**Adult Day Services Background Check Statute**

**Link to ADS statute:** [**Adult Day Services Statute**](https://advance.lexis.com/api/permalink/0b644e18-f150-42cf-b849-fb93bc5d23dc/?context=1000516)

**Excerpt from Statute:**

## 71-2-403. Review of records and registries — Verification — Exclusion from access to adults.

(a) A review of the records and registries set forth in subdivisions (a)(1)-(6) shall be conducted for all new employees or for volunteers who are counted in the staff/adult participant ratio and those volunteers who have unsupervised access to the adult participants in adult day care centers, and for all new department licensing staff who regulate the adult day care licensing program and all new counselors and supervisors providing services in the adult protective services program:

(1) Criminal background history;

(2) Juvenile records history available to the Tennessee bureau of investigation (TBI);

(3) Any available juvenile court records, if determined necessary by the department;

(4) Vulnerable persons registry pursuant to title 68, chapter 11, part 10;

(5) State's sex offender registry; and

(6) Records of indicated perpetrators of abuse or neglect of children or adults maintained by the department of children's services and the department of human services.

(b)

(1) Except as otherwise provided in this subdivision (b)(1) and in subsections (c) and (e), and except where the context or intent would otherwise render the language inapplicable to the persons having access to adults in an adult day care center, the procedures, requirements and any other statutory provisions involving the requirements for disclosure forms, the methodology for obtaining and reporting the fingerprint-based criminal and available juvenile histories of a person, the exclusions of persons with a prohibited records history, the appeals processes, the department's authority to allow by rule of the department for exemptions from a verified prohibited history, permissive review procedures and any other consistent procedures, shall be the same for persons subject to this section as those provided in [§ 71-3-507](https://advance.lexis.com/document/documentlink/?pdmfid=1000516&crid=fea8f374-6a62-43ee-8d89-2506b1dbdc91&action=linkdoc&pdtocnodeidentifier=ACSAACAAEAAD&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A4WTX-CSV0-R03K-G0C4-00008-00&pdcomponentid=&ecomp=xsp2k&prid=891be8a9-2fcf-49c2-b4b9-99f8ecf6511a) for persons having access to children in childcare agencies licensed by the department of human services pursuant to chapter 3, part 5 of this title; provided, that the adult day care center, and not the department, shall be responsible for all of the costs of the fingerprint background checks conducted by the TBI and the federal bureau of investigation for its employees or volunteers subject to this section.

(2) With respect to volunteers, this section applies only to those volunteers who serve as volunteers for more than thirty-six (36) hours in any one (1) calendar year.

(c) The adult day care center may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or it may pay the costs and recover the costs of the fingerprint-based background checks from the prospective employee following employment. The department shall pay all costs required for its employees subject to the required background reviews.

(d) The TBI shall make any reports of positive matches pursuant to this section in the same manner as provided for any of the processes authorized by [§ 71-3-507](https://advance.lexis.com/document/documentlink/?pdmfid=1000516&crid=fea8f374-6a62-43ee-8d89-2506b1dbdc91&action=linkdoc&pdtocnodeidentifier=ACSAACAAEAAD&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A4WTX-CSV0-R03K-G0C4-00008-00&pdcomponentid=&ecomp=xsp2k&prid=891be8a9-2fcf-49c2-b4b9-99f8ecf6511a).

(e) Conviction by a criminal court or adjudication by the juvenile court for an offense or a lesser included offense involving the physical, sexual or emotional abuse, neglect, financial exploitation or misuse of funds or theft from any person, or that constitutes conviction or adjudication for an offense involving violence against any person, or conviction of an offense involving the manufacture, sale, possession or distribution of any drug, or a no-contest plea to such offenses, and any pending warrants, indictments, presentments or petitions for such offenses, or the identification of any person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, on the state's sex offender registry or identification as a perpetrator of abuse or neglect of children or adults in the records of the department of children's services or department of human services as provided in [§ 71-3-515](https://advance.lexis.com/document/documentlink/?pdmfid=1000516&crid=fea8f374-6a62-43ee-8d89-2506b1dbdc91&action=linkdoc&pdtocnodeidentifier=ACSAACAAEAAD&pddocfullpath=%2Fshared%2Fdocument%2Fstatutes-legislation%2Furn%3AcontentItem%3A4WTX-CSV0-R03K-G0C4-00008-00&pdcomponentid=&ecomp=xsp2k&prid=891be8a9-2fcf-49c2-b4b9-99f8ecf6511a) shall disqualify such person from employment with, or from having any access whatsoever to adults in, an adult day care center as defined by this part, and from employment with the department as regulatory staff in the department's adult day care licensing program and service staff in the adult protective services program.

## History

Acts 1996, ch. 1058, § 4; 1997, ch. 449, § 2; 2000, ch. 981, § 69; 2009, ch. 410, § 1; 2013, ch. 101, § 1.

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**Adult Day Services Background Check Rules**

Link to ADS Rules: [Adult Day Services Rules](https://publications.tnsosfiles.com/rules/1240/1240-07/1240-07-10.20180524.pdf)

**Excerpt from Adult Day Services Rules:**

Unless otherwise notified by the Department, the adult day services center shall be responsible for all costs associated with obtaining the fingerprint sample, and for the costs of the criminal background check by the Tennessee Bureau of Investigation. The adult day services center may be may require that the costs of the background check be a part of the application process by a prospective employee or volunteer, or it may pay the costs and recover the costs of the fingerprint-based background checks from the prospective employee following employment.

(3) Prohibited Criminal, Juvenile, Vulnerable Persons or Sex Offender Registry, Abuse or Neglect or Driving History; Exclusion from Contact with Participants.

(a) No person shall be employed with, be a licensee or operator of, or have any access whatsoever to participants in an adult day services center if the criminal background check identifies an excludable criminal offense for which the person has:

1. Been convicted of, pled guilty or no contest to, or to a lesser included offense;

2. Been, or currently is, the subject of a juvenile petition or finding that would constitute a criminal offense or lesser included offense if the child were an adult; or

3. Been named in a pending warrant, indictment, presentment, petition, pretrial or judicial diversion.

(b) An excludable criminal offense involves, generally:

1. The physical, sexual or emotional abuse or neglect of an adult or child;

2. A crime of violence against any human being;

3. Any offense (including a lesser included offense) involving the manufacture, sale, distribution or possession of any drug; or

4. Any offense that presents a threat to the health, safety or welfare of adults or children.

(c) No person may be employed as a driver or serve as a driver for an adult day services center if the person:

1. Is currently charged with; or

2. Has been convicted of, or pled guilty to, within the last five (5) years to one of the following criminal offenses:

(i) Vehicular homicide (T.C.A. § 39-13-213);

(ii) Accidents involving death or personal injury (T.C.A. § 55-10-101);

(iii) Accidents involving damage to a vehicle (T.C.A. § 55-10-102);

(iv) Driving under the influence of intoxicant, drug or drug producing stimulant (T.C.A. § 55-10-401); or

(v) Any felony involving the use of a motor vehicle while under the use of any intoxicant.

(4) Criminal offenses for which exclusion from access to adult care is required includes, but is not limited to, the following (including any as amended):

(a) Aggravated arson (T.C.A. § 39-14-302);

(b) Aggravated assault (T.C.A. § 39-13-102);

(c) Aggravated child abuse (T.C.A. § 39-15-402); (d) Aggravated child neglect (T.C.A. § 39-15-402);

(e) Aggravated cruelty to animals (T.C.A. § 39-14-212);

(f) Aggravated kidnapping (T.C.A. § 39-13-304);

(g) Aggravated rape (T.C.A. § 39-13-502);

(h) Aggravated rape of a child (T.C.A. § 39-13-531);

(i) Aggravated robbery (T.C.A. § 39-13-402);

(j) Aggravated sexual battery (T.C.A. § 39-13-504);

(k) Aggravated sexual exploitation of a minor (T.C.A. § 39-17-1004);

(l) Aggravated vehicular homicide (T.C.A. § 39-13-218);

(m) Arson (T.C.A. § 39-14-301);

(n) Assault (T.C.A. § 39-13-101);

(o) Carjacking (T.C.A. § 39-13-404);

(p) Child abuse, child neglect or endangerment (T.C.A. § 39-15-401);

(q) Criminal attempt, under § 39-12-101, to commit any criminal offense that requires exclusion from child care;

(r) Criminal exposure to HIV (T.C.A. § 39-13-109);

(s) Criminal homicide (T.C.A. § 39-13-201);

(t) Criminally negligent homicide (T.C.A. § 39-13-212);

(u) Cruelty to animals (T.C.A. § 39-14-202);

(v) Custodial interference (T.C.A. § 39-13-306);

(w) Domestic abuse in violation of an order of protection or in violation of a restraining order (T.C.A. § 39-13-113);

(x) Domestic assault (T.C.A. § 39-13-111);

(y) Drug offenses (felony or misdemeanor, possession, manufacturing, sale, distribution, etc.);

(z) Especially aggravated burglary (T.C.A. § 39-14-404);

(aa) Especially aggravated kidnapping (T.C.A. § 39-13-305);

(bb) Especially aggravated robbery (T.C.A. § 39-13-403);

(cc) Especially aggravated sexual exploitation (T.C.A. § 39-17-1005);

(dd) Exploitation of a minor by electronic means (T.C.A. § 39-13-529);

(ee) False imprisonment (T.C.A. § 39-13-302);

(ff) First degree murder (T.C.A. § 39-13-202);

(gg) Incest (T.C.A. § 39-13-302);

(hh) Indecent exposure (T.C.A. § 39-13-511);

(ii) Involuntary labor servitude (T.C.A. § 39-13-307);

(jj) Kidnapping (T.C.A. § 39-13-105);

(kk) Rape (T.C.A. § 39-13-503);

(ll) Rape of a child (T.C.A. § 39-13-522);

(mm) Reckless endangerment (T.C.A. § 39-13-103);

(nn) Reckless homicide (T.C.A. § 39-13-215);

(oo) Robbery (T.C.A. § 39-13-401);

(pp) Second degree murder (T.C.A. § 39-13-210);

(qq) Sexual battery (T.C.A. § 39-13-505);

(rr) Sexual battery by an authority figure (T.C.A. § 39-13-527);

(ss) Sexual exploitation of a minor (T.C.A. § 39-17-1003);

(tt) Solicitation of a minor (T.C.A. § 39-13-528);

(uu) Stalking (T.C.A. § 39-17-315);

(vv) Statutory rape (T.C.A. § 39-13-506);

(ww) Statutory rape by an authority figure (T.C.A. § 39-13-532);

(xx) Trafficking a person for sexual servitude (T.C.A. § 39-13-309);

(yy) Vehicular assault (T.C.A. § 39-13-106);

(zz) Vehicular assault while intoxicated (T.C.A. § 39-13-106);

(aaa) Vehicular homicide (T.C.A. § 39-13-213);

(bbb) Voluntary manslaughter (T.C.A. § 39-13-211);

(ccc) Weapons offenses (unlawful possession, carrying, use, etc.);

(ddd) Aggravated burglary (T.C.A. § 39-14-403);

(eee) Burglary (T.C.A. § 39-14-402);

(fff) Criminal simulation (T.C.A. § 39-14-115);

(ggg) Extortion (T.C.A. § 39-14-112);

(hhh) Forgery (T.C.A. § 39-14-114);

(iii) Fraudulent use of a credit card (T.C.A. §§ 39-14-118, 39-14-105);

(jjj) Identity theft (T.C.A. § 39-14-150);

(kkk) Shoplifting (T.C.A. § 39-14-146);

(lll) Theft of property (T.C.A. § 39-14-103);

(mmm)Theft of services (T.C.A. § 39-14-104); or

(nnn) Worthless checks (T.C.A. § 39-14-121).

(5) Exclusion from access to an adult day services center based on a listing on a state registry.

(a) No person shall be employed with, be a licensee or operator of, or have any access whatsoever to participants in an adult day services center if the results of the state registry review or in the equivalent administrative registries or court records in any jurisdiction in which the person has resided in the past five (5) years identify the person as being:

1. Listed on the vulnerable persons registry, maintained by the Tennessee Department of Health;

2. Listed on the sexual offender registry, maintained by the Tennessee Bureau of Investigation; or

3. Substantiated in the records of the Department of Children’s Services for abuse or neglect of a child.