

OFFICE OF CHILDREN AND FAMILY SERVICES

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|   INFORMATIONAL LETTER   | TRANSMITTAL: 99 OCFS INF-4
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TO: Commissioners of Social Services Executive Directors of Voluntary Agencies

DIVISION: Strategic Planning and Policy Development

DATE: March 4, 1999

SUBJECT: Criminal History Record Checks (for Foster/Adoptive Parents)

SUGGESTED

DISTRIBUTION: Directors of Social Services  
 Foster Care Supervisors  
 Home Finding Supervisors  
 Adoption Supervisors  
 Staff Development Coordinators

CONTACT PERSON: Any questions concerning this release should be directed to the appropriate Regional Office of the Office of Children and Family Services.

BRO - Linda Brown (716) 847-3145 USER ID: 89D421  
 RRO - Linda Kurtz (716) 238-8201 USER ID: 0FH010  
 SRO - Jack Klump (315) 423-1200 USER ID: 89W005  
 ARO - Bill McLaughlin (518) 432-2751 USER ID: 0FN010  
 NYC - Gail Hallerdin (212) 383-1788 USER ID: AA0120  
 YRO - Pat Sheehy (914) 377-2064 USER ID: not operational

ATTACHMENTS:

- Attachment 1 - Notice Regarding Fingerprinting Requirement (Available on-line)
- Attachment 2 - Directions for Completing the Fingerprint Card (Not Available on-line)

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
			378-a-SSL		Guidelines "Evaluating Applicants with Criminal Conviction Records" 1986; rev. 12/87

The purpose of this release is to provide instructions concerning fingerprinting procedures to implement State Legislation enacted and in effect as of February 11, 1999. The new State law requires criminal history record checks of foster parents, prospective foster parents, approved adoptive parents, prospective adoptive parents, and other persons over the age of 18 who currently reside in the homes of such parents. Chapter 7 of the Laws of 1999 satisfies the requirements for criminal history record checks set forth in the federal Adoption and Safe Families Act of 1997.

After the issuance of this release you will receive more detailed information on how your agency must use the criminal history record results. Office regulations will be issued. However, it is essential that we begin to put in place procedures immediately.

Effective with the receipt of this transmittal and your initial supply of fingerprint cards, you must implement the fingerprinting requirements of Chapter 7 of the Laws of 1999 as follows:

#### Who Must Be Fingerprinted?

Category A. This category includes persons who were not finally certified or approved as foster parents or finally approved as adoptive parents prior to February 11, 1999.

- o Prospective foster parents, including persons who apply to be certified or approved foster parents on or after February 11, 1999;
- o Prospective adoptive parents, including persons who apply to be approved adoptive parents on or after February 11, 1999;
- o Persons seeking approval or certification as foster parents whose application was pending certification or approval as of February 11, 1999;
- o Persons seeking approval as adoptive parents whose application was pending approval as of February 11, 1999;
- o Persons who are over the age of 18 who currently reside in the home of the prospective foster parents noted above;
- o Persons who are over the age of 18 who currently reside in the home of the prospective adoptive parents noted above.

NOTE: This category includes, but is not limited to, kinship foster parents approved on an emergency basis and persons over the age of 18 residing in the home of the kinship foster parents.

Category B. This category includes persons who were certified or approved as foster parents as of February 11, 1999.

- o Approved and certified foster parents (including kinship foster parents);
- o Other persons over the age of 18 who currently reside in the home of the certified or approved foster parents. This includes any foster child over the age of 18 residing in the home.

NOTE: With regard to foster homes initially certified or approved during the period of January 1, 1999 through February 11, 1999, the criminal history record check should be completed as soon as possible. Criminal history record checks must be completed on other persons over the age of 18 who reside in the foster home at the time the home is recertified or reapproved.

With the exception (noted above) of foster homes which were initially certified or approved during the period January 1, 1999 through February 11, 1999, the criminal history record check must be completed at the time of the recertification or reapproval. A criminal history record check must also be done at each subsequent recertification or reapproval of any household member over the age of 18 who has not previously had a criminal record check.

Category C. This category includes persons who were approved as adoptive parents as of February 11, 1999.

- o Approved adoptive parents where the adoption has not been completed by the court;
- o Other persons over the age of 18 who currently reside in the home of the approved adoptive parents. This includes any foster child over the age of 18 residing in the home.

NOTE: Criminal history record checks should be done as soon as possible for adoptive parents who were approved between January 1, 1999 through February 11, 1999 where foster children have been placed in those homes for adoption. New foster children should not be placed in approved adoptive homes where the approval was completed between January 1, 1999 through February 11, 1999 until the criminal history record check is completed. For all other approved adoptive parents, criminal history records checks should be submitted no later than June 1st, 1999, and the criminal history record check must be completed before the adoption is finalized.

#### Out-of-State Placements

If a child is placed out-of-state for the purposes of adoption or into relative foster care, the adoptive parent or relative foster parent must meet New York State standards by having a criminal history records check in the State in which they reside and then following New York State procedures as far as evaluating results and actions to be taken.

What shall we provide to applicants/providers?

The Office will send you a supply of fingerprint cards, mailers and a sample required notice (see Attachment 1 "Notice Regarding Fingerprinting Requirements"). This notice explains the new fingerprinting requirement and how these cards will be used. It is to be given to each applicant to be a foster or adoptive parent, each person certified or approved as a foster parent and each person approved as an adoptive parent. When conducting the 24 hour study for relative foster parents, the fingerprint cards, notices and mailers must be supplied to the applicant. In the case of all other prospective foster and adoptive parents, authorized agencies

should exercise judgment in disseminating the fingerprint cards, notices and mailers. Such dissemination should occur at a point in the process when there is reasonable certitude that the persons are likely to complete the process of becoming certified or approved.

The number of cards and mailers must match the number of persons in the household over 18 years of age. Also you must include a listing of one or more places in your county that have agreed to take fingerprints. It is advisable to set up control procedures to be able to match the packets distributed with the eventually returned results. Use of names and other identifiers and a log with control numbers may aid in this process. It may be useful to appoint a single liaison in your district or agency to have responsibility for fingerprint tracking.

The fields on a fingerprint card and directions for its completion are shown in Attachment 2. It is important to complete all required fields on each card according to the directions provided. Incomplete cards may not be processed. Therefore, you should go over the instructions with the applicant/provider to help them understand what information needs to be completed.

What are the options for having fingerprints taken?

If your agency already has individuals trained to take fingerprints, you may conduct the fingerprinting. If your agency does not have any individuals trained to take fingerprints, you should contact the various law enforcement agencies in your community who already provide fingerprinting, such as the sheriff's office or State police to see if they will take the fingerprints either on an interim or a long-term basis. It is important to understand that this is not the same as "finger imaging". Criminal histories on file with the Division of Criminal Justice Services (DCJS) cannot use finger images to identify matching records. When speaking with law enforcement, you must determine whether a fee will be charged for the taking of the prints and secure agreement from such agency to mail the fingerprint cards using the mailer.

Your agency will soon have the option of electing to do fingerprinting on-site. Contact your Regional Office to make this known as your choice. Fingerprint technique training will be provided. You cannot take fingerprints until your staff has received training.

If you determine the law enforcement agencies to whom you make referrals charge a fee the following applies as to who will bear the cost:

- o If a child is currently placed in a home certified or approved by the local social services district, such district will pay and the state will partially reimburse for the costs incurred.
- o If no children are in the home (those to be fingerprinted are in applicant status with a local social services district), such district has the option of paying and receiving partial State reimbursement, or requiring the applicant to pay.

- o Voluntary agencies who have children placed in their homes will pay and separately bill the responsible local social services district for any costs incurred.
- o Voluntary agencies may also bill local social services districts for applicants based upon contractual agreements.
- o Voluntary agencies, where a child is placed directly with such agency as an adoptive placement (that is, care and custody of the child is not with a local social services commissioner), at their discretion may pay the fee or have the applicant pay the fee. No reimbursement is available.

Funding is available to local social services districts for a portion of the costs of obtaining the fingerprints. This funding is separate from and in addition to the funds allocated to the districts under the Family and Children's Services Block Grant. Therefore, it is necessary that you document the actual local costs of obtaining the fingerprints separately from other foster care and adoption services costs. The Office will issue separate guidelines to the local social services districts regarding claiming for these costs.

What happens after the fingerprints are taken?

Fingerprint cards must be mailed directly to Criminal History Review Unit, NYS Office of Children & Family Services, PO Box 839, Rensselaer, NY 12144-9953. This address will appear on the mailer. OCFS will be responsible for forwarding all cards to DCJS, where they will be processed.

How is the fee paid for the criminal history records check?

It is important to note that the person whose fingerprints are taken is not to be charged a fee for the DCJS search for a criminal history record. The fee for such searches will be paid by OCFS. A portion of the costs for the fees will be charged back to the local social services districts. This apportionment includes the fees associated with both local social services district and voluntary agency submissions. The costs will be allocated based on a formula which takes into account the number of each district's children in foster boarding homes compared to the total number of children in foster boarding homes Statewide.

How will my agency receive the results?

All results from DCJS will be returned to OCFS, where they will be reviewed and transferred into a summary that will aid you in decision making related to this review. You will not receive the actual "Rap Sheets"; those will be retained by OCFS. You will receive the summary for each fingerprinted person. It will contain information in one of three categories: (1) No record/no criminal history found; (2) history of one or more convictions/automatic denial or listing of one or more convictions/discretionary denial); or (3) pend/need further review.

It should be noted that after the search is made, DCJS will retain the fingerprints for a prescribed period, and will notify OCFS upon any future arrest. OCFS will follow up on the disposition of all reported

arrests. The retention period will be as follows: for all foster parents and relative foster parents and their family members over 18, until the home is closed; for all prospective adoptive parents and their family members over 18, until finalization of the adoption.

Confidentiality of Results/Recordkeeping

All criminal history information is confidential. However, it may be disclosed for judicial or administrative proceedings related to denials of applications or removal of foster children. All fingerprinting results must be retained in the applicant/provider file. All decisions made and actions taken with regard to these results, including safety assessments, must be documented in the applicant/provider file. Appropriate steps must be taken to maintain the confidentiality of the criminal history information and to prevent the unauthorized disclosure of such information.

Must the sworn statements regarding criminal convictions still be taken?

Pursuant to 18 NYCRR 421.15(c)(8) and 443.3(a)(10)(iv), you must continue to take sworn statements regarding criminal conviction history. The guidelines "Evaluating Applicants with Criminal Conviction Records" issued in 1986 (revised 12/87) must be applied in a manner consistent with the standards and criteria established by Chapter 7 of the Laws of 1999 and this INF.

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William F. Baccaglioni  
Director  
Strategic Planning  
and Policy Development

Attachment 1

NOTICE REGARDING FINGERPRINTING REQUIREMENTS

This notice is to advise you that Section 378-a of the Social Services Law has been amended effective February 11, 1999, and requires you and those currently residing in your household over 18 years of age to be fingerprinted, if you are applying to be or are already a certified or approved foster parent (including a relative foster parent) or are applying to be an adoptive parent. You and any person over 18 years of age residing in your home will also be required to be fingerprinted if you are already an approved adoptive parent but the adoption is not yet finalized.

You will be asked by the local social services district or voluntary authorized agency with which you are seeking certification, approval, recertification or reapproval to have fingerprints taken on all of the above noted household members. You will be given a listing of one or more places where you and these household members may go to have the fingerprints taken. You will be provided a blank fingerprint card and mailer for each person who must be fingerprinted. There may be a fee for the actual taking of the fingerprints.

After they are taken, the fingerprints will be sent to the Division of Criminal Justice Services (DCJS) and be used to search their agency files for any criminal record of charges or convictions in New York State. There is no fee to you for the searches performed by DCJS. If any such record is found:

- o the local social services district or voluntary agency will receive summary information about the charges or convictions;
- o depending upon the types of crimes listed in the criminal history, the following actions could result: applications may not receive final approval; decertification of your foster home; revocation of your approval (relative foster parents). If children are already placed in your home, depending on the nature of the crime, they could be removed. You will be provided notice and reasons for such actions if they are taken;
- o you will also be given a notice which provides a description of the process DCJS has for a person to review his or her criminal history record and any rights you may have to challenge the action taken.

The fingerprints will be retained by DCJS until such time as your home is closed or an adoption is finalized. If anyone fingerprinted under this law is charged with a fingerprintable offense during that time, the local social services district or voluntary agency will be notified. All criminal history record information is confidential. It may not be made available for public inspection. However, it may be disclosed for judicial or administrative proceedings relating to denials of applications or removal of foster children.

We have a mutual interest in protecting the safety of foster children. These requirements are important in meeting that goal.