

I. Overview

Among the requirements in this Colorado Judicial Department Independent Contractor Criminal History Check Policy (“Policy”), only Qualified Individuals may provide contracted services to the Colorado Judicial Department (“Judicial” or “Department”). This Policy requires that Judicial Contractors deliver services to the Department only after the timely completion and maintenance of Criminal History Checks (“CHCs”). These verifications are one of a number of requirements that may be reflected in Judicial Contracts. A more complete description of Judicial’s requirements regarding CHCs, including relevant definitions, is included below.

II. Definitions

Adverse Action Letter: A letter representing a final Non-Suitability Determination and potentially including certain, limited appeal rights.

Ancillary Employees: Individuals employed by a Judicial Contractor but whose services are not the subject of a Judicial Contract. Ancillary Employees may include staff employed but not involved in the direct delivery of services to Judicial staff, probationers or other Judicial stakeholders; examples include administrative personnel and staff who perform “back office” support.

Appeal Submission: Written documentation, on current forms provided by the Department, containing a complete and accurate articulation of the right, basis and nature of the appeal.

CHC Authorization Form: The document authorizing a Qualified CHC Service Provider and/or the Department to conduct a CHC, including information needed to perform the CHC as well as notifications to the authorizing individual about the CHC process.

CMU Legal Counsel: The actively licensed attorney(s) in the Judicial Financial Services Division contracting unit.

Contracts Management System: The Department’s contract management system that is utilized for managing CHCs.

Department Representative: The individual(s) identified in the relevant contract between a Judicial Contractor and the Department as the representative of the Department for notification, reporting and/or similar purposes.

Expressly Authorized Subcontractor: A subcontractor approved, in writing, by Judicial to provide services under a Judicial Contract.

Judicial-Affiliated CHC Service Provider: A service provider contracted by the Department to serve as an additional resource available to Judicial Contractors in relation to the completion of CHCs. A Judicial Contractor may choose and use its own CHC provider and the Judicial

Contractor shall remain exclusively responsible for any and all fees or other amounts due to its selected CHC Service Provider.

Judicial Facility: A facility owned, leased or occupied, in whole or in part, by the Department.

Judicial CHC Standards: The minimum CHC requirements of the Department, applicable to Judicial Contractors, identified below in Attachment A as the “*Colorado Judicial Department Independent Contractor Criminal History Check Minimum Standard Guidance*.” These standards may be subject to change.

Judicial Contract: The legal agreement(s) between a Judicial Contractor and the Department, addressing services provided to the Department, whether the agreement is in the form of a purchase order, standard contract or other legally enforceable agreement.

Judicial Contractor(s) or Contractor(s): For purposes of this Policy only, an individual or entity providing services to the Department under a Judicial Contract as an independent contractor as well as any Expressly Authorized Subcontractor.

Not Suitable or Non-Suitability Determination: A determination that an individual does not satisfy the relevant CHC standard(s), accompanied by the delivery of an Adverse Action Letter when utilizing a Qualified CHC Service Provider.

Peer Services: Supportive services for which the background or lived experience of the service provider directly contributes to the nature and quality of services delivered, therefore benefitting the recipient of those services.

Pre-Adverse Action Letter: A written communication indicating a preliminary determination of Not Suitable and describing the individual’s rights to dispute the completeness or accuracy of the information contained in the CHC report directly with the Qualified CHC Service Provider.

Qualified CHC Service Provider: A Consumer Reporting Agency as defined in 15 USC 1681 *et seq.* and C.R.S. §5-16-104 *et seq.*, in good standing and regularly engaged in the practice of performing CHCs using commercially reasonable methods.

Qualified Individuals: Individuals fully authorized by their employer and Judicial Contractor or Subcontractor to deliver service to the Department and who meet requirements including, but not limited to those in this Policy, licensing, certification, registration or similar professional requirements, and any other duties reflected in a Judicial Contract or otherwise applicable under Colorado law.

Suitable or Suitability Determination: A finding that an individual satisfied the relevant CHC standard(s).

Suitability Determination Notice: Written confirmation that the individual to whom the documentation is delivered has satisfied the referenced CHC standards, as of the date of the assessment.

III. Judicial Criminal History Check (“CHC”) Policy

Judicial Contractors are required to perform CHCs in a timely manner, consistent with the requirements contained within a Judicial Contract and to otherwise adhere to the following:

A. Entities and Individuals to Which this Policy Applies:

1. Requirements Extend to All Services Addressed in Contracts with Judicial Services at Issue
 - a. This Policy applies to all Judicial Contractors, unless a Judicial Contract expressly waives or modifies this requirement. For the Judicial Contractors covered by this policy, CHCs must be performed on every Contractor employee whose services are the subject of a Judicial Contract. Judicial Contractors are not required to perform CHCs on Ancillary Employees, who may be employed by a Contractor but whose services are not the subject of the relevant agreement.
2. Limited Applicability to Subcontractors
 - a. Judicial Contracts may extend CHC requirements to the employees of Judicial Subcontractors when:
 - i. The Judicial Subcontractor was expressly identified and authorized in a Judicial Contract to provide services that are the subject of the contract (“Expressly Authorized Subcontractor”); and/or
 - ii. The individual is a delivery person, equipment installer, or will otherwise enter a Judicial Facility in support of the work of the Judicial Contractor.

B. How CHCs May be Completed

1. Entities That May Perform CHCs
 - a. When a background check is required under this Policy or otherwise, the following options outline the manner by which the verifications are to be performed:
 - i. Contractor shall perform and maintain CHCs following their own commercially reasonable company policy, using a Qualified CHC Service Provider. The CHC standard applied must be at least as rigorous as the applicable standard within the Judicial CHC Standards;

or

- ii. If Contractor does not currently complete CHC checks on relevant employees, it must either independently select and utilize a Qualified CHC Service Provider or it may use a Judicial Affiliated CHC Service Provider. Judicial Affiliated CHC Service Providers, if any, are available, are included on the [Judicial Public Webpage](#) (see Financial Services program, Contracts Management Unit, Criminal History Check Information and Business Resources).

2. Department Rights to Perform CHCs Reserved

- a. The Department expressly reserves its right, at its unlimited discretion, to require and/or perform background checks on any Qualified Individual, separate and independent from the Contractor-performed CHCs, at any time preceding, during, or after the term of a Judicial Contract with the Department.
- b. Judicial Contracts may, in appropriate circumstances, reflect that certain CHCs will be performed directly by the Department.

3. CHC Standard Applied

- a. In all instances of a CHC being performed, the CHC standard applied must be at least as rigorous as the applicable standard within the Judicial CHC Standards.
 - i. Contractors may elect to utilize standards more stringent than the Judicial CHC Standards, and in all cases, maintain full legal responsibility for its implemented standards and determinations made in relation to CHCs. Any questions regarding whether Contractor's applied standards meet Judicial CHC Standards will be determined by CMU Legal Counsel.
 - ii. Consistent with the Judicial CHC Standards, unless a Judicial Contract provides otherwise, Peer Service and other similar service providers are subject to CHC requirements tailored to the services provided.
- b. The Judicial CHC Standards, and this process generally, are not intended for use in relation to Contractor hiring decisions and Contractors are similarly responsible for those decisions.

4. Frequency

- a. Judicial Contractor CHC verifications for Qualified Individuals shall be completed prior to the delivery of services to Judicial and, at a minimum, every three (3) years thereafter.

C. Post-Determination Actions

1. CHC Determination Process

- a. The following sections outline the actions to be taken following the completion of a CHC by a Qualified CHC Service Provider:

- b. *Determinations of Suitability:*

- i. If the Judicial Contractor performed a CHC following their own commercially reasonable company policy, using a Qualified CHC Service Provider, and the individual was determined to be Suitable under its policy and the Judicial CHC Standards, the Judicial Contractor shall list the individual as “Suitable” in the Contract Management System. The detailed instructions for this process are located on the [Judicial Public Website](#) (see Financial Services program, Forum and including Registering and Onboarding materials). The individual shall not provide services under a Judicial Contract unless and until this information has been entered into the Forum system.

- ii. If the Judicial Contractor utilizes the Judicial Affiliated CHC Service Provider to perform a CHC on an individual to satisfy the requirements of this Policy, the Judicial Affiliated CHC Service Provider will advise the individual directly regarding the time expected to complete a CHC. In Colorado, this is typically within 3 to 5 business days following the delivery of a complete and accurate CHC Authorization Form.

- (1) A Suitability Determination Notice will be sent directly to the individuals to whom the information applies.

- (2) Following a Suitability Determination, the Judicial Contractor will identify the individual as “Suitable” in the Contracts Management System. The detailed instructions for this process are located on the [Judicial Public Website](#) (see Financial Services program, Forum and including Registering and Onboarding materials). The individual shall not provide services under a Judicial Contract unless and until this information has been entered into the Contracts Management System.

- iii. If Judicial internally performed a CHC, its process will align with that described in the section above.

- c. *Determinations of Not Suitable:*

- i. If the Judicial Contractor performed a CHC following their own commercially reasonable company policy, using a Qualified CHC

Service Provider, and the individual was determined not to meet the Judicial CHC Standards, the individual is Not Suitable and the individual cannot provide services to the Department under a Judicial Contract.

- ii. If the Judicial Contractor utilizes the Judicial Affiliated CHC Service Provider to perform a CHC on an individual to satisfy the requirements of this Policy, the Judicial Affiliated CHC Service Provider will advise the individual directly regarding the time expected to complete a CHC. This is typically within 3 to 5 business days following the delivery of a complete and accurate CHC Authorization Form. A Non-Suitability Determination will generally involve the delivery of two notices to the individual to whom the CHC pertains:
 - (1) Pre-Adverse Action Letter: This letter advises the recipient of a preliminary determination that the individual's CHC will likely result in a finding of Not Suitable. The individual may, however, dispute the completeness or accuracy of the information contained in the CHC report as described in subsection E.2, below.
 - (2) Adverse Action Letter: Following the expiration of the allotted time period to dispute the completeness or accuracy of information detailed in the Pre-Adverse Action Letter, an individual will receive an Adverse Action Letter. This letter serves as the final, official Non-Suitability Determination. Certain appeal opportunities described in section E.2 may apply.
 - a. Following the receipt of an Adverse Action Letter and after the period of appeal as detailed below in section E.2, the individual shall be deemed "Not Suitable" and the individual cannot provide services to the Department under a Judicial Contract.
- iii. If the Department directly performed the CHC and the individual was determined not to meet the Judicial CHC Standards and found Not Suitable, the individual will be sent a Non-Suitability Determination letter from the Department. The individual is eligible for certain appeal rights as further described below in subsection E.4.

2. Duty to Report Results to Contractor

- a. Individuals who were the subject of a CHC are expected to immediately share the results of CHC assessments, whether Suitable or Not Suitable, with the appropriate Contractor representative identified in the Judicial Contract. Consistent with the disclosures in the CHC Authorization Form, individuals who are the subject of a CHC acknowledge and agree that Contractors and Judicial will communicate as needed regarding findings of Not Suitable to make

appropriate operational and contractual changes.

3. Contractor's Ongoing Duty to Report to Judicial

- a. Judicial Contractors are required to maintain a policy that requires any employee or Expressly Authorized Subcontractor providing services under a Judicial Contract to immediately report any criminal conviction, arrest, open or pending criminal case, known want or warrant, or deferred judgement, to the Contractor. Contractor shall then assess and take action(s) consistent with this Policy.
- b. In the event a previously Suitable individual, during the course of providing services to the Department pursuant to a Judicial Contract, becomes Not Suitable due to a recent conviction, Contractors shall take the following steps:
 - i. Update of Information in the Contracts Management System: If the individual had previously been deemed Suitable, their designation in the Forum system shall be updated from "Suitable" to "Not Suitable," consistent with the instructions located [Judicial Public Website](#) (see Financial Services program, Forum and including Registering and Onboarding materials).
 - ii. Discontinue Services (If applicable): If the individual had been or was anticipated to provide services to the Department, the individual shall no longer provide services. This is also the case during the pendency of any appeal(s).
 - iii. Report: The Judicial Contractor shall also immediately report the personnel change to the appropriate Department Representative as the change may necessitate operational or contractual modifications. The Department Representative will communicate with the Department's vendor liaisons regarding any reported personnel changes.

D. National Sex Offense Registry Lookup

1. Judicial Contractors shall be responsible for searching any individual who is the subject of a CHC on the National Sex Offender Public Website prior to the final determination of suitability. The National Sex Offender Public Website can be found at the following link: <https://www.nsopw.gov/>.
 - a. In accordance with the Judicial CHC Standards, if an individual is currently on the sex offender registry, the individual shall be deemed Not Suitable and cannot provide services to the Department under a Judicial Contract.
 - i. If an individual was found Not Suitable but can provide proof to the Department of deregistration, the determination may be changed to Suitable so long as the underlying charge itself is not disqualifying

according to the Judicial CHC Standards.

E. Dispute and Other Appeal Rights Related to CHCs

1. Individuals who were the subject of a CHC have rights established in law to dispute a CHC report, including but not limited to, the provisions summarized below. The Department also supplements these rights, to a limited extent, and as specifically contained in this Policy.
2. Dispute rights under the Colorado Consumer Credit Reporting Act, C.R.S. § 5-18-101, et seq.
 - a. The Colorado Consumer Credit Reporting Act provides, in part, that:
 - ii. the individual consumer is entitled to a disclosure copy of his/her consumer file (C.R.S. § 5-18-106); and
 - iii. the individual consumer may dispute the completeness or accuracy of the information contained in the consumer's file directly with the consumer reporting agency (C.R.S. § 5-18-110).
 - b. If a Judicial Contractor utilized their own Qualified CHC Service Provider to fulfill the requirements of this Policy, individuals who were the subject of a CHC each must work directly with that Qualified CHC Service Provider in relation to any disputes, challenges or questions regarding the completeness or accuracy of the information of any consumer report, or CHC, issued by the Qualified CHC Service Provider.
 - c. If Judicial Contractors utilized the Judicial Affiliated CHC Service Provider to fulfill the requirements of this Policy, individuals who were the subject of a CHC each must work directly with the Judicial Affiliated CHC Service Provider in relation to any disputes, challenges or questions regarding the completeness or accuracy of the information of any consumer report or CHC issued by the Judicial Affiliated CHC Service Provider.
3. Secondary Department Appeals following the use of a Judicial Affiliated CHC Service Provider
 - a. The Department offers the individuals who receive an Adverse Action Notice from a Judicial Affiliated CHC Service provider a separate, limited right to appeal if:
 - i. The Judicial Contractor utilized the services of a Judicial Affiliated CHC Service Provider and the individual was deemed Not Suitable; and
 - ii. Within five (5) calendar days of the Non-Suitability Determination, and

the delivery of an Adverse Action Letter, the individual delivered a complete and accurate Appeal Submission to the identified Judicial designee for receipt. The required Appeal Forms are located on the [Judicial Public Webpage](#) (see Financial Services program, Contracts Management Unit, Criminal History Check Information and Business Resources. Consistent with the content in the required Appeal Submission, the appealing individual must establish:

(1) that the individual was otherwise a Qualified Individual, and one of the following:

- a. that an error was made in applying the relevant element of the Judicial CHC Standards to the Qualified Individual's criminal history; or
- b. there is a direct relationship between the conviction giving rise to the Non-Suitability Determination and the Qualified Individual's relevant duties and responsibilities, and the relationship positively impacts the Qualified Individual's ability to perform one or more such duties and responsibilities; or
- c. another legal basis that the finding of Not Suitable is in error.

b. The Department, in limited situations and in its sole discretion, reserves the right to allow a limited appeal if the Judicial Contractor utilizes their own Qualified CHC Service Provider and an individual is found Not Suitable.

4. Appeals following Department's direct performance of a CHC

a. The Department offers individuals who receive a Non-Suitability Determination letter directly from the Department a right to appeal if:

i. Within five (5) calendar days of the delivery of Non-Suitability Determination letter from the Department, the individual delivered a complete and accurate Appeal Submission to the identified Judicial designee for receipt. The required Appeal Submission form will be attached to the Non-Suitability Determination letter sent directly by the Department. Consistent with the content in the required Appeal Submission, the appealing individual must establish:

(1) that the individual was otherwise a Qualified Individual, and one of the following:

- a. that an error was made in applying the relevant element of the Judicial CHC Standards to the Qualified Individual's criminal history; or

- b. there is a direct relationship between the conviction giving rise to the Non-Suitability Determination and the Qualified Individual's relevant duties and responsibilities, and the relationship positively impacts the Qualified Individual's ability to perform one or more such duties and responsibilities; or
- c. another legal basis that the finding of Not Suitable is in error.

ATTACHMENT A:

COLORADO JUDICIAL DEPARTMENT INDEPENDENT CONTRACTOR CRIMINAL HISTORY CHECK MINIMUM STANDARD GUIDANCEⁱ

Alcohol-Related Offenses	
Driving Under the Influence (DUI)/Driving While Ability Impaired (DWAI)	If an individual has a conviction in the last three years, the determination would be “Not Suitable.” With two or more convictions within the last seven years, the determination would be “Not Suitable.”
Underage Drinking Offenses	If an individual has a conviction in the last six months, the determination would be “Not Suitable.” With two or more convictions within the last year, the determination would be “Not Suitable.”
Providing Alcohol to Minors	If an individual has a conviction in the last six months, the determination would be “Not Suitable.”
Deferred Sentences	
If an individual is on a deferred sentence that is not complete, for an otherwise disqualifying offense, the determination would be “Not Suitable.”	
Disturbing the Peace	
If an individual has a conviction in the last six months, the determination would be “Not Suitable.”	
Driving on Revoked License, Under Restraint or Suspension	
If an individual has a conviction in the last three years, the determination would be “Not Suitable.” With two or more convictions in the last seven years, the determination would be “Not Suitable.”	

Drug Related Offenses	
Felony	If an individual has a conviction within the last five years, the determination would be “Not Suitable.” If an individual was convicted of distribution, manufacturing, dispensing or sales of drugs within the last seven years, the determination would be “Not Suitable.”
Misdemeanor	If an individual has a conviction within the last three years, the determination would be “Not Suitable.” With two or more convictions within the last seven years, the determination would be “Not Suitable.”
Fraud Offenses	
Felony	<p>Including but not limited to the following crimes under Colorado law or a similar law in another state: fraud; forgery; identity theft; computer crime; arson; criminal trespass; criminal mischief; conspiracy; & criminal impersonation.</p> <p>If an individual has a conviction within the last five years, the determination would be “Not Suitable.” With two or more convictions in the past seven years, the determination would be “Not Suitable.”</p>
Misdemeanor	<p>Including but not limited to the following crimes under Colorado law or a similar law in another state: forgery; fraud; and computer crimes.</p> <p>If an individual has a conviction within the last three years, the determination would be “Not Suitable.” If an individual has two or more convictions within the last seven years, the determination would be “Not Suitable.” If a misdemeanor fraud type conviction is at issue and not specifically noted above, the conviction will fall into the three-year timeframe for disqualification.</p>
Probation	
An otherwise Qualified Individual must self-disclose whether they are on supervised or unsupervised probation. If an individual is on supervised or unsupervised probation the	

determination would be “Not Suitable.”

Property Offenses

Felony

Including but not limited to the following crimes under Colorado law or a similar law in another state: arson; burglary; theft; criminal trespass; and criminal mischief.

If an individual has a conviction in the last five years, the determination would be “Not Suitable.” With two or more convictions within the last seven years, the individual would be considered “Not Suitable.”

Misdemeanor

Including but not limited to the following crimes under Colorado law or a similar law in another state: arson; theft; criminal trespass; & criminal mischief.

If an individual has a conviction within the last three years, the determination would be “Not Suitable.” With two or more convictions within the last seven years, the determination would be “Not Suitable.” If a misdemeanor offense against property type conviction is not specifically noted in this section, the conviction will fall into the three-year timeframe for disqualification.

Resisting Arrest

If an individual has a conviction within the last year, the determination would be “Not Suitable.”

Sex Offender Registry

If an individual is currently on a sex offender registry, the determination would be “Not Suitable.”

If an individual was found “Not Suitable” but can provide proof to the Judicial Department of deregistration, the determination may be changed to “Suitable” so long as the underlying charge itself is not disqualifying according to the Criminal History Check Minimum Standard Guidance.

Terrorist Activity or Threats	
Any conviction within the last seven years, the determination would be “Not Suitable.”	
Violent Offenses Against Persons or Property OR Crimes of Violence	
Felony	<p>Committed, conspired to commit, or attempted the following types of crimes under Colorado law or a similar law in another state and during which the person used, possessed or threatened to use a deadly weapon or caused serious bodily injury or death: murder (or homicide); child abuse; first or second degree assault; kidnapping; unlawful sexual behavior; aggravated robbery; first degree arson; first degree burglary; escape; criminal extortion; and any crime against an at-risk adult or at-risk juvenile. An “at-risk” adult or juvenile means any person age seventy or older, or any person regardless of age with a disability as defined by statute.</p> <p>If an individual has a conviction within the last seven years, the determination would be “Not Suitable.”</p>
Other Felony Convictions	<p>Including but not limited to the following crimes under Colorado law or a similar law in another state: manslaughter; criminally negligent homicide; kidnapping; vehicular homicide; vehicular assault; criminal conspiracy, attempt or solicitation; menacing; unlawful sexual behavior; enticement of a child; stalking; robbery; bias-motivated crimes and animal cruelty.</p> <p>If an individual has a conviction within the last seven years, the determination would be “Not Suitable.”</p>
Misdemeanor	<p>Including but not limited to the following crimes under Colorado law or a similar law in another state: unlawful sexual behavior; cyber harassment; harassment; menacing; assault; child abuse; arson; bias-motivated crimes; and animal cruelty.</p> <p>If an individual has a conviction within the last seven years, the determination would be “Not Suitable.”</p>
Application of Standards to Peer Service Providers	

If a Peer Service Provider has within the provider’s criminal history any of the crimes or events above, the Department, at its discretion, may find the individual “Suitable” if the background contributes directly to the individual’s qualifications for which contracted services would be provided, and without posing an unreasonable risk of harm to the expected recipients of services.

Arrests, Open or Pending Criminal Cases, Wants/Warrants, Deferred Judgement

Self-disclosure by an otherwise Qualified Individuals regarding an arrest, open or pending criminal case, known want or warrant, or deferred judgement will be evaluated by the Department to determine whether the existence of such arrest, open or pending criminal case, want or warrant, or deferred judgement negatively impacts the individual’s ability to perform services for the Department. During the pendency of this evaluation, the individual may not perform services for the Department.

Private Collections Agents

If an otherwise Qualified Individual is providing services to the Department as a private collections agent and is found to have outstanding fines and fees owed to the Colorado Judicial Department, the individual will be found “Not Suitable.”

ⁱ The Department reserves the right, in appropriate circumstances and at its discretion, to consider crimes that have occurred on dates earlier than the last 7 years.