

Jim Doyle
Governor

Reggie Bicha
Secretary



**State of Wisconsin
Department of Children and Families
Division of Early Care and Education**

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December 7, 2009

To: Group Child Care Licensees
Family Child Care Licensees
Day Camp Licensees

BECR MEMO 2009-06

From: Jill D. Chase, Director
Bureau of Early Care Regulation

A handwritten signature in blue ink that reads "Jill D. Chase".

RE: 2009 Wisconsin Act 76
Caregiver Background Check Modifications

On November 13, 2009, Governor Jim Doyle signed into law changes to caregiver background checks that will affect all licensed child care and day camp facilities. The changes will affect the frequency that background checks must be done. The changes will also affect the list of convictions and offenses that will either permanently bar or require a rehabilitation review for a person holding a license to operate a child care facility; residing in a child care facility or working as a caregiver. These modifications will take effect on **February 1, 2010**.

Frequency of a background check

- **Licensee** – Under the provisions of the new law, the department will conduct a caregiver background check on all licensees *every 3 months (4 times a year)*. A caregiver background check fee will be charged for each background check (\$10 X 4 = \$40 per year). Licensees will be notified when to submit a background check fee and the amount that must be submitted.
- **Household members** – The Department will run the caregiver background check on all adult household members at least *one time each year*. Licensees will be notified when to submit a background check fee for any household members.
- **Employees** – Centers will be required to complete a caregiver background check on all employees at least *one time each year*. The fees for a caregiver background check completed by the licensee will remain the same.

Changes in the list of convictions

In the past, child care licensees, household members and caregivers were subject to rehabilitation review if they had a conviction for one of the crimes or offenses listed in Section II of Appendix A of administrative code DHS 12. Under the new law, some convictions will carry a permanent bar that will not permit a person to hold a license to operate; reside in, or work as a caregiver for a child care center. Other convictions will impose a bar for 5 years after a person has completed probation, parole or extended supervision. Finally there are some

convictions that will require a rehabilitation review approval before a person may receive a license to operate; reside in, or work as a caregiver in a child care center. The updated crimes list is included with this memo.

Current licensees, household residents and caregivers

The law applies to all current licensees, household residents and caregivers in a child care center as well as applicants for a license and new employees. This means that even if the Department has issued a license or allowed a person to reside at a child care center with a criminal conviction in the past, the Department is now required to revoke the license if the licensee, a household resident or an employee has an offense that will permanently bar that person. The Department is also required to revoke the license in those situations where a person has a conviction that will require a rehabilitation review.

Suspension of a license

Under the new law, the Department is required to suspend a child care license if the licensee, a household resident or caregiver has any **pending** charges for a crime included on the revised crimes list.

Wisconsin Shares subsidy payments affected by the new law

If a child care provider, caregiver or household resident is convicted of committing a serious crime (as identified on the attached crimes list), the Department may not pay the child care provider under Wisconsin Shares beginning on the date of the conviction.

If a child care provider, caregiver or household resident is the subject of a pending criminal charge alleging that the person has committed a serious crime, the Department must immediately suspend payment to the provider under Wisconsin Shares until information regarding the final disposition of the charge is received. If the person is convicted of committing the serious crime, the Department may not pay for Wisconsin Shares. If the person is not convicted of committing a serious crime, the Department may reinstate payments for Wisconsin Shares if the conviction does not substantially relate to the care of children or the operation of a business.

The Department may refuse to pay a child care provider under Wisconsin Shares, if a child care provider, caregiver or household resident is convicted of a crime that is not included on the crimes list but the Department has determined that the crime for which the person was convicted is substantially related to the care of children or the operation of a business. The Department may also refuse to pay a child care provider under Wisconsin Shares if the child care provider, a caregiver or a household resident is the subject of the pending criminal charge that substantially relates to the care of children; has a substantiated finding of child abuse or neglect or has violated any provision or rule promulgated under Wisconsin Shares.

Implementation of the provisions of the new law

The Department will begin conducting caregiver background checks on licensees every 3 months (4 times a year) after February 1, 2010. Each facility will be notified by the Department when a caregiver background check must be completed. Licensees will be asked to submit a completed Background Information Disclosure form and the appropriate fees when notified.

If you have any questions about the changes to the caregiver background check law, please contact your licensing specialist.

Attachment: Updated crimes list

Updated Caregiver Background Checks
Crimes Table
(Based on 2009 revision to s. 48.685 Wis. Stats)

Note: The legislature modified the Caregiver Background check section of the Wisconsin Statutes in early November 2009. The resulting law (2009 Wisconsin Act 76) was signed by the Governor on Nov 13, 2009, published on Nov 25 and will take effect on February 1, 2010.

Statute	Offense	Categorization prior to 2/1/10	Categorization after 2/1/10
125.075 (1)	Dispensing alcohol to a person under age 18 resulting in injury or death	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
125.085 (3) (a) 2.	Make, alter, duplicate ID for money or compensation	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
125.105 (2) (b)	Impersonate or abet impersonation of an inspector, agent or employee of Dept of Revenue or Justice	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
125.66 (3)	Make or rectify intoxicating beverage without a permit	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
125.68 (12)	Recover, use, conceal or dispose of alcohol from denatured alcohol	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
346.63 (1), (2), (5) or (6)	Operating or causing injury by intoxicated use of a motor vehicle (Felony conviction only)	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
940.01	1 st degree intentional homicide	Bar with rehabilitation	Permanent Bar
940.02	1 st degree reckless homicide	Bar with rehabilitation	Permanent Bar
940.03	Felony Murder	Bar with rehabilitation	Permanent Bar
940.05	2 nd degree intentional homicide	Bar with rehabilitation	Permanent Bar
940.06	2 nd degree reckless homicide	Not on list	Permanent Bar
940.09	Homicide by intoxicated use of vehicle or firearm	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
940.12	Assisting suicide	Bar with rehabilitation	Bar with Rehabilitation
940.19 (2) – (6)	Battery (Felony conviction only) if victim is the spouse of the person convicted	Not on list	Permanent Bar
940.19 (2), (4), (5) (6)	Substantial or Aggravated Battery (Felony conviction only)	Bar with rehabilitation	Bar for 5 years after completion of probation, parole, or extended supervision.
940.20 (1) or (1m)	Battery, if the victim is the spouse of the person convicted	Not on list	Permanent Bar
940.20	Battery: special circumstance	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
940.203	Battery or threat to a judge	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.

Statute	Offense	Categorization prior to 2/1/10	Categorization after 2/1/10
940.205	Battery or threat to a Dept. of Revenue employee	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
940.207	Battery or threat to Commerce or Workforce Development employee	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
940.21	Mayhem	Not on list	Permanent Bar
940.22 (2) or (3)	Sexual exploitation by therapist; duty to report	Bar with rehabilitation	Bar with rehabilitation
940.225 (1), (2) or (3)	1 st , 2 nd , 3 rd degree sexual assault	Bar with rehabilitation	Permanent Bar
940.23	Reckless Injury	Not on list	Permanent Bar
940.25	Injury by intoxicated use of a vehicle	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
940.285 (2)	Abuse of vulnerable adults (Misdemeanor or Felony conviction)	Bar with rehabilitation	Bar with rehabilitation
940.29	Abuse of residents of a penal facility	Bar with rehabilitation	Bar with rehabilitation
940.295	Abuse or neglect of patients & resident (Misdemeanor or Felony conviction)	Bar with rehabilitation	Bar with rehabilitation
940.302 (2) if s. 940.302 (2)(a) 1.b. applies	Trafficking for a commercial sex act	Bar with rehabilitation	Bar with rehabilitation
940.305	Taking hostages	Not on list	Permanent Bar
940.31	Kidnapping	Not on list	Permanent Bar
941.20 (2) or (3)	Endangering safety with use of a dangerous weapon	Not on list	Permanent Bar
941.21	Disarming a peace officer	Not on list	Permanent Bar
942.09 (2)	Representations depicting nudity (Felony conviction only)	Not on list	Bar with rehabilitation
943.10 (2)	Armed burglary or burglary with battery	Not on list	Permanent Bar
943.201	Identity Theft	Not on list	Permanent Bar for licensee or certified provider only
943.203	Theft of an entity's identity	Not on list	Permanent Bar for licensee or certified provider only
943.23 (1g)	Operating a motor vehicle without the owner's consent while possessing a dangerous weapon	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
943.32 (2)	Robbery with a dangerous weapon	Not on list	Permanent Bar
943.38 (1) or (2)	Forgery (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only

Statute	Offense	Categorization prior to 2/1/10	Categorization after 2/1/10
943.34 (1)	Receiving stolen property (financial transaction card) (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.395 (1)	Fraudulent insurance or employee benefit program claim (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.41 (3) (e), (4) (a), (5), (6) or (6m)	Financial transaction card crime – fraudulent use of a financial transaction card (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.45 (1)	Theft of telecommunications service (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.455 (2)	Theft of commercial mobile service (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.46 (2)	Theft of video service (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.47 (2)	Theft of satellite cable programming (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.50 (1m)	Retail theft (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
943.70 (2) (a) or (am) or (3) (a)	Computer crime (Felony conviction only)	Not on list	Permanent Bar for licensee or certified provider only
Any offense under s. 943 (4) Stats.	An Offense under subch. IV of s. 943 Wis. Stats. (crimes against a financial institution) that is a felony	Not on list	Permanent Bar for licensee or certified provider only
948.22 (2)	Failure to support	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision unless the person has paid all arrearages due and is meeting his or her current support obligation
948.51 (2)	Hazing if it results in great bodily injury or death (Felony conviction only under 948.51 (3) (b) or (c))	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
Any offense under s. 948 Stats	An Offense under s. 948 Wis. Stats. (crimes against children) that is a felony except for 948.22 (2) or 948.51 (2)	Not on list	Permanent Bar
Any offense under s. 961 Stats. (or s. 161 Stats.)	An Offense under s. 961 Wis. Stats. (uniform controlled substances act) that is a felony	Not on list	Bar for 5 years after completion of probation, parole, or extended supervision.
Other Offenses	Finding by a governmental agency of neglect or abuse of a client, or of misappropriation of a client's property	Bar with rehabilitation	Bar with rehabilitation

Statute	Offense	Categorization prior to 2/1/10	Categorization after 2/1/10
Other Offenses	Find by a governmental agency of child abuse or neglect	Bar with rehabilitation	Bar with rehabilitation
Other Offense	Providing false information to or intentionally withholding information related to the caregiver background check from DCF, a county, contracted agency or a school board or other agency.	Not on list	Permanent Bar
Other Offense	Fraudulent activity as a participant in Wisconsin Works Program including as a recipient of child care subsidy or AFDC, Medical assistance, food stamp benefits, SSI, Badger Care	Not on list	Permanent Bar

Note: Any comparable offense or conviction under federal or another state’s law has the same categorization as crimes and offenses included on this list.