

What Is New?

Part M of Chapter 54 of the Laws of 2016 amended section 378-a (2) of the Social Services Law (SSL), affecting the role of the New York State Office of Children and Family Services (OCFS) and voluntary authorized agencies (VAs) in the review and processing of the Federal Bureau of Investigation (FBI) criminal history record checks of prospective foster and adoptive parents, and persons 18 years of age or older who reside in the home of the applicant, who apply to VAs for certification or approval.

These changes **DO NOT** affect the review or processing of the Division of Criminal Justice Services (DCJS) criminal history record checks for local departments of social services (LDSSs) or DCJS criminal history checks for VAs. LDSSs and VAs will continue to receive a criminal history record summary for crimes reported to OCFS by DCJS.

There is no change in the review of FBI criminal history record checks for LDSSs. The only change to LDSSs in the processing of FBI criminal history record checks is that the results of the FBI criminal history record check may only be provided to the person whose FBI criminal history was the basis for the denial.

As set forth below, Part M of Chapter 54 of the Laws of 2016 significantly impacts FBI criminal history record checks conducted on behalf of VAs.

The following is a summary of changes to the FBI checks for VA applicants:

- OCFS will receive and review the criminal history record information received from the FBI for all prospective foster and adoptive parents, and persons 18 years of age or older who reside in the home of the applicant, who apply for certification and approval as foster or adoptive parents through a VA.
- OCFS will determine whether the applicant, or persons 18 years of age or older residing in the home of the applicant, has been convicted of a crime or crimes that require denial of the application; convicted or charged with a crime requiring that the application be held in abeyance; or whether, solely based on the results of the FBI criminal history record check, OCFS has no objection with the agency otherwise proceeding with a determination on the application for certification or approval pending before the agency.
- VAs will no longer receive from OCFS a criminal history record summary containing the content of the results of the FBI criminal history record check. OCFS will send the VA a written notification for each fingerprinted person, which will include a conclusion reached by OCFS after a review of the criminal history in one of the following three categories:
 - **OCFS has no objection, based solely on the FBI record, to the VA proceeding with a determination on the application based on the standards for certification or approval of a foster or adoptive parent as set forth in OCFS regulations.**
 - If a VA is notified that there is no objection to proceeding with a determination on the application, the VA may continue with the

certification or approval process applying 18 NYCRR Part 421 or Part 443, as applicable. The results of the DCJS record check must be independently assessed.

➤ **Hold in abeyance pending subsequent notification from OCFS.**

- If a VA is notified that an application must be held in abeyance, regardless of the results of the DCJS criminal history record check, the agency cannot go forward with the certification or approval procedure until further notification from OCFS, *regardless of the results of the DCJS criminal history record check.*
- OCFS will advise the applicant whose FBI criminal history results resulted in the hold in abeyance that he or she is obligated to secure acceptable documentation of the disposition of the case and that he or she must forward the appropriate documentation to OCFS for review within a specific period of time. Failure to provide such information may be a basis for denial of approval or certification.
- After a review of the documentation is submitted, OCFS will send an updated notification to the VA either directing the VA to deny the application or informing the VA that OCFS has no objection based solely on the results of the FBI criminal history record check for the VA to proceed with the application process.

➤ **The application must be denied.**

- If a VA is notified by OCFS that an application must be denied, regardless of the results of the DCJS criminal history record check, it is no longer able to go forward with the certification or approval procedure and must deny the application, *regardless of the results of the DCJS criminal history record check.*
- Where OCFS directs the VA to deny the application of a prospective foster or adoptive parent, based on the results of the FBI criminal history record check, OCFS will notify the person whose FBI criminal history was the basis for the denial and will provide such person with:
 - a copy of the results of the FBI criminal history record check upon which the decision was based,
 - a written statement setting out the reason(s) for such denial, and
 - a description of the FBI record review process and any remedial processes provided by OCFS.
- The VA must provide the applicant with OCFS- 2661 and information of his or her applicable appeal rights.