

J. Suitability Criteria

Alabama Code § 38-13-2 and Alabama Code § 38-13-4 and DHR Administrative Code, 660-5-46-.03, provide that convictions (including a determination of guilt by a trial, by a plea of guilty, or a plea of *nolo contendere*) for any of the following classifications of crimes shall make an individual unsuitable for employment, volunteer work, approval, or licensure:

1. A violent offense as defined in Section 12-25-32.
 2. A sex crime (includes any crime listed in Section 15-20A-5).
 3. A crime that involves the physical or mental injury or maltreatment of a child, the elderly, or an individual with disabilities.
 4. A crime committed against a child.
 5. A crime involving the sale or distribution of a controlled substance.
 6. A crime or offense committed in another state or under federal law which would constitute any of the above crimes in this state.
- b. Conviction for any crime listed in the Adoption and Safe Families Act, 42 U.S.C. § 671(a)(20) shall disqualify a person from being approved or continuing to be approved as a foster parent or adoptive parent and a convicted person shall be deemed unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent.

An unsuitability determination must be made for an applicant that has conviction(s) for any crime listed in the Adoption and Safe Families Act, 42 U.S.C. § 671(a)(20)(A), shall disqualify a person from being approved or continuing to be approved as a foster parent or adoptive parent and a convicted person shall be deemed unsuitable for employment, volunteer work, approval, or licensure as a foster parent or adoptive parent if a criminal history check record reveals the following:

(i) ... a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and

(ii) ... a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed within the past 5 years, such final approval shall not be granted

c. The Department of Human Resources may set other disqualifying convictions by rule under the Administrative Procedure Act, Section 41-22-1, et seq., for Department of Human Resources licensed child or adult care facilities.”

DHR Administrative Code 660-5-46-.03 defines a “crime involving violence” as **“crimes of murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses, robbery, arson, extortion, extortionate extension of credit, and burglary of a dwelling.** Other offenses are included as “crimes involving violence” if (A) the offense has as element the use, attempted use or threatened use of physical force against the person of another, or (B) the conduct set forth (i.e., expressly charged) in the count of which the defendant was convicted involved use of explosives (including any explosive material or destructive device) or, by its nature, presented a serious potential risk of physical injury to another. **“Crime involving violence” also includes the offenses of aiding and abetting, conspiring, and attempting to commit such offenses.”**

VIOLENT OFFENSE (as defined in Section 12-25-32).

a. For the purposes of this article, a violent offense includes each of the following offenses, or any substantially similar offense to those listed in this subdivision created after June 20, 2003:

1. Capital murder pursuant to Sections 13A-6-2 and 13A-5-40.
2. Murder pursuant to Section 13A-6-2.
3. Manslaughter pursuant to Section 13A-6-3.
4. Criminally negligent homicide pursuant to Section 13A-6-4.
5. Assault I pursuant to Section 13A-6-20.
6. Assault II pursuant to Section 13A-6-21.
7. Compelling street gang membership pursuant to Section 13A-6-26.
8. Kidnapping I pursuant to Section 13A-6-43.
9. Kidnapping II pursuant to Section 13A-6-44.
10. Rape I pursuant to Section 13A-6-61.
11. Rape II pursuant to Section 13A-6-62.
12. Sodomy I pursuant to Section 13A-6-63.

13. Sodomy II pursuant to Section 13A-6-64.
14. Sexual torture pursuant to Section 13A-6-65.I.
15. Sexual abuse I pursuant to Section 13A-6-66.
16. Enticing a child to enter a vehicle for immoral purposes pursuant to Section 13A-6-69.
17. Stalking pursuant to Section 13A-6-90.
18. Aggravated stalking pursuant to Section 13A-6-91.
19. Soliciting a child by computer pursuant to Section 13A-6-110.
20. Domestic violence I pursuant to Section 13A-6-130.
21. Domestic violence II pursuant to Section 13A-6-131.
22. Burglary I pursuant to Section 13A-7-5.
23. Burglary II pursuant to Section 13A-7-6.
24. Burglary III pursuant to subdivision (1) or subdivision (2) of subsection (a) of Section 13A-7-7.
25. Arson I pursuant to Section 13A-7-41.
26. Criminal possession of explosives pursuant to Section 13A-7-44.
27. Extortion I pursuant to Section 13A-8-14.
28. Robbery I pursuant to Section 13A-8-41.
29. Robbery II pursuant to Section 13A-8-42.
30. Robbery III pursuant to Section 13A-8-43.
31. Pharmacy robbery pursuant to Section 13A-8-51.
32. Terrorist threats pursuant to Section 13A-10-15.
33. Escape I pursuant to Section 13A-10-31.
34. Promoting prison contraband I pursuant to Section 13A-10-36, involving a deadly weapon or dangerous instrument.

35. Intimidating a witness pursuant to Section 13A-10-123.
36. Intimidating a juror pursuant to Section 13A-10-127.
37. Treason pursuant to Section 13A-11-2.
38. Discharging a weapon into an occupied building, dwelling, automobile, etc., pursuant to Section 13A-11-61.
39. Promoting prostitution I pursuant to Section 13A-12-111.
40. Production of obscene matter involving a minor pursuant to Section 13A-12-197.
41. Trafficking pursuant to Section 13A-12-231.
42. Child abuse pursuant to Section 26-15-3.
43. Elder abuse pursuant to Section 38-9-7.
44. Terrorism pursuant to Section 13A-10-152.
45. Hindering prosecution for terrorism pursuant to Section 13A-10-154.
46. Domestic violence III pursuant to subsection (d) of Section 13A-6-132.
47. Domestic violence by strangulation or suffocation pursuant to Section 13A-6-138.
48. Human trafficking I pursuant to Section 13A-6-152.
49. Human trafficking II pursuant to Section 13A-6-153.
50. Hindering prosecution in the first degree pursuant to Section 13A-10-43.
51. Any substantially similar offense for which an Alabama offender has been convicted under prior Alabama law or the law of any other state, the District of Columbia, the United States, or any of the territories of the United States.”

SEX OFFENSE (includes any crime listed in Section 15-20A-5).

For the purposes of this chapter, a sex offense includes any of the following offenses:

- (1) Rape in the first degree, as provided by Section 13A-6-61.
- (2) Rape in the second degree, as provided by Section 13A-6-62.
- (3) Sodomy in the first degree, as provided by Section 13A-6-63.

(4) Sodomy in the second degree, as provided by Section 13A-6-64.

(5) Sexual misconduct, as provided by Section 13A-6-65, provided that on a first conviction or adjudication the sex offender is only subject to registration and verification pursuant to this chapter. On a second or subsequent conviction or adjudication of a sex offense, if the second or subsequent conviction or adjudication does not arise out of the same set of facts and circumstances as the first conviction or adjudication of a sex offense, the sex offender shall comply with all requirements of this chapter. The sentencing court may exempt from this chapter a juvenile sex offender adjudicated delinquent of sexual misconduct.

(6) Sexual torture, as provided by Section 13A-6-65.1.

(7) Sexual abuse in the first degree, as provided by Section 13A-6-66.

(8) Sexual abuse in the second degree, as provided by Section 13A-6-67.

(9) Indecent exposure, as provided by Section 13A-6-68, provided that on a first conviction or adjudication of a sex offense, the sex offender is only subject to registration and verification pursuant to this chapter. On a second or subsequent conviction or adjudication of a sex offense, if the second or subsequent conviction or adjudication does not arise out of the same set of facts and circumstances as the first conviction or adjudication, the sex offender shall comply with all requirements of this chapter. The sentencing court may exempt from this chapter a juvenile sex offender adjudicated delinquent of indecent exposure.

(10) Enticing a child to enter a vehicle, room, house, office, or other place for immoral purposes, as provided by Section 13A-6-69.

(11) Sexual abuse of a child less than 12 years old, as provided by Section 13A-6-69.1.

(12) Promoting prostitution in the first degree, as provided by Section 13A-12-111.

(13) Promoting prostitution in the second degree, as provided by Section 13A-12-112.

(14) Violation of the Alabama Child Pornography Act, as provided by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197. The sentencing court may exempt from this chapter a juvenile sex offender adjudicated delinquent of a violation of the Alabama Child Pornography Act after the juvenile has been counseled on the dangers of the conduct for which he or she was adjudicated delinquent.

(15) Unlawful imprisonment in the first degree, as provided by Section 13A-6-41, if the victim of the offense is a minor, and the record of adjudication or conviction reflects the intent of the unlawful imprisonment was to abuse the minor sexually.

(16) Unlawful imprisonment in the second degree, as provided by Section 13A-6-42, if the victim of the offense is a minor, and the record of adjudication or conviction reflects the intent of the unlawful imprisonment was to abuse the minor sexually.

(17) Kidnapping in the first degree, as provided by subdivision (4) of subsection (a) of Section 13A-6-43, if the intent of the abduction is to violate or abuse the victim sexually.

(18) Kidnapping of a minor, except by a parent, guardian, or custodian, as provided by Section 13A-6-43 or 13A-6-44.

(19) Incest, as provided by Section 13A-13-3.

(20) Transmitting obscene material to a child by computer, as provided by Section 13A-6-111.

(21) School employee engaging in a sex act or deviant sexual intercourse with a student, as provided by Section 13A-6-81.

(22) School employee having sexual contact with a student, as provided by Section 13A-6-82.

(23) Facilitating solicitation of unlawful sexual conduct with a child, as provided by Section 13A-6-121.

(24) Electronic solicitation of a child, as provided by Section 13A-6-122.

(25) Facilitating the on-line solicitation of a child, as provided by Section 13A-6-123.

(26) Traveling to meet a child for an unlawful sex act, as provided by Section 13A-6-124.

(27) Facilitating the travel of a child for an unlawful sex act, as provided by Section 13A-6-125.

(28) Human trafficking in the first degree, as provided by Section 13A-6-152, provided that the offense involves sexual servitude.

(29) Human trafficking in the second degree, as provided by Section 13A-6-153, provided that the offense involves sexual servitude.

(30) Custodial sexual misconduct, as provided by Section 14-11-31.

(31) Sexual extortion, as provided by Section 13A-6-241.

(32) Directing a child to engage in a sex act, as provided in Section 13A-6-243.

(33) Any offense which is the same as or equivalent to any offense set forth above as the same existed and was defined under the laws of this state existing at the time of such conviction, specifically including, but not limited to, crime against nature, as provided by Section 13-1-110; rape, as provided by Sections 13-1-130 and 13-1-131; carnal knowledge of a woman or girl, as provided by Sections 13-1-132 through 13-1-135, or attempting to do so, as provided by Section 13-1-136; indecent molestation of children, as defined and provided by Section 13-1-113; indecent exposure, as provided by Section 13-1-111; incest, as provided by Section 13-8-3; offenses relative to obscene prints and literature, as provided by Sections 13-7-160 through 13-7-175, inclusive; employing, harboring, procuring or using a girl over 10 and under 18 years of age for the purpose of prostitution or sexual intercourse, as provided by Section 13-7-1; seduction, as defined and provided by Section 13-1-112; a male person peeping into a room occupied by a female, as provided by Section 13-6-6; assault with intent to ravish, as provided by Section 13-1-46; and soliciting a child by computer, as provided by Section 13A-6-110.

(34) Any solicitation, attempt, or conspiracy to commit any of the offenses listed in subdivisions (1) to (31), inclusive.

(35) Any crime committed in Alabama or any other state, the District of Columbia, any United States territory, or a federal, military, Indian, or foreign country jurisdiction which, if it had been committed in this state under the current provisions of law, would constitute an offense listed in subdivisions (1) to (32), inclusive.

(36) Any offense specified by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248, the Sex Offender Registration and Notification Act (SORNA)).

(37) Any crime committed in another state, the District of Columbia, any United States territory, or a federal, military, Indian, or foreign country jurisdiction if that jurisdiction also requires that anyone convicted of that crime register as a sex offender in that jurisdiction.

(38) Any offender determined in any jurisdiction to be a sex offender shall be considered a sex offender in this state.

(39) The foregoing notwithstanding, any crime committed in any jurisdiction which, irrespective of the specific description or statutory elements thereof, is in any way characterized or known as rape, carnal knowledge, sodomy, sexual assault, sexual battery, criminal sexual conduct, criminal sexual contact, sexual abuse, continuous sexual abuse, sexual torture, solicitation of a child, enticing or luring a child, child pornography, lewd and lascivious conduct, taking indecent liberties with a child, molestation of a child, criminal sexual misconduct, video voyeurism, or there has been a finding of sexual motivation.

(40) Any crime not listed in this section wherein the underlying felony is an element of the offense and listed in subdivisions (1) to (39), inclusive.

(41) Any other offense not provided for in this section wherein there is a finding of sexual motivation as provided by Section 15-20A-6.

In addition to the foregoing, the Department is subject to the requirements of the Child Care and Development Block Grant Act ("CCDBGGA") or Public Law (Pub.L.) 113-186. Section 7 of the Act requires a state that receives funds to conduct criminal background checks on child care staff members, including prospective child care staff members, of child care providers that are (1) licensed, regulated, or registered or (2) that receive CCDF funds and carry out services. Relatives that care for other relatives only are excluded from undergoing the background check.

Specifically, 42 U.S.C.A. § 9858f of the CCDBGGA requires ALDHR to conduct background checks of prospective and current child care staff members of certain child care providers. 42 U.S.C.A. § 9858f requires that ALDHR conduct a criminal background check for a child care staff member that includes all of the following:

(1) a search of the State criminal and sex offender registry or repository in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years

(a) a fingerprint check is required to complete the in-state and inter-state criminal history check;

(b) a fingerprint check is optional to complete the in-state and inter-state sex offender registries;

(c) searching a public facing criminal history sites or sex offender registries do not satisfy these requirements;

(2) a search of State-based child abuse and neglect registries and databases in the State where the child care staff member resides, and each State where such staff member resided during the preceding 5 years

(a) a name-based check is acceptable to complete the in-state child abuse and neglect registries;

(b) a name-based check is acceptable to complete the inter-state child abuse and neglect registries;

(3) a search of the National Crime Information Center

(a) the search must be performed by law enforcement;

(b) a public facing sex offender registry does not satisfy this requirement;

(4) a Federal Bureau of Investigation fingerprint check using the Integrated Automated Fingerprint Identification System

(a) a fingerprint check is required to complete this check;

(b) this check does not cover the in-state and inter-state criminal history checks; and

(5) a search of the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 ([42 U.S.C. 16901 et seq.](#))

(a) a public facing sex offender registry does not satisfy this requirement;

(b) the national check does not cover the in-state or inter-state sex offender registries.

In addition to the foregoing, the 42 U.S.C.A. § 9858f(d)(2) and 42 U.S.C.A. § 9858f(d)(3) requires that the criminal background checks for prospective child care staff and current child care staff members must be conducted “no less than once during **each 5-year period** following the first submission on or after November 19, 2014” and “no less than once during **each 5-year period** following the first submission before November 19, 2014”, respectively.

The Department expects to implement specified requirements in Chapters 660-5-25 through 660-5-27, Alabama Administrative Code, to provide guidance regarding the administration of criminal history background checks on applicants for positions at child care facilities.
