools and day-care centers, will help to provide you with a baseline upon which to build a threshold policy that is right for your camp.

It may be helpful to your process to consider what other organizations have set as their thresholds. Just one example is a list of the offenses the state of Virginia has deemed unacceptable in a criminal background for people working with children in certain capacities (this is just one example, and it is imperative that you seek legal counsel so that your organization understands all the relevant hiring laws applicable to you—including anti-discrimination laws):

- Abduction
- Abuse and neglect of children
- Abuse and neglect of incapacitated adults
- Any felony violation relating to possession or distribution of drugs
- Any violent felony
- Arson
- Assaults and bodily wounding
- Burglary
- Carjacking
- Crimes against nature involving children
- Cruelty to animals
- Delivery of drugs to prisoners
- Electronic facilitation of pornography
- Employing or permitting a minor to assist in an act constituting an offense
- Escape from jail
- Failure to secure medical attention for an injured child
- Felony stalking
- Incest
- Murder or manslaughter
- Obscenity offenses
- Pandering
- Possession of child pornography
- Robbery
- Sexual assault
- Taking indecent liberties with children
- Threats of death or bodily injury

Furthermore, ACA-accreditation requires that camps “have a specific plan for securing criminal background checks based on state laws, availability of data, cost, and type of staff.” Creating a clearly-defined policy will allow you to deal with the myriad scenarios you may confront while screening employees for positions at your organization.

Step 3: Consider how you will evaluate a background check report once received.

For example, many public agencies and institutions will assess the circumstances surrounding a conviction as well as the time frame, nature, gravity, and relevancy of the offense to the duties of the job at hand. Such evaluations might consider:

- The nature and the gravity of the offense;
- The relevancy of the conviction(s) to the duties and responsibilities of the job;
- The candidate’s employment history since the conviction(s) or other information;
- Circumstances surrounding the conviction(s);
- Age at which the conviction(s) occurred;
- Whether the conviction(s) are of a violent nature (e.g. murder, attempted murder, rape, assault, etc.);
- Length of time since the conviction(s) occurred;
- Whether there are multiple convictions that may indicate an ongoing pattern of behavior;
- Evidence of rehabilitation;
- Any other mitigating circumstances.

Multi-Faceted Approach

Effectively using the information provided by criminal background checks is essential to hiring qualified staff and selecting appropriate volunteers for your organization. However, in addition to establishing a threshold policy and completing a criminal background check on all staff and volunteers who might have access to children, youth, or vulnerable adults, there are additional steps you can take to protect the safety of those participating in your program. ACA offers the following guidance:

- ✓ Thoroughly interview all candidates (including people you may already know transitioning into a new role, such as a former camper applying for a job).
- ✓ Check with at least three references (you may also seek out references not mentioned by the applicant).

- ✓ Closely monitor and regularly train staff and volunteers who work with children.
- ✓ Document all of your camp's policies clearly in writing and properly train your staff on how to implement them.

Additional Resources

- State Laws and Regulations — <http://www.acacamps.org/publicpolicy/regulations>
- ACA's e-Institute Criminal Background Checks Online Course — <http://www.acacamps.org/einstitute/criminalbkqd>
- ACA's Criminal Background Check Information and Guidance for Camps —
http://www.acacamps.org/sites/default/files/images/publicpolicy/documents/CBC_Education_7_2011.pdf
- Additional resources on setting criminal background check thresholds —
<http://www.acacamps.org/publicpolicy/cbcthresholds>
- U.S. Department of Justice National Sex Offender Public Website (NSOPW) — www.nsopw.gov
- U.S. Equal Employment Opportunity Commission (EEOC) — <http://www.eeoc.gov/>

For more information, contact the American Camp Association Public Policy Office at:
800-428-2267, publicpolicy@acacamps.org or at: www.acacamps.org/publicpolicy.