**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).

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.

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)