

OFFICE OF CHILDREN AND FAMILY SERVICES

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 | INFORMATIONAL LETTER | TRANSMITTAL: 99 OCFS INF-7
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DIVISION: Strategic Planning
 and Policy
 Development

TO: Commissioners of
 Social Services
 Executive Directors
 of Voluntary
 Agencies

DATE: June 2, 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
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 Marvin Gold (Region 5) (212) 383-1733 USER ID: 0FM270

ATTACHMENTS: - See Attachment A

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
99 OCFS LCM-8	99 OCFS INF-4		378-a-SSL		Guidelines "Evaluating Applicants with Criminal Conviction Records" 1986; rev. 12/87
99 OCFS LCM-15					

The purpose of this release is to provide instructions concerning fingerprinting standards and 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.

With the release of this Informational Letter, the Office of Children and Family Services is cancelling 99 OCFIS INF-4 (March 4, 1999). This INF contains both new and revised information. This INF also replaces the April 1, 1999 letter sent to adoption agencies.

The fingerprinting requirements of Chapter 7 of the Laws of 1999 are as follows:

Who must be fingerprinted?

Category A. This category includes persons who were not certified or approved as foster parents or 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, relative foster parents approved on an emergency basis and persons over the age of 18 residing in the home of the relative foster parents. This category also includes foster parents and persons over the age of 18 residing in family homes under the auspices of OMRDD, OMH and OASAS, when children in the custody of a local social services district will be placed in such family homes.

Office regulation (18 NYCRR 443.7) filed on an emergency basis and in effect as of March 30, 1999 permits an emergency relative foster home approved on an expedited emergency basis for 60 days to continue to provide foster care beyond the 60th day of approval as an emergency relative foster home when the relative foster parent has otherwise satisfied all of the requirements for final approval as an approved relative foster home, except for the completion of the criminal history record check.

Similarly, Office regulation (18 NYCRR 443.9) filed on an emergency basis and in effect as of March 30, 1999 permits certifying a non-relative on an emergency basis as an emergency certified foster home if the appropriate placement for the child is a foster family boarding home, and a suitable foster family boarding home certified or approved (on a final basis) is not available. This regulation applies to all children in the custody of the local commissioner pursuant to section 384 or 384-a of the Social Services Law or Article 3, 7 or 10 of the Family Court Act. The non-relative must have successfully completed the process for certification as a foster parent with the exception of the criminal history record check. Certification of the non-relative on an emergency basis may continue until the criminal history record check process is complete.

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 relative 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 10, 1999, the criminal history record check must 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 10, 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 history record check. If the foster parent(s) makes timely and sufficient application for the renewal of his or her certification or approval, the existing certification or approval will not expire until the application has been finally determined by the applicable agency. A foster parent will be considered to have made timely and sufficient application if he or she submits the following documents before the existing certification or approval expires: a completed application, the physician statement or report when required, and fingerprint cards for everyone in the household over 18 years of age.

Your agency is strongly encouraged to disseminate the fingerprint cards to families with upcoming recertifications or reapprovals at least 60 days before the due date.

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 10, 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 10, 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 1, 1999, and the criminal history record check must be completed before the adoption is finalized.

Where can we obtain information regarding claiming?

A separate LCM, 99 OCFS LCM-8 (March 19, 1999) for local social services districts sets forth special instructions so districts will be able to appropriately claim payments made to or on behalf of foster and adoptive homes in a manner consistent with both federal and State law.

What are the fingerprint requirements when a child is placed out-of-state?

If a child is placed out-of-state for the purposes of adoption or foster care, including relative foster care, the adoptive parent or foster parent must meet the standards for certification, licensure or approval set by the State in which they reside. This will include having a criminal history records check in accordance with the federal Adoption and Safe Families Act. The placement must go through the Interstate Compact on the Placement of Children (ICPC) in the usual manner. (Please also refer to the section "Special Instructions for Adoption Agencies.")

What shall we provide to applicants/providers?

The Office has sent you a supply of fingerprint cards, mailers and a sample required notice (see Attachment 1 "Notice Regarding Fingerprinting Requirements"; a Spanish version is also provided in this INF). This notice explains the new fingerprinting requirement and how these cards will be used. It must 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 where the adoption has not been completed by the court. When conducting the 24 hour study for relative foster parents for approval as an emergency relative foster home, the fingerprint cards, notices and mailers must be supplied to the applicant by the next business day after the placement of the child(ren). 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 where there is reasonable certitude that the persons are likely to complete the process of becoming certified or approved.

The number of cards 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.

How do we set up tracking controls?

It is recommended that you 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 each person's agency ID number will aid in this process. The agency ID # is a combination of the Agency ID assigned by OCFS [it is 3 characters, generally alpha numeric in format; all numeric for Administration for Children's Services (ACS)], followed by up to 5 characters (numbers or letters) assigned by the district or agency for a maximum of 8 characters. This ID will allow each person in the State who is fingerprinted to have a unique identifier in the system.

It may be useful to appoint a single liaison in your district or agency to have responsibility for fingerprint tracking and the coordination of assigning unique agency IDs to each person who will be fingerprinted. It is important to note that districts and agencies (particularly those with multiple sites) should ensure that fingerprint cards designate a single address for receipt of results (except ACS which will be permitted additional addresses matched to the agency subcodes they have). Except for ACS, OCFS will return results only to a single site per district or agency. All districts and agencies who wish results to go to other than the commissioner or executive director should notify OCFS of the liaison for receiving results. Send the liaison name and agency address via Exchange to the attention of Stephanie O'Connell, or by Internet Email to: "OFM020@dfa.state.ny.us", or by mail to her attention at OCFS, 52 Washington Street, Room 392, Rensselaer, NY 12144.

The liaison should also be responsible for knowing how to fill out the fingerprint cards and ensuring others involved in this process receive proper instructions. A quality control check will go a long way toward having the cards processed quickly without problems. The fields on fingerprint cards and directions for their 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. Please note: typing the information on the cards is not required. Printing clearly and legibly, however, is essential.

How do we order / reorder fingerprint cards?

Fingerprint cards and mailers may be ordered / reordered by faxing your order to the Criminal History Review Unit at (518) 474-9384. You may also order by E-mailing Stephanie O'Connell through Exchange or by Internet Email to "OFM020@dfa.state.ny.us". Be sure to include the number of cards and/or mailers needed and clear mailing instructions. Order the quantity you think your agency will need for a period of at least six months.

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 be accessed using finger images. When speaking with law enforcement, you must determine whether a fee will be charged for the taking of the prints. In addition, you should determine with law enforcement who will mail the fingerprint cards to OCFS for processing. You may want the persons fingerprinted to return the cards to your authorized agency for mailing, to verify that all fields are correctly filled out, and to make sure that the cards are mailed and to keep track of the actual date of mailing. Multiple cards may be put in a single mailer.

Your agency has the option of electing to do fingerprinting on-site. Contact your OCFS Regional Office to choose this option. 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 to take fingerprints, 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 by a social services district 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, legal 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, equipment and supplies associated with taking fingerprints, and any fingerprint technique training fees (if you arrange your own training). 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 and the precise category of these costs separately from other foster care and adoption services costs. The Office has issued a separate LCM (99 OCFS LCM-15, May 14, 1999) to the local social services districts regarding claiming for these costs.

A fingerprint equipment list is shown in Attachment 3.

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. Do not mail the fingerprint cards directly to DCJS. 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 (including relative foster boarding homes

and approved adoptive homes where the adoption is not yet final), compared to the total number of children in foster boarding homes (including relative foster boarding homes and approved adoptive homes where the adoption is not yet final) 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. DCJS prohibits dissemination of the actual criminal history record (commonly known as a "RAP sheet"). Therefore, you will not receive the actual "RAP sheet"; it will be retained by OCFS. You will receive a summary for each fingerprinted person. It will contain information in one of the following categories: (I) No Criminal Record Found or No Reportable Criminal Record Found; (IIA) History of One or More Convictions/Mandatory Disqualifier; (IIB) History of One or More Charges or Convictions/Discretionary Disqualifier; or (III) Pending Matters / Hold in Abeyance. Refer to Attachment 4 "Crimes Listing" and Attachment 5 for Sample Results Letters (from OCFS to Authorized Agency).

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 for a fingerprintable offense. This practice is often referred to as "search and retain." OCFS will use their best efforts to research open charges and advise you of any resolution as soon as possible. The retention period for the fingerprint cards 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. If foster parents who already have been fingerprinted apply to become adoptive parents, there is no need to have them re-fingerprinted, as long as the foster home remains continually open through the adoption finalization since the "search and retain" procedure remains in effect for them. This is also the case if there is more than one adoption, and a subsequent application to adopt overlaps the pre-finalization period of the earlier adoption.

How will my agency use these results in the certification and approval process?

Based on results with regard to any family member, follow the instructions below.

I. No Criminal Record Found or No Reportable Criminal Record Found

If the results on all fingerprinted household members are "No Criminal Record Found" or "No Reportable Criminal Record Found" proceed with the certification, recertification, approval or reapproval process as usual. For your information, since Chapter 7 of the Laws of 1999 makes "reportable" only convictions for felonies and misdemeanors, as well as open arrests, if a history exists with DCJS, other than convictions for felonies or misdemeanors, or open arrests for such crimes, you will see "No Reportable

Criminal Record Found". This means a person was arrested for a crime but not convicted of a crime. The disposition of the arrest may have been: conviction for a violation (such as disorderly conduct or loitering) or a traffic infraction; dismissal of the charge; or an acquittal.

[Attachment 5: letters #1a and #1b correspond to this section.]

II. History of One or More Crimes

A) Mandatory Disqualifiers:

Category 1 Crime (See Attachment 4 CRIMES LISTING)

1. When there is a pending application to be a certified or approved foster parent or approved adoptive parent
 - o Application must be denied if there is a conviction for a Category 1 crime and such crime was committed by the applicant.
2. When there is a certified or approved foster parent or approved adoptive parent (no foster child in the home)
 - o The home must be decertified or the approval revoked if there is a conviction for a Category 1 crime and such crime was committed by the foster or adoptive parent.
3. When there is a certified or approved foster parent or approved adoptive parent (pre-finalization) and a foster child resides in the home
 - o When the foster parent or the adoptive parent has a criminal conviction for a Category 1 crime, the authorized agency must remove any foster child from the home of the certified or approved foster parent or the approved adoptive parent. There are no exceptions to this requirement. An assessment of imminent danger to the child must be made for the purposes of determining how quickly to remove the child. Safety of the child must be paramount; moves may be planned as long as safety is maintained. Any additional charges or convictions listed in the summary of the criminal history should be reviewed and considered in order to help determine how quickly the child must be removed. The authorized agency must thereafter take steps to decertify the home or revoke the approval. A 10 day notice of the intention to remove the child is not required pursuant to 18 NYCRR 443.5 (a). However, a notice of a person's right to a conference is still required.

[Attachment 5: letter #2 corresponds to this section. It is important to note that this letter explains that a conviction for a Category 1 crime has been identified for an individual residing in the household. The authorized agency must determine whether that individual is an applicant to be a foster parent, an applicant to be an adoptive parent, an existing foster parent, an existing approved adoptive parent, OR is an other individual over the age of

18 residing in the household. Once that determination is made, it will be clear whether there must be a mandatory disqualification or discretion may be used. For applicants or existing foster or adoptive parents, conviction for a Category 1 crime is a mandatory disqualifier. It is only for individuals over the age of 18, who are not applicants or existing foster or adoptive parents, that conviction for a Category 1 crime is a discretionary disqualifier. (See Discretionary Disqualifiers below.)]

B) Discretionary Disqualifiers

Category 1 Crime (See Attachment 4 CRIMES LISTING)

(Crime by other household member over the age of 18)

- o When an other person over the age of 18 who currently resides in the home of the prospective foster parent or certified/approved foster parent or prospective/approved adoptive parent has been convicted of a Category 1 crime, the authorized agency may deny approval/reapproval or certification/recertification or may revoke a certification or approval. The authorized agency must perform a safety assessment of the conditions in the household which is the basis for approval, denial or revocation. Such assessment must include whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with the foster children or other children residing in the household; and the status and nature of the criminal charge or conviction. The authorized agency must thereafter take steps to protect the health and safety of any such children, including, where appropriate, the removal of any foster child(ren) from the home and the revocation of the certification or approval of the foster or adoptive home. The safety assessment and the steps and actions taken to protect the health and safety of the child must be documented in the provider record. The reasons why a prospective or existing foster parent or a prospective or approved adoptive parent is determined to be appropriate and acceptable to provide or continue foster care or adoption in light of the results of the criminal history record check must also be documented in the provider record. Although there is no mandate stating how quickly the safety assessment must be completed, it should be done in an expeditious manner. Guidelines for Safety Assessments are found in Attachment 7.

Category 2 Crime

(Crime by applicant, foster parent, approved adoptive parent or any other household member over the age of 18)

- o When the prospective or certified/approved foster parent, prospective or approved adoptive parent, or other person over the age of 18 who currently resides in the home of such foster or adoptive parent has a criminal conviction for a Category 2 crime, the authorized agency may deny approval / reapproval or certification / recertification, or may revoke a certification or

approval. The authorized agency must perform a safety assessment of the conditions in the household which is the basis for approval, denial or revocation. Such assessment must include whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with the foster children or other children residing in the household; and the status and nature of the criminal charge or conviction. The authorized agency must thereafter take steps to protect the health and safety of any such children, including, where appropriate, the removal of any foster child(ren) from the home and decertifying the home or revoking the approval. The safety assessment and the steps and actions taken to protect the health and safety of the child must be documented in the provider record. The reasons why a prospective or existing foster parent or a prospective or approved adoptive parent is determined to be appropriate and acceptable to provide or continue foster care or adoption in light of the results of the criminal history record check must also be documented in the provider record. Although there is no mandate stating how quickly the safety assessment must be completed, it should be done in an expeditious manner. Guidelines for Safety Assessments are found in Attachment 7.

[Attachment 5: letters #2 and #3 correspond to this section. It is important to note that letter #2 explains that a conviction for a Category 1 crime has been identified for an individual residing in the household. The authorized agency must determine whether that individual is an applicant to be a foster parent, an applicant to be an adoptive parent, an existing foster parent, an existing approved adoptive parent, OR is an other individual over the age of 18 residing in the household. Once that determination is made, it will be clear whether there must be a mandatory disqualification (see Mandatory Disqualifiers above) or discretion may be used. Letter #3 explains the identification of Category 2 crimes (convictions and/or open charges) which allows for discretion in all circumstances.]

III. Pending Matters / Hold in Abeyance

The final determination of an application for certification or approval of an applicant to be a foster parent or an adoptive parent must be held in abeyance when:

- o the criminal history record of the prospective or current foster or adoptive parent reveals a pending criminal charge for a Category 1 crime which has not been finally resolved; or
- o the criminal history record of the prospective or current foster or adoptive parent reveals a criminal conviction that may be a Category 1 crime but which requires further review by OCFS.

The authorized agency may proceed with processing the application, but can not finally certify, approve, recertify or reapprove the home until OCFS notifies the authorized agency of the status of the criminal charge or the nature of the conviction. If there are any foster children in the home, a safety assessment as outlined above must be performed. Although there is no

mandate stating how quickly the safety assessment must be completed, it should be done in an expeditious manner. Guidelines for Safety Assessments are found in Attachment 7.

[Attachment 5: letters #4a and #4b correspond to this section. These 2 versions accommodate situations where there is a charge(s) as described above, or where there is a conviction(s) as described above. The authorized agency must determine to whom the charge(s) or conviction(s) relate. Once it is determined whether the individual is an applicant to be a foster parent, an applicant to be an adoptive parent, an existing foster parent, an existing approved adoptive parent, OR is an other individual over the age of 18 residing in the household, it will be clear whether there is a Hold in Abeyance situation or discretion may be used. (See Discretionary Disqualifiers above.)]

What are the requirements for providing a Denial / Revocation Notice?

When an authorized agency makes a denial or revocation because of the criminal history record review, the authorized agency must provide the affected applicant, certified or approved foster parent or approved adoptive parent with a written statement setting forth the reasons for the denial or revocation. In addition, the authorized agency must provide a description of the DCJS process available for a person to review and/or challenge his or her criminal history records and any remedial processes provided to the applicant, certified or approved foster parent, or approved adoptive parent by OCFS.

This notice sent by the authorized agency must also include information about the ability of an individual who was denied or disapproved, had his or home decertified or had an approval revoked on the basis of a Category 1 crime for spousal abuse to request an administrative hearing from OCFS on the basis that such offense does not constitute spousal abuse because he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the person to commit such offense.

Attachment 6 DENIAL / REVOCATION LETTER / NOTICE OF RESULTS OF FINGERPRINTING / CRIMINAL RECORD FOUND contains the required language that the notice must contain whenever there is a denial or revocation. The denial / revocation letter must also contain, where applicable, notice requirements mandated by State law and Office regulations relating to the denial of an application to be an adoptive parent and revocation of the approval of an adoptive parent in accordance with Section 372-e of the Social Services Law and 18 NYCRR 421.15 (g), and relating to the removal of a foster child in accordance with Section 400 of the Social Services Law and 18 NYCRR 443.5. Such notice must include, where applicable, the right to a conference with the authorized agency relating to the removal of a foster child. Also in regard to the removal of a foster child, such notice must address the right of the aggrieved foster parent or adoptive parent who is not successful at the conference to request an administrative hearing before the Office. Such notice, where applicable, must be attached to or incorporated into the Denial / Revocation Letter (see Attachment 6).

What are the requirements for confidentiality of results and recordkeeping?

The summary of the criminal history record provided by this Office to you is confidential. You may not disclose criminal history information to any person or entity, including the applicant. However, it may be disclosed subsequently in an administrative or judicial proceeding relating to the denial of an application, decertification of the home, revocation of a home's approval or removal of a foster child from the home, or as part of a judicial proceeding to finalize an adoption.

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. (Note: the regulations filed on an emergency basis and in effect as of March 30, 1999, require the criminal history attestation to be taken on all members of the household over 18 years of age.) 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.

System Instructions

The following procedure outlines what local districts and voluntary agencies should record in CONNECTIONS concerning new foster and adoptive homes as well as foster homes that are due for recertification / reapproval.

Procedure

- o Ensure that all individuals currently residing in the household are added on the Person Detail window, using the Maintain Person task.
- o Emergency relative foster homes, emergency non-relative foster homes and adoptive homes, where all authorization requirements have been met except for receiving the fingerprint results, should be authorized in CONNECTIONS.
- o Homes due for reauthorization, where all reauthorization requirements have been met except for receiving the fingerprint results, should be reauthorized in CONNECTIONS.

- o Documentation should be placed in the Home Study / Reauthorization narrative in CONNECTIONS stating that all authorization (adoptive homes and emergency homes) and reauthorization requirements have been met except for fingerprinting.
- o For ALL foster and adoptive homes, including ALL new homes, the dates the fingerprints were taken and the dates they were sent to OCFs should be documented in the Comment Section on the Address/List Detail window in CONNECTIONS. Separate documentation should be done for each adoptive parent, each foster parent and each person over the age of 18 currently residing in the household. The Address/List Detail window is accessible via the Maintain Person task and the Options Menu off the Person List window.
- o We also recommend that workers create a 30 day To Do for themselves from the time the prints are submitted to OCFs, to remind them to look for the fingerprint results.
- o Once the criminal record check is complete and the results are returned to the local districts / agencies, the date satisfactory results received should be recorded in the Comment section in the Address/List Detail window to reflect the completion of the process. Where results identify that criminal records have been found, that should also be recorded.

We expect that Build 12, scheduled for summer 1999, will include the capability of entering specific data elements for submission dates and results received dates associated with the fingerprinting process. You will be advised when this enhancement becomes available.

WMS / POS coding instructions are included in 99 OCFs LCM-8, which provides guidance on claiming federal reimbursement in light of ASFA.

Special Instructions for Adoption Agencies

These instructions are to inform you of the provisions of Chapter 7 of the Laws of 1999 regarding criminal history record checks as these provisions apply to the population served by in-state and out-of-state adoption agencies.

By law, a criminal history record check must be completed when an authorized agency is evaluating a person who has applied to be an approved adoptive parent and such parent resides in New York State, even if the agency is incorporated in another state. For the purposes of this process, an authorized agency includes: a) a social services district; b) a New York corporation approved by the Office to operate an adoption program (Section 371.10 (a) of the Social Services Law); c) a non-New York corporation approved by the Office to operate an adoption program (Article 13 of the Not-for-Profit Corporation Law); d) an Indian tribe with a State tribal agreement which includes the operation of an adoption program (Section 371.10 (b) of the Social Services Law); or e) an out-of-state agency approved by a state other than New York and which places foreign children for adoption into New York (Section 371.10 (c) of the Social Services Law). The criminal history record check is one of the steps required by Office regulation, 18 NYCRR Part 421 for the

review and evaluation of the suitability of an individual to be an approved adoptive parent. This process includes, but is not limited to, the submission of an application, medical information, references, State Central Register clearance and a home study.

An applicant can not be approved as an adoptive parent unless and until the criminal history record check process is completed. This requirement also includes foreign adoptions in the situation where your agency will be approving the applicant as an adoptive parent.

An agency which only performs a home study and/or post placement supervision on behalf of a person seeking to adopt a child is not authorized to perform a criminal history record check pursuant to either Section 378-a of the Social Services Law or Office regulation, 18 NYCRR Part 421. This means that where the only function the agency is called upon to carry out is a home study and/or post placement supervision, the agency may not process criminal history record check requests through this Office.

If the agency is carrying out a home study for a person seeking to be certified as a qualified adoptive parent in accordance with Section 115-d of the Domestic Relations Law, the court must order the criminal history record check directly through the State Division of Criminal Justice Services (DCJS). Fingerprint cards in such cases are not processed through this Office. Other requests for a home study, outside of a home study which is part of the adoptive parent approval process, are also not subject to the procedures set forth in Section 378-a of the Social Services Law. The agency would have to evaluate if some other authority for a criminal history record check is required. In any case, requests would not be directed through this Office.

If an adoption is to be finalized in a state other than New York, such placement must go through the Interstate Compact on the Placement of Children (ICPC) as usual and the rules of the other state with regard to criminal history record checks also apply.

Please note that pursuant to Section 378-a (2)(k) of the Social Services Law, the Office must inform the Division of Criminal Justice Services when a person is no longer certified or approved as a foster parent or is no longer a prospective adoptive parent so that the Division of Criminal Justice Services may terminate its retain processing with regard to such person and any person over the age of eighteen who is residing in the home of the foster parent or prospective adoptive parent. At least once a year, the Office will be required to conduct a validation of the records maintained by the Division of Criminal Justice Services. In order to comply with this provision with regard to adoption agencies who do not report to the Office child welfare systems, a manual notice is included in this Informational Letter.

Date June 2, 1999

Trans. No. 99 OCFS INF-7

Page No. 16

Please refer to Attachment 8 NOTIFICATION OF ADOPTION FINALIZATION (NOTICE TO EXPUNGE ASSOCIATED FINGERPRINT CARDS) for instructions for providing this information.

William F. Baccaglini
Director, Strategic Planning and
Policy Development

Attachment A

- Attachment 1 - Notice Regarding Fingerprinting Requirements
(Available on-line);
Spanish Version (Not Available on-line)
- Attachment 2 - Directions for Completing the Fingerprint Card
(Not Available on-line)
- Attachment 3 - Fingerprinting Equipment List (Available on-line)
- Attachment 4 - Crimes Listing (Available on-line)
- Attachment 5 - Sample Results Letters (from OCS to Authorized
Agency) (Available on-line)
- Attachment 6 - Denial / Revocation Letter /
Notice of Results of Fingerprinting /
Criminal Record Found (Available on-line)
- Attachment 7 - Criminal History Record Checks & Safety Assessments
(Available on-line)
- Attachment 8 - Notification of Adoption Finalization
(Notice to Expunge Associated Fingerprint Cards)
(Not Available on-line)

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: denial of your application; 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.

Attachment 3

Fingerprinting Equipment List

The following is a list of items which sites may want to purchase if they intend to fingerprint on a permanent basis at their own location. Also, a portable kit is listed which would be useful for providing fingerprint technique training.

<u>Item</u>	<u>Cost</u>
Portable Porelon Fingerprint Kit No. 650 (recommended for training purposes)	\$90.00 ea
Fingerprint Stand Model No. 236P (recommended for permanent site)	\$410.00
Individual Disposable Ink Cleaner No. 839D	\$113.00 per case of 1,000
Folding Magnifier (4X) No. 436S	\$5.00 ea
Pre-Inked Porelon Pad Refill No. 201R	\$22.00 ea

Price and Item information was obtained from the following vendor:

*Faurot, Inc.
45 N. Lawn Ave.
Elmsford, NY 10523
Fed ID#13-5508105

Phone: (914) 592-4604
Fax: (914) 592-4606

*You are under no obligation to purchase from this vendor.

Attachment 4

CRIMES LISTING

Category 1

- (A) A FELONY CONVICTION AT ANY TIME INVOLVING:
 - (I) CHILD ABUSE OR NEGLECT;
 - (II) SPOUSAL ABUSE;
 - (III) A CRIME AGAINST A CHILD, INCLUDING CHILD PORNOGRAPHY; OR
 - (IV) A CRIME INVOLVING VIOLENCE, INCLUDING RAPE, SEXUAL ASSAULT, OR HOMICIDE, OTHER THAN A CRIME INVOLVING PHYSICAL ASSAULT OR BATTERY; OR
- (B) A FELONY CONVICTION WITHIN THE PAST FIVE YEARS FOR PHYSICAL ASSAULT, BATTERY, OR A DRUG-RELATED OFFENSE.

Category 2

A charge or conviction of any other crime, not listed in Category 1.

Attachment 5

Sample Results Letters (from OCFS to Authorized Agency)

Sample Letter: No Criminal Record Found

Date:
Re:
DOB:
Agency ID:
NYSID No.:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law ("SSL"), the Division of Criminal Justice Services ("DCJS") has conducted a criminal history record check of the above referenced individual and as of _____ (date of report) has reported to the Office of Children and Family Services ("OCFS") the following:

No Criminal Record Found

Please be advised that the above referenced fingerprints will be retained by DCJS for the period in which the foster home is open or until the adoption is finalized. While this record is retained by DCJS, OCFS will be informed of any arrests that may occur. You will be provided a summary of such information in the event of any such occurrences.

Sincerely,

Criminal History Review Unit

CAUTION

SSL SECTION 378-a(2)(i) PROVIDES THAT ANY SUMMARY OF THE CRIMINAL HISTORY RECORD PROVIDED BY OCFS TO AN AUTHORIZED AGENCY IS CONFIDENTIAL AND SHALL NOT BE PROVIDED TO ANY PERSON OR ENTITY, INCLUDING THE APPLICANT. SUCH INFORMATION MAY ONLY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO THE FINALIZATION OF AN ADOPTION, THE DENIAL OR REVOCATION OF A CERTIFICATION OR APPROVAL OF A FOSTER OR ADOPTIVE PARENT OR THE REMOVAL OF ANY FOSTER CHILD FROM THE HOME.

Sample Letter: No Reportable Criminal Record Found

Date:
Re:
DOB:
Agency ID:
NYSID No.:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law ("SSL"), the Division of Criminal Justice Services ("DCJS") has conducted a criminal history record check of the above referenced individual and as of _____ (date of report) has reported to the Office of Children and Family Services ("OCFS") the following:

No Reportable Criminal Record Found

Please be advised that the above referenced fingerprints will be retained by DCJS for the period in which the foster home is open or until the adoption is finalized. While this record is retained by the DCJS, OCFS will be informed of any arrests that may occur. You will be provided a summary of such information in the event of any such occurrences.

Sincerely,

Criminal History Review Unit

CAUTION

SSL SECTION 378-a(2)(i) PROVIDES THAT ANY SUMMARY OF THE CRIMINAL HISTORY RECORD PROVIDED BY OCFS TO AN AUTHORIZED AGENCY IS CONFIDENTIAL AND SHALL NOT BE PROVIDED TO ANY PERSON OR ENTITY, INCLUDING THE APPLICANT. SUCH INFORMATION MAY ONLY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO THE FINALIZATION OF AN ADOPTION, THE DENIAL OR REVOCATION OF A CERTIFICATION OR APPROVAL OF A FOSTER OR ADOPTIVE PARENT OR THE REMOVAL OF ANY FOSTER CHILD FROM THE HOME.

Sample Letter: Mandatory Disqualifier

Date:
Re:
DOB:
Agency ID:
NYSID No.:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law ("SSL"), the Division of Criminal Justice Services ("DCJS") has conducted a criminal history record check of the above referenced individual. As of _____ (date of report), DCJS has reported the criminal history to the Office of Children and Family Services ("OCFS") which includes the following conviction(s):

Date of Conviction	Crime	Jurisdiction/Court
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If the above conviction(s) relates to an individual who is applying to be or is currently a certified or approved foster parent or approved adoptive parent, please be advised that, pursuant to Section 378-a (2)(e) of the SSL, one or more convictions of this nature DISQUALIFIES the individual for consideration as a foster parent or adoptive parent. If this is the case, the individual's application MUST BE DENIED. If the individual currently is a certified or approved foster parent or an approved adoptive parent, such certification or approval MUST BE REVOKED. In addition, pursuant to SSL Section 378-a (2)(h), you are required to remove any foster child from the foster parent's or adoptive parent's home, and to close the foster home. You are reminded to notify the individual of his or her right to review and challenge the records maintained by DCJS. In addition, you are obligated to inform the applicant or certified or approved foster parent or adoptive parent of the denial or revocation, and of any applicable remedial rights provided by OCFS that the individual may have, including those set forth in Section 400 of the SSL and 18 NYCRR 443.5 where a foster child is to be removed from the home. For your convenience in completing the "Denial / Revocation Letter / Notice of Results of Fingerprinting / Criminal Record Found", this conviction is one of

If the above conviction(s) relates to an individual in the household over the age of 18, other than the applicant or the certified or approved foster parent or adoptive parent, such conviction(s) may be considered by you, consistent with the provisions of Article 23-A of the Correction Law, in determining whether to certify or approve the applicant as a foster parent or as an adoptive parent; to revoke an existing certification or approval as a foster parent; or to revoke an existing approval as an adoptive parent. Under this circumstance, pursuant to SSL Section 378-a (2)(h) you are required to perform a safety assessment of the conditions in the household which addresses specific issues identified in that section of law and to

take all appropriate actions to protect any children in the home, including, where appropriate, the removal of any foster child or children from the home. If, as a result of the safety assessment, you decide to deny the application of the foster parent or adoptive parent, or revoke an existing certification or approval of a foster parent or adoptive parent, you are again reminded to notify the individual of his or her right to review and challenge the records maintained by DCJS. In addition, you are obligated to inform the applicant or certified or approved foster parent or adoptive parent of the denial or revocation, and of any applicable remedial rights provided by OCFS that the individual may have, including those set forth in Section 400 of the SSL and 18 NYCRR 443.5 where a foster child is to be removed from the home.

We are also providing to you a summary of any additional conviction(s) and/or charge(s) found on the criminal history of this individual. This information, if such individual is applying to be or is currently a foster parent or approved adoptive parent, should be used to assist you in determining how quickly the child must be removed from the home. If the charge(s) and/or conviction(s) are related to an individual in the household over the age of 18, other than the applicant or the certified or approved foster parent or adoptive parent, this information should be used in conducting the safety assessment described above.

<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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<u>Date of Charge</u>	<u>Charge</u>	<u>Jurisdiction/Court</u>
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Any questions should be directed to me at (518) 473-8418.

Sincerely,

John A. Ouimet
Deputy Counsel
Criminal History Review Unit

CAUTION

SSL SECTION 378-a(2)(i) PROVIDES THAT ANY SUMMARY OF THE CRIMINAL HISTORY RECORD PROVIDED BY OCFS TO AN AUTHORIZED AGENCY IS CONFIDENTIAL AND SHALL NOT BE PROVIDED TO ANY PERSON OR ENTITY, INCLUDING THE APPLICANT. SUCH INFORMATION MAY ONLY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO THE FINALIZATION OF AN ADOPTION, THE DENIAL OR REVOCATION OF A CERTIFICATION OR APPROVAL OF A FOSTER OR ADOPTIVE PARENT OR THE REMOVAL OF ANY FOSTER CHILD FROM THE HOME.

Sample Letter: Discretionary Disqualifier

Date:
Re:
DOB:
Agency ID:
NYSID No.:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law ("SSL"), the Division of Criminal Justice Services ("DCJS") has conducted a criminal history record check of the above referenced individual. As of _____ (date of report), DCJS has reported the criminal history to the Office of Children and Family Services ("OCFS"). Following is a summary of the criminal history information:

<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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In addition, the report does not show the resolution of the following charge(s), which are in need of further investigation by this unit. We will use our best efforts to resolve the questions related to any open charges and advise you of any resolution.

<u>Date of Charge</u>	<u>Charge</u>	<u>Jurisdiction/Court</u>
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Please be advised that pursuant to SSL Section 378-a (2)(e), the above conviction(s) and/or charge(s) may, consistent with the provisions of Article 23-A of the Correction Law, be considered by you in determining whether to certify or approve the applicant as a foster parent or adoptive parent, or to revoke an existing certification or approval of the individual as a foster parent, or to revoke an existing approval as an adoptive parent. In addition, you are required by SSL Section 378-a (2)(h) to perform a safety assessment of the conditions in the household which addresses specific issues identified in that section of law and to take all appropriate actions to protect any children in the home, including, where appropriate, the removal of any foster child or children from the home. In making the safety assessment, you must consider whether the subject of the conviction(s) and/or charge(s) is the applicant, existing foster parent or adoptive parent or another individual over the age of 18 residing in the household. If, as a result of the safety assessment, the application of the foster parent or adoptive parent is denied, or a decision is made to revoke an existing certification or approval, you are reminded to notify the

individual of his or her right to review and challenge the records maintained by DCJS. In addition, you are obligated to inform the applicant or certified or approved foster parent or adoptive parent of the denial or revocation, and of any applicable remedial rights provided by OCFs that the individual may have, including those set forth in Section 400 of the SSL and 18 NYCRR 443.5 where a foster child is to be removed from the home.

Any questions should be directed to me at (518) 473-8418.

Sincerely,

John A. Ouimet
Deputy Counsel
Criminal History Review Unit

CAUTION

SSL SECTION 378-a(2)(i) PROVIDES THAT ANY SUMMARY OF THE CRIMINAL HISTORY RECORD PROVIDED BY OCFs TO AN AUTHORIZED AGENCY IS CONFIDENTIAL AND SHALL NOT BE PROVIDED TO ANY PERSON OR ENTITY, INCLUDING THE APPLICANT. SUCH INFORMATION MAY ONLY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO THE FINALIZATION OF AN ADOPTION, THE DENIAL OR REVOCATION OF A CERTIFICATION OR APPROVAL OF A FOSTER OR ADOPTIVE PARENT OR THE REMOVAL OF ANY FOSTER CHILD FROM THE HOME.

Sample Letter: Pending Matters / Hold in Abeyance

Date:
Re:
DOB:
Agency ID:
NYSID No.:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law ("SSL"), the Division of Criminal Justice Services ("DCJS") has conducted a criminal history record check of the above referenced individual. As of _____ (date of report), DCJS has reported to the Office of Children and Family Services ("OCFS") the following conviction(s), which are in need of further investigation by this unit. We will advise you of the results of this investigation as soon as possible.

<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
---------------------------	--------------	---------------------------

If the above conviction(s) relates to an individual who is applying to be or is currently a foster parent or approved adoptive parent, please be advised that pursuant to SSL Section 378-a (2)(e)(2), the final determination of the individual's application for certification or approval as a foster parent or adoptive parent MUST BE HELD IN ABEYANCE, pending a subsequent notification from OCFS. This is because the conviction(s) may be for a crime (or crimes) which requires denial or revocation of such certification or approval. In addition, in the event there is currently a foster child residing in the foster parent's or adoptive parent's home, you are required to perform a safety assessment of the conditions in the household in accordance with the provisions of Section 378-a (2)(h) of the SSL and regulations of OCFS, and to take all appropriate steps to protect any children in the home, including, where appropriate, the removal of any foster child or children from the home.

If the above conviction(s) relates to an individual in the household over the age of 18, other than the applicant or certified or approved foster parent or adoptive parent, such conviction(s) may be considered by you, consistent with the provisions of Article 23-A of the Correction Law, in determining whether to approve the applicant as a foster parent or adoptive parent; to revoke an existing certification or approval as a foster parent; or to revoke an existing approval as an adoptive parent. Under this circumstance, pursuant to SSL Section 378-a (2)(h) you are required to perform a safety assessment of the conditions in the household which addresses specific issues identified in that section of law and to take all appropriate actions to protect any children in the home, including, where appropriate, the removal of any foster child or children from the home.

In either of the above cases, if, as a result of the safety assessment, you decide to deny the application of the foster parent or adoptive parent, or revoke an existing certification or approval of a foster parent or adoptive parent, you are reminded to notify the individual of his or her right to review and challenge the records maintained by DCJS. In addition, you are obligated to inform the applicant or certified or approved foster parent or adoptive parent of the denial or revocation, and of any applicable remedial rights provided by OCFS that the individual may have, including those set forth in Section 400 of the SSL and 18 NYCRR 443.5 where a foster child is to be removed from the home.

We are also providing to you a summary of any additional conviction(s) and/or charge(s) found for this individual. This information should be used in conducting the safety assessment described above.

<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
---------------------------	--------------	---------------------------

<u>Date of Charge</u>	<u>Charge</u>	<u>Jurisdiction/Court</u>
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Any questions should be directed to me at (518) 473-8418.

Sincerely,

John A. Ouimet
Deputy Counsel
Criminal History Review Unit

CAUTION

SSL SECTION 378-a(2)(i) PROVIDES THAT ANY SUMMARY OF THE CRIMINAL HISTORY RECORD PROVIDED BY OCFS TO AN AUTHORIZED AGENCY IS CONFIDENTIAL AND SHALL NOT BE PROVIDED TO ANY PERSON OR ENTITY, INCLUDING THE APPLICANT. SUCH INFORMATION MAY ONLY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO THE FINALIZATION OF AN ADOPTION, THE DENIAL OR REVOCATION OF A CERTIFICATION OR APPROVAL OF A FOSTER OR ADOPTIVE PARENT OR THE REMOVAL OF ANY FOSTER CHILD FROM THE HOME.

Sample Letter: Pending Matters / Hold in Abeyance

Date:
Re:
DOB:
Agency ID:
NYSID No.:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law ("SSL"), the Division of Criminal Justice Services ("DCJS") has conducted a criminal history record check of the above referenced individual. As of _____ (date of report), DCJS has reported to the Office of Children and Family Services ("OCFS") the following charge(s), which are in need of further investigation by this unit. We will advise you of the results of this investigation as soon as possible.

<u>Date of Charge</u>	<u>Charge</u>	<u>Jurisdiction/Court</u>
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If the above charge(s) relates to an individual who is applying to be or is currently a foster parent or approved adoptive parent, please be advised that pursuant to SSL Section 378-a (2)(e)(2), the final determination of the individual's application for certification or approval as a foster parent or adoptive parent MUST BE HELD IN ABEYANCE, pending a subsequent notification from OCFS. This is because the charge(s) is for a crime (or crimes) which, if there was to be a conviction, requires denial or revocation of such certification or approval. In addition, in the event there is currently a foster child residing in the foster parent's or adoptive parent's home, you are required to perform a safety assessment of the conditions in the household in accordance with the provisions of Section 378-a (2)(h) of the SSL and regulations of OCFS, and to take all appropriate steps to protect any children in the home, including, where appropriate, the removal of any foster child or children from the home.

If the above charge(s) relates to an individual in the household over the age of 18, other than the applicant or certified or approved foster parent or adoptive parent, such charge(s) may be considered by you, consistent with the provisions of Article 23-A of the Correction Law, in determining whether to approve the applicant as a foster parent or adoptive parent; to revoke an existing certification or approval as a foster parent; or to revoke an existing approval as an adoptive parent. Under this circumstance, pursuant to SSL Section 378-a (2)(h) you are required to perform a safety assessment of the conditions in the household which addresses specific issues identified in that section of law and to take all appropriate actions to protect any children in the home, including, where appropriate, the removal of any foster child or children from the home.

In either of the above cases, if, as a result of the safety assessment, you decide to deny the application of the foster parent or adoptive parent, or revoke an existing certification or approval of a foster parent or adoptive parent, you are reminded to notify the individual of his or her right to review and challenge the records maintained by DCJS. In addition, you are obligated to inform the applicant or certified or approved foster parent or adoptive parent of the denial or revocation, and of any applicable remedial rights provided by OCFs that the individual may have, including those set forth in Section 400 of the SSL and 18 NYCRR 443.5 where a foster child is to be removed from the home.

We are also providing to you a summary of any additional conviction(s) and/or charge(s) found for this individual. This information should be used in conducting the safety assessment described above.

<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
---------------------------	--------------	---------------------------

<u>Date of Charge</u>	<u>Charge</u>	<u>Jurisdiction/Court</u>
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Any questions should be directed to me at (518) 473-8418.

Sincerely,

John A. Ouimet
Deputy Counsel
Criminal History Review Unit

CAUTION

SSL SECTION 378-a(2)(i) PROVIDES THAT ANY SUMMARY OF THE CRIMINAL HISTORY RECORD PROVIDED BY OCFs TO AN AUTHORIZED AGENCY IS CONFIDENTIAL AND SHALL NOT BE PROVIDED TO ANY PERSON OR ENTITY, INCLUDING THE APPLICANT. SUCH INFORMATION MAY ONLY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO THE FINALIZATION OF AN ADOPTION, THE DENIAL OR REVOCATION OF A CERTIFICATION OR APPROVAL OF A FOSTER OR ADOPTIVE PARENT OR THE REMOVAL OF ANY FOSTER CHILD FROM THE HOME.

Attachment 6

DENIAL / REVOCATION LETTER / NOTICE OF RESULTS OF FINGERPRINTING /
CRIMINAL RECORD FOUND

Date:

Re:

Name:

DOB:

Agency ID:

NYSID No.:

Dear Sir/Madam:

Pursuant to Section 378-a of the Social Services Law, the Division of Criminal Justice Services has advised us that the above named person was charged or convicted as indicated below. After review of this information the following decision has been made:

() Your request to be certified or recertified as a foster parent, approved or reapproved as a relative foster parent or approved as an adoptive parent has been denied.

() Your certification or approval as a foster parent or approval as an adoptive parent has been revoked.

This denial or revocation is because:

MANDATED DENIAL or REVOCATION

- () You or your spouse has a felony conviction at any time involving:
 - () child abuse or neglect;
 - () spousal abuse;
 - () a crime against a child, including child pornography; or
 - () a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery.
- () You or your spouse has a felony conviction within the past five years for physical assault, battery, or a drug-related offense.

PERMISSIVE DENIAL or REVOCATION

- () You or your spouse has a felony and/or misdemeanor conviction for any other crime which creates a safety concern with regard to boarding or placing children in your home for the purposes of foster care or adoption.
- () Someone else over the age of 18 who resides in your household has a felony and/or misdemeanor conviction for any crime which creates a safety concern with regard to boarding or placing children in your home for the purposes of foster care or adoption.
- () You, your spouse, or someone else over the age of 18 who resides in your household has been charged with a crime which creates a safety concern with regard to boarding or placing children in your home for the purposes of foster care or adoption.

If your denial is based upon spousal abuse, and you believe that such offense was not spousal abuse because the fact that you were abused was a factor in causing you to commit the crime, you may request an administrative hearing from the Office of Children and Family Services by contacting in writing:

Bureau of Special Hearings
NYS Office of Children and Family Services
PO Box 1930
Albany, New York 12201

Such request must be made within 60 days of the receipt of this notice.

If you are a prospective adoptive parent or an approved adoptive parent and your application has been denied or your approval revoked by an authorized agency because of a criminal history referenced in this letter (and any additional reasons for denial or revocation), you have a right to notice of the reason(s) for denial or revocation. In addition, you have the right to request an administrative hearing before the Office, pursuant to section 372-e of the Social Services Law. Such request must be made within 60 days of the receipt of this notice.

Similarly, if a foster child is to be removed or is removed from your home because of a criminal history (and any additional reasons), you have a right to a conference with the authorized agency responsible for such removal in accordance with the provisions of 18 NYCRR 443.5. If you are not successful at the conference, you may request an administrative hearing before the Office in accordance with Section 400 of the Social Services Law. As applicable, additional information concerning the reasons for the agency action and your rights is attached to this letter.

If you want to conduct a DCJS Record Review, you should call the Record Review Unit or write to the address listed below to request the necessary forms. All record reviews are conducted via mail.

NYS Division of Criminal Justice Services
Criminal History Bureau
Record Review Unit - 5th Floor
4 Tower Place
Albany, NY 12203
Phone: (518) 485-7675

If you conduct a Record Review through DCJS and you believe that there are errors on your criminal history record which you seek to challenge, you must provide DCJS with the following documentation:

Arrest Data

To modify arrest data (i.e., arrest charges, date of arrest, date of crime) on your Criminal History Record, YOU must contact the arresting agency. DCJS REQUIRES WRITTEN notification from the ARRESTING AGENCY to correct this information.

Disposition Data

To correct disposition data or to update missing disposition data, YOU must contact the court of adjudication and request a CERTIFIED copy of the disposition. Once you have obtained the certified court document, you must forward it to the DCJS Record Review Unit which will review it and update your Criminal History Record. Be advised photostatic copies are NOT acceptable unless they contain an embossed (raised design) seal from the issuing court.

Criminal History Record Checks & Safety Assessments

When a Criminal History Record Check results in a finding that there has been a charge and/or conviction for a crime that allows for discretion in whether to approve, certify, reapprove or recertify foster or adoptive homes, a "safety assessment" is required.

This discretion is permitted when a potential or current foster parent or a potential or approved adoptive parent has been charged or convicted of any crime (except convictions for crimes that are mandatory disqualifiers), or an other person over 18 years of age residing in the home has been charged or convicted of any crime, including those that automatically disqualify potential or current foster parents or potential or approved adoptive parents.

Law and regulation mandate safety assessments in the scenarios above; the following must be considered:

- o whether the subject of the charge or conviction resides in the household;
- o the extent to which such person may have contact with the foster or other children residing in the household;
- o the status and nature of the criminal charge or conviction.

Additional Guidelines follow.

Where there is a child placed in the home, this situation may arise:

- o on the first recertification or reapproval since the law was passed;
- o on an approved adoptive family (approved before the law was passed) where there is a child placed in the home, but the adoption is not yet final;
- o when a person over the age of 18 is added to the household;
- o where the home has been approved on an expedited basis as an emergency approved relative or certified on an expedited basis as an emergency certified (non-relative) foster home;
- o when notice of arrest is received due to DCJS having "search and retain" of the fingerprints.

It is arguably a more difficult decision to make when a child is already in the home, because such decision must always be weighed against the negatives associated with moving a child. Consider the following:

- o if the person lives in the household, the degree of unsupervised access to or contact with the child;
- o the length of time the child has been in the home;
- o the influence the person may have on the child's care and/or upbringing;
- o the counterbalancing strengths found in the household which meet the child's specific needs;

- o any counterbalancing strong ties with relatives;
- o the degree of bonding between child and foster or adoptive parents, including how well the child seems to be doing in the home;
- o the foster or adoptive parents' prior "track record" with any other placements they may have had.

Whether or not there is a child placed in the home, consider the following:

- o the nature of the charge or conviction, how serious a crime it was, whether it involved violence or force?
- o the circumstances of the crime and the person's explanation of such;
- o the relationship between the type of crime and its relationship to child caring responsibilities;
- o how recent the crime is, particularly the length of time following any prison or jail time that the person has spent (productively) in the community (generally give less weight to older convictions);
- o the age of the person at the time of the occurrence of the criminal offense (generally give less weight to crimes committed at relatively young ages);
- o any factors that demonstrate good conduct or rehabilitation, such as returning to school, employment, volunteer activities, etc.;
- o the number of crimes committed and any patterns which emerge;
- o the penalties imposed as a result of the conviction(s).

In situations where there are no children in the home (applicants, or certified or approved persons without placements), you may want to weight the factors listed above more heavily, since it is preferable to minimize the risk to the child, and not placing a child where household members have been convicted will accomplish this.

All necessary steps to protect the health and safety of the child must be taken, including, when appropriate, the removal of any foster child from the home. In all situations, the safety and well being of the child should always be the primary concern, but this concern must be balanced with the rights of those individuals who have criminal conviction records.

The following provisions of Article 23 - A of the Correction Law should also help guide your decision and must be applied when deciding whether to deny an application for certification / recertification or approval / reapproval or to revoke certification or approval:

Sec. 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant has previously been convicted of one or more criminal offenses, unless:

- (1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought; or
- (2) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

Sec.753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall consider the following factors:
 - (a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.
 - (b) The specific duties and responsibilities necessarily related to the license or employment sought.
 - (c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.
 - (d) The time which has elapsed since the occurrence of the criminal offense or offenses.
 - (e) The age of the person at the time of the occurrence of the criminal offense or offenses.
 - (f) The seriousness of the offense or offenses.
 - (g) Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.
 - (h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.
2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.