OFFICE OF THE ATTORNEY GENERAL
Department of Law
Department of Child Support Services
(New Administrative Regulation)

40 KAR 11:003. Employee Access to Federal Tax Information (FTI); required criminal background check.

RELATES TO: KRS 18A.095; KRS 336.700; KRS 335B.010; KRS 335B.020; KRS 15.180; KRS 15.802; KRS 15.838; KRS 15.840; KRS 15.866; 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103; Public L. 118-258.

STATUTORY AUTHORITY: KRS 15.180 and KRS 15.866.

CERTIFICATION STATEMENT: This is to certify that this administrative regulation complies with the requirements of 2025 RS HB 6, Section 8.

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15.802 authorizes the Office of the Attorney General, Department of Law to serve as the state agency authorized to administer Part D of Title IV of the Soc Sec Act, 42 U.S.C. secs 651 to 669, to maintain a system to receive and process all child support payments and serve as collector of all court or administratively ordered support payments. KRS 15.838 requires the Office of the Attorney General, as the state agency authorized to administer the IV-D Program, to refer for federal income tax refund offset and state income tax refund offset verified amounts owed for support and provides the unfettered right to intercept said payments pursuant to 45 C.F.R. 303.72 and KRS 131.560 to 131.595, to satisfy all child support, maintenance, and medical support arrearages due the office or its assignee. All actions require each employee of the Office of the Attorney General, Department of Child Support Services (DCSS), including contract staff, to have access to or use of federal tax information (FTI). 26 C.F.R. 301.6103(p)(7)-1, 26 U.S.C. 6103 and IRS Publication 1075 requires that all prospective and current employees, including contract staff, to have fingerprint-based state and national criminal background checks if their job duties include access to or use of FTI.

Section 1. Definitions for 40 KAR

(1) "Contract staff" means an individual employed by DCSS or its offices or a contractor working on behalf of DCSS or its offices who does not meet the definition of employee in this section.

(2) "DCSS" means the Department of Child Support Services, the state agency in charge of administering the Child Support Enforcement program.

(3) "Disqualifying offense" means:

(a) A conviction, plea of guilty, Alford plea, or plea of nolo contendere to:

1. Any felony; or
2. A misdemeanor offense related to:
   a. Abuse, neglect, or exploitation of an adult as defined by KRS 209.020(4);
   b. Abuse, neglect, or exploitation of a child;
   c. A sexual offense;
   d. A criminal offense against a victim who is a minor, asdefined in KRS 17.500;
   e. An offense outlined in KRS 525.130;
   f. An offense outlined in KRS 525.135; or
   g. Any of the following offenses occurring less than seven (7) years from the date of the criminal background check:
      (i) Assault, including domestic violence;
      (ii) Stalking;
      (iii) Theft;
      (iv) Fraud;

(v) Unlawfully possessing or trafficking in a legend drug or controlled substance; or

(vi) Any other misdemeanor offense relating to abuse, neglect, or exploitation not listed in this subsection; or

(b) A pending charge or an outstanding warrant for a criminal offense related to:

1. A sex crime as defined by KRS 17.500(8);
2. KRS Chapter 209, protection of adults;
3. KRS 218A.1412, Trafficking in controlled substance first degree;
4. KRS Chapter 507, Criminal homicide;
5. KRS Chapter 508, Assault and related offenses;
6. KRS Chapter 509, Kidnapping and related offenses;
7. KRS Chapter 510, Sexual offenses;
8. KRS Chapter 513, Arson and related offenses,
9. KRS Chapter 515, Robbery;
10. KRS Chapter 516, Forgery;
11. KRS Chapter 531, Pornography;

(c) An out-of-state or federal charge that is pending or any outstanding warrant from another jurisdiction that is similar to an offense specified in subsection (b) of this section;

(d) A substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with state or federal law;

(e) Registration as a sex offender under federal law or under the law of any state;

(f) Any other offense the nature of which indicates the employee constitutes an unreasonable and immediate risk to the security of federal tax information, as determined by DCSS.

(4) "Employee" means either a classified employee as defined by KRS 189A.005(7), an unclassified employee pursuant to KRS 18A.115, or a federally funded time-limited employee as defined by KRS 18A.005(15).

(5) "Federal tax information" or "FTI" means federal tax returns and return information that may:

(a) Contain personally identifiable information; and

(b) Include information created by the recipient that is:

1. Derived from federal return or return information; and
2. Received directly from the Internal Revenue Service (IRS) or obtained through an authorized secondary source, which may include:
   a. Social Security Administration (SSA);
   b. Federal Office of Child Support Enforcement (OCSE);
   c. Bureau of the Fiscal Service (BFS);
   d. Centers for Medicare and Medicaid Services (CMS); or
   e. Another entity acting on behalf of the IRS.

(6) "Responsible agency" means an office or department within the Office of the Attorney General or an entity under contract with DCSS that employs or offers a job to an individual in a position for which the job duties include access to or use of FTI.

Section 2. Requirement for Criminal Background Checks.

(1) The Office of the Attorney General, DCSS, and its offices shall require prospective and current employees, including contract staff, whose job duties include access to or use of FTI to submit to a fingerprint-based national and state criminal background check as a condition of initial or continued employment. The criminal background check shall occur:

(a) After the applicant is offered a job but before he or she begins working; and

(b) At least once every five (5) years for current employees or contract staff.

(2) The Office of the Attorney General, DCSS, its offices, or responsible agency requesting a fingerprint-based national and state criminal background check for an applicant, current employee, or contract staff shall incur all fees associated with the cost of each criminal background check requested, including the rap back service.

(3) The Office of the Attorney General, DCSS, its offices, or responsible agency shall not employ directly or by contract an individual in a position for which the job duties include access to or use of FTI if the individual:

(a) Refuses to consent to a fingerprint-based state and national criminal background check; or

(b) Is found to have a disqualifying offense.

(4) DCSS or its responsible office shall notify each prospective or current employee determined to have a disqualifying offense

Section 3. Disqualification for Other Criminal Offenses or Factors. The Office of the Attorney General, DCSS, its offices, or responsible agency shall not employ or contract with an individual with a disqualifying offense as defined in Section 1 of this administrative regulation or whose background check reveals any information that bears upon the fitness of the individual to work in a position with access to or use of FTI. The Office of the Attorney General, DCSS, its offices, or responsible agency shall have the sole discretion to determine if an applicant, current employee, or contract staff is suitable to work in a position with access to or use of FTI and ensure its protection and security in accordance with Kentucky law, IRS Publication 1075, and any other relevant policy or procedure concerning the confidentiality of FTI.

Section 4. Individuals Ineligible to be Hired. The Office of the Attorney General, DCSS, its offices, or responsible agency may refuse to hire, contract with, or permit to work as an employee any applicant that submits to a criminal background check if one (1) or more of the following conditions apply:

(1) The applicant refuses to provide photo identification and Social Security Number;

(2) The applicant fails to submit his or her fingerprints at an authorized collection site within ten (10) business days of receiving notice to submit fingerprints;

(3) Upon completion of the criminal background check, the Office of the Attorney General, DCSS, its office, or responsible agency receives notice that the applicant is found to have a disqualifying offense; or

(4) Final and acceptable disposition of a criminal charge related to a disqualifying offense is not provided to the Office of the Attorney General, DCSS, its offices, or responsible agency within sixty (60) days of fingerprint submission.

Section 5. Notice of a Disqualifying Offense - Applicants.

(1) Upon completion of the criminal background check, the Office of the Attorney General, DCSS, its offices, or responsible agency shall notify applicants determined to have a disqualifying offense.

(2) If an applicant wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, DCSS, its offices, or responsible agency shall refer the applicant to the appropriate state or federal law enforcement agency.

Section 6. Notice of Disqualifying Offense, Reconsideration, and Appeal – Current Employees.

(1) Upon completion of a criminal background check, DCSS, its offices, or responsible agency shall notify current employees determined to have a disqualifying offense. A current employee found to have a disqualifying offense shall immediately be removed from duties with access to or use of FTI.

(2) Upon receipt of notice of a disqualifying offense, a current employee removed from responsibilities requiring FTI access or use may submit a written request for reconsideration to the Department's Executive Director of the Office of Administrative Services no later than fourteen (14) calendar days from the date the notice is issued.

(3) The current employee's request for reconsideration shall include the following information:

(a) A written explanation of each disqualifying offense, including:

1. A description of the events related to the disqualifying offense;
2. The number of years since the occurrence of the disqualifying offense;
3. The age of the offender at the time of the disqualifying offense;
4. Evidence that the individual has pursued or achieved rehabilitation with regard to the disqualifying offense; and
5. Any other relevant and mitigating circumstances regarding the disqualifying offense;

(b) Official documentation showing that all fines, including court-imposed fines, costs, or restitution have been paid or documentation demonstrating adherence to a payment schedule, if applicable;

(c) The date probation or parole was satisfactorily completed, if applicable; and

(d) Employment and character references, including any other evidence demonstrating the ability of the individual to competently perform the employment responsibilities.

(4) A current employee who requests reconsideration may be retained on staff during the review process subject to the following factors:

(a) The nature and severity of the disqualifying offense;

(b) The disposition of the disqualifying offense;

(c) The time elapsed since the disqualifying offense;

(d) The employee's personnel history; and

(e) Whether the employee may be assigned other duties that do not require access to or use of FTI.

(5) After review, DCSS, its offices, or responsible agency may:

(a) Transfer the employee to another open position at the same pay grade or lower within DCSS, its offices, or responsible agency for which the employee is qualified and for which access to or use of FTI is not part of the job responsibilities;

(b) Dismiss the employee if it is determined that the nature of the disqualifying offense presents an immediate, serious and irreparable risk to FTI if the employee's job duties require access to or use of FTI;

(c) Dismiss the employee if it is determined that the nature of the disqualifying offense in any way violates the Office of the Attorney General's Policies regarding Public Integrity and Professionalism.

(d) Redefine the employee's job responsibilities to exclude those functions that require access to or use of FTI; or

(e) Any other action permitted by law.

(6) The appointing authority as defined in KRS 18A.005(1) or his or her designee shall issue a final written determination regarding the reconsideration request. The appointing authority or his or her designee shall notify the employee of the final determination no later than thirty (30) calendar days from receipt of the written request for reconsideration, and the notice shall include any personnel action to be taken by DCSS, its offices, or responsible agency as a result of the final determination.

(7) The current employee may have the right to appeal an action taken by DCSS, its offices, or responsible agency pursuant to the applicable sections of KRS Chapter 18A and the Kentucky Administrative Regulations.

Section 7. Notice of Disqualifying Offense – Contract Staff.

(1) Upon completion of the criminal background check, any contract staff found to have a disqualifying offense shall immediately be subject to one (1) or more of the following actions at the sole discretion of DCSS, its offices, or responsible agency:

(a) Termination;

(b) If permitted by the contract, removed from all duties requiring access to or use of FTI and assigned other duties that do not require access to or use of FTI; or

(c) Any other action permitted by law.

(2) DCSS, its offices, or responsible agency shall notify the contract staff of the action or actions taken within fourteen (14) days of discovery of the disqualifying offense.

(3) If the contract staff wishes to obtain information concerning the disqualifying offense or challenge the accuracy of a criminal background check, DCSS, its offices, or responsible agency shall refer the applicant to the appropriate state or federal law enforcement agency.

Section 8. Challenges to Criminal Background Check Information. An individual subject to a criminal background check required by this administrative regulation shall have the right to request and review the results of his or her national and state criminal background checks and to request correction of any inaccurate information. All corrections shall be addressed with the Federal Bureau of Investigation or the Department of Kentucky State Police; DCSS cannot assist with this process or correct any inaccurate information.

Section 9. Pardons, and Expungements. An applicant, employee, or contract staff who has received a pardon for a disqualifying offense or has had the disqualifying offense expunged shall not be barred from employment with DCSS, its offices, or responsible agency in a position with job duties that include access to or use of FTI for reasons related to the underlying disqualifying offense(s).

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APPROVED BY AGENCY: September 28, 2026

FILED WITH LRC: October 12, 2026 at 11:20 a.m.

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