

**Subject:** Background Adjudication Policy  
**Policy Number:** A-10  
**Pages:** 6  
**Original Date:** 04/13/2013  
**Review Date:**  
**Approval Date:** 04/13/2013  
**Approved by:** Resolution Number 13-66

**EMPLOYMENT BACKGROUND CHECK POLICY  
for TRIBES/TRIBAL PROGRAMS  
(Adjudication procedures)**

**Purpose Statement**

It is the policy of *Kaw Nation* to perform pre-employment background checks. This policy is established to promote a safe and secure work environment as well as provide for the safety of children and community members and to ensure individuals hired by *Kaw Nation* are well qualified and have undergone a verification of personal character and suitability. The purpose of performing these checks is to determine and/or confirm the qualifications and suitability of applicants and employees for the particular position for which they are being considered and to meet the requirements established for individuals having regular contact with or control over Indian children.

**Policy**

*Kaw Nation* reserves the right to check the employment references of all applicants. The process is intended to help the organization to evaluate the candidate's suitability for hire. All offers of employment are contingent upon successful completion of the background checks. Any misrepresentations, falsifications, or omissions in any employment information may result in no further consideration for employment. Candidates who fail to disclose accurate and complete information regarding any substantial negative history of criminal convictions may not be considered suitable for hire. The organization will also comply with all applicable tribal, state and federal laws to ensure candidates are not discriminated against because of negative history of convictions. *Kaw Nation* does not automatically disqualify any person from hiring or promotion due to a criminal record.

*Kaw Nation* will perform pre-employment background checks on all applicants for employment. In addition, if an employee changes positions or if required due to Federal regulatory requirements, any additional required background checks for that position which have not previously been performed will be performed.

The results of pre-employment background checks are confidential and are to be shared on a strict "need to know" basis.

The Indian Child Protection and Family Violence Prevention Act, as amended, requires that tribes and tribal organizations receiving federal funds under the Indian Self-Determination and Education Assistance Act conduct national criminal background investigations of prospective employees who will occupy positions having regular contact or control over Indian children.

**Policy Number: A-10**  
Background Adjudication Policy

Specifically, Section 408 of Public Law 101-630 of the Indian Child Protection and Family Violence Prevention Act requires that organizations:

1. Compile a list of all authorized positions the duties and responsibilities of which involve regular contact with, or control over, Indian children;
2. Conduct an investigation of the character of each individual who is employed, or is being considered for employment in accordance with 25 Code of Federal Regulations Subpart 63 guidelines;
3. Ensure minimum standards of character that each individual must meet to be appointed to such positions; and
4. The minimum standards of character shall ensure that none of the individuals appointed to positions covered by the list described in item 1 above, have been found guilty of or entered a plea of nolo contendere (no contest) or guilty to, any felonious offense, or any of two or more misdemeanor offenses, under Federal, State, or tribal law involving crimes of violence; sexual assault, molestation, exploitation, contact or prostitution; crimes against persons; or offenses committed against children.

Furthermore, Section 231 of Public Law 101-647 of the Crime Control Act of 1990 requires background investigations of “individuals involved with the provision to children under the age of 18 of child care services.” Child care services is defined in the Crime Control Act as “child protective services (include the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional or treatment services.”

Public Law 101-647 mandates:

1. All existing and newly-hired employees undergo a criminal history background check within prescribed time limits;
2. Employment applications shall contain a question asking whether the individual has ever been arrested for or charged with a crime involving a child, and if so requiring a description and disposition of the arrest or charge;
3. Obtain signature of the employee or prospective employee indicating that the employee or prospective employee has been notified of the employer’s obligation to require a record check as a condition of employment and the employee’s right to obtain a copy of the criminal history report made available to the employing organization and the right to challenge the accuracy and completeness of any information contained in the report;
4. The results of the background check shall be communicated to the employing organization; and,
5. Any conviction for a sex crime, an offense involving a child victim, or a drug felony, may be grounds for denying employment or for dismissal of an employee involved in the provision to

**Policy Number: A-10**  
Background Adjudication Policy

children under the age of 18 of child care services. Conviction of a crime other than a sex crime may also be considered if it bears on an individual's fitness to have responsibility for the safety and well-being of children.

### **Procedures**

1. The components of each individual's background check will depend on their position designation. Depending on the particular position, Kaw Nation currently performs criminal background checks, FBI and fingerprint criminal history search, sexual offender search, drivers license verification, education verification, prior employment and professional license verification.

2. All applicants and/or employees will be required to sign appropriate authorizations and consents prior to the performing of any background checks.

3. Individuals are expected to provide accurate and complete information and not to omit material information needed to make a decision. The organization relies on the accuracy of information on the employment application and other data developed through the hiring processing and subsequent employment. The results of a background check will only be used for the purpose of determining an individual's suitability for employment while maintaining strict confidentiality. Individuals that provide false or misleading information in their application and/or authorization may be eliminated from any further consideration.

4. All job offers should be conditioned upon satisfactory completion of the pre-employment background checks.

5. Prior to taking any adverse action, appropriate pre-adverse and adverse action notices will be send to the individual together with the contents of the background check results considered adverse.

6. All individuals shall be reviewed on a case-by-case basis and decisions made with respect to employment/placement upon the whole person to include the results of the employment background checks.

7. For conduct identified in the Indian Child Protection and Family Violence Prevention Act, as amended, Kaw Nation will deny employment or dismiss an employee who does not meet the suitability criteria established for positions having regular contact or control over Indian children. For all other circumstances, the relevance of a particular employment background check to an individual's eligibility for employment will be based on the following:

- (1) The nature and seriousness of the conduct in question;
- (2) The recency and circumstances surrounding the conduct in question;
- (3) The age of the individual at the time of the incident;
- (4) Societal conditions that may have contributed to the nature of the conduct;
- (5) The probability that the individual will continue the type of behavior in Question; and
- (6) The individual's commitment to rehabilitation and a change in the behavior in Question.

8. Having adverse information, including a criminal history or conviction does not automatically preclude a candidate's eligibility for employment.

### **Disclaimers**

It is not the purpose of this policy to provide detailed information or descriptions of searches and/or suitability criteria for each background check that can be performed. Nor is it the purpose of this policy to provide detailed information on how to make a final decision regarding results of background checks. Every case must be decided on its own merits subject to Kaw Nation's requirement that all individuals be treated equally and consistently.

This policy does not limit Kaw Nation's right to hire, re-assign, discipline or terminate. This policy does not create a contract of employment. All employment is at will unless contract or law applies to the contrary.

### **References**

This policy contains references to the following:

Indian Child Protection and Family Violence Prevention Act, as amended (Public Law 101-630; codified in 25 United States Code 3207) and Sec. 814. Technical Amendment to the Indian Child Protection And Family Violence Prevention Act.

25 Code of Federal Regulations Part 63, Implementation of the Indian Child Protection and Family Violence Prevention Act.

Crime Control Act Of 1990 - Subchapter V – Child Care Worker Employee Background Checks (Public Law 101-647; codified in 42 United States Code 13041)

## **ADDITIONAL LANGUAGE for Positions Requiring Employment Credit Checks:**

### **Procedures**

1. The components of each individual's background check will depend on their position designation.
2. All applicants and/or employees will be required to sign appropriate authorizations and consents prior to the performing of any background checks which may include a Fair Credit Reporting Act release.
3. Individuals are expected to provide accurate and complete information and not to omit material information needed to make a decision. The organization relies on the accuracy of information on the employment application and other data developed through the hiring processing and subsequent employment. The results of a background check will only be used for the purpose of determining an individual's suitability for employment while maintaining strict confidentiality. Individuals that provide false or misleading information in their application and/or authorization may be eliminated from any further consideration.
4. All job offers should be conditioned upon satisfactory completion of the pre-employment background checks.
5. Prior to taking any adverse action, appropriate pre-adverse and adverse action notices will be sent to the individual together with the contents of the background check results considered adverse.
6. All individuals shall be reviewed on a case-by-case basis and decisions made with respect to employment/placement upon the whole person to include the results of the employment background checks.
7. For conduct identified in the Indian Child Protection and Family Violence Prevention Act, as amended, Kaw Nation will deny employment or dismiss an employee who does not meet the suitability criteria established for positions having regular contact or control over Indian children. For all other circumstances, the relevance of a particular employment background check to an individual's eligibility for employment will be based on the following:
  - (1) The nature and seriousness of the conduct in question;
  - (2) The recency and circumstances surrounding the conduct in question;
  - (3) The age of the individual at the time of the incident;
  - (4) Societal conditions that may have contributed to the nature of the conduct;
  - (5) The probability that the individual will continue the type of behavior in question; and,
  - (6) The individual's commitment to rehabilitation and a change in the behavior in question.
8. Having adverse information, including a criminal history or conviction does not automatically preclude a candidate's eligibility for employment.

9. Having adverse information, including a judgment, lien or bankruptcy does not automatically preclude an individual's eligibility for employment. Employment credit reports will be used as follows:

a. The Kaw Nation's use of credit reports is limited to the following positions:

- (1) [*Positions such as Accounts payable/receivable;*
- (2) *Employees that handle cash or cash equivalents;*
- (3) *Senior management, etc.]*

b. Having negative credit information does not automatically exclude an applicant. Every applicant will be individually considered. Under no circumstances will an employment decision be based solely on information in a credit report;

c. Bankruptcy information will not be considered;

d. The credit report will be analyzed to determine the following:

- (1) Is the individual in a problematic financial position?
- (2) Is there evidence that there is a compelling need for money?
- (3) Consideration that the individual's financial problems will interfere with their ability to perform their duties;
- (4) Senior management should also be reviewed with respect to their ability to manage the Kaw Nation's affairs given their management of their personal obligations;
- (5) Extenuating circumstances beyond the individual's control such as illness, divorce other family problems, loss of job, etc.