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Administrative Directive

Transmittal:	07-OCFS-ADM-01
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
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Date:	February 7, 2007
Subject:	State and National Criminal History Record Checks (for Foster/Adoptive Parents)
Suggested Distribution:	Directors of Social Services Foster Care Supervisor Home Finding Supervisors Adoption Supervisors Staff Development Coordinators
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Attachments:	See Attachment A
Attachment Available Online:	Yes

Filing References:

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
99 OCFS LCM-15 00 OCFS LCM-25 00 OCFS LCM-31 00 OCFS INF-6	99 OCFS LCM-8 00 OCFS ADM-04 01 OCFS INF-4 03 OCFS INF-01	18 NYCRR Parts 421 & 443	SSL378-a Chapter 7 of the Laws of 1999 Chapter 145 of the Laws of 2000 Chapter 668 of the Laws of 2006 Adam Walsh Child Protection Act of 2006 (P. L. 109- 248)		

I. INTRODUCTION AND BACKGROUND

The purpose of this release is to provide updated and comprehensive instructions and guidance to authorized agencies concerning implementation of state and national criminal history record checks in accordance with Section 378-a (2) of the Social Services Law (SSL). This update includes the provisions recently enacted by Chapter 668 of the Laws of 2006 (hereinafter, "Chapter 668") and regulations filed by the Office of Children and Family Services (OCFS) on an emergency basis. Both Chapter 668 and the regulations took effect on January 11, 2007. With this release, OCFS is canceling 00 OCFS ADM-04 (December 7, 2000). This ADM incorporates the information previously found in 00 OCFS ADM-04 where that information has not been superseded by the provisions of Chapter 668 and implementing regulations. This release contains both new and revised information.

The requirement for a state criminal history record check for foster and adoptive parents and other persons residing in their household was enacted by the 1999 amendment of section 378-a of the SSL in **Chapter 7 of the Laws of 1999**. It imposed the requirement of criminal history record checks on foster parents, prospective foster parents, approved adoptive parents, prospective adoptive parents, and other persons over the age of 18 who currently reside in the home of such parents. The addition of section 378-a (2) of the SSL satisfied the requirements for criminal history record checks set forth in Title IV-E of the Social Security Act, as amended by the federal Adoption and Safe Families Act of 1997 (ASFA) and only applied to arrests and convictions within New York State.

Section 378-a(2) of the SSL was thereafter amended by **Chapter 145 of the Laws of 2000** to eliminate mandatory disqualification of persons applying for certification or approval as adoptive or foster parents because of their conviction for certain categories of felonies. The amended section 378-a (2) of the SSL replaced mandatory disqualification for a conviction for certain categories of felonies with presumptive disqualification whereby an applicant must be denied unless he or she rebuts the presumption of disqualification. To rebut the presumption, the applicant must demonstrate that such denial will create an unreasonable risk of harm to the physical or mental health of the child and that the approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child. Also, the 2000 amendment of section 378-a of the SSL contained new provisions for disclosing the criminal history summary to applicants or existing foster or adoptive parents in the event of a denial or revocation. The 2000 amendment also dealt with provision of the summary to courts in which proceedings are pending.

Chapter 668 amended section 378-a (2) of the SSL to require a national criminal history record check performed through the Federal Bureau of Investigation (FBI) for all persons applying for certification or approval as a foster or adoptive parent and all other persons over the age of 18 who reside in the home of the applicant. The criminal history record check enacted by Chapter 668 is in addition to the criminal history record check of the data base maintained by the New York State Division of Criminal Justice Services (DCJS). Consequently, the criminal history record search will now be *nationwide in scope*, covering all states and federal jurisdictions. By amending section 378-a (2), the

New York State Legislature enhanced the scope of the criminal record checks performed by social services districts and voluntary authorized agencies, thus allowing officials to corroborate information and gain a more accurate picture about any crimes committed, including arrests and/or convictions, nationally. Given the mobile nature of our society, the more complete criminal history afforded by Chapter 668 should provide a safer environment for children placed in foster care or for the purpose of adoption.

Chapter 668 also amended section 378-a (2) of the SSL to implement standards required by the FBI for the sharing of criminal history information reported to OCFS by the FBI involving applications for certification or approval made to voluntary authorized agencies.

This release is also intended to inform authorized agencies of changes in federal law that impact criminal history record checks. On July 26, 2006, the President signed the federal Adam Walsh Child Protection Act of 2006 (P. L. 109-248) (Walsh Protection Act). The Walsh Protection Act, parts of which took effect on October 1, 2006, also requires a national criminal history record check for any person who applies for certification or approval as a foster or adoptive parent. This requirement is irrespective of whether or not the social services district seeks federal Title IV-E funding for placement in the foster or adoptive home. Compliance with the federal act is required for the state to have a compliant Title IV-E State Plan and to satisfy federal safety requirements for individual foster care placements.

The Walsh Protection Act permits an implementation delay if state legislation is necessary in order to meet the federal requirements. Consequently, the effective date for New York State to meet both federal and state requirements is **January 11, 2007**.

In addition to mandating a national criminal history check for prospective foster and adoptive parents, the Walsh Protection Act eliminates the ability of states to opt out of the criminal history record check requirements of Title IV-E, as enacted by ASFA. This new requirement is effective **October 1, 2008**. The implication of the elimination of the "opt out" provision means that certain categories of felony convictions will mandate the disqualification of prospective foster and adoptive parents from being certified or approved. Further guidance on how to prepare for this future change is provided in section VI of this release.

Status of Regulations and Previous Directives

Please note that as a result of Chapter 668, OCFS regulations found at 18 NYCRR Part 421, relating to approval of adoptive parents, and Part 443, relating to the certification or approval of foster parents, have been amended on an emergency basis effective January 11, 2007.

OCFS issued 99 OCFS LCM-8 (March 19, 1999) to provide guidance on criminal history record checks and the claiming of payments to foster and pre-adoptive homes. Subsequently, OCFS revised the claiming instructions for these homes for *services provided on or after July 1, 2000 and payments made on or after August 1, 2000* in 00

OCFS LCM-25 (September 25, 2000) and *for services provided on or after January 1, 1999 and prior to July 1, 2000* in 00 OCFS LCM-31 (November 28, 2000). The latter two releases remain in effect.

OCFS issued 99 LCM OCFS-15 (May 14, 1999) regarding claiming of costs of obtaining the fingerprints, equipment and supplies associated with taking fingerprints, and any fingerprint technique training fees (if you arrange for your own training). Due to federal requirements, the claiming instructions listed in 99 OCFS LCM 15 have been modified. Social services districts should claim reimbursement for their costs of fingerprinting applicants for certification or approval as foster or adoptive parents and other persons over the age of 18 who reside in the home of the applicant under the Foster Care and Adoption Assistance programs in accordance with the instructions in Chapter 9 of Volume 3 (Volume 4 for New York City) of the Fiscal Reference Manual. These costs should be identified as a direct charge to the IV-E Foster Care, Non-IV-E Foster Care, EAF Foster Care and Adoption Assistance programs on the Schedule D-2 Allocation for Claiming General Services Administration Expenditures (LDSS-2347-B) on the basis of the ratio of the case loads for these four programs.

OCFS issued 01 OCFS INF-4 (October 11, 2001) to provide a policy modification concerning disclosure by social services districts or voluntary authorized agencies of the content of the criminal history record summary to the fingerprinted individual. This policy modified information provided on this topic set forth in 00 OCFS ADM-04. The content of that INF is now fully incorporated into this ADM in section III. As a result, 01 OCFS INF-4 is canceled.

OCFS issued 03 OCFS INF-01 (January 7, 2003) on the Fingerprint Card and Waiver process. This process obviated the necessity of persons being re-fingerprinted and eliminated submission of fingerprint cards for the purpose of obtaining a criminal history record check for those persons *previously fingerprinted* for one of the following purposes: applicants for certification or approval as a foster or adoptive parent; applicants for day care center and/or group family day care licensure, employment or volunteer; family day care and/or school age child care registrations, employment or volunteer; household members over the age of eighteen of applicants who would otherwise be required to submit a fingerprint card. Because the FBI does not maintain fingerprint cards on a search and retain basis, OCFS will not receive information on subsequent arrests from the FBI involving persons who have had a national criminal history check performed. This then requires a new national criminal history record check, for example, whenever such person in the future applies to another authorized agency for certification or approval as a foster or adoptive parent. Therefore, the waiver process can no longer be accommodated. The INF is canceled by this ADM.

On a related matter, OCFS issued 00 OCFS INF- 6 (September 21, 2000) on Foster Boarding Home Records and Policy on Transferring Foster Boarding Homes. That INF remains in effect, except that references to mandatory disqualifying crimes are to be interpreted as presumptive disqualifying crimes until October 1, 2008.

II. CRIMINAL HISTORY RECORD CHECK PROCEDURES

A. Who must be fingerprinted?

Category A. This category includes

- prospective foster parents;
- prospective adoptive parents;
- persons who are over the age of 18 who currently reside in the home of the prospective foster parents;
- persons who are over the age of 18 who currently reside in the home of the prospective adoptive parents.

NOTE: This category includes, but is not limited to, relative or non-relative foster parents approved or certified on an emergency basis and persons over the age of 18 residing in the home of the relative or non-relative foster parents. This category also includes foster parents and persons over the age of 18 residing in family homes under the auspices of the Office of Mental Retardation and Developmental Disabilities, the Office of Mental Health and the Office of Alcoholism and Substance Abuse Services in accordance with a memorandum of understanding with OCFS, when children in the custody of a local social services district will be placed in such family homes.

OCFS regulation (18 NYCRR 443.7) permits an emergency relative foster home approved on an expedited emergency basis to continue to provide foster care beyond the period 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, OCFS regulation (18 NYCRR 443.7) permits certifying non-relatives under certain circumstances on an emergency basis as an emergency certified foster home. Certification of the non-relative on an emergency basis may also continue until the criminal history record check process is complete.

Note: ***The amendments to section 378-a (2) of the SSL enacted by Chapter 668 and by the Walsh Protection Act are not retroactive.*** This means that a person who had a State criminal history check through DCJS and was finally and fully certified or approved as a foster or adoptive parent before January 11, 2007 is not subject to a criminal history record check through the FBI to maintain his or her current approval or certification. Any other person over the age of 18 who resides in such fully certified or approved foster or adoptive home and who had a State criminal history record check through DCJS before January 11, 2007 also is not to be refingerprinted for a national criminal history record check through the FBI. If a foster or adoptive home was not finally and fully certified or approved before January 11, 2007, all applicants and other persons over the age of 18 who reside in the home must be fingerprinted for a national criminal history record check through the FBI in accordance with the process set forth in this directive and any interim instructions provided by OCFS. In addition, both a State criminal history record check through DCJS and a national criminal history record check through the FBI are required commencing on January 11, 2007 and thereafter, for those listed under Category B.

Category B. This category includes

- a foster parent's adult spouse who comes into the home after January 11, 2007, and applies for certification or approval;
- any additional person who resides in the home who turns age 18 after initial or any subsequent certification or approval (this includes any foster child residing in the home over the age of 18);
- any additional person who is age 18 or over and has thereafter come to reside in the foster home after initial or any subsequent certification or approval (this includes any foster child residing in the home over the age of 18).

Fingerprinting must be done by the time the home is recertified or reapproved. This does not preclude the performance by your agency of the criminal history record check sooner, but in no event may it be completed beyond the next recertification or reapproval.

Your agency is strongly encouraged to disseminate the fingerprint cards at least 60 days before the expiration of the existing certification or approval to families with upcoming recertifications or reapprovals where a person who resides in the home turns age 18 or someone age 18 or over has come to reside in the home.

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

If a child is placed out-of-state for the purpose of adoption or foster care, including relative foster care, the adoptive parents or foster parents 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 ASFA and the Walsh Protection 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 V. "Special Instructions for Adoption Agencies.")

C. What shall we provide to applicants or others who are required to be fingerprinted?

Each person required to be fingerprinted must be given a fingerprint card (only *one card* per person for both DCJS and FBI processing) and mailer and a required notice (see Attachment 1a **Notice Regarding Fingerprinting Requirements**). This notice explains the fingerprinting requirements and how the fingerprint card will be used. In addition, a notice describing the process to challenge an FBI or DCJS record must also be provided (see Attachment 1b).

When conducting the 24-hour study for relative or non-relative foster parents for approval or certification as an emergency relative or non-relative foster home, the fingerprint cards, notices and mailers must be supplied to the applicant(s) 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 certainty 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.

In the case of applications for certification or approval as foster or adoptive parents made to **voluntary authorized agencies**, each person required to be fingerprinted must also be given a consent form entitled “**Acknowledgement and Consent Form for Fingerprinting and Disclosure of Criminal History Record Information**” (see Attachment 1c). This consent form only pertains to the FBI criminal history record check and is required for New York State to comply with current FBI limitations on the dissemination of criminal history record information to non-public agencies. (*Social services districts, as public agencies, are not affected by the consent requirement.*) This consent only applies to the national criminal history record check through the FBI and does not apply to the State criminal record check through DCJS. This consent form addresses the person’s permission to allow OCFS to share with the voluntary authorized agency information reported by the FBI to OCFS involving arrests occurring outside of New York State. (Information on arrests occurring in New York State will be included in the State criminal history check completed by DCJS.) The consent will authorize OCFS to provide the voluntary authorized agency with the specific crimes for which the person was convicted or charged, the date of the arrest and/or date of conviction, and the jurisdiction in which the arrest or conviction took place. A voluntary authorized agency may deny an application if the applicant or anyone else that must be fingerprinted refuses to sign the consent form. However, fingerprint cards may be submitted and processed without such consent. If the person has any criminal history in the FBI database, only very limited information will be disclosed to the voluntary authorized agency. Such information will be limited to the category of crime: presumptive disqualifying crime, potential presumptive disqualifying crime or discretionary disqualifying crime. Note: the subcategories of presumptive disqualifying or potential presumptive disqualifying crimes will also be given. At that point, the voluntary authorized agency should encourage the person to sign the consent form in order to obtain the nature and specificity of the crime(s) and remind the person of the consequences for the failure to consult. **Failure to secure a signed consent, once it is known that a criminal history reported by the FBI exists outside of New York State, will automatically disqualify the home from being certified or approved.**

Spanish versions of Attachments 1a, 1b and 1c are also provided in this ADM.

D. 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 results when they are returned. For all persons to be fingerprinted as part of the foster boarding home certification or approval, or the adoptive home approval, open the home on CONNECTIONS in Inquiry status and use the Resource ID and the Person ID from CONNECTIONS. For adoption agencies not on CONNECTIONS, use of names and other identifiers and a log with each person’s Agency ID number will aid in this process. The Agency ID number is a combination of the Agency ID assigned by OCFS [it is three characters, generally, but not always, alphanumeric in format; all-numeric for Administration for Children’s Services (ACS)], followed by up to five

characters (numbers or letters) assigned by adoption agency for a maximum of eight characters. Using these IDs will allow each person in the State who is fingerprinted to have a unique identifier in the OCFS fingerprint system.

It may be useful to appoint a single liaison in your social services district or voluntary authorized agency to have responsibility for fingerprint tracking and the coordination of fingerprint related activities. Except for ACS, OCFS will return results only to a single site per district or agency. For fingerprint cards submitted by any social services district outside NYC and for any other authorized agency including those in NYC, a single address must be designated for receipt of results. (ACS is permitted additional addresses matched to the agency subcodes they have.) All districts and agencies whose results are to go to other than the Commissioner or Executive Director must notify OCFS of the liaison for receiving results. Send the liaison name and agency address via Outlook to the attention of Linda Fylak, *or by Internet Email to: Linda.Fylak@ocfs.state.ny.us or by mail to her attention at OCFS, 52 Washington Street, Rensselaer, NY 12144.*

We recommend that the liaison be responsible for knowing how the fingerprint cards are to be filled out and for ascertaining that others involved in this process receive proper instructions. A quality control check will generally result in 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 will not be processed. Therefore, you should review the instructions with applicants and others who must be fingerprinted to help them understand what information needs to be completed. Please note that typing the information on the cards is not required. Printing clearly and legibly, however, is essential.

E. How do we order or reorder fingerprint cards?

Fingerprint cards and mailers may be ordered by *faxing* your order to the Distribution Center at (518) 432-8230. You may also order by e-mailing “ocfs.sm.mailroom” through OCFS Outlook *or by Internet e-mail to: ocfs.sm.mailroom@ocfs.state.ny.us*. Be sure to specify the card type as **ASFA** and include the number of cards and/or mailers needed and clear mailing instructions. Order the quantity you think your agency will need for at least a six-month period.

F. 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 which already provide fingerprinting (e.g. 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 the fingerprinting process is not the same as “finger imaging.” For the purpose of this directive, criminal histories on file with DCJS or the FBI 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. It is strongly suggested that the persons who are fingerprinted return the cards to your authorized

agency for mailing. That will allow your agency to verify that all fields are correctly filled out, to make sure that the cards are mailed, and to keep track of the actual date of mailing. For voluntary authorized agencies, consent forms should be included with the associated fingerprint card and placed in the same mailer. Consent forms that are obtained after the original card submission are to be mailed separately, using an OCFS mailer.

Multiple cards and consent forms may be put in a single mailer.

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

- If a child is currently placed in a home certified or approved by the social services district, such district will pay and the State will partially reimburse the district for the costs incurred.
- If no children are in the home (those to be fingerprinted are in applicant status with a social services district), such district has the option of paying and receiving partial State reimbursement, *or* requiring the applicant to pay.
- Voluntary authorized agencies that have children placed in their homes by a social services district will pay and separately bill the responsible social services district for any costs incurred.
- Voluntary authorized agencies also may bill social services districts for applicants based upon contractual agreements.
- Voluntary authorized 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), may pay the fee *at their discretion* or have the applicant pay the fee. No reimbursement is available.

Funding is available to 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 for your own training). This funding is separate from and in addition to the funds allocated to the districts under the Foster Care 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.

A fingerprinting equipment list is shown in Attachment 3.

G. What happens after the fingerprints are taken?

Fingerprint cards and consents (when applicable) 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 or to the FBI. OCFS will be responsible for electronically forwarding all cards to DCJS, where they will be processed for both in-state and out-of-state criminal history results.

H. 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 charged or to be charged a fee for the DCJS or FBI search for a criminal history record. The fee for such searches will be paid by OCFS. Fifty percent of the non-federal share for the searches will be charged back to the social services districts.

I. How will my agency receive the results?

For social services districts, all results from DCJS and the FBI 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 and the FBI prohibit 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; (IIA) History of One or More Convictions / Presumptive 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)**. Generally results from both agencies will be returned in one summary letter. However, there may be instances where a card is accepted by DCJS and is rejected for poor quality by the FBI. If this occurs, you will be notified of resubmit procedures. Depending on the results received from DCJS, you may receive separate summary letters from OCFS pending receipt of the results from the FBI.

Furthermore, if there is an open charge involving an arrest that took place *within* New York State, or a potential presumptive disqualifying conviction involving a crime that took place *within* New York State, OCFS will use its best efforts to research the open charge and/or conviction and advise you of any resolution as soon as possible. You will be advised by means of an *updated* summary.

If there is an open charge or a potential presumptive disqualifying conviction reported by the FBI involving an arrest and/or crime *outside* of New York State, the burden of seeking and securing appropriate documentation of the disposition of the case rests with the person who was fingerprinted. Such person and their counsel have a legal right to the person's criminal history information (not generally afforded to out-of-state government agencies) and such person has a vested interest in requesting and receiving this information in order to complete the certification or approval process. Thus, the social services district official evaluating the application for certification or approval must advise the person that he/she is obligated to secure acceptable documentation of the disposition of the open charge or information on the victim in the case of a hold in abeyance conviction. Acceptable documentation includes a certificate of conviction or other documentation on letterhead of an appropriate government official, such as the court, district attorney or probation office. This documentation must be forwarded to the social services district which, in turn, must forward the information to OCFS for review. Be sure to include either an attached copy of the criminal history summary letter sent by OCFS or include the NYSID # that appears on the copy of the OCFS correspondence and submit the documentation in an OCFS mailer. Upon confirmation of the authenticity and acceptability of the documentation, OCFS will send an updated criminal history summary to the social services district.

As with all cases where a social services official is informed that a person has an open charge or conviction of a crime, whether reported by DCJS or the FBI, a safety assessment must be conducted, as discussed in more detail later in this release.

The completion of a timely and thorough safety assessment is particularly important in the case of an emergency certified or approved home with a *foster children already in the home*, upon notification by OCFS that a person in the household has an open charge or has a conviction for what would be a presumptive disqualifying crime reported by the FBI occurring outside of New York State. Depending on the results of the safety assessment, a decision may be reached to remove the foster child and deny the application for certification or approval.

As noted above, the social services official must inform the person that it is the individual's obligation to seek and secure appropriate documentation of the disposition and that the failure to seek such information within a period of time required by the social services official may be a basis for denial of full approval or certification.

However, for discretionary crimes, it is still the agency's professional choice whether to proceed with certification or approval even though a final disposition has not been obtained (see also section III.).

For voluntary authorized agencies, all procedures described above are the same with regard to crimes reported by DCJS. The procedures are also the same with regard to crimes reported by the FBI that occurred outside of New York State and for which a consent (see Attachment 1c) was signed by the fingerprinted person. The failure to sign the consent may be a reason by itself to deny the application for certification or approval. If such consent is not obtained, for those crimes reported to OCFS by the FBI occurring outside of New York State, the criminal history record summary will only disclose, as appropriate: (I) No Criminal Record Found; (IIA) History of One or More Convictions / Presumptive Disqualifier; (IIB) History of One or More Charges or Convictions / Discretionary Disqualifier; or (III) Pending Matters / Hold in Abeyance. If category IIA or III is noted, then the summary will also include one or more of the following:

- (i) child abuse or neglect;
- (ii) spousal abuse;
- (iii) a crime against a child, including child pornography;
- (iv) a crime involving violence, including rape, sexual assault or homicide;
- (v) felony assault offense within past 5 years; or
- (vi) felony drug related offense within past 5 years.

If the FBI criminal history summary indicates anything other than "No Criminal Record Found," a signed consent **must** be obtained so a complete summary can be received and reviewed and a safety assessment can be adequately performed. **Failure to obtain a consent under these circumstances means the certification or approval must be denied.**

After the criminal history record search is conducted, DCJS will retain the fingerprints for a prescribed period, and will notify OCFS upon any future arrest for a fingerprintable offense within New York State. This practice is often referred to as "*search and retain.*"

OCFS will use its best efforts to research charges for potential presumptive disqualifying crimes and advise you of any resolution as soon as possible. With respect to all other arrests identified through search and retain, you should pursue matters with the applicant, or certified or approved foster or approved adoptive parent. The recent nature of the charge makes it more likely that the individual can provide you with the most up-to-date information in the fastest manner.

The retention period for the fingerprint cards by DCJS is 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, unless the adoptive parents want to remain approved adoptive parents after finalization of the adoption. Under prior rules, if foster parents who already had been fingerprinted for a State criminal history record check through DCJS wanted to become adoptive parents, they did not have to be refingerprinted through DCJS. Therefore, for those persons who had a criminal history record check prior to January 11, 2007 for the purpose of foster home certification or approval and subsequent to January 11, 2007 apply for adoptive home approval, refingerprinting is necessary so that an FBI criminal history record check can be conducted.

There is no “*search and retain*” for the FBI records. This means that the FBI does not retain the fingerprints. The FBI criminal history record check is a point in time check similar to the check done of the Statewide Central Register of Child Abuse and Maltreatment pursuant to section 424-a of the SSL.

III. CRIMINAL HISTORY RECORD CHECK RESULTS

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

Based on the type of results, follow the instructions below.

1) No Criminal Record Found

If the results on all fingerprinted household members are "No Criminal Record Found," proceed with the certification, recertification, approval or reapproval process as usual. Section 378-a (2) makes only convictions (or open arrests) for felonies and misdemeanors reportable. Therefore, if a history exists with DCJS or the FBI, *other than* for convictions for felonies or misdemeanors, or open arrests for such crimes, you will also see "No Criminal Record Found."

Note: OCFS is eliminating the category of "No Reportable Criminal History" and all cases which would have previously been reported using that result will now be reported as "No Criminal Record Found." This is consistent with the process used for day care.

Attachment 5: letter #1 corresponds to this section.

2) History of One or More Crimes

i) Presumptive Disqualifying Crimes:

Category 1 Crime (See Attachment 4 **CRIMES LISTING**)
(*Crime by a prospective or existing foster or adoptive parent*)

An application for certification or approval as a foster parent or for approval as an adoptive parent must be denied if the applicant was convicted of a felony that fits under one of the section 378-a (2) (e) (1) of the SSL category 1 crimes (see Attachment 4) **UNLESS THE PROSPECTIVE FOSTER PARENT OR ADOPTIVE PARENT DEMONSTRATES THAT:**

- **Such denial will create an unreasonable risk of harm to the physical or mental health of the child; and**
- **Approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child.**

This standard must also be used in regard to a certified or approved foster parent or an approved adoptive parent who is in jeopardy of having his or her certificate or approval revoked or application for renewal denied. [See section 378-a (2) (e) (4) and (5) of the SSL.]

The exception standards set forth above to a presumptive disqualifying crime also apply to the situation where the criminal conviction takes place after the initial criminal history record check. Notification of this event could occur from DCJS through the search and

retain process. Where a certified or approved foster parent or an approved adoptive parent subsequently is found to have been convicted of a presumptive disqualifying crime, approval or certification must be revoked or the application for renewal must be denied, unless the foster or adoptive parent can demonstrate to the certifying or approving authorized agency that denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child, and continued certification or approval will not place the child's safety in jeopardy and will be in the best interests of the child.

Whenever the summary of a criminal history record of an applicant or a certified or approved foster or adoptive parent reveals a charge or conviction for *any* crime, the authorized agency must perform a safety assessment of the conditions in the household. (See Attachment 8 **Criminal History Record Checks & Safety Assessments.**)

During the course of the safety assessment, the authorized agency must provide the applicant or the certified or approved foster or adoptive parent with the notice attached to this ADM as Attachment 7 **NOTICE OF EXCEPTION TO PRESUMPTIVE DISQUALIFICATION**. A Spanish version of Attachment 7 is also provided in this ADM. This notice informs the applicant or certified or approved foster or adoptive parent that his or her application will be denied or that his or her certification or approval will be revoked unless he or she can demonstrate to the certifying or approving agency that such denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child, and approval of the application or the continued certification or approval will not place the child's safety in jeopardy and will be in the best interest of the child. **OCFS strongly recommends that the Notice of Exception to Presumptive Disqualification be given to the existing or prospective foster or adoptive parent at the commencement of the safety assessment.**

It should also be noted that if there had been an open charge for a potential presumptive disqualifying crime (resulting in a hold in abeyance situation), followed by a conviction for such crime, the Notice of Exception to Presumptive Disqualification must be provided by the certifying or approving agency within seven days of being informed by OCFS of this conviction.

In conducting the safety assessment, consider the following:

- whether there is one or more foster children in the home;
- whether any foster children are planned by the agency to be placed in the home;
- whether there is a request by the prospective or existing foster or adoptive parent that a child be placed in the home as a foster child; or
- whether there are any non-foster children in the home.

If there is one or more foster children in the home, the safety assessment, in part, is used to determine how quickly the child must be removed. Additionally, the information gathered should be used to help evaluate any attempt by the foster or adoptive parent to rebut the presumption that the foster or adoptive parent must be denied or have the certification or approval revoked due to the nature of the conviction. If the agency proposes a removal of a foster child, the notice of the right to a pre-removal conference must be given, as required by 18 NYCRR 443.5, unless the approving or certifying agency determines that there is imminent danger to the foster child(ren). (Note: The

Notice of Exception to Presumptive Disqualification must be given prior to or concurrent with the notice of removal.) During the course of the safety assessment, but in no case later than the agency conference, the foster or adoptive parent must be afforded the opportunity to demonstrate why his or her certification or approval should not be denied or revoked. (See Section III. B.)

If there is a plan by the agency to place any foster child in the home, or there is a request by the prospective or existing foster or adoptive parent that a child be placed in the home as a foster child, the safety assessment, in part, is used to determine whether the home would be safe for the foster child if he or she were placed there. Additionally, the information gathered should be used to help evaluate any attempt by the foster or adoptive parent to rebut the presumption that foster or adoptive parent should be denied or have the certification or approval revoked due to the nature of the conviction. The rebuttal may be made prior to or at an agency interview held for the purpose of discussing a denial or revocation. (See Section III. B.)

If there are children in the home but none of them are foster children, and there is no plan by the agency to place any foster child in the home, and there is no request by the prospective or existing foster or adoptive parent that a child be placed in the home as a foster child, the safety assessment must evaluate, at a minimum, whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with the children residing in the household; and the status and nature of the criminal charge or conviction. In this scenario, if the foster or adoptive parent wishes to rebut the denial or revocation presumption, he or she may attempt to do so. However, because there needs to be a particular child, whether in foster care or at risk of foster care placement, to which the standard of unreasonable risk of harm applies, the attempt to rebut the presumption will be unsuccessful. Note: a photo-listed child to whom the prospective or existing foster or adoptive parent has no relationship is not considered an appropriate child to whom to apply this standard.

If there is reasonable cause to suspect that any child in the household is being abused or maltreated, a report must be made to the Statewide Central Register of Child Abuse and Maltreatment, in accordance with the standards set forth in section 413 of the SSL.

*If there are **no** children living in the home, and there is no plan by the agency to place any foster child in the home, and there is no request by the prospective or existing foster or adoptive parent that a child be placed in the home as a foster child, the safety assessment must, at a minimum, determine that that is the case, and furthermore must evaluate whether the subject of the charge or conviction resides in the household; and the status and nature of the criminal charge or conviction. In this scenario, if the foster or adoptive parent wishes to attempt to rebut the denial or revocation presumption, he or she may do so. However, because there needs to be a particular child, whether in foster care or at risk of foster care placement, to which the standard of unreasonable risk of harm applies, the attempt to rebut the presumption will be unsuccessful. Note: a photo-listed child to whom the prospective or existing foster or adoptive parent has no relationship is not considered an appropriate child to whom to apply this standard.*

In sum, the general guidelines to apply when criminal history results include a presumptive disqualifying crime include:

- There needs to be a particular child, whether in foster care or at risk of foster care placement, to which the standard of unreasonable risk of harm applies. The prospective or existing foster or adoptive parent must identify the specific child or children to which the exception applies. Such child or children need not be in foster care for the exception to apply. The burden is on the prospective or existing foster or adoptive parent to demonstrate unreasonable risk of harm.
- The issues of best interests and safety must be addressed, with the issue of safety of the child a paramount consideration in regard to whether an application can be granted or renewed or the certification or approval may continue. As with the issue of unreasonable risk of harm, a particular child must exist and the prospective or existing adoptive or foster parent has the burden of presenting adequate proof to satisfy this standard. The safety information must be documented on the safety assessment.
- The determination whether the prospective or existing foster or adoptive parent satisfied the exception to the presumptive denial or revocation standards is made by the authorized agency.
- 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 decisions that result from the safety assessment as well as decisions regarding whether the prospective or existing foster or adoptive parent has satisfied the exception to the presumptive denial or revocation standards must also be documented in the provider record.

The following two examples illustrate possible situations where a social services district or voluntary authorized agency may choose to place or keep a foster child with an individual with a presumptive disqualifying conviction. They are not meant to be all-inclusive.

Example #1

A relative is being considered as a foster care resource for a child who is entering foster care. There is a strong relationship between the relative and the child. The relative was convicted of an otherwise presumptive disqualifying crime several years ago but the safety assessment of the home indicates no risk to the safety of the child. There are no other relative resources and placement with a non-relative foster parent would have a significant adverse impact on the foster child's mental health.

Example #2

A foster child has resided with the same approved relative foster parent (paternal grandfather) for several years. At first the permanency plan was reunification with the child's mother. Time passed and family circumstances led both parents to surrender the child. The child was surrendered after January 11, 2007. The permanency goal was changed to adoption and the grandfather wished to adopt

the child. A strong attachment had developed between the grandfather and the child.

At the time of original approval, no New York State criminal record existed and the grandfather did attest to an assault conviction many years ago in another state. As part of the adoptive parent approval process, the grandfather's fingerprints were sent to the FBI. The FBI identified a potential presumptive disqualifying crime resulting in the application being held in abeyance. When follow-up information was provided, it was learned that the assault was against his first wife (spouse), which raised the crime to a Category 1, presumptive disqualifier. The grandfather has had no subsequent involvement with the criminal justice system. The grandfather presents evidence that removal would create significant risk of harm to the child's mental health. The safety assessment of the home indicates that the child is safe in the home and that approval would be in the best interests of the child.

Attachment 5: letter #2 corresponds to this section. It is important to note that this letter will only be used when the fingerprinted individual is a prospective or existing foster or adoptive parent, since presumptive disqualifying crimes only apply to such individuals.

OCFS makes the determination of the individual's role by the category selected on the fingerprint card (field 23). Thus, it is very important that this field be completed accurately on all submissions. Failure to complete field 23 will result in the card being returned to the submitting agency. Incorrect role designation may result in receipt of the wrong letter.

ii) Discretionary Disqualifying Crimes

Category 1 Crime (See Attachment 4 **CRIMES LISTING**)

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

- When another 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 charged or 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. Also,

the safety assessment must be completed in an expeditious manner. Guidelines for Safety Assessments are found in Attachment 8.

Category 2 Crime

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

- 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 charge or 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 condition(s) 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. Also, the safety assessment must be completed in an expeditious manner. Guidelines for Safety Assessments are found in Attachment 8.

Attachment 5: letter #3 corresponds to this section.

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:

- 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*
- 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 in regard to in-state crimes and by the authorized agency in regard to out-of-state crimes.

Where an authorized agency is initially informed by OCFS that an applicant or a certified or approved foster or adoptive parent has an open charge for any presumptive disqualifying crime, such individual must be placed in hold in abeyance status until

OCFS provides the authorized agency with an updated criminal history summary on the status of the open charge.

The authorized agency may proceed with the processing of the application, but can not finally certify, approve, recertify or reapprove the home until OCFS provides an updated criminal history record summary that reflects the status of the criminal charge or the nature of the conviction. If there is a conviction or charge for any crime, a safety assessment, as outlined above, must be performed. Again, the safety assessment must be completed in an expeditious manner. Guidelines for Safety Assessments are found in Attachment 8.

If OCFS informs the authorized agency that the disposition of the charge was a conviction for a presumptive disqualifying crime, the authorized agency must provide the individual with the attached **NOTICE OF EXCEPTION TO PRESUMPTIVE DISQUALIFICATION** (Attachment 7) within seven days of the receipt of the criminal history summary update. The authorized agency must provide this notice prior to, or concurrent with, a notice of a right to a conference with the authorized agency as required by OCFS regulation 18 NYCRR 443.5 when the authorized agency proposes to remove any foster child(ren) from the home.

Attachment 5: letter #4 corresponds to this section. This version accommodates situations where there is a charge(s) as described above, or where there is a conviction(s) as described above. It is important to note that this letter will only be used when the fingerprinted individual is a prospective or existing foster or adoptive parent, since presumptive disqualifying crimes only apply to such individuals.

OCFS makes the determination of the individual's role by the category selected on the fingerprint card (field 23). Thus it is very important that this field be completed accurately on all submissions. Failure to complete field 23 will result in the card being returned to the submitting agency. Incorrect role designation may result in receipt of the wrong letter.

B. What are the procedural rights afforded with denials or revocation?

If the authorized agency denies an application or revokes a certification or approval and removes any foster child(ren) from the home, the applicant or the certified or approved foster or adoptive parent must be afforded the following procedural rights:

- Denial / Revocation Notice

When an authorized agency makes a denial or revocation because of the criminal history record check, 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/FBI process available for the person with the criminal history 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 or had his or her certification or 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.

With regard to denial of an adoptive parent application, the authorized agency must comply with the notification and meeting requirements set forth in 18 NYCRR 421.15 (g). Such notification must include a right to an administrative hearing in accordance with section 372-e of the SSL.

With regard to the denial or revocation of a foster parent application or approval or certificate, the authorized agency must comply with the notification and interview requirements set forth in 18 NYCRR 443.2 (c) for initial applicants and 18 NYCRR Section 443.11 for non-renewal or revocation of certified or approved foster homes.

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. A Spanish version of Attachment 6 is also provided in this ADM. **A copy of this notice must be kept in the applicant / provider record.** The denial / revocation letter also contains information about the procedural rights described below.

- Removal of Foster Child(ren)

The authorized agency must comply with the notice of removal and conference standards set forth in 18 NYCRR 443.5 relating to the removal of foster child(ren). **Such rights include notice at least ten days prior to the proposed removal unless removal is required earlier as a result of imminent risk to the health or safety of the foster child(ren).** However, the foster child is not to be removed, absent imminent danger, court order or consent of the foster or adoptive parent, until at least three days after the notice of the decision following the conference is sent, or prior to the proposed effective date of removal, whichever occurs later. Such notification must also include the right to an administrative hearing to be held after the conference in accordance with section 400 of the SSL. Prior to, or at, the conference held in accordance with OCFS regulation 18 NYCRR 443.5, the applicant or the certified or approved foster or adoptive parent must be afforded the opportunity to rebut a presumptive disqualification with regard to approval or certification in accordance with the standards set forth in this release.

- Criminal History Record Summary

The authorized agency must share with the applicant or current foster or adoptive parent the criminal history record summary received from OCFS at the time of the denial of an application for approval or certification to be a foster or adoptive parent, the denial of renewal of an application for approval or certification to be a foster parent, or the revocation of an approval or certification of a foster or adoptive parent. (See also subsection C. below.)

C. What are the requirements for confidentiality of results and recordkeeping?

The summary of the criminal history record provided by OCFS to the authorized agency is confidential. You may not disclose criminal history information to any person or entity, including the applicant or current foster or adoptive parent, *except* when an authorized agency denies an application or revokes an approval or certification pursuant to section 378-a (2) (e) of the SSL. In that case the authorized agency *must* provide the criminal history record summary to the applicant or current foster or adoptive parent. The exception described above is the only circumstance where the criminal history summary is given in writing to an applicant or current foster or adoptive parent.

Another exception to the standard noted above is that it is permissible during the safety assessment to *verbally* disclose to the fingerprinted individual the following items from the criminal history record summary: the crime for which the fingerprinted individual was charged or convicted, when such person was arrested or convicted and in what court or jurisdiction such person was charged or convicted. Disclosure of this information to the fingerprinted individual in the presence of other persons is permissible only with the fingerprinted individual's consent.

If the individual questions the accuracy of the verbal or written information provided by the authorized agency, or the record the individual describes does not match the summary, the individual should be directed to obtain his or her own criminal history.

For DCJS records, the individual may call the DCJS Record Review Unit or write to the address listed below:

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

For FBI records, the individual needs to contact the original contributing agency (e.g., police department, county court, etc.) that submitted the information to the FBI or the state central repository in the state in which the arrest or conviction occurred. These agencies will be able to furnish the guidelines for record release.

Where review of a criminal history record summary resulted in a denial of the application or revocation of the certification or approval and an administrative and/or judicial proceeding is commenced, a copy of the summary may be provided to the administrative hearing tribunal and/or court. Additionally, even if the review of the criminal history record summary results in certification or approval, when there is a pending court case, a copy of the summary must be provided to the Family Court or the Surrogate's Court hearing the matter. Most often this will apply to court finalizations of adoptions, but it may also apply to decisions by the court with regard to foster care placements.

All fingerprinting results must be retained in the applicant / provider file for the entire period the home is certified or approved. In addition, such information must be retained in the file after the home is closed. Regarding the retention period for the provider record, a voluntary authorized agency must consult the terms of its purchase of services agreement with the social services district. Generally, such records must be retained for at least seven years to satisfy potential claiming and reimbursement issues. Finally, authorized agencies may also want to consult with their counsel concerning extending the period of record retention for other reasons such as pending or potential litigation.

All decisions made and actions taken with regard to criminal history search 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.

In the event that a foster home needs to be transferred from one authorized agency to another, refer to 00 OCFS INF-6 (September 21, 2000) for instructions.

D. Must the sworn statements regarding criminal convictions still be taken?

Pursuant to 18 NYCRR 421.15 (c) (9) and 443.2 (b) (13) (iv), you must continue to take sworn statements regarding criminal conviction history. The criminal history attestation must apply to all members of the household over 18 years of age. Evaluation of any criminal history must be applied in a manner consistent with the standards and criteria established by section 378-a (2) of the SSL and this Administrative Directive. Note: You may also openly discuss with the applicant crimes set forth in the criminal history attestation. If the information provided on the sworn statement is inconsistent with the information on the criminal history record summary, and the information cannot be satisfactorily reconciled, certification or approval may be denied.

IV. SYSTEM INSTRUCTIONS

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

Procedure

- **Until further notice DO NOT generate the Notice Regarding Fingerprinting Requirements from CONNECTIONS (FAD) on or after January 11, 2007, as it is not up-to-date. Use only the Notice Regarding Fingerprinting Requirements found in this ADM in Attachment 1a. You will be advised when the CONNECTIONS system has been updated.**
- **Until further notice DO NOT generate the Denial / Revocation Letter / Notice of Results of Fingerprinting / Criminal Record Found from CONNECTIONS (FAD) on or after January 11, 2007, as it is not up-to-date. Use only the Denial / Revocation Letter found in this ADM in Attachment 6. You will be advised when the CONNECTIONS system has been updated.**
- Make sure that all individuals currently residing in the household are added on the **Person Detail** window, using the **Maintain Person** task.
- In instances where all authorization requirements have been met, except for receipt of the fingerprint results, emergency relative foster homes, emergency non-relative foster homes and adoptive homes must be authorized in CONNECTIONS.
- Homes due for reauthorization, where all reauthorization requirements have been met except for receipt of the fingerprint results, must be reauthorized in CONNECTIONS.
- Documentation must 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.
- For ALL foster and adoptive homes, including ALL new homes, the dates the fingerprints were sent to OCFS must be documented in the **Person Detail** window in CONNECTIONS, separately for each adoptive parent, each foster parent and each person over the age of 18 currently residing in the household. The **Person Detail** window is accessible via the **Maintain Person** task and the **Options Menu** off the **Person List** window.
- We recommend that workers create a **30-day To Do** for themselves from the time the fingerprints are submitted to OCFS, to remind them to look for the fingerprint results.
- Once the criminal record check is complete and the results are returned to the local districts/agencies, the date results were received must be recorded in the **Person Detail** window to reflect the completion of the process.
 - Enter the date that the last of the DCJS and/or FBI fingerprint results were received on the Person Detail F/A Home window.
 - Access the most recent Foster Adoptive Record Summary (FRS) and select the Household Member Detail tab.

- ***Where the results for each member of the household over 18 years of age is “No Criminal Record Found,”*** enter the Fingerprint Results for each member of the household over 18 years of age, as “No Record Found,” and proceed with the other steps necessary to authorize or reauthorize the home.

- ***Where results identify that criminal records have been found,*** that must be recorded in the applicant / provider file as described elsewhere in this ADM, as well as on CONNECTIONS as follows:
 - Enter the date that the last of the DCJS and/or FBI fingerprint results were received on the Person Detail F/A Home window.
 - Access the most recent Foster Adoptive Record Summary (FRS) and select the Household Member Detail tab.
 - Enter the Fingerprint Results for each member of the household over 18 years of age as “Hold in Abeyance,” “Discretionary Disqualifier” or “Presumptive Disqualifier.”
 - The FRS Safety Assessment Template must be completed to help determine if it is appropriate for a child to be placed or to remain with this resource.
 - Select the Safety Assessment Template push button, save the changes and enter the date completed under “Safety Asmnt Dt” on the Household Member Detail tab.
 - If it is determined that the home should be authorized, despite a criminal history record, select the Med/CHRC and SCR Comments push button and, in the CHRC section of the text box, record a summary of the reasons why the prospective or existing foster or adoptive parent was determined to be appropriate and acceptable to receive a foster care or adoptive placement, when there is a criminal history record.
 - Save the changes on the tab and then select the Contact Tab.
 - Within the Contact Tab, enter “OCFS-CHRU” in the Contacted By field, “Correspondence Received” in the Method drop down, Check the appropriate Participant(s), choose “Office” from the Location drop down, enter the date the criminal history summary letter was received in the Contact Date field, select Other in the Purpose List and in the Comments section record the name and date of arrest or charge, date notification was received and the offense, if known. Save the Changes in the tab and then select the Home Study Narrative Tab.
 - The worker should also include the information in the initial Home Study or through an interim Home Study by checking the box "Interim - Change in Criminal Records Results" and any other relevant Reason for Home Study checkboxes (Change in House Hold Comp, etc.), and save their changes to the Home Study.
 - If the district/agency is notified of a subsequent arrest or conviction, follow the procedure outlined above for the initial criminal history record check, **EXCEPT do not overwrite the initial fingerprint result received date or any of the previously entered narratives.** Instead update the narratives in the Safety Assessment Template, the

Medical/CHRU/SCR comment box, the Contacts and the Home Study, making certain to begin the entry with the date they are recording the new information. Enter the new completion date of the Safety Assessment on the Household Member Detail tab. This will serve as a visual queue that additional information was entered at a later time.

In addition, please note that CONNECTIONS has specific closure reasons related to criminal history record checks on the Closure Reason codes table. They are:

- Criminal History - Presumptive Disqualifier
- Criminal History - Discretionary Disqualifier

If a home has a closure reason of either of the above, a message box will be displayed to the user reminding him/her that a Notice of Denial/Revocation of certification/approval due to fingerprinting results must be sent to the Foster Parent(s). The “Do Not Re-open” indicator will be defaulted to “Do Not Re-open,” but the user will be allowed to modify this field.

V. SPECIAL INSTRUCTIONS FOR ADOPTION AGENCIES

The following applies to the population served by in-state and out-of-state adoption agencies. By New York State law, a criminal history record check in New York State through the Division of Criminal Justice Services (DCJS) and nationally through the Federal Bureau of Investigation (FBI), must be completed when an authorized agency is evaluating a person who has applied to be an approved adoptive parent and such person 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 OCFS to operate an adoption program (section 371.10 (a) of the Social Services Law); c) a non-New York corporation approved by OCFS 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 OCFS regulations, 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 exam information, a home study, references, a Statewide Central Register of Child Abuse and Maltreatment data base check in New York State and a child abuse registry check in any state in which the applicant resided in the five years previous to the application.

An applicant can not be approved as an adoptive parent unless and until the criminal history record check process is completed on the applicant and all other persons over the age of 18 who reside in the home of the applicant. This requirement also includes foreign adoptions in the situation where the adoption 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 OCFS regulations, 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 OCFS.

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 DCJS and the FBI. Fingerprint cards in such cases are not processed through OCFS for a DCJS or FBI check. 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 identify an authority other than section 378-a of the Social Services Law to perform a criminal history record check. In any case, requests would not be directed through OCFS.

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 as set forth in section 374-a of the Social Services Law and the rules of the other state with regard to criminal history record checks also apply.

Please note that after the initial criminal history record check, the adoption agency will receive notice of any arrests within New York State, until the adoption is finalized, because DCJS retains the fingerprints. There will be no further notice of arrests outside of New York State because the FBI does not retain the fingerprints.

Please also note that pursuant to section 378-a (2) (k) of the Social Services Law, OCFS must inform DCJS when a person is no longer certified or approved as a foster parent or is no longer a prospective adoptive parent so DCJS may terminate its retain processing with regard to that 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, OCFS will be required to conduct a validation of the records maintained by the DCJS. In order to comply with this provision with regard to adoption agencies who do not report to OCFS child welfare systems, a manual notice is included in this Administrative Directive.

Please refer to Attachment 9 **NOTIFICATION OF ADOPTION FINALIZATION (NOTICE TO EXPUNGE ASSOCIATED FINGERPRINT CARDS)** for instructions for providing this information.

VI. FEDERAL CRIMINAL HISTORY RECORD CHECK REQUIREMENTS

The federal Title IV-E regulations that became effective March 27, 2000 retain the federal prohibition against claiming Title IV-E reimbursement for payments to newly opened homes prior to a final approval or certification being issued. Therefore, a criminal history record check must be completed prior to the claiming of Title IV-E reimbursement for payments made to such homes because it is a condition of final approval or certification of a new home under State law and regulations. There is no Title IV-E reimbursement until both the State and federal criminal history reviews have been completed and the home is fully certified or approved.

Preparation for the Elimination of the “Opt-Out” Provision for Conducting Criminal History Record Checks

As stated earlier, the Walsh Protection Act amends various Title IV-E State Plan requirements that New York State must comply with to continue to receive federal reimbursement for foster care and adoption assistance. Section 152 of the Walsh Protection Act eliminates the ability of states to “opt out” of the Title IV-E criminal history record check requirements for prospective foster and adoptive parents. The federal amendment requires that states comply with the new federal requirements no later than **October 1, 2008**.

In 1999, New York enacted the federal criminal history record check requirements of ASFA by enacting section 378-a (2) of the SSL. The federal standards set forth in 42 U.S.C. 671(a) provide that an applicant for certification or approval as a foster or adoptive parent must be denied if such person was convicted of a felony that falls within one of the following categories of crimes: (i) child abuse or neglect; (ii) spousal abuse; (iii) crime against a child; (iv) crime involving violence, including rape, sexual assault or homicide; or (v) drug or assault conviction within five years of the application. In 1999, New York’s criminal history record check statute (section 378-a(2) of the SSL) provided for the **mandatory** disqualification of an applicant to be a foster or adoptive parent if he or she was convicted of one of the preceding categories of felony crimes.

In 2000, New York “opted out” of the federal criminal history record check requirements. In “opting out,” New York amended section 378-a(2) of the SSL to eliminate mandatory disqualifying crimes and replaced that standard with the category of **presumptive** disqualifying crimes. This standard, which exists today, provides that if a person is convicted for a felony that falls under one of the categories noted above, the person’s application for certification or approval as a foster or adoptive parent must be denied unless the person is able to rebut the presumption. A person may rebut the presumption only if he or she is able to demonstrate to the authorized agency to which he or she applied that: (i) such denial will create an unreasonable risk of harm to the physical or mental health of that child; and (ii) approval of the application will not place the child’s safety in jeopardy and will be in the best interests of the child.

Effective October 1, 2008, in order for New York State to have a compliant Title IV-E State Plan, New York will have to have in place the federal criminal history record check standards set forth in 42 U.S.C. 671(a)(20), including standards that provide for

mandatory disqualification for certain felony convictions. This means New York will no longer be able to have a presumptive disqualification standard that may be rebutted by the applicant under certain situations. New York State must revert to the standards that were originally in place in 1999 with the enactment of ASFA. An amendment to current State law will have to be made. Based on the information provided by the federal government to date, the changes to federal law will only apply to new applicants and will not be applied retroactively to persons already certified or approved. In addition, the mandatory disqualification requirements will not apply to other persons (non-applicants) over the age of 18 who reside in the home of the applicant.

As noted above, the impact of implementation of the Walsh Protection Act by October 1, 2008, will be that authorized agencies, both social services districts and voluntary authorized agencies, will have to deny an applicant for certification or approval as foster or adoptive parent if the person was convicted of a **mandatory** disqualifying crime. There will no longer be an option to approve or certify that person, even if the person could have otherwise rebutted the presumption against denial regardless of whether the placement would be supported with Title IV-E funds.

This change in federal requirements will mean, for example, if a foster parent is certified or approved before the new federal standard takes effect (i.e., prior to October 1, 2008) and the person has a presumptive disqualifying conviction, the person would be evaluated and could be approved under the existing standard. However, if that person applied to be an adoptive parent after the effective date of New York State's implementation of the new federal standards, the person's application for approval as an adoptive parent would have to be denied and the denial would not be subject to an ability of the applicant to correct or rebut the denial. In 1999, when New York State enacted the federal ASFA provision, there were cases where a child had been in a foster home for a significant period of time, but when the foster parent applied for approval as an adoptive parent, the application had to be denied because the applicant had a mandatory disqualifying conviction, and the foster child had to be removed from the home.

This prospective change in federal requirements will also apply when a person seeks to function as a foster parent where the person has been a direct caregiver of the child or where the agency has been directed pursuant to section 1017 of the Family Court Act to identify relatives who are willing and able to function as foster parents of a child involved in an abuse or neglect proceeding. The new standards will also apply to care provided to a child by a non-relative who thereafter seeks to function as the foster parent or adoptive parent of the child.

Given the potential impacts this new federal requirement may have for prospective foster and adoptive parents beginning October 1, 2008, OCFS offers some recommendations and suggestions on how to avoid situations that may prevent the continued placement of a child in an otherwise suitable home, and to prevent the unnecessary disruption of an otherwise appropriate placement. Before addressing them, OCFS wants to make it clear that in making decisions whether a home should be certified or approved and whether a child should be placed in a particular home, the safety of the child is the paramount concern.

- OCFS recommends that you ascertain if you have any foster homes where the foster parent has a conviction for what is now a presumptive disqualifying crime. You would know that based on the criminal history summary letter you received from OCFS. You should ascertain if the permanency goal for the child is adoption by the current foster parent or even if there is the potential that the foster parent will adopt the child. If that is a possibility, you should consider completing the adoption approval process before the new federal standards take effect on October 1, 2008. Again, if you do not, and if the foster parent applies to be an adoptive parent after the effective date of New York State's implementation of the new federal standards, you will be required to deny the person's application.
- Another option available to authorized agencies prior to the implementation of the revised criminal history record check standards is to concurrently certify or approve a person as a foster and adoptive parent, as authorized in OCFS regulation, 18 NYCRR 443.9. If this is done before the effective date of the revision to the criminal history record check standards, the person would have already been approved as an adoptive parent and no new approval would be required at the time of the adoptive placement.
- In addition to evaluating your current caseload, it is also important that you advise new applicants for certification or approval as foster or adoptive parents early in the application process of the potential impact the new standards may have on them, especially those for whom an emergency certification or approval is sought and the child's placement in the home occurs prior to completing the criminal history record check. Such information may be helpful in the decision-making process by the applicants whether to pursue certification or approval based on their criminal history.

VII. EFFECTIVE DATE

This administrative directive is effective January 11, 2007, the effective date of Chapter 668 of the Laws of 2006.

S/S Nancy W. Martinez

Nancy Martinez
Director, Strategic Planning and
Policy Development

Attachment A

- Attachment 1a - Notice Regarding Fingerprinting Requirements
- Adjunto 1a - Notificación Acerca de los Requisitos de Huellas Digitales o Impresiones Dactilares

- Attachment 1b - How to Challenge Your Federal Bureau of Investigation (FBI) Record
- Adjunto 1b - Cómo Disputar el Historial de la Agencia Federal de Investigaciones (Federal Bureau of Investigation—FBI)

- Attachment 1c - Acknowledgement and Consent Form for Fingerprinting and Disclosure of Criminal History Record Information
- Adjunto 1c - Formulario de Reconocimiento y Consentimiento para las Huellas Digitales o Impresiones Dactilares y Divulgación del Historial Criminal

- Attachment 2 - Directions for Completing the Fingerprint Card

- Attachment 3 - Fingerprinting Equipment List

- Attachment 4 - Crimes Listing

- Attachment 5 - Sample Results Letters (from OCFS to Authorized Agency)

- Attachment 6 - Denial / Revocation Letter / Notice of Results of Fingerprinting / Criminal Record Found
- Adjunto 6 - Carta de Denegación/Revocación/Notificación de Resultados de Huellas Digitales/Descubrimiento del Historial Criminal

- Attachment 7 - Notice of Exception to Presumptive Disqualification (and Removal)
- Adjunto 7 - Notificación de Excepción a la Presunta Descalificación (y Retiro)

- Attachment 8 - Criminal History Record Checks & Safety Assessments

- Attachment 9 - Notification of Adoption Finalization
(Notice to Expunge Associated Fingerprint Cards)

Attachment 1a**NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES****NOTICE REGARDING FINGERPRINTING REQUIREMENTS**

This notice is to advise you that New York State law (section 378-a of the Social Services Law) requires you and those persons over the age of 18 who currently live in your home to be fingerprinted if you are applying to be certified or approved as a foster parent (including a relative foster parent) or an adoptive parent. The fingerprints are used to conduct a national criminal history record check through the Federal Bureau of Investigation (FBI) and a New York State criminal history record check through the Division of Criminal Justice Services (DCJS).

The social services district or voluntary authorized agency with which you are seeking certification or approval will ask you and all of the above noted household members to have fingerprints taken. It will give you a listing of one or more places where you and those household members may go to have the fingerprints taken. It will give you blank fingerprint cards and mailer for each person who must be fingerprinted. The person or place actually taking the fingerprints may charge you a fee for taking the fingerprints.

After the fingerprints are taken, they will be sent to the Office of Children and Family Services (OCFS). OCFS will then send them to DCJS and the FBI to search their agency files for any criminal record of charges or convictions in New York State or nationally. There is no fee to you for these searches.

If in any search a criminal record is found, the social services district or voluntary authorized agency will receive summary information about the charges or convictions. (When application is made to a voluntary authorized agency, specific charges or convictions reported by the FBI involving you and those persons over the age of 18 who currently live in your home will only be provided to the voluntary authorized agency when OCFS receives the consent addressed in the notice section below.)

Depending upon the types of crimes listed in the criminal history, the following actions could result:

- denial of your application;
- revocation of your certification or approval;
- removal of children already placed in your home.

You will be provided notice and reason for such actions if they are taken. In the event your application is denied or your certification or approval is revoked, you will be provided with a copy of the summary of the criminal history record.

You will also be given a notice which provides a description of the process DCJS and the FBI have for persons to review their criminal history record and any rights to challenge the action taken.

Please be advised: If you are an applicant or a certified or approved foster or adoptive parent and you have been convicted of a presumptive disqualifying crime, your application will be denied or your certification or approval revoked UNLESS you demonstrate to the social services district or voluntary authorized agency:

- that the denial or revocation will create a unreasonable risk of harm to the physical or mental health of the child, and
- that approval of your application or continuance of your certification or approval will not place the child's safety in jeopardy and will be in the best interests of the child.

Presumptive disqualifying crimes include certain felonies such as child abuse or neglect; spousal abuse, crimes against children, and certain crimes of violence.

DCJS retains your fingerprints until your home is closed or an adoption is finalized. While it retains the fingerprints, DCJS will notify OCFS (which will then notify the social services district or voluntary authorized agency) if you or anyone fingerprinted under this law is charged with a crime. The FBI does not retain fingerprints.

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 a denial of an application, revocation of a certificate or approval, or the removal of foster children. Where there is a pending court case, a copy of the summary of the criminal record will be provided to the Family Court or Surrogate's Court.

NOTICE TO PERSONS APPLYING TO A VOLUNTARY AUTHORIZED AGENCY [THIS DOES NOT APPLY TO PERSONS APPLYING TO A SOCIAL SERVICES DISTRICT]:

For a person who is applying to a voluntary authorized agency for certification or approval as a foster or adoptive parent and all other persons over the age of 18 who currently live in the home of the applicant, you will each be given a consent to sign called the "Acknowledgement and Consent for Fingerprinting and Disclosure of Criminal History Information". The purpose of the consent is to authorize OCFS to provide the voluntary authorized agency with certain specific information on any crime or crimes reported to OCFS by the FBI. The failure to sign the consent is a reason by itself to deny the application for certification or approval. Also, if someone subject to the fingerprint requirement refuses to sign a consent, and the FBI has reported to OCFS that the person has a conviction or charge, OCFS regulations require the voluntary authorized agency to deny the application for certification or approval.

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

Adjunto 1a**OFICINA DE SERVICIOS PARA NIÑOS Y FAMILIAS
DEL ESTADO DE NUEVA YORK****NOTIFICACION ACERCA DE LOS REQUISITOS
DE HUELLAS DIGITALES O IMPRESIONES DACTILARES**

El propósito de esta notificación es informarle que la ley del estado de Nueva York (Sección 378-a de la Ley de Servicios Sociales) requiere que usted y todos aquellos individuos mayores de 18 años de edad que actualmente residen en su hogar provean huellas digitales, si es que usted está aplicando para ser o ya es un(a) padre/madre de crianza certificado(a) o aprobado(a) (incluyendo a un familiar que asume el papel de padre/madre de crianza) o está solicitando para ser un(a) padre/madre adoptivo(a). Las huellas digitales se usan para llevar a cabo verificaciones de historiales criminales a nivel nacional, a través de la Agencia Federal de Investigaciones (Federal Bureau of Investigation—FBI), y a nivel estatal, a través de la División de Servicios de Justicia Criminal (Division of Criminal Justice Services—DCJS).

El distrito de servicios sociales de su localidad o la agencia voluntaria autorizada mediante la que está tratando de obtener certificación o aprobación pedirá que usted y todos los miembros de su hogar citados anteriormente provean huellas digitales. Se le dará una lista de uno o más lugares donde usted y los miembros de su hogar podrán presentarse para que se tomen impresiones de sus huellas digitales. A usted se le proveerá tarjetas de impresión de huellas digitales en blanco y un sobre para que las envíe para cada persona que debe proveer huellas digitales. Es posible que se le cobre un honorario por el proceso de tomar huellas digitales.

Después de haberse tomado las huellas digitales, éstas serán enviadas a la Oficina de Servicios para Niños y Familias (Office of Children and Family Services). La OCFS las enviará a la División de Servicios de Justicia Criminal y al FBI para investigar los archivos de sus respectivas agencias con el fin de identificar cualquier récord criminal de cargos o convicciones en el estado de Nueva York o en la nación. Las investigaciones son gratuitas.

Si durante la investigación se encuentra un récord criminal, el distrito de servicios sociales o la agencia voluntaria recibirá un resumen de los cargos o convicciones. (Cuando la solicitud se la dirija a una agencia voluntaria autorizada, los cargos o las convicciones específicas reportadas por el FBI involucrándole a usted y a aquellas personas mayores de 18 años de edad que viven en su hogar sólo se proveerán a la agencia voluntaria autorizada cuando OCFS reciba el consentimiento referido más abajo.

Dependiendo de los tipos de crímenes listados en el historial criminal, las siguientes acciones pueden llevarse a cabo:

- rechazo o negación de su aplicación;
- revocación de su certificación o aprobación;
- retiro de los niños ya colocados en su hogar.

Se le proveerá una notificación explicándole las razones de tales acciones, si éstas se llevan a cabo. En caso de que su solicitud sea rechazada o negada, o de que su certificación o aprobación sea revocada, se le proveerá una copia del resumen del historial criminal.

A usted también se le notificará una descripción del proceso que DCJS y el FBI utilizan para que una persona pueda revisar su historial criminal y cualquier derecho que esa persona pueda tener para objetar a la acción efectuada.

Por favor tenga en cuenta: Si usted es un solicitante o un padre/madre de crianza o adoptivo(a) aprobado(a) o certificado(a), y usted ha sido convicto de un crimen que presuntamente lo descalifica, su aplicación será negada/rechazada o su certificación o aprobación revocada A MENOS que usted demuestre al distrito de servicios sociales o a la agencia voluntaria autorizada que:

- el rechazo o la revocación creará un riesgo irrazonable de daño a la salud física o mental del niño(a); y
- la aprobación de su solicitud o la continuación de su certificación o aprobación no pondrá al niño(a) en peligro y protegerá los intereses del niño(a).

Los crímenes que presuntamente descalifican a una persona incluyen ciertos delitos mayores, tales como abuso o negligencia infantil, abuso doméstico, crímenes contra niños y ciertos crímenes violentos.

Las impresiones dactilares o huellas digitales serán retenidas por DCJS hasta que su hogar se cierre o hasta que se finalice una adopción. Mientras DCJS retenga las huellas, la división notificará a OCFS (la que luego notificará al distrito de servicios sociales a o a la agencia voluntaria autorizada) si usted o cualquier persona que haya provisto huellas digitales bajo la ley haya sido cargada con un crimen. El FBI no retiene huellas digitales.

Toda la información relativa a historiales criminales es confidencial y no está disponible al público. Sin embargo, puede ser divulgada para propósitos de procedimientos judiciales o administrativos relacionados al rechazo de una aplicación, a la revocación o aprobación de un certificado, o al retiro de niños de crianza. Cuando haya un caso pendiente en el tribunal, se proveerá una copia del resumen del historial criminal al Tribunal de Relaciones Familiares o al Tribunal Testamentario.

NOTIFICACIÓN A PERSONAS APLICANDO A UNA AGENCIA VOLUNTARIA AUTORIZADA (NO SE APLICA A PERSONAS SOLICITANDO A UN DISTRITO DE SERVICIOS SOCIALES):

Para una persona que está aplicando a una agencia voluntaria autorizada con el fin de obtener certificación o aprobación para ser padre/madre de crianza o adoptivo(a), y para todas las otras personas mayores de 18 años que actualmente viven en el hogar del solicitante, cada uno será provisto con un formulario de consentimiento que debe firmarse, llamado "Reconocimiento y Consentimiento para la Obtención de Huellas Digitales y la Divulgación de Información de Historiales Criminales" (Acknowledgement and Consent for Fingerprinting and Disclosure of Criminal History Information). El propósito del consentimiento es autorizar a que OCFS provea a la agencia voluntaria

autorizada cierta información sobre cualquier crimen o crímenes reportados a OCFS por el FBI. El no firmar el consentimiento constituye razón suficiente para rechazar la solicitud de certificación o aprobación. Si el sujeto que debe proveer huellas digitales se rehúsa a firmar el consentimiento, y el FBI ha reportado a OCFS de que la persona tiene una convicción o un cargo criminal, las regulaciones de OCFS requieren que la agencia voluntaria autorizada rechace o niegue la respectiva solicitud de certificación o aprobación.

Nuestro interés es proteger la seguridad de los niños de crianza. Estos requisitos son importantes para satisfacer nuestra meta.

Attachment 1b**HOW TO CHALLENGE YOUR FEDERAL BUREAU OF INVESTIGATION (FBI) RECORD**

Since the FBI's Criminal Justice Information System Division is not the source of the data appearing on Identification Records, and obtains all data thereon from fingerprint submissions or related identification forms submitted to the FBI by local, state and federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data requires the subject of an Identification Record make application to the original contributing agency (e.g., police department, county court, etc.).

An individual may challenge the information contained in the FBI Identification Record by contacting the original agency that submitted the information to the FBI or the state central repository in the state in which the arrest or conviction occurred. These agencies will be able to furnish the guidelines for correction of the Record. The FBI is not authorized to modify the Record without written notification from the appropriate criminal justice agency.

HOW TO CHALLENGE YOUR NEW YORK STATE DIVISION OF CRIMINAL JUSTICE (DCJS) SERVICES RECORD

If you believe that the DCJS has incorrectly reported an open charge or conviction affecting your application, you may conduct a Record Review with that office. You should write to the address listed below or call the Record Review Unit to request the necessary forms for the Record Review. All record reviews are conducted via mail.

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

If you conduct a Record Review through DCJS and you believe that there are errors on your criminal history disposition record which you seek to challenge, e.g., incorrect disposition data or missing updated 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.

Adjunto 1b**CÓMO DISPUTAR EL HISTORIAL DE LA AGENCIA FEDERAL DE INVESTIGACIONES (*FEDERAL BUREAU OF INVESTIGATION--FBI*)**

Debido a que la División de Sistemas de Información de Justicia Criminal del FBI (*Criminal Justice Information System Division*) no es la fuente de los datos que aparecen en los Historiales de Identificación, y obtiene todos los datos siguientes a través de huellas digitales o impresiones dactilares u otros formularios de identificación presentados al FBI por agencias locales, estatales y federales, la responsabilidad de autentificar y corregir los datos depende de las agencias contribuyentes. Por lo tanto, las regulaciones establecidas para cambiar, corregir o actualizar tales datos requiere que el sujeto de un Historial de Identificación presente una aplicación a la agencia contribuyente original (por ejemplo, el departamento de la policía, el tribunal del condado, etc.).

Un individuo puede disputar la información contenida en el Historial de Identificación del FBI poniéndose en contacto con la agencia que presentó la información al FBI o al repositorio central del estado donde ocurrió el arresto o la convicción. Estas agencias podrán proveer las normas para corregir el Historial. El FBI no está autorizado a modificar el Historial sin una notificación escrita de la agencia criminal de justicia apropiada.

CÓMO DISPUTAR EL HISTORIAL DE LA DIVISIÓN DE SERVICIOS DE JUSTICIA CRIMINAL DEL ESTADO DE NUEVA YORK (*NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES--DCJS*)

Si usted cree que la DCJS ha reportado incorrectamente una acusación pendiente o una convicción que afecta su aplicación, usted puede solicitar una Revisión del Historial de esa oficina. Usted debería escribir a la dirección citada más abajo o llamar a la Unidad de Revisión de Historiales (*Criminal Review Unit*) para solicitar los formularios necesarios para llevar a cabo una Revisión del Historial. Todas las revisiones se solicitan por correo, escribiendo a:

New York State Division of Criminal Justice Services
Criminal History Bureau
Record Review Unit - 5th Floor
4 Tower Place
Albany, New York 12203

Teléfono: (518) 485-7675

Si se lleva a cabo una Revisión del Historial a través de DCJS y usted cree que existen errores en la disposición de su historial criminal, los cuales desea disputar (por ejemplo, datos incorrectos acerca de una disposición o datos incompletos relativos a una disposición que ha sido actualizada), usted debe contactar al tribunal de adjudicación y pedir una copia CERTIFICADA de la disposición. Una vez obtenido el documento certificado del tribunal, usted debe enviarlo a la Unidad de Revisión de Historiales (*Record Review Unit*) de DCJS, la que revisará y actualizará su Historial Criminal. Se le advierte que NO se aceptan copias fotostáticas, a menos que contengan un sello grabado (diseño en relieve) del tribunal que lo emitió.

Attachment 1c

NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES

**ACKNOWLEDGEMENT AND CONSENT FORM FOR FINGERPRINTING AND
DISCLOSURE OF CRIMINAL HISTORY RECORD INFORMATION**

[APPLICABLE ONLY TO APPLICATIONS FOR CERTIFICATION OR APPROVAL
SUBMITTED TO VOLUNTARY [NON-PUBLIC] AUTHORIZED AGENCIES]

1. I have applied (or someone with whom I reside has applied) to a voluntary authorized agency for certification or approval as a foster or adoptive parent. A voluntary authorized agency is a non-public agency, as defined in Social Services Law §371(10)(a) or (c), which is organized or authorized under the laws of the State of New York with the approval of the New York State Office of Children and Family Services (OCFS) and with the corporate authority to care for, board out or place out children.
2. I understand that as part of the application process, the law (Social Services Law §378-a) requires OCFS to perform a criminal history check on me with the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI).
3. I acknowledge and consent to having my fingerprints taken for the purpose of a criminal history record check by the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI).
4. I have been advised that OCFS is authorized by law to receive the results of the criminal history record check from DCJS and the FBI for the purpose of developing a criminal history record summary to be provided to the voluntary agency to which I (or another person with whom I reside) applied for certification or approval as a foster or adoptive parent. I have been advised that the criminal history record summary will indicate whether I have a criminal history, as maintained by DCJS or the FBI, including convictions of a crime (felony or misdemeanor) or criminal charges which do not reflect a disposition. I have been advised that by law, OCFS is authorized and required to provide the results of the criminal history record check through a criminal history record summary to the voluntary authorized agency. The criminal history record summary prepared by OCFS and sent to the voluntary authorized agency will contain the results of the criminal history record check performed by DCJS.
5. I hereby consent to OCFS sharing with any voluntary authorized agency to which I (or another person with whom I reside) applied for certification or approval as a foster or adoptive parent, any criminal history record check information provided to OCFS by the FBI, including the specific crime(s) for which I was convicted or charged, the date of the arrest for such charge, and/or date of conviction, and the jurisdiction in which the arrest or conviction took place.

_____	____/____/____	_____
Applicant/Household Member (PRINT NAME)	Date of Birth	Voluntary Authorized Agency
_____		_____
Applicant/Household Member (SIGNATURE)		Date

Adjunto 1c

OFICINA DE SERVICIOS PARA NIÑOS Y FAMILIAS DEL ESTADO DE NUEVA YORK

FORMULARIO DE RECONOCIMIENTO Y CONSENTIMIENTO PARA LAS HUELLAS DIGITALES O IMPRESIONES DACTILARES Y DIVULGACIÓN DEL HISTORIAL CRIMINAL

[SOLAMENTE APLICABLE A APLICACIONES DE CERTIFICACIÓN O APROBACIÓN PRESENTADAS A AGENCIAS VOLUNTARIAS AUTORIZADAS [NO PÚBLICAS]]

- 1. Yo he aplicado (o alguien que vive conmigo ha aplicado) a una agencia voluntaria autorizada para ser certificado(a) o aprobado(a) como padre/madre adoptivo(a) o de crianza. Una agencia voluntaria autorizada es una agencia no pública, según lo define la Ley de Servicios Sociales §371(10)(a) o (c), organizada o autorizada bajo las leyes del estado de Nueva York con la aprobación de la Oficina de Servicios para Niños y Familias del Estado de Nueva York (New York State Office of Children and Family Services--OCFS) y con la autoridad jurídica para cuidar, coordinar el alojamiento o colocación de niños en el sistema de crianza.
2. Yo comprendo que como parte del proceso de la aplicación, la ley (Ley de Servicios Sociales §378-a) requiere que OCFS lleve a cabo una verificación de mi historial criminal a través de la División de Servicios Criminales del Estado de Nueva York (Division of Criminal Justice Services--DCJS) y la Agencia Federal de Investigaciones (Federal Bureau of Investigation--FBI).
3. Yo reconozco y doy mi consentimiento para que se tomen mis huellas digitales o impresiones dactilares para verificar mi historial criminal a través de la División de Servicios Criminales del Estado de Nueva York (Division of Criminal Justice Services--DCJS) y la Agencia Federal de Investigaciones (Federal Bureau of Investigation--FBI).
4. Se me ha notificado que OCFS tiene la autoridad legal de recibir los resultados del historial criminal de DCJS y del FBI con el propósito de desarrollar un resumen y presentarlo a la agencia voluntaria donde yo (u otra persona que vive conmigo) apliqué para ser certificado o aprobado como padre/madre adoptivo(a) o de crianza. Se me ha notificado que el resumen del historial criminal indicará si tengo antecedentes criminales, mantenidos por DCJS o el FBI, incluyendo convicciones por un crimen (delito mayor o menor) o cargos criminales que no reflejan una disposición jurídica. Se me ha notificado que OCFS tiene la autoridad legal y está requerida a proveer los resultados de mi historial criminal mediante un resumen de antecedentes criminales a la agencia voluntaria autorizada. El resumen del historial criminal, preparado por OCFS y enviado a la agencia voluntaria autorizada, contendrá los resultados de la verificación de antecedentes criminales llevada a cabo por DCJS.
5. Por el presente doy mi consentimiento a OCFS para que comparta con cualquier agencia voluntaria autorizada, a la que yo (u otra persona que vive conmigo) apliqué para ser certificado(a) o aprobado(a) como padre/madre adoptivo(a), cualquier información provista por el FBI a OCFS acerca de mis antecedentes criminales, incluyendo el crimen o crímenes específicos por los cuales recibí una convicción o fui acusado, la fecha del arresto por ese cargo o acusación y/o la fecha de convicción, y la jurisdicción en la que el arresto o la convicción se llevó a cabo.

Solicitante/Miembro del Hogar (LETRAS DE IMPRENTA) Fecha de Nacimiento Agencia Voluntaria Autorizada

Solicitante/Miembro del Hogar (FIRMA) Fecha

Attachment 2

Directions for Completing the Fingerprint Card

The table below lists the elements on the fingerprint card and directions for completion. **Shaded rows must be completed by the authorized agency.** All other rows can be completed by the person who is to be fingerprinted, except field 28.

Field No.	Element	Directions
1.	Name	complete last, first and middle name
2.	Street Address	enter residence house number & street
3.	Apt/Bldg #	enter additional identifiers for Apartment or Building Number
4.	City	enter city
5.	State	enter N.Y.
6.	Zip	enter Zip code
7.	Alias or Maiden Name	enter any other name person may be known as
8.	Sex	enter M or F
9.	Race	see codes on back of card
10.	Ethnicity	see codes on back of card
11.	Skin	see codes on back of card
12.	Hair	see codes on back of card
13.	Eyes	see codes on back of card
14.	Weight	enter weight
15.	Height	enter height in feet and inches
16.	Date of Birth	enter month, day and year of birth
17.	Age	enter age
18.	Place of Birth	enter State, if USA; otherwise enter Country
19.	Contributor	Preprinted: 700199Y NYS OCFS Crim. Hist. Rev. Unit Rensselaer, NY 12144
20.	Agency ID	enter 3 character Agency code followed by an individual identifier assigned by the authorized agency [maximum field size is 8 characters in total]
21.	Social Security Number	enter Social Security Number (optional)
22.	Date Fingerprinted	enter the month, day, and year the fingerprints were taken

Field No.	Element	Directions
23.*	REASON FINGERPRINTED	Check <i>one</i> code for this referral using the following categories: foster parent [FP]; relative foster parent [RFP]; adoptive parent [AP]; household member of foster parent over 18 [FHM]; household member of relative foster parent over 18 [RHM]; household member of adoptive parent over 18 [AHM]; foster child over 18 [FC]
24.	CONNECTIONS home Resource ID#	For all NYS foster care agencies & those NYS adoption agencies on the CONNECTIONS network, enter the home Resource ID
24a.	CONNECTIONS Person ID	For all NYS foster care agencies & those NYS adoption agencies on the CONNECTIONS network, enter the Person ID
25.	License Type/Job Title	Preprinted: FOSTER CARE/ADOPTION
26.	Signature of Person Fingerprinted	this should be signed at the time of fingerprinting
27.	Authorized Foster Care or Adoption Agency - name and address	enter the full name and address of the authorized agency making referral
28.	Signature of Person Taking Prints	this should be signed at the time of fingerprinting by the person taking the prints

*** Failure to complete this field will result in the fingerprint card being returned to the submitting agency.**

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 Model No. F 3620 (recommended for training purposes)	\$198.00
Fingerprint Stand Model No. F 4100 (recommended for permanent site)	\$263.00
Individual Disposable Ink Cleaner Model No. F 7001	\$110.00 per case of 1,000
Pre-Inked Porelon Pad Refill Model No. F 1002	\$ 15.95

Price and Item information was obtained from the following vendor website faurotforensics.com. You may also wish to contact them directly at the address and phone number listed below:

* 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.

Specific Category 1 Crimes are listed beginning on the next page.

Category 2

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

OFFICIAL LIST

(as revised –4/20/06)

**NEW YORK STATE OFFICE OF
CHILDREN AND FAMILY SERVICES****CRIMINAL HISTORY RECORD****ASFA REVIEW STANDARDS****I. Social Services Law Section 378-a
Subdivision 2, Paragraph (e), Subparagraph (1), Clause A**

If the applicant has a conviction, at any time, for one of the following crimes, as defined in the New York State Penal Law, then he or she must be presumptively disqualified:

(i) Child Abuse or Neglect

120.25 – Reckless Endangerment

135.50 – Custodial Interference

255.25 – Incest

260.00 – Abandonment of a Child

260.06 – Non-support 1st degree

NOTE: There are other crimes, such as assault, which could be child abuse or neglect if the defendant is the parent and the victim is their child.

(ii) Spousal Abuse

Section 378-a(2)(j) of the Social Services Law defines “spousal abuse” as an offense defined in the following sections, where the victim of such offense was the defendant’s spouse:

120.05 Assault 2nd degree265.14 Assault 1st degree**(i) Crimes Against a Child, Including Child Pornography**

The following is a list of offenses, in which the age of the victim is a factor:

120.01 – Reckless Assault of a Child by a Child Day Care Provider

120.05 – Assault 2nd degree/Subdivision (8) & (9)

120.12 - Aggravated Assault Upon a Person Less than 11

120.55 - Stalking 2nd degree/ Subdivision130.25 – Rape 3rd degree/Subdivision (2)130.30 – Rape 2nd degree/Subdivision (1)

130.35 – Rape 1st degree/Subdivision (3)
 130.40 – Criminal Sexual Act 3rd degree/Subdivision (2)
 130.45 – Criminal Sexual Act 2nd degree/ Subdivision (1)
 130.50 – Criminal Sexual Act 1st degree/Subdivision (3) & (4)
 130.65 – Sexual Abuse 1st degree/Subdivision (3)
 130.66 – Aggravated Sexual Abuse 3rd degree/Subdivision (1)(c)
 130.67 – Aggravated Sexual Abuse 2nd degree/Subdivision (1)(c)
 130.70 – Aggravated Sexual Abuse 1st degree/Subdivision (1)(c)
 130.75 – Course of Sexual Conduct Against a Child 1st degree
 130.80 – Course of Sexual Conduct Against a Child 2nd degree
 130.85 – Female Genital Mutilation
 135.50 – Custodial Interference
 135.55 – Substitution of children
 230.05 – Patronizing a Prostitution 2nd degree
 230.06 – Patronizing a Prostitution 1st degree
 230.25 – Promoting Prostitution 3rd degree/Subdivision (2) where the child is under age
 18
 230.30 – Promoting Prostitution 2nd degree/Subdivision (2)
 230.32 - Promoting Prostitution 1st degree
 235.21 – Disseminate Indecent Material to Minors 2nd degree
 235.22 – Disseminate Indecent Material to Minors 1st degree
 260.00 – Abandonment of a Child
 260.06 – Non-support 1st Degree
 263.05 – Use of a Child in a Sexual Performance
 263.10 – Promoting an Obscene Sexual Performance by a Child
 263.11 – Possessing an Obscene Sexual Performance by a Child
 263.15 – Promoting a Sexual Performance by a Child
 263.16 – Possessing a Sexual Performance by a Child
 265.14 - Criminal Sale of a Firearm with the Aid of a Minor

(iv) A Crime Involving Violence, Including Rape, Sexual Assault, or Homicide [but not including crimes defined in Section 378-a(2)(3)(1)(B) of the Social Services Law]

1. Rape

130.25 – Rape 3rd degree
 130.30 – Rape 2nd degree
 130.35 – Rape 1st degree

2. Sexual Assault

130.40 – Criminal Sexual Act 3rd degree
 130.45 – Criminal Sexual Act 2nd degree
 130.50 – Criminal Sexual Act 1st degree
 130.53 – Persistent Sexual Abuse
 130.65 – Sexual Abuse 1st degree
 130.65(a) – Aggravated Sexual Abuse 4th degree
 130.66 – Aggravated Sexual Abuse 3rd degree

- 130.67 – Aggravated Sexual Abuse 2nd degree
- 130.70 – Aggravated Sexual Abuse 1st degree
- 130.75 – Course of Sexual Conduct Against a Child 1st degree
- 130.80 – Course of Sexual Conduct Against a Child 2nd degree
- 130.90 – Facilitating a sex offense with a Controlled Substance
- 250.45 – Unlawful Surveillance 2nd Degree
- 250.50 – Unlawful Surveillance 1st Degree

3. Homicide

- 125.10 – Criminally Negligent Homicide
- 125.12 – Vehicular Manslaughter 2nd degree
- 125.13 – Vehicular Manslaughter 1st degree
- 125.15 – Manslaughter 2nd degree
- 125.20 – Manslaughter 1st degree
- 125.25 – Murder 2nd degree
- 125.27 – Murder 1st degree

4. Other Crimes Involving Violence

a. Any of the following Class A-1 Felonies:

- 125.25 – Murder 2nd degree
- 125.27 – Murder 1st degree
- 135.25 – Kidnapping 1st degree
- 150.20 – Arson 1st degree

b. Any of the following Class B violent felonies:

- 120.07 – Gang Assault 1st degree, if convicted within the previous five years
- 120.10 – Assault 1st degree, if convicted within the previous five years or where the victim is the defendant's spouse or a child under 18
- 120.11 – Aggravated Assault on a Police Officer, if convicted within the previous five years
- 125.20 – Manslaughter 1st degree
- 130.35 – Rape 1st degree
- 130.50 – Criminal Sexual Act 1st degree
- 130.70 – Aggravated Sexual Abuse 1st degree
- 130.75 – Course of Sexual Conduct Against a Child 1st degree
- 135.20 – Kidnapping 2nd degree
- 140.30 – Burglary 1st degree
- 150.15 – Arson 2nd degree
- 160.15 – Robbery 1st degree
- 215.12 – Tampering with a witness 1st degree
- 215.17 – Intimidating a Witness or Victim 1st degree
- 265.04 – Criminal Possession of a Dangerous Weapon 1st degree
- 265.09 – Criminal Use of a Firearm 1st degree
- 265.13 – Criminal Sale of a Firearm 1st degree
- 490.35 -- Hindering Prosecution of Terrorism 1st degree

c. Any of the following Class C Violent Felonies

- 120.06 – Gang Assault 2nd degree, if convicted within the previous five years
- 120.08 – Assault on a Police Officer, if convicted within the previous five years
- 125.13 – Vehicular Manslaughter 1st degree
- 130.67 – Aggravated Sexual Abuse 2nd degree
- 140.25 – Burglary 2nd degree
- 160.10 – Robbery 2nd degree
- 265.03 – Criminal Possession of a Weapon 2nd degree
- 265.08 – Criminal Use of a Firearm 2nd degree
- 265.12 – Criminal Sale of a firearm 2nd degree
- 265.14 – Criminal Sale of a Firearm with the Aid of a Minor
- 490.15 -- Soliciting or Providing Support for an Act of Terrorism 1st degree
- 490.30 -- Hindering Prosecution of Terrorism 2nd degree

d. Any of the Following Class D Violent Felonies

- 120.60 – Stalking 1st degree
- 125.12 – Vehicular Manslaughter 2nd degree
- 130.65 – Sexual Abuse 1st degree
- 130.80 – Course of Sexual Conduct Against a Child 2nd degree
- 130.66 – Aggravated Sexual Abuse 3rd degree
- 215.12 - Tampering with a witness 2nd degree
- 215.16 – Intimidating a witness or Victim 2nd degree
- 240.60 - Falsely Reporting an Incident
- 240.62 - Placing a False Bomb 1st
- 240.63 - Placing a False Bomb in a Sports Arena
- 265.02 – Criminal Possession of a Weapon 3rd degree (subdivisions 4, 5, 6, 7 and 8)
- 490.10 -- Soliciting or Providing Support for an Act of Terrorism 2nd degree
- 490.20 -- Making a Terroristic Threat

e. Any of the following Class E Felonies*

- 120.55 – Stalking 2nd degree
- 125.10 – Criminally Negligent Homicide
- 130.53 – Persistent Sexual Abuse
- 130.65(a) – Aggravated Sexual Abuse 4th degree
- 130.90 - Facilitating a sex offense with a controlled substance
- 135.10 - Unlawful Imprisonment 1st degree
- 240.55 - Falsely Reporting an Incident 2nd
- 240.61 - Placing a False Bomb 2nd

*A conviction for an attempt at any of the above listed Class E felonies does not result in a presumptive disqualification conviction.

f. Terrorism

490.25 -- Crime of Terrorism - violent felony when person commits murder, assassination or kidnapping with intent to intimidate, coerce or influence the policy of government

5) Former Penal Law Offenses

70 – Abduction
 221 – Arson 1st degree
 222 – Arson 2nd degree
 240 – Assault 1st degree
 242 – Assault 2nd degree
 402 – Burglary 1st degree
 403 – Burglary 2nd degree
 480 – Abandonment of Children
 481 – Abandonment of Children under 14 years of age
 483-a – Carnal Abuse of a Child
 483-b – Carnal Abuse of a Child, 10 years of age and less than 16
 484-c – Employment of Children in Drug Traffic
 690 – Sodomy, Crime against Nature
 1042 – Homicide
 1044 – Murder 1st degree
 1046 – Murder 2nd degree
 1049 – Non-Negligent Manslaughter
 1050 – Manslaughter 1st degree
 1052 – Manslaughter 2nd degree
 1053 – Criminal Negligence in Operation of Motor Vehicle
 1110 – Incest
 1250 – Kidnapping
 1400 – Maiming
 1760 – Willfully Poisoning Food
 1895 – Endangering Life by Maliciously Placing Explosives Near Building
 2010 – Rape, 1st and 2nd degree
 2124 – Robbery 1st degree
 2126 – Robbery 2nd degree

*(Note: The list of Former Penal Law Offenses set forth above is not an all-inclusive list and is intended to include felony offenses which contain elements similar to the existing offenses referenced in this official list)

I.

Social Services Law Section 378-a
Subdivision 2, Paragraph (e), Subdivision (1), Clause B

If the applicant has a conviction, in the past 5 years, for one of the following crimes then he or she must be presumptively disqualified:

Physical Assault, Battery

- 120.00H – Assault/Hate Crime (enhances misdemeanor to felony)
- 120.03 – Vehicular Assault 2nd degree
- 120.04 – Vehicular Assault 1st degree
- 120.05 – Assault 2nd degree
- 120.06 – Gang Assault 2nd degree
- 120.07 – Gang Assault 1st degree
- 120.08 – Assault on a Police Officer
- 120.10 – Assault 1st degree
- 120.11 – Aggravated Assault on a Police Officer

NOTE: The commission of one of these assaults in the past 5 years is a presumptive disqualifier, however, an assault conviction older than 5 years can still be a presumptive disqualifying crime if it is subject to (i) or (ii).

Drug-Related Offenses

- 178.15 – Criminal Diversion of Prescription Medications 3rd Degree
- 178.20 – Criminal Diversion of Prescription Medications 2nd Degree
- 178.25 – Criminal Diversion of Prescription Medications 1st Degree
- 220.06 – Criminal Possession of a Controlled Substance 5th degree
- 220.09 – Criminal Possession of a Controlled Substance 4th degree
- 220.16 – Criminal Possession of a Controlled Substance 3rd degree
- 220.18 – Criminal Possession of a Controlled Substance 2nd degree
- 220.21 – Criminal Possession of a Controlled Substance 1st degree
- 220.31 – Criminal Sale of a Controlled Substance 5th degree
- 220.34 – Criminal Sale of a Controlled Substance 4th degree
- 220.39 – Criminal Sale of a Controlled Substance 3rd degree
- 220.41 – Criminal Sale of a Controlled Substance 2nd degree
- 220.43 – Criminal Sale of a Controlled Substance 1st degree
- 220.44 – Criminal Sale of a Controlled Substance in or near School Grounds
- 220.46 – Criminal Injection of a Narcotic Drug*
- 220.55 – Criminally Using Drug Paraphernalia 1st degree
- 220.60 – Criminal Possession of Precursors of Controlled Substances*
- 220.65 – Criminal Sale of a Prescription for a Controlled Substance
- 220.71 – Criminal Possession of Methamphetamine Material 1st Degree
- 220.72 – Criminal Possession of precursors of Methamphetamine
- 220.73 – Unlawful Manufacture of Methamphetamine 3rd Degree
- 220.74 – Unlawful Manufacture of Methamphetamine 2nd Degree
- 220.75 – Unlawful Manufacture of Methamphetamine 1st Degree
- 220.76 – Unlawful Disposal of Methamphetamine Laboratory Material
- 221.20 – Criminal Possession of Marihuana 3rd degree*

221.25 – Criminal Possession of Marihuana 2nd degree

221.30 – Criminal Possession of Marihuana 1st degree

221.45 – Criminal Sale of Marihuana 3rd degree*

221.50 – Criminal Sale of Marihuana 2nd degree

221.55 – Criminal Sale of Marihuana 1st degree

Public Health Law § 3304 - Unlawful possession, manufacture, sale, prescription, distribution, etc. of a controlled substance

* attempts of these crimes will be misdemeanors and are thus not presumptive disqualifications.

II. Attempts

With the exception of a conviction for an attempt of a Class E felony, a felony conviction for the attempt to commit any presumptive disqualifying crime set forth above, is also a presumptive disqualifying crime.

III. Hate Crimes:

A conviction for one of the crimes listed below as a result of section 485.05 of the Penal Law, transforms a reportable conviction into a presumptive disqualifying conviction. That crime will be categorized as a crime involving violence. The following crimes will become presumptive disqualifying convictions when DCJS identifies them as a hate crime:

120.00 – Assault 3rd degree

120.20 – Reckless Endangerment 2nd degree

150.05 – Arson 4th degree

150.10 – Arson 3rd degree

Attachment 5

Sample Results Letters (from OCFS to Authorized Agency)

Attachment 5: #1

No Criminal Record Found

Date:	NYSID No.:
Re:	CNX PID:
AKA:	CNX RID:
DOB:	NYSID No.:
	FBI No:
Clearance Date:	

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law (SSL), the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) have conducted criminal history checks of the above referenced individual and have 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, the 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. In addition, please be advised that the FBI does not retain fingerprints. Therefore, information on subsequent arrests occurring outside of New York State will not be provided.

Sincerely,

Criminal History Review Unit

CAUTION
<p>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, EXCEPT AS NOTED HEREIN. THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY TO AN APPLICANT OR A CERTIFIED OR APPROVED FOSTER OR ADOPTIVE PARENT WHEN SUCH PERSON'S APPLICATION, APPROVAL OR CERTIFICATION HAS BEEN DENIED OR REVOKED BECAUSE OF A CRIMINAL CHARGE OR CONVICTION. ALSO, SUCH INFORMATION MAY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO 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. IN ADDITION, WHERE THERE IS A PENDING COURT CASE, A COPY OF THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY, TO THE FAMILY COURT OR SURROGATE'S COURT.</p>

Attachment 5 #2

Presumptive Disqualification

Date:	NYSID No.:
Re:	CNX PID:
AKA:	CNX RID:
DOB:	NYSID No.:
	FBI No:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law (SSL), the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) have conducted criminal history checks of the above referenced individual whom you have identified to the Office of Children and Family Services (OCFS) as a (Individual's Category).

As of (date of report), DCJS and the FBI have reported the following criminal history to OCFS:

<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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Please be advised that, pursuant to Section 378-a (2)(e)(1) of the SSL, the above referenced individual's application **MUST BE DENIED UNLESS** the prospective foster parent or adoptive parent demonstrates that the denial will create an unreasonable risk of harm to the physical or mental health of the child; and, approval will not place the child's safety in jeopardy, and will be in the best interests of the child. If the individual currently is a certified or approved foster parent or an approved adoptive parent, such certification or approval **MUST BE REVOKED UNLESS** the foster parent or adoptive parent demonstrates that the revocation will create an unreasonable risk of harm to the physical or mental health of the child; and continued certification or approval will not place the child's safety in jeopardy and will be in the best interests of the child.

You must perform a safety assessment of the conditions of the household in accordance with the provisions of Section 378-a (2)(h) of the SSL and OCFS regulations, and take all appropriate steps to protect any children in the home, including, where appropriate and consistent with the standards set forth in this letter, removal of any foster child or children from the home.

During the safety assessment you must provide the above named individual with a copy of the attached "Notice of Exception to Presumptive

Disqualification". However, it is strongly urged by OCFS that you provide such notice at the commencement of the safety assessment.

Except where the health and safety of the child requires immediate removal, a social services official or authorized agency acting on such official's behalf must comply with the notice and conference requirements set forth in 18 NYCRR 443.5. These requirements include the right to at least ten (10) days notice prior to the proposed effective date of the removal of the foster child and a conference with the authorized agency removing the foster child.

Prior to or at the agency conference held in accordance with 18 NYCRR 443.5, the individual must be afforded an opportunity to demonstrate that the denial or revocation will create an unreasonable risk of harm to the physical or mental health of the child; and certification or approval will not place the child's safety in jeopardy and will be in the best interests of the child. If the individual who has been convicted of a presumptive disqualifying crime fails to make such a demonstration, you must deny the application or revoke the approval or certification of the individual. You are obligated to inform the applicant or certified or approved foster or adoptive parent of the denial or revocation and the reasons for such denial or revocation. In addition, you must inform the individual of any applicable remedial rights, including those set forth in section 400 of the SSL where a foster child is to be removed from the home and section 372-e of the SSL in relation to the denial of an application to be an adoptive parent. The foster child is not to be removed, absent imminent danger, court order or consent of the foster or adoptive parent, until at least three (3) days after the notice of the decision following the conference is sent, or prior to the proposed effective date of removal, whichever occurs later.

In the event of a denial or revocation pursuant to section 378-a (2)(h) of the SSL, you are required to remove any foster child from the foster parent's or adoptive parent's home, and to close the foster or adoptive home.

In the event of a denial or revocation where there are no foster children in the home, you must also give the applicant or certified or approved foster or adoptive parent an opportunity to rebut the presumption.

You are also reminded whenever there is a denial or revocation, to provide the applicant or the certified or approved foster or adoptive parent with a copy of this summary of the criminal history record and to notify the individual of his or her right to review the records maintained by DCJS or the FBI and of any applicable remedial right(s) provided by OCFS that the individual may have. For your convenience, in completing the Denial/Revocation Letter/Notice of Results of Fingerprinting/Criminal Record Found, this is a (type of conviction).

We are also providing to you a summary of any additional conviction(s) involving this individual, reported by DCJS and the FBI. This information should be used to assist you in determining if the child should be removed from the home, and if this is the action you are taking, how quickly the child must be removed from the home.

<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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In addition, this summary does not show the resolution of the following charge(s) reported by DCJS concerning an arrest(s) occurring in New York State, which is in need of further investigation. OCFS will use its best efforts to pursue an inquiry into the open charge(s) and advise you of any resolution.

<u>Date of Charge</u>	<u>Charge</u>	<u>Jurisdiction/Court</u>
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In addition, this summary does not show the resolution of the following charge(s) reported by the FBI concerning an arrest(s) occurring outside of New York State. The above referenced individual must be advised by you of the open charge(s). It is the individual's obligation to provide you with acceptable documentation of the disposition of each non-New York State open charge referenced in this letter. Acceptable documentation includes a certified copy of the disposition of the charge(s). The individual must provide such documentation to you and you must then send the documentation to OCFS for review. OCFS will then provide you with an updated Criminal History Summary upon confirmation of the adequacy of the documentation.

<u>Date of Charge</u>	<u>Charge</u>	<u>Jurisdiction/Court</u>
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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 in New York State. You will be provided a summary of such information in the event of any such occurrences.

Additionally, please be advised that the FBI does not retain fingerprints. Therefore, information on subsequent arrests occurring outside of New York State will not be provided.

Any questions should be directed to me at (518) 473-8595.

Sincerely,

Linda Fylak
 CHRU Supervisor
 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, EXCEPT AS NOTED HEREIN. THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY TO AN APPLICANT OR A CERTIFIED OR APPROVED FOSTER OR ADOPTIVE PARENT WHEN SUCH PERSON'S APPLICATION, APPROVAL OR CERTIFICATION HAS BEEN DENIED OR REVOKED BECAUSE OF A CRIMINAL CHARGE OR CONVICTION. ALSO, SUCH INFORMATION MAY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO 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. IN ADDITION, WHERE THERE IS A PENDING COURT CASE, A COPY OF THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY, TO THE FAMILY COURT OR SURROGATE'S COURT.

Attachment 5: #3**Discretionary Disqualifier**

Date:	NYSID No.:
Re:	CNX PID:
AKA:	CNX RID:
DOB:	NYSID No.:
	FBI No:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law (SSL), the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) have conducted criminal history record checks of the above referenced individual whom you have identified to the Office of Children and Family Services (OCFS) as a (Individual's Category). As of (date of report), DCJS and the FBI have reported the following criminal history to OCFS:

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

In addition, this summary does not show the resolution of the following charge(s) reported by DCJS concerning an arrest(s) occurring in New York State, which is in need of further investigation. OCFS will use its best efforts to pursue an inquiry into the open charge(s) and advise you of any resolution.

<u>Date of Charge</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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In addition, this summary does not show the resolution of the following charge(s) reported by the FBI concerning an arrest(s) occurring outside of New York State. The above referenced individual must be advised by you of the open charge(s). It is the individual's obligation to provide you with acceptable documentation of the disposition of each non-New York State open charge referenced in this letter. Acceptable documentation includes a certified copy of the disposition of the charge(s). The individual must provide such documentation to you and you must then send the documentation to OCFS for review. OCFS will then provide you with an updated Criminal History Summary upon confirmation of the adequacy of the documentation.

<u>Date of Charge</u>	<u>Crime</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. 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 provide to the applicant or the certified or approved foster or adoptive parent a copy of this summary of the criminal history record and to notify the individual of his or her right to review and challenge the records maintained by DCJS or the FBI. In addition, you are obligated to inform the applicant or certified or approved foster 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.

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 in New York State. You will be provided a summary of such information in the event of any such occurrences.

Additionally, please be advised that the FBI does not retain fingerprints. Therefore, information on subsequent arrests of the above referenced individual occurring outside of New York State will not be provided

Any questions should be directed to me at (518) 473-8595.

Sincerely,

Linda Fylak
CHRU Supervisor
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, EXCEPT AS NOTED HEREIN. THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY TO AN APPLICANT OR A CERTIFIED OR APPROVED FOSTER OR ADOPTIVE PARENT WHEN SUCH PERSON'S APPLICATION, APPROVAL OR CERTIFICATION HAS BEEN DENIED OR REVOKED BECAUSE OF A CRIMINAL CHARGE OR CONVICTION. ALSO, SUCH INFORMATION MAY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO 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. IN ADDITION, WHERE THERE IS A PENDING COURT CASE, A COPY OF THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY, TO THE FAMILY COURT OR SURROGATE'S COURT.

Attachment 5: #4

Pending Presumptive Disqualifier

Date:	NYSID No.:
Re:	CNX PID:
AKA:	CNX RID:
DOB:	NYSID No.:
	FBI No:

Dear Authorized Agency:

Pursuant to Section 378-a of the Social Services Law (SSL), the New York State Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI) have conducted criminal history checks of the above referenced individual whom you have identified to the Office of Children and Family Services (OCFS) as a (Individual's Category).

As of (date of report), DCJS and the FBI have reported the criminal history to OCFS, which includes the following charge(s) and/or convictions.

<u>Date of Charge</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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<u>Date of Conviction</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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We will use our best efforts to pursue an inquiry into these charge(s) and/or convictions reported by DCJS involving crime(s) committed in New York State and advise you of any resolution. The above referenced individual must be advised by you of any open charge(s) or hold in abeyance conviction(s) reported by the FBI concerning arrests occurring outside of New York State for the purpose of follow-up. It is the individual's obligation to provide you with acceptable documentation of the disposition of each non-New York State open charge and hold in abeyance conviction referenced in this letter. Acceptable documentation includes a certified copy of the disposition of each charge. For open charges involving an assault or reckless endangerment, such individual must also provide documentation from a court, district attorney or other government official that identifies the victim of the crime and the victim's relationship to the above referenced individual. The individual must send the documentation to you and you must then send the documentation to OCFS for review. OCFS will provide you with an updated Criminal History Summary upon confirmation of the adequacy of the documentation.

Please be advised that, pursuant to SSL Section 378-a (2)(e), the final determination of the above referenced individual's application for certification or

approval as a foster or adoptive parent **MUST BE HELD IN ABEYANCE** pending a subsequent notification from this Office. The above charge(s) and/or convictions are in need of further investigation, which may result in a determination that the above person must be disqualified. Under SSL Section 378(a) (2)(e)(2), because the charge(s) and/or convictions may result in disqualification, such person's application must be held in abeyance.

In the event there is currently a foster child residing in the foster or adoptive parent's home, you must 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 OCFS regulations, and 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, as a result of the safety assessment and consistent with the provisions of Article 23-a of the Corrections Law, you decide to deny the application of the foster or adoptive parent, or revoke an existing certification or approval of a foster or adoptive parent, you are reminded to provide the applicant or the certified or approved foster or adoptive parent with a copy of this summary of the criminal history record and to notify the individual of his or her right to review the records maintained by DCJS or the FBI and of any applicable remedial right(s) provided by OCFS that the individual may have. In addition, you are obligated to inform the applicant or certified or approved foster or adoptive parent of the denial or revocation, and of any applicable remedial rights including those set forth in Section 400 of the SSL and 18 NYCRR 443.5 when a foster child is to be removed from the home.

We are also providing to you a summary of any additional conviction(s) involving this individual reported by DCJS and the FBI. This information should be used in conducting the safety assessment described above.

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

In addition, this summary does not show the resolution of the following charge(s) reported by DCJS concerning an arrest(s) occurring in New York State, and reported by the FBI concerning an arrest(s) occurring outside of New York State. This information should be used in conducting the safety assessment described above. OCFS will use its best efforts to pursue an inquiry into the open charge(s) reported by DCJS and advise you of any resolution. As noted above, it is the obligation of the above referenced individual to secure acceptable documentation of each non-New York open charge reported by the FBI.

<u>Date of Charge</u>	<u>Crime</u>	<u>Jurisdiction/Court</u>
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February 7, 2007

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 in New York State. You will be provided a summary of such information in the event of any such occurrences. In addition, please be advised that the FBI does not retain fingerprints. Therefore, information on subsequent arrests of the above referenced individual occurring outside of New York State will not be provided.

Any questions should be directed to me at (518) 473-8595.

Sincerely,

Linda Fylak
CHRU Supervisor
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, EXCEPT AS NOTED HEREIN. THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY TO AN APPLICANT OR A CERTIFIED OR APPROVED FOSTER OR ADOPTIVE PARENT WHEN SUCH PERSON'S APPLICATION, APPROVAL OR CERTIFICATION HAS BEEN DENIED OR REVOKED BECAUSE OF A CRIMINAL CHARGE OR CONVICTION. ALSO, SUCH INFORMATION MAY BE DISCLOSED IN ACCORDANCE WITH LAW IN AN ADMINISTRATIVE OR JUDICIAL PROCEEDING RELATING TO 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. IN ADDITION, WHERE THERE IS A PENDING COURT CASE, A COPY OF THE SUMMARY OF THE CRIMINAL HISTORY RECORD MUST BE PROVIDED BY THE AUTHORIZED AGENCY, TO THE FAMILY COURT OR SURROGATE'S COURT.

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 and/or the Federal Bureau of Investigation 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:

DENIAL or REVOCATION (based on a presumptive disqualifying crime)

- 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.

DISCRETIONARY 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.

I. DENIAL/REVOCATION RIGHTS

You are entitled to a copy of the summary of your criminal history record if your application for approval or certification to be a foster or adoptive parent or your application for renewal of your approval or certification to be a foster parent is denied, or if your approval or certification as a foster or adoptive parent is revoked.

If you are a prospective or certified or approved foster parent, or a prospective or approved adoptive parent, and your application has been denied or your certification or 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.

If you are a prospective or approved adoptive parent and your application has been denied or your approval revoked, you have the right to request an administrative hearing before OCFS, pursuant to Section 372-e of the Social Services Law. A request for an administrative hearing from the Office of Children and Family Services must be made by contacting in writing:

Bureau of Special Hearings
NYS Office of Children and Family Services
P.O. Box 1930
Albany, NY 12201

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

II. REMOVAL RIGHTS

If a foster child is to be removed or is removed from your home because of a criminal history referenced in this letter (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 OCFS 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.

III. SPOUSAL ABUSE EXCEPTION

If your denial or revocation 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 at the address noted above:

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

IV. REVIEW OF CRIMINAL HISTORY INFORMATION

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, New York 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.

If you want to conduct an **FBI Record Review**, please be advised that since the FBI's Criminal Justice Information System Division is not the source of the data appearing on Identification Records, and obtains all data thereon from fingerprint submissions or related identification forms submitted to the FBI by local, state and federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data requires the subject of an Identification Record make application to the original contributing agency (e.g., police department, county court, etc.).

An individual may challenge the information contained in the FBI Identification Record by contacting the original agency that submitted the information to the FBI or the state central repository in the state in which the arrest or conviction occurred. These agencies will be able to furnish the guidelines for correction of the Record. The FBI is not authorized to modify the Record without written notification from the appropriate criminal justice agency.

Adjunto 6

**CARTA DE DENEGACIÓN/REVOCACIÓN/NOTIFICACIÓN DE RESULTADOS
DE HUELLAS DIGITALES/DESCUBRIMIENTO DEL HISTORIAL CRIMINAL**

Fecha:
Referencia:
Nombre:
Fecha de Nacimiento:
No. de NYSID:
ID de Agencia:

Estimado(a) Señor/Señora:

De acuerdo a la Sección 378-a de la Ley de Servicios Sociales, la División de Servicios de Justicia Criminal del Estado de Nueva York (*New York State Division of Criminal Justice Services--DCJS*) nos ha informado que la persona nombrada más arriba ha sido acusada y declarada culpable o condenada por lo indicado más abajo. Después de revisar esta información, se ha tomado la siguiente decisión:

() Su solicitud para ser un padre/madre de crianza certificado o re-certificado, aprobado o reaprobadado como familiar que asume el papel de padre/madre de crianza, o aprobado como padre/madre adoptivo(a) ha sido **denegada**.

() Su certificación o aprobación como padre/madre de crianza o aprobación como padre/madre adoptivo ha sido **revocada**.

Esta denegación o revocación de debe a:

DENEGACIÓN o REVOCACIÓN (basada en un crimen presunto que lo descalifica)

() Usted o su cónyuge tiene una convicción de felonía que ha involucrado en algún momento:

- () el abuso o la negligencia de niños;
- () el abuso de un cónyuge;
- () un crimen contra un niño(a), incluyendo pornografía infantil; o
- () un crimen involucrando violencia, incluyendo violación, asalto sexual, u homicidio, u otro que no sea uno que involucre asalto físico o agresión.

() Usted o su cónyuge tiene una convicción de felonía que ha ocurrido dentro de los últimos cinco años por asalto físico, agresión, o una ofensa relacionada a drogas.

DENEGACIÓN O REVOCACIÓN DISCRECIONAL

() Usted o su cónyuge tiene una convicción de felonía y/o de un delito menor por cualquier otro crimen que crea un riesgo de seguridad con respecto al hospedaje o a la colocación de niños en su hogar para propósitos de cuidado de crianza o adopción.

() Alguna persona más que reside en su hogar y tiene más de 18 años de edad tiene una convicción de felonía y/o de un delito menor por algún crimen que crea un riesgo de seguridad con respecto al hospedaje o a la colocación de niños en su hogar para propósitos de cuidado de crianza o adopción.

() Usted, su cónyuge, u otra persona mayor de 18 años de edad que reside en su hogar ha sido acusado de un crimen que crea un riesgo de seguridad con respecto al hospedaje o a la colocación de niños en su hogar para propósitos de cuidado de crianza o adopción.

I. DERECHOS DE DENEGACIÓN/REVOCACIÓN

Usted tiene derecho a recibir una copia del sumario de su historial criminal si su aplicación para la aprobación o certificación para ser un padre/madre de crianza o adoptivo o su aplicación para la renovación de su aprobación o certificación para ser un padre/madre de crianza es denegada, o si su aprobación o certificación como padre/madre de crianza o adoptivo es revocada.

Si usted es un padre/madre de cuidado de crianza prospectivo, certificado o aprobado, y su aplicación ha sido denegada o su certificación o aprobación revocada por una agencia autorizada debido a un historial criminal referenciado en esta carta (y cualquier razón adicional para denegar o revocar), usted tiene derecho a ser notificado(a) sobre la denegación o revocación.

Si usted es un padre/madre adoptivo prospectivo o aprobado cuya aplicación ha sido denegada o su aprobación revocada, usted tiene el derecho de solicitar una audiencia administrativa ante OCFS, según la Sección 372-e de la Ley de Servicios Sociales. Una solicitud para una audiencia administrativa de la Oficina de Servicios para Niños y Familias debe efectuarse contactándose por escrito con la:

Bureau of Special Hearings
NYS Office of Children and Family Services
P.O. Box 1930
Albany, NY 12201

Tal solicitud debe hacerse dentro de los 60 días del recibo de esta notificación.

II. DERECHOS DE RETIRO

Si un niño(a) que está bajo cuidado de crianza va a ser retirado o ha sido retirado de su hogar debido a un historial criminal referenciado en esta carta (y cualquier razón adicional), usted tiene derecho a una conferencia con la agencia responsable autorizada para efectuar tal retiro, de acuerdo con las provisiones 18 NYCRR 443.5. Si usted no tiene éxito en la conferencia, usted puede solicitar una audiencia administrativa ante OCFS, de acuerdo a la Sección 400 de la Ley de Servicios Sociales. Según se aplique, se adjunta a esta carta información adicional con respecto a las razones por las que la agencia tomó esta acción y sus derechos.

III. EXCEPCIÓN REFERENTE AL ABUSO CONYUGAL

Si su denegación o revocación está basada en abuso conyugal, y usted cree que tal ofensa no constituyó abuso conyugal debido a que el hecho de que usted fue abusada(o) fue un factor que ocasionó su crimen contra su esposo(a), usted puede solicitar una audiencia administrativa de la Oficina de Servicios para Niños y Familias contactándose por escrito a la dirección anotada más arriba:

Tal solicitud debe hacerse dentro de los 60 días del recibo de esta notificación.

IV. REVISIÓN DE LA INFORMACIÓN DEL HISTORIAL CRIMINAL

Si usted desea una Revisión del Historial de DCJS, usted debería llamar a la Unidad de Revisión de Historiales o escribir a la dirección siguiente para solicitar los formularios necesarios. Todas las revisiones de historiales se llevan a cabo por correo.

NYS Division of Criminal Justice Services
Criminal History Bureau
Record Review Unit - 5th Floor
4 Tower Place
Albany, New York 12203

Teléfono: (518) 485-7675

Si usted lleva a cabo una Revisión de Historiales a través de DCJS y usted cree que hay errores en su historial criminal, el mismo que usted trata de recusar, usted debe proveer a DCJS la siguiente documentación:

Datos del Arresto

Para modificar los datos del arresto (i.e. acusación del arresto, fecha del arresto, fecha del crimen) en su Historial Criminal, **USTED** debe contactar a la agencia con potestad de detener. **DCJS REQUIERE NOTIFICACION POR ESCRITO** de la **AGENCIA CON POTESTAD DE DETENER** para corregir esta información.

Disposición de Datos

Para corregir la disposición de datos o para actualizar los datos de disposición que faltan, **USTED** debe contactar al tribunal adjudicante y solicitar una copia de la disposición **CERTIFICADA**. Una vez que usted haya obtenido el documento judicial certificado, usted debe enviarlo a la Unidad de Revisión de Historiales de DCJS, la que la revisará y actualizará su Historial Criminal. Por favor note que copias fotostáticas **NO** son aceptables, a menos que contenga el sello de la corte emisora en relieve.

Si usted desea llevar a cabo una Revisión del Historial del FBI, por favor tome en cuenta que debido a que la División de Sistemas de Información de Justicia Criminal del FBI (*Criminal Justice Information System Division*) no es la fuente de los datos que aparecen en los Historiales de Identificación, y obtiene todos los datos siguientes a través de huellas digitales o impresiones dactilares u otros formularios de identificación presentados al FBI por agencias locales, estatales y federales, la responsabilidad de autenticar y corregir los datos depende de las agencias contribuyentes. Por lo tanto, las regulaciones establecidas para cambiar, corregir o actualizar tales datos requiere que el sujeto de un Historial de Identificación presente una aplicación a la agencia contribuyente original (por ejemplo, el departamento de la policía, el tribunal del condado, etc.).

Un individuo puede disputar la información contenida en el Historial de Identificación del FBI poniéndose en contacto con la agencia que presentó la información al FBI o al repositorio central del estado donde ocurrió el arresto o la convicción. Estas agencias podrán proveer las normas para corregir el historial. El FBI no está autorizado a modificar el historial sin una notificación escrita de la agencia criminal de justicia apropiada.

Attachment 7

**NOTICE OF EXCEPTION TO PRESUMPTIVE DISQUALIFICATION
(And Removal)**

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

Dear Sir/Madam:

With respect to your application to be certified as a foster parent, or approved as a relative foster parent, or approved as an adoptive parent, or your recertification or reapproval as a foster parent, the New York State Division of Criminal Justice Services and the Federal Bureau of Investigation has performed a check of your criminal history record pursuant to New York Social Services Law section 378-a. The New York State Division of Criminal Justice Services and or the Federal Bureau of Investigation has advised us that you were convicted of a presumptively disqualifying crime, as set forth below under Social Services Law section 378-a(2)(e)(1):

() 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.

() a felony conviction within the past five years for physical assault, battery, or a drug-related offense.

Under Social Services Law section 378-a, your application for certification or approval or renewal of your certification or approval will be denied, or your existing certification or approval will be revoked, UNLESS YOU DEMONSTRATE that:

(1) denial or revocation will create an unreasonable risk of harm to the mental or physical health of the child, and

(2) certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child.

Furthermore, IF YOU FAIL TO DEMONSTRATE this, then our agency is required by Social Services Law section 378-a to remove any foster child[ren] placed with you.

If you wish to make such a demonstration, you will have a right to an interview (and pre-removal conference, if there is a foster child in the home) to discuss this issue with us.

You must request the conference or meeting referenced above within 10 days of receipt of this letter.

At this conference or meeting, you should bring any documents and/or materials to demonstrate that (1) denial or revocation will create an unreasonable risk of harm to the mental or physical health of the child, and (2) certification, approval or renewal will not place the child's safety in jeopardy and will be in the best interests of the child.

Prior to this conference or meeting, this agency will also perform a safety assessment of the conditions in your household.

If this agency decides to deny or revoke your application or certification or approval as a foster or adoptive parent, you will also receive written notification of the rights you may have to further challenge the decision.

Where a foster child is in your home and you have a pre-removal conference, this agency will notify you no later than five days after the conference of our decision. In the event this agency issues a decision after a pre-removal conference to remove any foster child from your home, you may administratively appeal this agency's removal decision. To do so, you must request an administrative hearing before the New York State Office of Children and Family Services, pursuant to Social Services Law section 400.

REVIEW OF CRIMINAL HISTORY INFORMATION

If you believe that the New York State Division of Criminal Justice Services or the Federal bureau of Investigation has incorrectly reported a felony conviction affecting your application, you may conduct a Record Review as outlined below, in addition to requesting an administrative hearing with the New York State Office of Children and Family Services.

For a Record Review with the Division of Criminal Justice Services:

You should write to the address listed below or call the Record Review Unit to request the necessary forms for the Record Review. All record reviews are conducted via mail.

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

If you conduct a Record Review through DCJS and you believe that there are errors on your criminal history disposition record which you seek to challenge, e.g., incorrect disposition data or missing updated 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.

For a Record Review with the Federal Bureau of Investigation:

If you want to conduct an FBI ***Record Review***, please be advised that since the FBI's Criminal Justice Information System Division is not the source of the data appearing on Identification Records, and obtains all data thereon from fingerprint submissions or related identification forms submitted to the FBI by local, state and federal agencies, the responsibility for authentication and correction of such data rests upon the contributing agencies. Therefore, the rules set forth for changing, correcting or updating such data requires the subject of an Identification Record make application to the original contributing agency (e.g., police department, county court, etc.).

An individual may challenge the information contained in the FBI Identification Record by contacting the original agency that submitted the information to the FBI or the state central repository in the state in which the arrest or conviction occurred. These agencies will be able to furnish the guidelines for correction of the Record. The FBI is not authorized to modify the Record without written notification from the appropriate criminal justice agency.

Adjunto 7**NOTIFICACIÓN DE EXCEPCIÓN A LA PRESUNTA DESCALIFICACIÓN
(y Retiro)**

Fecha:
Referencia:
Nombre:
Fecha de Nacimiento:
No. de NYSID:
ID de Agencia:

Estimado(a) Señor/Señora:

Respecto a su aplicación para ser un padre/madre certificado de cuidado de crianza o aprobado como familiar que asume el papel de padre/madre de crianza, o aprobado como padre/madre adoptivo(a), o para su re-certificación o re-aprobación como padre de crianza, la División de Servicios de Justicia Criminal del Estado de Nueva York (*New York State Division of Criminal Justice Services--DCJS*) y la Agencia Federal de Investigaciones (*Federal Bureau of Investigation—FBI*) han llevado a cabo una verificación de su historial criminal de acuerdo a la Sección 378-a de la Ley de Servicios Sociales. La División de Servicios de Justicia Criminal del Estado de Nueva York y/o la Agencia Federal de Investigaciones nos ha(n) advertido que a usted se le acusó de un presunto crimen que lo descalifica, según lo establece la Sección 378-a(2)(e)(1):

- una convicción de felonía que ha involucrado en algún momento:
- el abuso o la negligencia de niños;
 - el abuso de un cónyuge;
 - un crimen contra un niño(a), incluyendo pornografía infantil; o
 - un crimen involucrando violencia, incluyendo violación, asalto sexual, u homicidio, u otro que no sea uno que involucre asalto físico o agresión.

una convicción de felonía que ha ocurrido dentro de los últimos cinco años por asalto físico, agresión, o una ofensa relacionada a drogas.

Según la Sección 378-a de la Ley de Servicios Sociales, su aplicación para la certificación o aprobación, o renovación de su certificación o aprobación, ha sido denegada, o su certificación existente o aprobación ha sido revocada, A MENOS QUE DEMUESTRE que:

- (1) la denegación o revocación creará un riesgo irracional de daño a la salud física o mental del niño(a) y
- (2) la certificación, aprobación o renovación no pondrá la seguridad del niño(a) en peligro y protegerá los intereses del niño(a).

Más aún, SI USTED NO DEMUESTRA esto, entonces nuestra agencia tiene la obligación legal, según la Sección 378-a de la Ley de Servicios Sociales, de retirar al niño(a) o a los niños de crianza que han sido colocados con usted.

Si desea presentar documentación que demuestre esto, usted tiene derecho a una entrevista (y a una conferencia antes de que se efectúe el retiro, si es que un niño(a) de crianza reside en su hogar) para discutir los asuntos con nosotros.

Usted debe solicitar la conferencia o reunión referida anteriormente dentro de 10 días de recibir esta carta.

Usted debe traer a la conferencia o reunión cualesquier documentos y/o materiales que demuestren que (1) la denegación o revocación creará un riesgo irracional de daño a la salud física o mental del niño(a) y (2) que la certificación, aprobación o renovación no pondrá la seguridad del niño(a) en peligro y protegerá los intereses del niño(a).

Antes de la conferencia o reunión, esta agencia llevará a cabo una evaluación de seguridad de las condiciones en su hogar.

Si esta agencia decide denegar o revocar su aplicación o certificación o aprobación para ser un padre/madre de crianza o adoptivo(a), usted también recibirá una notificación por escrito acerca de los derechos que usted pueda tener para recusar u objetar la decisión.

En el caso de que un niño(a) de crianza viva en su hogar y usted haya tenido una conferencia antes del retiro, esta agencia le hará conocer nuestra decisión antes de los cinco días a partir de la fecha de la conferencia. En el caso de que esta agencia emita la decisión de retirar al niño(a) de crianza de su hogar después de la conferencia relativa al retiro, usted puede solicitar una apelación administrativa de la decisión de retiro de esta agencia. Para hacerlo, usted debe solicitar una audiencia administrativa ante la Oficina de Servicios para Niños y Familias, de acuerdo a la Sección 400 de la Ley de Servicios Sociales.

REVISIÓN DE INFORMACIÓN RELATIVA AL HISTORIAL CRIMINAL

Si usted cree que la División de Servicios de Justicia Criminal del Estado de Nueva York o la Agencia Federal de Investigación ha reportado una convicción de felonía incorrectamente que afecta su aplicación, usted puede solicitar la revisión de su historial de la forma indicada más abajo, además de solicitar una audiencia administrativa ante la Oficina de Servicios para Niños y Familias del Estado de Nueva York.

Para Solicitar una Revisión del Historial ante la División de Servicios de Justicia Criminal

Usted debe escribir a la dirección de abajo o llamar a la Unidad de Revisión de Historiales de DCJS para solicitar los formularios necesarios. Todas las revisiones de historiales se llevan a cabo por correo.

New York State Division of Criminal Justice Services
Criminal History Bureau
Record Review Unit - 5th Floor
4 Tower Place
Albany, New York 12203

Teléfono: (518) 485-7675

Si usted desea llevar a cabo una Revisión del Historial a través de DCJS y usted cree que hay errores en el informe de disposición sobre su historial criminal, el mismo que usted trata de recusar, por ejemplo datos incorrectos sobre una disposición o datos no incluidos o no

actualizados, usted debe contactar al tribunal de adjudicación y solicitar una copia de la disposición **CERTIFICADA**. Una vez que usted haya obtenido el documento judicial certificado, usted debe enviarlo a la Unidad de Revisión de Historiales de DCJS, la que la revisará y actualizará su Historial Criminal. Por favor note que copias fotostáticas **NO** son aceptables, a menos que contenga el sello de la corte emisora en relieve.

Pasa Solicitar una Revisión del Historial de la Agencia Federal de Investigaciones:

Si usted desea llevar a cabo una Revisión del Historial del FBI, por favor tome en cuenta que debido a que la División de Sistemas de Información de Justicia Criminal del FBI (*Criminal Justice Information System Division*) no es la fuente de los datos que aparecen en los Historiales de Identificación, y obtiene todos los datos siguientes a través de huellas digitales o impresiones dactilares u otros formularios de identificación presentados al FBI por agencias locales, estatales y federales, la responsabilidad de autenticar y corregir los datos depende de las agencias contribuyentes. Por lo tanto, las regulaciones establecidas para cambiar, corregir o actualizar tales datos requiere que el sujeto de un Historial de Identificación presente una aplicación a la agencia contribuyente original (por ejemplo, el departamento de la policía, el tribunal del condado, etc.).

Un individuo puede disputar la información contenida en el Historial de Identificación del FBI poniéndose en contacto con la agencia que presentó la información al FBI o al repositorio central del estado donde ocurrió el arresto o la convicción. Estas agencias podrán proveer las normas para corregir el historial. El FBI no está autorizado a modificar el historial sin una notificación escrita de la agencia criminal de justicia apropiada.

Attachment 8

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, a “safety assessment” is required.

Law and regulation mandate safety assessments in which the following must be considered:

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

Additional Guidelines for consideration follow.

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

- when an adult spouse of a foster parent comes into the home and applies for certification or approval;
- when a person who resides in the home turns age 18 after initial or any subsequent certification or approval, including any foster child residing in the home;
- when a person who is age 18 or over has thereafter come to reside in the foster home after initial or any subsequent certification or approval, including any foster child residing in the home;
- 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;
- 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:

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

- the degree of bonding between child and foster or adoptive parents, including how well the child seems to be doing in the home;
- 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:

- the nature of the charge or conviction, how serious a crime it was, whether it involved violence or force;
- the circumstances of the crime and the person's explanation of such;
- the relationship between the type of crime and its relationship to child caring responsibilities;
- 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);
- 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);
- any factors that demonstrate good conduct or rehabilitation, such as returning to school, employment, volunteer activities, etc.;
- the number of crimes committed and any patterns which emerge;
- 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 weigh 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 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.

Attachment 9

**NOTIFICATION OF ADOPTION FINALIZATION
(NOTICE TO EXPUNGE ASSOCIATED FINGERPRINT CARDS)**

Please complete this form when an adoption is finalized and the adoptive parents are no longer open/active with your agency. This form is only for out-of-state adoption agencies and in-state adoption agencies that approve New York State families for adoption and do **not** use CONNECTIONS for reporting.

The purpose of this form is to provide the Office of Children and Family Services (OCFS) with information that OCFS will relay to the Division of Criminal Justice Services (DCJS). DCJS will expunge the fingerprint cards of all persons identified as no longer requiring “search and retain” capability. (“Search and retain” allows your agency to be notified of arrests in New York State throughout the period that an adoptive home is open/active with your agency.)

Complete a separate form for each adoptive parent and each household member over the age of 18, who was fingerprinted. [PLEASE PRINT CLEARLY]

Name (Last, First, Middle)

Address (Street No. Street Address, City, State)

Sex

Date of Birth (mo./day/year)

Social Security #

Agency ID #

Name and address of Agency completing this form:

Contact Person and Phone #:

This form should be mailed to: Criminal History Review Unit
NYS Office of Children & Family Services
PO Box 839
Rensselaer, NY 12144-9953