

9 CSR 10-5.190 Background Screening for Employees and Volunteers

*PURPOSE: This rule establishes standards for obtaining background screening for certain staff and volunteers in **any public or private facilities, residential facilities, day programs or specialized service operated, licensed, certified, accredited, in possession of deemed status, or funded by the Department of Mental Health.***

(1) For the purposes of this rule, **public or private facilities**, residential facilities, day programs and specialized services (**agency(ies)**) are divided into two (2) categories, as follows:

(A) Category I. *[Those]* **Agencies** that are certified or licensed exclusively by the Department of Mental Health (DMH) or, although not certified or licensed, are funded by *[the department]* **DMH**. Specifically this category includes:

1. **All agencies certified by DMH** *[Agencies certified by DMH as community psychiatric rehabilitation programs (CPRP), comprehensive substance abuse and treatment and rehabilitation programs (CSTAR), residential and/or outpatient programs;*

2. *Agencies certified by DMH in the community-based waiver certification program;*

3. *Agencies certified by the Division of Alcohol and Drug Abuse];*

2.*[4. Facilities]* **Agencies** that have contractual arrangements with *[the department]* **DMH** but are exempt from *[the department's]* **DMH's** licensing and certification rules due to accreditation or other reason; and

3.*[5. Facilities and day programs which]* **Agencies that** are licensed by *[the department]* **DMH** and do not have a license from another state agency.*]; and]*

(B) Category II. *[Those]* **Agencies** that, *in addition to a license or certificate from DMH,* have a license or certificate~~ion~~ from another state agency. Specifically, this category includes *[facilities]* **agencies** licensed by the Children's Division or the Department of Health and Senior Services; also included are intermediate care facilities/*[mental retardation]* **developmental disabilities** (ICF/*[MR]* **DD**). *[Facilities and a]* **Agencies** included in Category II are subject to rules regarding criminal record review as promulgated by the state agency *[which]* **that** licenses or certifies them and are not subject to sections *[(2)]* **(3)** through (6) of this rule, **however, all other sections of this rule apply.** *[However such agencies are subject to sections (7), (8), (9) and (10).]*

(2) This rule applies to—

(A) Staff;

(B) Volunteers *[who are recruited as part of an agency's formal volunteer program]*, **including student workers, who provide unpaid services to an agency**, but does not apply to volunteers who assist individuals as a friend would by providing assistance with shopping, transportation, recreation, etc.; and

(C) Members of the provider's household who have contact with residents or clients, except for minor children.

(3) Each **agency** *[residential facility, day program or specialized service]* defined under Category I above shall make the following inquiries for all new employees and volunteers:

(A) An inquiry with the Department of Health and Senior Services to determine whether the new employee or volunteer having contact with residents or clients is listed on the employee disqualification list of the Department of Social Services or the Department of Health and Senior Services;

(B) An inquiry with *[the Department of Mental Health]* **DMH** to determine whether the new employee or volunteer is on the DMH disqualification registry; and

(C) A criminal background check with the State Highway Patrol. The request for the background check shall not require fingerprints and shall be in accordance with requirements of the State Highway Patrol under Chapter 43, RSMo. The *[facility, program or service]* **agency** may use a private investigatory agency to conduct this review.

(4) The criminal background check and inquiries required under section (3) of this rule shall be initiated prior to the employee or volunteer having contact with residents, clients or patients.

(5) Each *[residential facility, day program and specialized service]* **agency** included under Category I shall require all new applicants for employment or volunteer positions involving contact with residents or clients to—

(A) Sign a consent form authorizing a criminal record review with the highway patrol, either directly through the patrol or through a private investigatory agency;

(B) Disclose his/her criminal history, including any conviction or a plea of guilty to a misdemeanor or felony charge and any suspended imposition of sentence, any suspended execution of sentence or any period of probation or parole; and

(C) Disclose if s/he is listed on the employee disqualification list of the Department of Social Services or the Department of Health and Senior Services, or the DMH disqualification registry.

(6) Each agency shall develop policies and procedures regarding the implementation of this rule and the disposition of information provided by the criminal record review. At a minimum the guidelines shall address—

(A) Procedures for obtaining the criminal record review;

(B) Procedures for confidentiality of records; and

(C) Guidelines for evaluating information received through the criminal record review *[which]* **that** establish a clear boundary between those convictions *[which,]* **that** by statute*[,]* must exclude an individual from service, and those convictions *[which]* **that** would not automatically exclude an individual.

(7) Offenses which under section 630.170, RSMo disqualify a person from service are as follows:

(A) A person shall be disqualified from holding any position in the agency if that person—

1. Has been *[convicted of,]* found guilty of*[,]* **or** *[pled]* **pleaded** guilty to or *nolo contendere*, **including having received a suspended imposition of sentence or suspended execution of sentence**, to any of the following crimes.

A. *[Physical abuse or Class I Neglect]* **Abuse or neglect** of a patient, resident or client **as defined in section 630.155, RSMo; [or]**

B. Furnishing unfit food to patients, residents or clients **as defined in section 630.160, RSMo;[.]**

C. **Vulnerable person abuse, first degree, as defined in section 565.210, RSMo;**

D. **Vulnerable person abuse, second degree, as defined in section 565.212, RSMo; or**

E. **Vulnerable person abuse, third degree, as defined in section 565.214, RSMo.**

2. Is listed on the DMH disqualification registry; or

3. Is listed on the employee disqualification list of the Department of Health and Senior Services or Department of Social Services.

(B) A person who has been [*convicted of,*] found guilty [*to,*] **of or** [*pled*] **pleaded** guilty to or *nolo contendere*, **including having received a suspended imposition of sentence or suspended execution of sentence**, to any of the [*following*] crimes **specified in section 630.170.2, RSMo**, shall be disqualified, **except as specified below**, from holding any position having contact with patients, residents or clients in the agency. **For reference purposes, DMH maintains an updated list of disqualifying crimes under section 630.170, RSMo, at <http://dmh.mo.gov/about/employeeedisqualification/>.** [*The crimes listed below are not disqualifying unless they are felonies, except for failure to report abuse and neglect to the Department of Health and Senior Services, which is a Class A misdemeanor. The disqualifying crimes are:*

1. *First or second degree murder;*
2. *Voluntary manslaughter (includes assistance in self-murder);*
3. *Involuntary manslaughter;*
4. *First or second degree assault;*
5. *Assault while on school property;*
6. *Unlawful endangerment of another;*
7. *First or second degree assault of a law enforcement officer;*
8. *Tampering with a judicial officer;*
9. *Kidnapping;*
10. *Felonious restraint;*
11. *False imprisonment;*
12. *Interference with custody;*
13. *Parental kidnapping;*
14. *Child abduction;*
15. *Elder abuse in the first degree or the second degree;*
16. *Harassment;*
17. *Stalking;*
18. *Forcible rape;*
19. *First or second degree statutory rape;*
20. *Sexual assault;*
21. *Forcible sodomy;*
22. *First or second degree statutory sodomy;*
23. *First or second degree child molestation;*
24. *Deviate sexual assault;*
25. *First degree sexual misconduct;*
26. *Sexual abuse;*
27. *Endangering the welfare of a child;*
28. *Abuse of a child;*
29. *Robbery in the first degree or second degree;*
30. *Arson in the first or second degree;*
31. *First or second degree pharmacy robbery;*
32. *Incest;*
33. *Causing catastrophe;*
34. *First degree burglary;*
35. *Felony count of invasion of privacy;*

36. *Failure to report abuse and neglect to the Department of Social Services as required under subsection 3 of section 198.070, RSMo; or*

37. *Any equivalent felony offense.]*

1. A person who has been found guilty of or pleaded guilty or nolo contendere, including having received a suspended imposition of sentence or suspended execution of sentence, to a violation of section 577.010, RSMo, or section 577.012, RSMo, and who is alleged and found by the court to be an aggravated or chronic offender under section 577.023, RSMo, shall be disqualified from holding any position having contact with patients, residents or clients in the agency if the person is hired by the agency after January 1, 2014.

2. A person who is currently working for an agency on August 28, 2013, and who has been found guilty of or pleaded guilty or nolo contendere, including having received a suspended imposition of sentence or suspended execution of sentence, prior to August 28, 2010 to any felony offense as defined in chapter 195 or sections 568.175, 570.030, 570.040, 570.090, 570.145, 570.223, 575.230, or 576.080, RSMo, shall not be required to obtain an exception so long as they continue working for their current agency employer. Should the person change employers, the person shall be required to obtain an exception in order to hold any position having contact with patients, residents or clients in the new employing agency.

3. A person who is currently working for an agency on August 28, 2013, and who has been found guilty of or pleaded guilty or nolo contendere, including having received a suspended imposition of sentence or suspended execution of sentence, on or after August 28, 2010 to any felony offense as defined in chapter 195 or sections 568.175, 570.030, 570.040, 570.090, 570.145, 570.223, 575.230, or 576.080, RSMo, shall be required to obtain an exception in order to hold any position having contact with patients, residents or clients of an agency. Such person may continue to be employed on a conditional basis, at the discretion of the employing agency, for a limited period of time, not to exceed March 1, 2014, while the person is requesting an exception as set forth in section (8). If the exception is denied during the conditional limited period, the person's employment shall immediately terminate.

(8) Any person disqualified from employment under this rule may request an exception from the DMH Exceptions Committee in accordance with 9 CSR 10-5.210 Exceptions Committee Procedures.

(A) The right to request an exception under this subsection shall not apply to persons who are disqualified due to being listed on the employee disqualification registry of the Department of Social Services or Department of Health and Senior Services, nor does it apply **under section 630.170.4, RSMo**, to persons who are disqualified due to any *[of the following]* crime[s:] pursuant to the provisions of chapter 566 or sections 565.020, 565.021, 568.020, 568.060, 569.025, or 569.070, RSMo. For reference purposes, DMH maintains an updated list of disqualifying crimes not eligible for exception under section 630.170.4, RSMo, at <http://dmh.mo.gov/about/employeedisqualification/>.

1. *First or second degree murder;*

2. *First or second degree statutory rape;*

3. *Sexual assault;*

4. *Forcible sodomy;*

5. *First or second degree statutory sodomy;*

6. *First or second degree child molestation;*
7. *Deviate sexual assault;*
8. *Sexual misconduct involving a child;*
9. *First degree sexual misconduct;*
10. *Sexual abuse;*
11. *Incest;*
12. *Causing catastrophe;*
13. *Abuse of a child;*
14. *First degree pharmacy robbery; or*
15. *Forcible rape.]*

(9) For the purposes of this rule, a verdict of not guilty by reason of insanity (NGRI) is not per se disqualifying. A suspended imposition of sentence (SIS) or suspended execution of sentence (SES) is disqualifying.

(10) A provider shall not hire any person who has committed a disqualifying crime as identified in section (7) of this rule, unless the person has received an exception from the department. However, the provider retains the discretionary authority to deny employment to persons who—

- (A) Have committed crimes not identified as disqualifying;
- (B) Have received an exception from the Exceptions Committee; or
- (C) Have received a verdict of Not Guilty by Reason of Insanity.

AUTHORITY: sections 630.170 and 660.317, RSMo Supp. 2003 and 630.655 and 630.710, RSMo 2000. Emergency rule filed Aug. 15, 1997, effective Aug. 28, 1997, expired Feb. 26, 1998. Original rule filed Aug. 15, 1997, effective March 30, 1998. Amended: Filed Oct. 29, 1998, effective May 30, 1999. Amended: Filed Nov. 3, 2003, effective April 30, 2004. Amended: Filed March 29, 2004, effective Sept. 30, 2004.*

**Original authority: 630.170, RSMo 1980, amended 1982, 1996, 1998, 2001, 2003; 630.655, RSMo 1980; 630.710, RSMo 1980, amended 1996, 1998, and 660.317, RSMo 1996, amended 1997, 1998, 2003, 2003.*