

Determination of suitability for individuals who interact with participating minors

(Background Check)

March 2021

This guidance supplements the federal award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors

# Suitability to Interact with Minors Determination

Grantees must ensure that staff and volunteers are suitable to interact with participating minors prior to allowing any contact with minors. The Award Conditions is appended to this FAQ.

### Who is considered a Participating Minor?

All individuals under 18 years of age within the set of individuals in the Statement of Work / Scope of Project included in your Grant Agreement. This includes all activities under the award, including those activities that are not paid with grant funds (i.e. matching funds, program income, volunteers).

### How do I define “interaction”?

**Interaction** includes all forms of contact (verbal, written, physical, etc.). "Interaction" does not include brief contact that is both unexpected by the grantee and unintentional on the part of the individual (i.e. when a postal carrier delivers mail to an administrative office).

### When do I need to Determine Suitable?

The grantee must determine if an individual is suitable to interact with minors:

* **Before** that individual is permitted contact with a minor, and
	+ at least every **5 years**, OR
	+ **immediately** after learning of information that suggests an individual may not be suitable to have contact with minors

### My agency provides services to minors, but my DCJ grant is for adult contact only. Does this requirement apply?

No. Not for this award condition, however, you must adhere to other federal, state, tribal, or local law, and/or by your agency’s written policies and procedures.

Note: Not adhering to laws and your agency’s written policies and procedures can result in an audit finding and possible corrective actions.

### Do I need to determine suitability for individuals who are not paid with grant funds?

Yes, if the individual may **interact** with any minor receiving grant funded services (other than that individual's own children). This might be an employee, but also might be a consultant, contractor, employee of a contractor, trainee, volunteer, intern, front desk staff, teacher, etc.

### Can I use grant funds to pay for the associated costs of Determining Suitability?

Yes. You may use indirect costs charged to the grant, or pay for it as a direct cost only if the costs are already included in the approved budget. Please contact your DCJ Grant Manager if you are unsure if your approved budget includes these costs.

### What does Personally-Accompanied Contact mean?

Infrequent or occasional contact by an individual with a participating minor in the presence of an individual that has been deemed suitable. Example:

* Your agency has determined suitability for all individuals who may have contact with participating minors, but there is a last minute change of personnel to a person who has not yet been deemed suitable This is OK, as long as:
	+ Your agency has written policies and procedures to address this type of situation, **AND**
	+ The new person is closely and personally accompanied, and remain continuously within view and earshot of an individual that has already been deemed suitable.

### What is the difference between a Background Check and Determination of Suitability?

Determination of Suitability is written documentation indicating that an individual is suitable to interact with minors.

A Background Check is one of the steps performed to gather the necessary information to determine suitability.

### When do I need to gather information (background checks, screenings, etc.)?

The information resulting from checks and screening that are used to determine suitability must **not be more than 6 months old**. This means that if you performed a background check on an individual more than 6 months prior to your DCJ grant for another purpose than meeting this requirement, you must gather updated information to make a written determination of suitability for activities under your DCJ grant award.

### What information do I need to gather?

In addition to information resulting from checks or screening required by applicable federal, state, tribal, or local law, and/or by the grantee written policies and procedures, **all** the following searches **must** be performed **no earlier than six months** before determining suitability of individuals 18 years of age or older:

1. Public sex offender and child abuse websites/registries

A search (by current name, and, if applicable, by previous name(s) or aliases), of the pertinent and reasonably- accessible federal, state, and (if applicable) local and tribal sex offender and child abuse websites/public registries, including—

1. The Dru Sjodin National Sex Offender Public Website ([www.nsopw.gov](http://www.nsopw.gov)); *(Results from this site depend on the reporting guidelines of each individual state and may not list all convicted sex offenders.)*
2. The website/public registry for each state (and/or tribe, if applicable) in which the **individual**
	* lives, works, or goes to school, or
	* has lived, worked, or gone to school at any time during the past five years; and
3. The website/public registry for each state (and/or tribe, if applicable) in which the individual is expected to, or reasonably likely to, interact with a participating minor in the course of activities under the award.

**Useful Resources**:

* + Colorado Sex Offender Registry: https://apps.colorado.gov/apps/dps/sor/ *(This website does not list all convicted sex offenders in Colorado. The CBI does not post information concerning (1) sex offenders only convicted of misdemeanor sex offenses, or (2) juveniles adjudicated for sex crimes.)*
	+ Local Jurisdictions
	+ Colorado misdemeanor sex offense records are maintained by local jurisdictions.
	+ Review of state and locality sex offense records will likely be required for individuals who have lived, worked or gone to school outside of Colorado in the past five years.
	+ Contact local jurisdictions directly for additional information
1. Colorado misdemeanor sex offense records are maintained by local jurisdictions.
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* Contact local jurisdictions directly for additional information.
1. Criminal history registries and similar repositories of criminal history records

Fingerprint search(es)\* encompassing **at least the time period beginning five calendar years** preceding the date of the search request -- of pertinent state (and, if applicable, local and tribal) criminal history registries or similar repositories, including—

1. The criminal history registry for each state in which the **individual**
	* lives, works, or goes to school, or
	* has lived, worked, or gone to school at any time during the past five years; and
2. The criminal history registry for each state in which he or she is expected to, or reasonably likely to, interact with a participating minor in the course of activities under the award.

\*If the grantee documents that a fingerprint search is not legally available, a name-based search, using current and, if applicable, previous names and aliases) –

**Useful Resources:**

* + CBI fingerprint background checks: <https://www.colorado.gov/pacific/cbi/employment-background-checks> See “VECHS - Volunteer and Employee Criminal History Service.”
	+ CBI fingerprint background check typically includes a FBI fingerprint background check (required if person has lived, worked, gone to school, or interacted with minors in another state within the last 5 years): <https://www.fbi.gov/services/cjis/identity-history-summary-checks>

### How do I Determine Suitability?

The grantee must consider the required gathered information, all applicable state, federal, and tribal laws, and the grantee’s written policies and procedures. In particular, the grantee may not determine that a covered individual is suitable to interact with participating minors in the course of activities under the award if the covered individual--

1. Withholds consent to a criminal history search required by this condition;
2. Knowingly makes (or made) a false statement that affects, or is intended to affect, any search required by this condition;
3. Is listed as a registered sex offender on the Dru Sjodin National Sex Offender Public Website;
4. To the knowledge of the grantee, has been convicted -- whether as a felony or misdemeanor -- under federal, state, tribal, or local law of any of the following crimes (or any substantially equivalent criminal offense, regardless of the specific words by which it may be identified in law):
5. sexual or physical abuse, neglect, or endangerment of an individual under the age of 18 at the time of the offense;
6. rape/sexual assault, including conspiracy to commit rape/sexual assault;
7. sexual exploitation, such as through child pornography or sex trafficking;
8. kidnapping;
9. voyeurism; or
10. Is determined by a federal, state, tribal, or local government agency not to be suitable.

### What do I do if I learn that an individual may not be suitable to have contact with minors?

The grantee must immediately reexamine the individual’s suitability and, if appropriate, modify or withdraw that determination. If suitability determination is withdrawn the individual must not interact with participating minors.

### How do I document that I have Determined Suitability for award activities?

The grantee must document **in writing** that, based on the information gathered, the individual is suitable to interact with minors and this documentation is included in your grant file. This documentation and applicable policies will be reviewed during compliance monitoring.

# Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors

The following award condition is incorporated by reference into many OJP and OVW awards, starting in calendar year 2019. (Please refer to the terms and conditions that accompany the grant agreement award document.)

**Award Condition:**

**Determination of suitability required, in advance, for certain individuals who may interact with participating minors**

1. Advance determination regarding suitability. The recipient (and any subrecipient at any tier) may not permit any covered individual to interact with any participating minor in the course of activities under the award, unless the recipient or subrecipient first has made a written determination of the suitability of that individual to interact with participating minors, based on current and appropriate information as described in paragraph 3.E., and taking into account the factors and considerations described in paragraph 4.

2. Updates and reexaminations

A. The recipient (or subrecipient) must, at least every five years, update the searches described in paragraph 3.E.1. and 2., reexamine the covered individual's suitability determination in light of those search results, and, if appropriate, modify or withdraw that determination.

B. The recipient also must reexamine a covered individual's suitability determination upon learning of information that reasonably may suggest unsuitability and, if appropriate, modify or withdraw that determination.

3. Definitions

A. "Covered individual" means any individual (other than a participating minor, as defined in this condition, or a client of the recipient (or subrecipient)) who is expected, or reasonably likely, to interact with any participating minor (other than the individual's own minor children). A covered individual need not have any particular employment status or legal relationship with the recipient (or subrecipient). Such an individual might be an employee of a recipient (or subrecipient), but also might be (for example) a consultant, contractor, employee of a contractor, trainee, volunteer, or teacher.

B. "Participating minor." All individuals under 18 years of age within the set of individuals described in the scope section of this condition as it appears on the award document are participating minors.

C. "Interaction" includes physical contact, oral and written communication, and the transmission of images and sound, and may be in person or by electronic (or similar) means. But "interaction" does not include--

(1) brief contact that is both unexpected by the recipient (or subrecipient) and unintentional on the part of the covered individual -- such as might occur when a postal carrier delivers mail to an administrative office.

(2) personally-accompanied contact -- that is, infrequent or occasional contact (for example, by someone who comes to make a presentation) in the presence of an accompanying adult, pursuant to written policies and procedures of the recipient (or subrecipient) that are designed to ensure that -- throughout the contact -- an appropriate adult who has been determined to be suitable pursuant to this condition will closely and personally accompany, and remain continuously within view and earshot of, the covered individual.

D. "Activities under the award." Whether paid for with federal funds from the award, "matching" funds included in the OJP-approved budget for the award, or "program income" for the award as defined by the (DOJ) Part 200 Uniform Requirements), activities under the award include both--

(1) activities carried out under the award by the recipient (or subrecipient); and

(2) actions taken by an entity or individual pursuant to a procurement contract under the award or to a procurement contract under a subaward at any tier.

E. "Current and appropriate information"

In addition to information resulting from checks or screening required by applicable federal, state, tribal, or local law, and/or by the recipient's (or subrecipient's) written policies and procedures, current and appropriate information includes the results of all required searches listed below, each of which must be completed no earlier than six months before the determination regarding suitability.

(1) Public sex offender and child abuse websites/registries

A search (by current name, and, if applicable, by previous name(s) or aliases), of the pertinent and reasonably- accessible federal, state, and (if applicable) local and tribal sex offender and child abuse websites/public registries, including--

(a) the Dru Sjodin National Sex Offender Public Website (www.nsopw.gov);

(b) the website/public registry for each state (and/or tribe, if applicable) in which the individual lives, works, or goes to school, or has lived, worked, or gone to school at any time during the past five years; and

(c) the website/public registry for each state (and/or tribe, if applicable) in which the individual is expected to, or reasonably likely to, interact with a participating minor in the course of activities under the award.

(2) Criminal history registries and similar repositories of criminal history records

For each individual at least 18 years of age who is a covered individual under this FY 2019 award, a fingerprint search (or, if the recipient or subrecipient documents that a fingerprint search is not legally available, a name-based search, using current and, if applicable, previous names and aliases) -- encompassing at least the time period beginning five calendar years preceding the date of the search request -- of pertinent state (and, if applicable, local and tribal) criminal history registries or similar repositories, including--

(a) the criminal history registry for each state in which the individual lives, works, or goes to school, or has lived, worked, or gone to school at any time during the past five years; and

(b) the criminal history registry for each state in which he or she is expected to, or reasonably likely to, interact with a participating minor in the course of activities under the award.

4. Factors and considerations in determinations regarding suitability

In addition to the factors and considerations that must or may be considered under applicable federal, state, tribal, or local law, and under the recipient's (or subrecipient's) written policies and procedures, in making a determination regarding suitability, the recipient (or subrecipient) must consider the current and appropriate information described in paragraph 3.E.

In particular (unless applicable law precludes it), with respect to either an initial determination of suitability or a subsequent reexamination, the recipient (or subrecipient) may not determine that a covered individual is suitable to interact with participating minors in the course of activities under the award if the covered individual--

A. Withholds consent to a criminal history search required by this condition;

B. Knowingly makes (or made) a false statement that affects, or is intended to affect, any search required by this condition;

C. Is listed as a registered sex offender on the Dru Sjodin National Sex Offender Public Website;

D. To the knowledge of the recipient (or subrecipient), has been convicted -- whether as a felony or misdemeanor -- under federal, state, tribal, or local law of any of the following crimes (or any substantially equivalent criminal offense, regardless of the specific words by which it may be identified in law):

(1) sexual or physical abuse, neglect, or endangerment of an individual under the age of 18 at the time of the offense;
(2) rape/sexual assault, including conspiracy to commit rape/sexual assault;
(3) sexual exploitation, such as through child pornography or sex trafficking;
(4) kidnapping;
(5) voyeurism; or

E. Is determined by a federal, state, tribal, or local government agency not to be suitable.

5. Administration; rule of construction

A. The requirements of this condition are among those that must be included in any subaward (at any tier), and must be monitored. They apply as of the date of acceptance of this award, and throughout the remainder of the period of performance.

B. The recipient is to contact the DOJ awarding agency with any questions regarding the requirements of this condition and must not allow a covered individual to interact with a participating minor until such questions are answered.

C. Award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition, provided that such funds would not supplant non-federal funds that would otherwise be available for such costs.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal, state, tribal, or local law, including any applicable civil rights or nondiscrimination law.