



NATIONAL CENTER ON
Subsidy Innovation and Accountability



CRIMINAL BACKGROUND CHECK REQUIREMENTS

CCDBG ACT BACKGROUND CHECK REQUIREMENTS

REVISED: 07/11/2019

Background Check Requirement Highlights

Applicability of Rules

- State, Territorial and Tribal Lead Agencies
- Licensed, regulated, and registered providers*
- CCDF providers*
- Current and prospective staff members*
 - Including those employed before 11/19/2014 (date of enactment)

*Except those related to all children in care.

Individuals Subject to Background Checks

Those employed by a provider for compensation

Contracted employees and self-employed

Those who care for, supervise, or have unsupervised access to children in care

Adults living in a family child care home

Required National and State-based Background Checks

FBI Check + Current State of Residence

National FBI Fingerprint Criminal History Check

In-State Criminal History Check

Fingerprint Required:

- FBI Check
- In-State Criminal

Fingerprint Optional:

- In-State SOR
- Out-of-State SOR
- Out-of-State Criminal

Name Based:

- NCIC NSOR
- All CAN Checks

NCIC National Sex Offender Registry Check

In-State Sex Offender Registry Check



In-State Child Abuse and Neglect Registry Check

Previous State(s) of Residence for Last 5 Years

State Criminal History Check

State Sex Offender Registry Check

State Child Abuse and Neglect Registry Check

The FBI fingerprint check is national, why doesn't it cover the out-of-state background check requirements?

Only offenses/records with a valid fingerprint make it into the national FBI database.

Checking the individual State records helps mitigate gaps between the State and FBI records.

Background checks are required prior to employment and at least every 5 years.

Background checks should meet a standard 45-day or less turnaround time.

Individuals may start work once the FBI or State fingerprint check is returned as satisfactory, but must be continually supervised until a determination is made on all checks.

Revised: 02/27/2019

Background Check Requirements

The background check requirements are broken into 3 primary categories:

■ National

- This refers to national checks that must be conducted in addition to the state-based checks
- There are **TWO** required national checks

■ In-state

- This refers to the current state of residence (employment) of the individual or prospective individual
- There are **THREE** required in-state checks

■ Inter-state (or out-of-state)

- This refers to any and all states where the individual or prospective individual has resided within the previous 5 years
- There are **THREE** required inter-state checks

| National background checks: | In-state background checks: | Inter-state background checks: |
|--|--|---|
| 1. National FBI criminal history check, with fingerprint | 3. In-state criminal history check, with fingerprint | 6. Inter-state criminal history check |
| 2. NCIC National sex offender registry (NSOR) check | 4. In-state sex offender registry check | 7. Inter-state sex offender registry check |
| | 5. In-state child abuse and neglect registry check | 8. Inter-state child abuse and neglect registry check |

↑ ↑
All five of these checks must be performed for all designated individuals

↑
All three of these checks must also be performed for each additional state where the individual has resided within five years

All checks must meet a 45-day or less turnaround time

Background Check Requirements (cont'd)

#1 – National FBI Criminal History Check

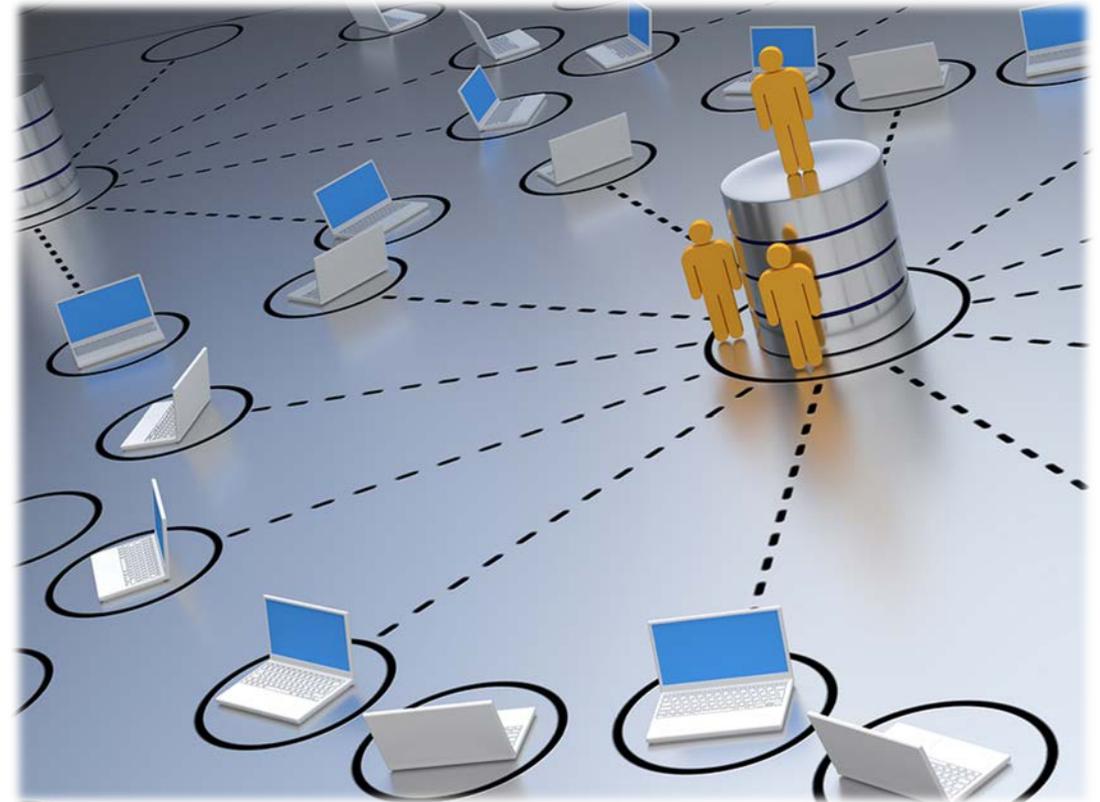
- The national FBI criminal history check is the first of two national checks that must be completed, in addition to the three in-state (state-based) checks
- It is required that this check be completed with the use of a fingerprint
- This national check does not cover the in-state or inter-state criminal history check because there could be state crimes that don't appear in the national repository



Background Check Requirements (cont'd)

#2 – NCIC National Sex Offender Registry

- The NCIC national sex offender registry check is the second of two national checks that must be completed, in addition to the three in-state (state-based) checks
- This is a name-based search
- Searching general public facing sex offender registries does not satisfy this requirement
- This national check does not cover the in-state or inter-state sex offender registry check requirements
- Must be performed by law enforcement



Background Check Requirements (cont'd)

#3 – In-state Criminal History Check

- The in-state criminal history check is the first of three in-state, state-based checks that must be completed, in addition to the national checks and inter-state checks, when applicable
- It is required that this check be completed with the use of a fingerprint
- Searching a general public facing judicial website does not satisfy this requirement
- This state-based check must be completed in addition to the national FBI criminal history check to mitigate any gaps that may exist between the two sources



Background Check Requirements (cont'd)

#4 – In-state Sex Offender Registry Check

- The in-state sex offender registry check is the second of three in-state, state-based checks that must be completed, in addition to the national checks and inter-state checks, when applicable
- It is *optional* to use a fingerprint to conduct this check
- This state-based check must be completed in addition to the national NCIC sex offender registry check to mitigate any gaps that may exist between the two sources



Background Check Requirements (cont'd)

#5 – In-state Child Abuse and Neglect Registry Check

- The in-state child abuse and neglect registry check is the third of three in-state, state-based checks that must be completed, in addition to the national checks and inter-state checks, when applicable
- This is a name-based search



Background Check Requirements (cont'd)

#6 – Inter-state Criminal History Check

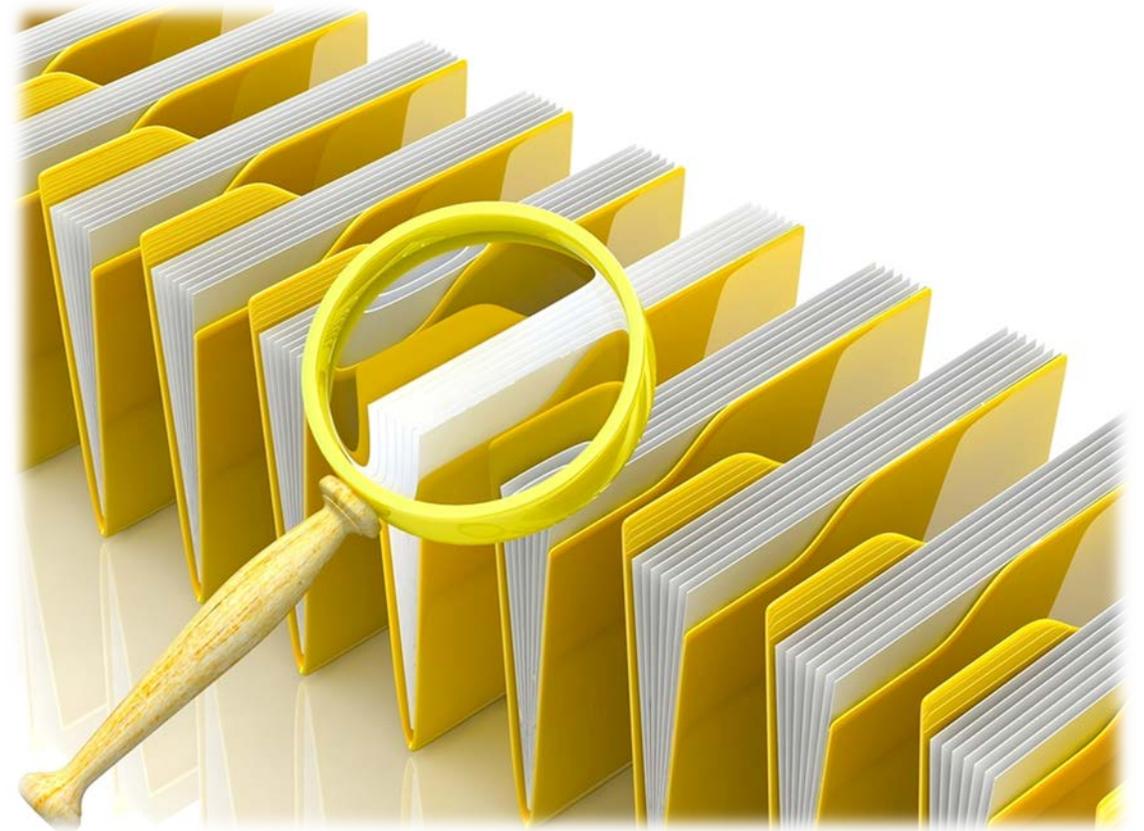
- The inter-state criminal history check is the first of three inter-state, state-based checks that must be completed, in addition to the national checks and in-state checks
- It is optional to use a fingerprint to conduct this check
- Searching a general public facing judicial website does not satisfy this requirement
- This state-based check must be completed in addition to the national FBI criminal history check to mitigate any gaps that may exist between the two sources



Background Check Requirements (cont'd)

#7 – Inter-state Sex Offender Registry Check

- The inter-state sex offender registry check is the second of three inter-state, state-based checks that must be completed, in addition to the national checks
- It is *optional* to use a fingerprint to conduct this check
- This state-based check must be completed in addition to the national NCIC sex offender registry check to mitigate any gaps that may exist between the two sources



Background Check Requirements (cont'd)

#8 – Inter-state Child Abuse and Neglect Registry Check

- The inter-state child abuse and neglect registry check is the third of three inter-state, state-based checks that must be completed, in addition to the national checks
- This is a name-based search



Background Check Requirements (cont'd)

Tribal Lead Agencies

- All Tribes are subject to the CCDF background check requirements
- Tribes and states should coordinate as much as possible in order to obtain access to the FBI and State databases
- The Final Rule allows Tribes the flexibility to propose an alternative background check approach in their CCDF plans
 - If an alternative approach is proposed, it is subject to ACF approval



Applicability of Background Check Requirements to Child Care Providers

Simply put, applicability of requirements identifies which provider types are required to adhere to the background check guidelines for current and prospective employees.

This table illustrates which provider types must comply and those that are exempt from the background check requirements.

| These Providers Must Comply: | These Providers Do Not Have To Comply: |
|--|--|
| All licensed, regulated or registered providers* (except relatives caring for only related children) | License-exempt who do NOT receive CCDF funds |
| Any provider who receives CCDF funds (except relatives caring for only related children) | Relative providers, regardless of whether or not they receive CCDF funds |

** States have the flexibility to determine which providers are considered licensed, regulated, or registered.*

Applicability of Background Check Requirements to Child Care Staff Members

Individuals subject to background checks refers to all current and prospective staff employed by a provider who meets the applicability of background check requirements, as previously described, AND who meet at least ONE of the descriptions illustrated in the table.

| These Individuals Are Subject To Background Checks*: |
|---|
| Any individual employed by a provider for compensation |
| Any individual who is either a contracted employee or self-employed |
| Any individual who cares for, supervises or has unsupervised access to children in the child care setting |
| Any individual who is an adult (18+ years old) living in a family home provider |

** When the provider meets the applicability requirements*

Disqualifying Crimes

Which providers are subject to the disqualifying crimes?

- Unlike the other requirements in the background check section, the Act only applies the restriction against employing ineligible child care staff members to child care providers receiving CCDF assistance.
- These employment disqualifications specifically do not apply to child care staff members of licensed providers who do not serve children receiving CCDF subsidies.

Disqualifying Crimes

When is a staff member ineligible for employment by a child care provider?

- Refuses to consent to the criminal background check
- Knowingly makes a materially false statement in connection with a criminal background check
- Is registered, or is required to be registered, on a State sex offender registry or repository or the National Sex Offender Registry
- Has been convicted of a felony listed at §98.43(c)(1)(iv)
- Has been convicted of a violent misdemeanor committed as an adult against a child listed at §98.43(c)(1)(v)
- States, territories, or tribes have flexibility to disqualify staff members based on a conviction of a crime not listed above.

[45 CFR 98.43(c)(1)]



Disqualifying Crimes

What are the disqualifying felonies?

- Murder
- Child abuse or neglect
- Crime against children, including pornography
- Spousal abuse
- Crime involving rape or sexual assault
- Kidnapping
- Arson
- Physical assault or battery
- Drug-related offense (committed during the preceding 5 years)



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Disqualifying Crimes

What are the disqualifying violent misdemeanors committed as an adult against a child?

- Child abuse
- Child endangerment
- Sexual assault
- Misdemeanor involving child pornography



[48 CFR 98.43(c)(1)(v)]

Appeals Process

What must a state provide if a disqualifying result is received for a staff member?

- The state making the determination that an individual is disqualified is the state responsible for the appeals process.
- The appeals process is based on accuracy and completeness.
- The state must provide information about each specific disqualifying crime to the individual.
- The individual must be given clear instructions, including timelines, on how to complete the appeals process.
- The state is responsible for verifying the accuracy of the information challenged.
- **Prospective** and **current** staff members are subject to requirements.



[45 CFR 98.43(e)(3)]

Review Process

What options do states have for drug-related offense committed in the past 5 years?

- States have the option to use an individualized review process to determine those staff members convicted of drug-related felonies committed during the previous five years to be eligible for employment by a CCDF provider.
- The review process is different from the appeals process because it allows the Lead Agency to consider extenuating circumstances on a case-by-case basis.
- States should consult the U.S. Equal Employment Opportunity Commission's guidance on review processes.

[45 CFR 98.43(e)(4)]

Additional Disqualifying Crimes

Can states add additional disqualifying offenses?

- States have the flexibility to consider additional disqualifying offenses when making employment determinations.
- States must at least offer an appeals process for these additional disqualifying crimes.
- States are encouraged to implement an individualized review process for any other disqualifying crimes not listed in the Act. In addition to challenging the record for accuracy and completeness, an individualized review allows the Lead Agency to consider other relevant information.

[45 CFR 98.43(h)]

Red Light / Green Light

What if our state is a closed-record state?

- Most states have adopted FBI security policies and standards to protect their own state criminal data. These state laws and policies are a barrier to sharing state criminal data with other states.
- Responding states determine whether the individual is eligible or ineligible for employment given the state background check results.
 - It is important to note that the responding state may use additional disqualifying crimes that are not listed in the Final Rule for the purposes of determining eligibility.
- Responding states disclose this determination (red light/green light) to the requesting state, without revealing the specific disqualifying crime(s).
- If the individual is deemed ineligible by a responding state, then that state is also responsible for notifying the individual and following the appeals process.

Submitting Background Checks

When is a child care provider not required to submit a background check for a staff member?

- The staff member received a background check that included all of the required parts within the past five years while employed by, or seeking employment by, another child care provider in the state;
- The state gave a qualifying result to the first provider for the staff member; and
- The staff member is employed by a child care provider within the state or has been separated from employment from a child care provider for less than 180 days.



[45 CFR 98.43(d)(3)]

Provisional Employment

When can a staff member begin working?

- Prospective staff members may not begin work until one of the following results have been returned as satisfactory:
 - FBI fingerprint check or
 - State criminal repository using fingerprints in the state where the staff member resides
- Until a determination is made on all checks, prospective staff must be supervised at all times by someone who has already received a qualifying result on a background check within the past five years.
- States may pose additional requirements beyond this minimum.

[45 CFR 98.43(d)(4)]



Timeliness of Background Checks

What if background checks are not completed within 45 days?

- Lead Agencies may create their own procedures in the event that one or more of the components of a background check are not complete within the required 45 days.
- A state must process, at the very least, either the FBI fingerprint check or the search of the state criminal repository, using fingerprints in the state where the prospective staff member resides, before an individual may begin work.
- In instances where a state is waiting for interstate background check components, ACF does not intend to penalize states that have made a good faith effort to request information from other states.



[45 CFR 98.43(e)(1)]

Eligibility Determination

Who can make a determination that a prospective staff member is eligible to work?

- The Lead Agency is required to make determinations regarding a child care staff member's eligibility for employment.
- The Lead Agency must provide a response for the background check to the child care provider in a statement that indicates **only** whether the prospective staff member is **eligible** or **ineligible**, without revealing specific, disqualifying information or other information regarding the individual.
- If the staff member is ineligible, the Lead Agency must provide information about each specific disqualifying crime to the prospective staff member, as well as information on how to appeal the results of the background check to challenge the accuracy and completeness.

[45 CFR 98.43(e)(2)]



Results of Background Checks

Can detailed results be shared with the provider (prospective employer)?

- Most Lead Agencies currently use Public Law 92–544 or the National Child Protection Act/Volunteers for Children Act (NCPA/VCA) (42 U.S.C. 5119a) as the authority to conduct FBI background checks.
- NCPA/VCA requires dissemination of the results to a governmental agency, unless the State has implemented a Volunteer and Employee Criminal History System (VECHS) program.
- Through the NCPA/VCA VECHS program, Lead Agencies may share an individual’s specific background check results with the child care provider, provided the individual has given consent.
- Lead Agencies have the flexibility to continue to use these statutes as authority to complete the FBI fingerprint check, as long as the employment determination process required by the Act is followed.

Fees

Who is responsible for paying the background check fees?

- States, territories, and tribes have the flexibility to determine who pays for background checks (i.e. Lead Agency, the provider, or the applicant).
- Fees that a state, territory, or tribe may charge for the costs of processing applications and administering a criminal background check, shall not exceed the actual costs for the processing and administration.
- At Lead Agency's discretion, CCDF funds may be used to pay the costs of background checks including legally exempt and family child care providers, and their household members.



Differences Between Checks

National Crime Information Center National Sex Offender Registry (NCIC NSOR) vs. National Sex Offender Public Website (NSOPW)

- A search of the NSOPW does not satisfy the statutory requirement for a search of the NSOR.
- States are required to conduct both an FBI fingerprint check AND a separate name-based search of the NCIC NSOR.
- The FBI check searches several files of the NCIC, including NSOR, but there are a number of individuals in the NSOR who are not identified by solely conducting an FBI fingerprint search.
 - In some cases, individuals were not fingerprinted at the time of arrest, or the prints were rejected by the FBI for poor quality.
 - This small percentage of records can be accessed through a name-based search of the NCIC.

Differences Between Checks (cont'd)

FBI Checks vs. In-state and Inter-state Criminal Repository

- FBI fingerprint check provides access to national criminal history record information across state lines on people arrested for felonies and some misdemeanors under state, federal, or tribal law.
- There may be information in state databases that is not in the FBI database.
- A search of both the state criminal records and an FBI fingerprint check returns the most up-to-date record.
- Both checks better address individuals that are not forthcoming regarding their past residences, or committed crimes in a state in which they did not reside.

Differences Between Checks (cont'd)

What if a state is participating in the FBI's National Finger Print File (NFF)?

Requesting State (state of residence)

- Participating in the NFF program does not prevent the need for an in-state criminal history check.
- The FBI requires the requesting state to conduct their own in-state check prior to submitting the FBI check request (if there are disqualifying crimes identified in the in-state check, there is no need for the FBI check).

Responding State (former state of residence)

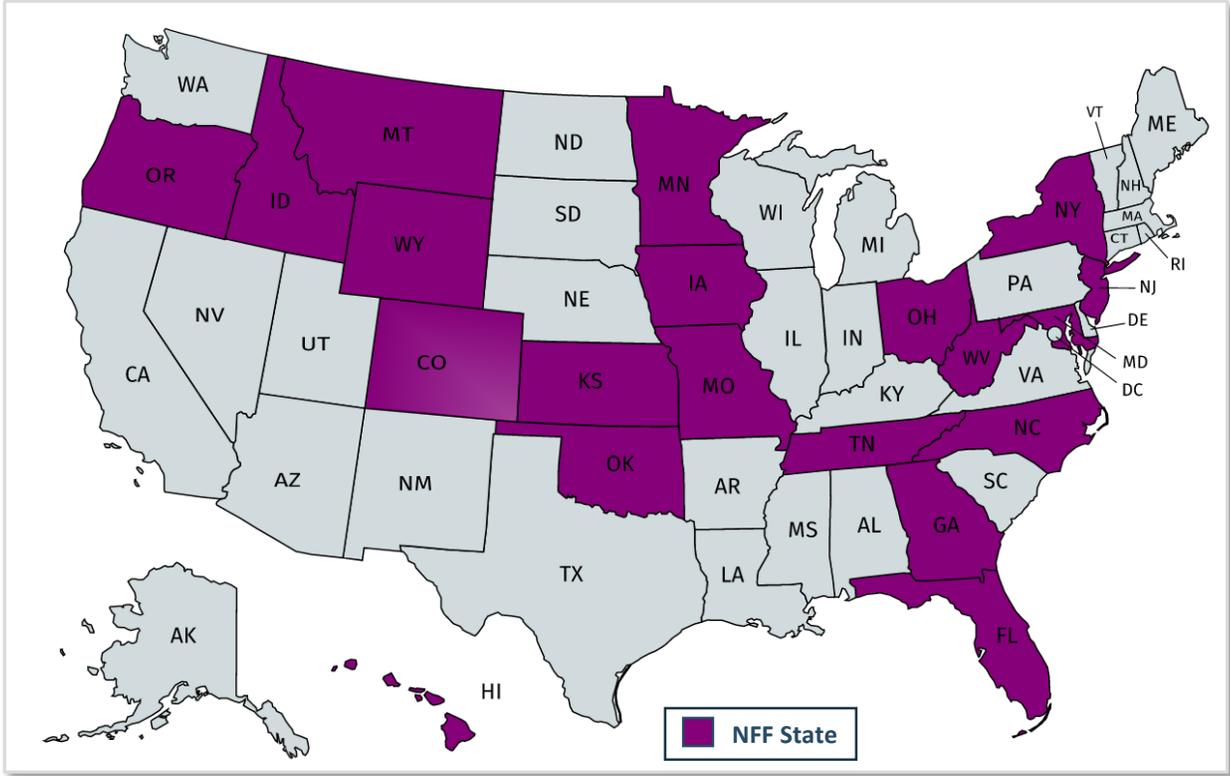
- An FBI fingerprint check satisfies the requirement to perform an inter-state check of another state's criminal history record repository if the responding state participates in the NFF program because the FBI check will search the NFF state's database directly.

National Fingerprint File

| CCDF Background Check Components | States participating in NFF must complete: | States NOT participating in NFF must complete: |
|---|--|--|
| FBI Fingerprint Check | ✓ | ✓ |
| National Crime Information Center National Sex Offender Registry | ✓ | ✓ |
| In-State Criminal Repository using fingerprints | ✓ Completed prior to FBI check | ✓ |
| Interstate Criminal Repository in other states of residence for past 5 years | Only for non-NFF states | Only for non-NFF states |
| State Sex Offender Registry, in state and other states of residence for past 5 years | ✓ | ✓ |
| State Child Abuse and Neglect Registry, in state and other states of residence for past 5 years | ✓ | ✓ |

National Fingerprint File States

| States participating in NFF | |
|-----------------------------|----------------|
| Colorado | Florida |
| Georgia | Hawaii |
| Idaho | Iowa |
| Kansas | Maryland |
| Minnesota | Missouri |
| Montana | North Carolina |
| New Jersey | New York |
| Ohio | Oklahoma |
| Oregon | Tennessee |
| West Virginia | Wyoming |



The FBI has direct access and automatically checks each NFF state’s criminal history repositories as part of its search, in addition to the FBI database.

National Fingerprint File States - Examples

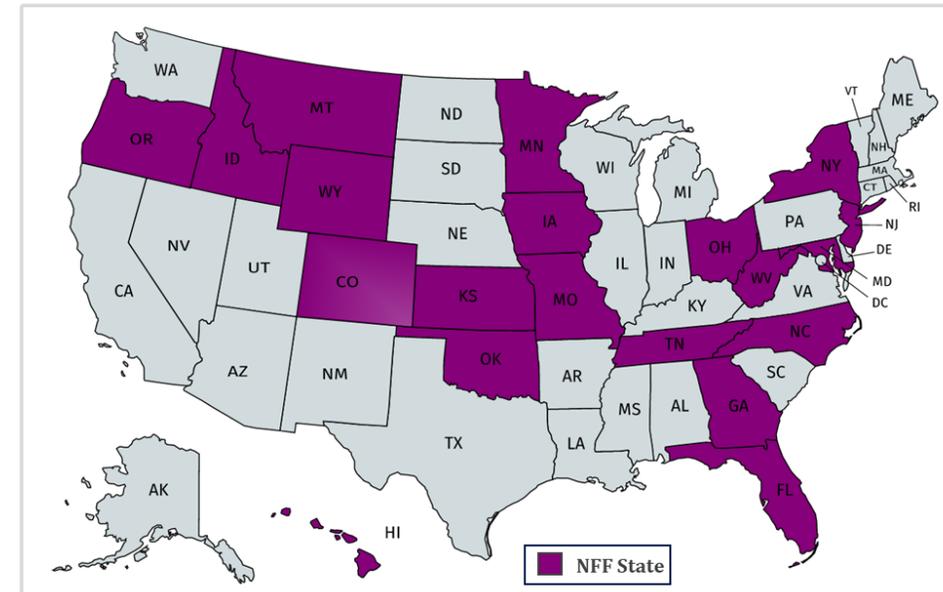
The FBI requires the requesting NFF state to conduct their own in-state criminal history check prior to requesting the national FBI.

Being an NFF state does not negate the need for state-level sex offender registry or child abuse and neglect registry checks.

Example 1:

Individual lives in FL (NFF) and has never resided elsewhere

- FL - in-state criminal history check is required for NFF states as a prerequisite for the FBI criminal history check request
- The national FBI criminal history check must be completed



National Fingerprint File States - Examples

Example 2:

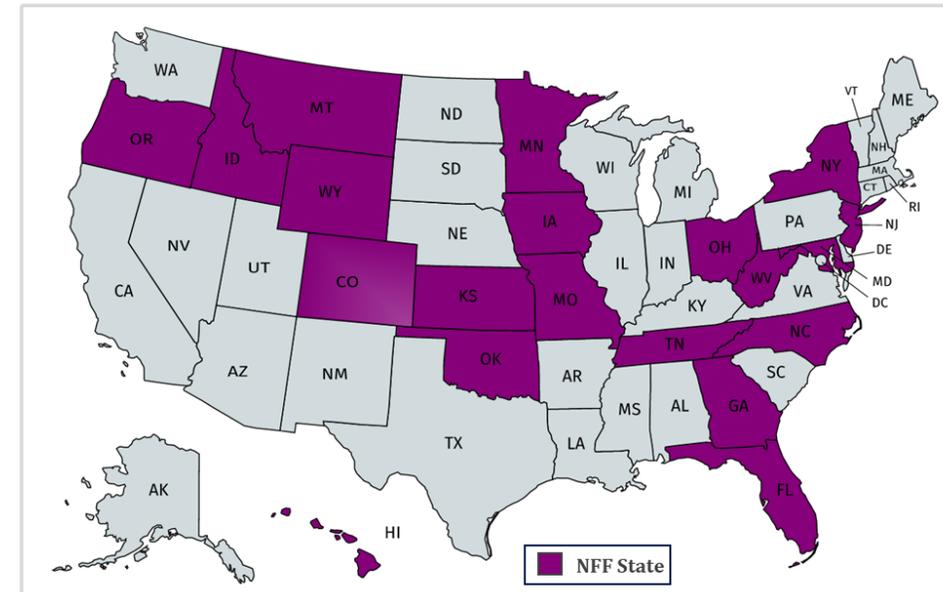
Individual lives in FL (NFF) and lived in GA (NFF) within previous 5 years

- FL - in-state criminal history check is required for NFF states as a prerequisite for the FBI criminal history check request
- The national FBI criminal history check must be completed
- GA - inter-state criminal history check is not required for NFF states

Example 3:

Individual lives in AL (Non-NFF) and has never resided elsewhere

- The national FBI criminal history check must be completed
- AL - in-state criminal history check is required for Non-NFF states



National Fingerprint File States - Examples

Example 4:

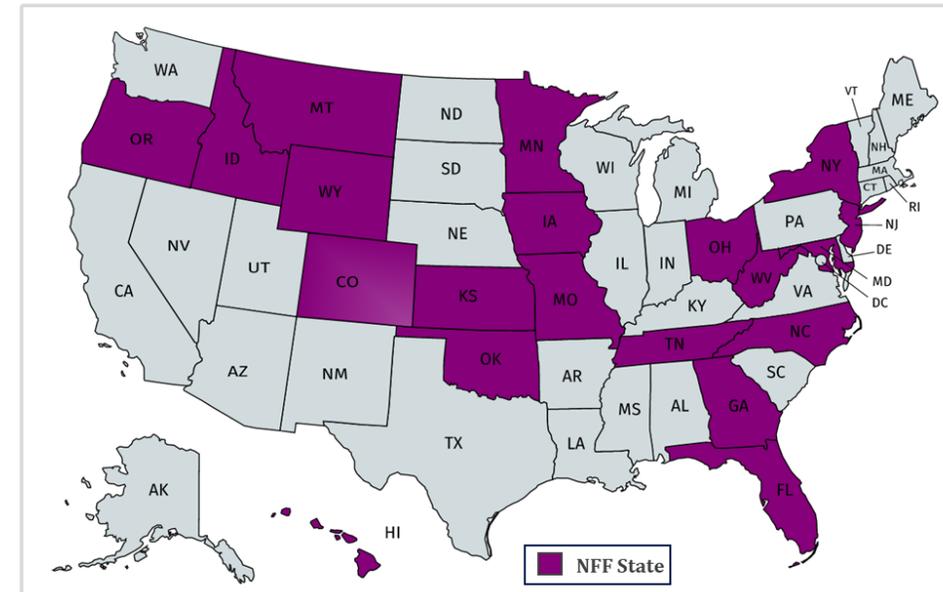
Individual lives in FL (NFF) and lived in GA (NFF) and AL (Non-NFF) within previous 5 years

- FL - in-state criminal history check is required for NFF states as a prerequisite for the FBI criminal history check request
- The national FBI criminal history check must be completed
- GA - inter-state criminal history check is not required for NFF states
- AL - inter-state criminal history check is required for Non-NFF states

Example 5:

Individual lives in CA (Non-NFF) and lived in OR (NFF), WA (Non-NFF), and ID (NFF) within previous 5 years

- The national FBI criminal history check must be completed
- CA - in-state criminal history check is required for Non-NFF states
- OR - inter-state criminal history check is not required for NFF states
- WA - inter-state criminal history check is required for Non-NFF states
- ID - inter-state criminal history check is not required for NFF states



CCDF Background Check Implementation Planning Checklist

- The Checklist contains specific questions concerning key planning steps Lead Agencies are considering, or have taken, to implement comprehensive criminal background checks. It is broken down into five sections:
 - State and Local Regulatory Authority
 - Organizational Structure
 - Disqualifying Crimes and Offenses
 - Volume Estimates and Staffing
 - Central Background Check Registry

Resources

- Criminal Background Check Resources Web Page ([LINK](#))
 - Background Check Requirement Highlights
 - Tribal Background Check Requirement Highlights
 - CCDF Criminal Background Implementation Planning Checklist
 - Criminal Background Check Requirements: CCDBG Act Background Check Requirements
 - Child Care Subsidy Criminal Background Check Contact List
 - Fingerprint Considerations and Resources Brief
 - Fingerprinting: Considerations and Resources One-Pager
 - Using Live Scan Fingerprinting to Meet CCDF Criminal Background Check Requirements
 - National Criminal Background Check Webinar series
 - Approved Methods for the FBI Fingerprint Component of Criminal Background Checks: Brief for CCDF Tribal Lead Agencies
- Administration for Children and Families Web Page ([LINK](#))
 - PI – Implementing the NCIC NSOR Background Check Requirement (CCDF-ACF-PI-2017-03)
 - PIQ – Clarification on CCDBG Act Background Check Requirements and Health and Safety Training Requirements (CCDF-ACF-PIQ-2017-01)



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Thank you!