



## STATE OF TENNESSEE

### DEPARTMENT OF HUMAN SERVICES [www.state.tn.us/humanserv/](http://www.state.tn.us/humanserv/)

#### Waiver Request Information Sheet

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A meeting with the Waiver Advisory Committee is designed to provide a fair and informal opportunity for an individual to present information and documentation in support of his or her request for a waiver from an exclusion from access to child care agencies or adult day care centers due to a criminal offense, juvenile adjudication or the person's status on a registry as a person who has committed abuse, neglect or a sexual offense.

Individuals appearing before the Advisory Committee must demonstrate the statutory requirement that there are extenuating circumstances, which means very good reasons, that clearly justify granting a waiver from an automatic exclusion due to the results of a criminal background check and/or a review of the vulnerable persons registry, sexual offender registry, and the Department of Children's Services indicated perpetrator registry. The Advisory Committee will consider whether those circumstances clearly warrant a waiver of the exclusion and will make a recommendation to the Director of Child and Adult Care Licensing. The Director will decide whether to grant or deny the waiver.

**This meeting is not designed to provide a hearing or trial for the individual to dispute the results of the criminal background check and/or review of the administrative registries.**

Neither the Advisory Committee nor the Director will consider issues such as "fairness," "guilt or innocence," etc. – the information and documentation that will be considered is that which helps to establish *extenuating circumstances that would clearly warrant* the granting of an exception to the automatic exclusion.

#### General Factors for Consideration:

The factors that will establish "extenuating circumstances clearly warranting a waiver" will differ according to the particular circumstances of each individual. Some of the factors that the advisory committee will generally consider include:

- The age of the individual when the most recent criminal offense or basis for listing on an administrative registry occurred;
- The length of time that has passed since the criminal offense/basis for listing occurred;
- The seriousness of the criminal offense or basis for listing;
- Whether any mental health and/or substance abuse issues have been appropriately addressed, including the length of time that the individual has remained stabilized and/or sober;
- Whether the criminal offense or basis for listing involved any type of sexual abuse of either a child or an adult;
- Whether the individual has demonstrated responsibility toward any victim(s), or has otherwise demonstrated full responsibility for the criminal offense;
- The overall criminal history of the individual, including:
  - ✓ the number of criminal offenses that the individual has been charged with;

- ✓ the seriousness of the criminal offenses;
- ✓ the recidivism rate, e.g., multiple misdemeanor crimes of violence, multiple drug charges, multiple felonies, etc.; and
- ✓ the time period within which the criminal history took place;
- the individual's activities since the last criminal offense;
  - ✓ employment history,
  - ✓ educational achievements,
  - ✓ completion of appropriate treatment programs,
  - ✓ community activities, etc.

Burden of Proof:

The law requires that the individual be automatically excluded due to the results of a criminal background check and/or a review of the vulnerable persons registry, sexual offender registry, or the Department of Children's Services indicated perpetrator registry. The burden is *on the individual to prove* the extenuating circumstances that clearly warrant an exception.

Disclosure Form:

All individuals meeting with the Advisory Committee are required to send Child Care Licensing a completed, signed copy of the Fingerprint Sample Registration/Criminal-Juvenile History and State Registry Review Disclosure Form before the meeting will be scheduled. *The form must also be signed by the Cogent fingerprinting technician. The failure to provide a copy of this form may result in the meeting being delayed.*

Preparing for the Meeting:

The individual should be prepared to present information and documentation that will help the Advisory Committee consider the "General Factors" listed above.

Individuals do not have a legal right to be represented by counsel at these meetings, but the individual may bring an attorney to advise him or her. The individual may also bring with them any other individual that they feel can assist them with presenting information to the Advisory Committee.

The types of information and documentation that the individual may present include:

- ✓ Statements by the individual and/or a representative of the individual;
- ✓ Statements from witnesses, e.g., a character witness who can speak regarding the individual's activities since the last criminal violation;
- ✓ Documentary evidence, e.g., certificate of completion for a treatment program, employer recommendations, etc.

Procedures to Expect During the Meeting:

The Advisory Committee will ask the individual to provide any information and documentation that the individual wishes to provide. Members of the Advisory Committee are encouraged to ask questions of the individual, attorney, and witnesses, and may ask these questions throughout the meeting.

The Advisory Committee can choose to place reasonable limits on the information and documentation presented. Such limits will often be placed at the beginning of the meeting. For example, such limits might include:

- Requesting attorneys to limit opening/closing remarks to 5 minutes;
- Instructing the individual not to present multiple witnesses who will provide substantially similar information;
- Instructing witnesses to speak only to those facts that have not already been presented by another witness;

- Instructing the individual to carefully consider his or her documentation so that it is not repetitive (e.g., presenting multiple documents that verify the same facts).

The Advisory Committee can also choose to place limits on the meeting while the meeting is in progress; for example, the committee may limit the amount of time that a witness may speak, or the committee at some point may refuse to accept any additional documentation.

At the conclusion of the meeting, the individual will not immediately be given a decision. The Advisory Committee does not make a decision about granting or denying the individual's waiver request; it makes a recommendation to the Director of Child and Adult Care Licensing. The Director will decide whether to grant or deny the waiver.

After the Meeting:

The Advisory Committee will have a discussion and make its decision, then fill out a "Recommendation Form" stating whether its recommendation is to grant or deny the waiver. This form is then delivered to the Director. The Director will make the final determination regarding granting or denying the waiver. The individual will receive a letter to the informing them of whether their request for a waiver has been granted or denied.