

OFFICE OF CHILDREN AND FAMILY SERVICES

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 | ADMINISTRATIVE DIRECTIVE | TRANSMITTAL: 00 OCFS ADM-4
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DIVISION: Strategic Planning
 and Policy Development

TO: Commissioners of Social Services
 Executive Directors of Voluntary Agencies

DATE:

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

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

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 ATTACHMENTS: | See Attachment A
 | FILING REFERENCES
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| Previous ADMs/INFs | Releases Cancelled | Dept. Regs. | Soc. Serv. Law & Other Legal Ref. | Manual Ref. | Misc. Ref. |
|-----------------------|-----------------------|-----------------------|---|-------------|---------------------------------|
| 99 OCFS LCM-8 | 99 OCFS INF-7 | 18 NYCRR 421 & 443 | 378-a SSL Chapter 7 | | Guidelines "Evaluat- ing |
| 99 OCFS LCM-15 | 00 OCFS INF-2 | | of the Laws of 1999 | | Applicants with |
| 00 OCFS LCM-25 | | | Chapter 145 of the | | Criminal Conviction |
| 00 OCFS INF-6 | | | Laws of 2000 | | Records" 1986; rev. 12/87 |

I. INTRODUCTION AND BACKGROUND

The purpose of this release is to provide updated and comprehensive instructions and guidance to authorized agencies concerning implementation of 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 145 of the Laws of 2000 (hereinafter, "the 2000 Law") and regulations filed on an emergency basis on August 8, 2000. With this release, the Office of Children and Family Services (OCFS) is canceling 00 OCFS INF-2 (February 11, 2000) and 99 OCFS INF-7 (June 2, 1999). This ADM incorporates the information previously found in 99 OCFS INF-7 where that information has not been superseded by the provisions of the 2000 Law. This release contains both new and revised information.

Chapter 7 of the Laws of 1999 (hereinafter, "the 1999 Law") was enacted and became effective on February 11, 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 homes of such parents. The 1999 Law satisfied the requirements for criminal history record checks set forth in the federal Adoption and Safe Families Act of 1997. The 2000 Law, which took effect July 1, 2000, enacted amendments to some of the provisions established by the 1999 Law. As is set forth in greater detail below, the 2000 Law made significant changes to the legal affect on existing foster parents and applicants to be foster and adoptive parents of the prior conviction of certain crimes which, under the 1999 Law, required a mandatory denial of the application or revocation of an existing certificate or approval. The 2000 Law creates an exception to automatic disqualification or denial. Also, the 2000 Law contains 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 Law also deals with provision of the summary to courts in which proceedings are pending.

Overview of Chapter 145 of the Laws of 2000

Regarding criminal history record checks, the 2000 Law includes the following provisions:

- * Under certain limited situations, it authorizes an authorized agency to approve or certify a foster parent or approve an adoptive parent who had been convicted of what had been, under the 1999 Law, a mandatory disqualifying crime.
- * It replaces the category of a mandatory disqualifying crime with the category of a presumptive disqualifying crime.

- * It enables former foster or adoptive parents who had their certification or approval revoked or renewal denied because of a felony conviction of a mandatory disqualifying crime, in accordance with the 1999 Law, to apply to the authorized agency for renewal or reinstatement.
- * Where a foster parent or adoptive parent has his or her certification or approval renewed or reinstated and a foster child had previously been removed, it provides the authorized agency discretion to return the foster child to that foster or adoptive parent where the return of the foster child is in the best interests of the child as determined by the authorized agency.
- * Consistent with the revised standard noted above regarding mandatory denials or revocations, it changes the standards for the removal of a foster child from the home of a foster or adoptive parent with a felony conviction for what had been a mandatory disqualifying crime under the 1999 Law (but which is now a presumptive disqualifying crime under the 2000 Law). Under the 2000 Law, in cases where a foster/adoptive parent has a conviction for any crime, a safety assessment of the home must be performed by the authorized agency prior to making a removal decision.
- * The 2000 Law continues the requirement that whenever an authorized agency revokes the certification or approval (including emergency certification or emergency approval) of a foster or adoptive parent or denies the renewal of such certification or approval of a foster parent, any foster child(ren) must be removed from such foster or adoptive home.
- * It requires the authorized agency to 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.

Please note that OCFS regulations found at 18 NYCRR Part 421, relating to the approval of adoptive parents, have been amended and filed on an emergency basis effective August 8, 2000, and OCFS regulations found at 18 NYCRR Part 443, relating to certification and approval of foster homes, have been amended and filed on an emergency basis effective September 27, 2000. 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. OCFS has recently 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).

Please also note that, in addition to impacting upon the criminal history record check process described in this release, the 2000 Law also amends State standards relating to other aspects of State compliance with the federal Adoption and Safe Families Act (ASFA).

II. CRIMINAL HISTORY RECORD CHECK PROCEDURES

A. Who must be fingerprinted?

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

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

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

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

- * Approved and certified foster parents (including relative foster parents);

- * Other persons over the age of 18 who currently reside in the home of the certified or approved foster parents. This includes any foster child over the age of 18 residing in the home.

All criminal history record checks for existing foster parents were required to have been completed at the time of the recertification or reapproval during the first year after passage of the 1999 Law. Since more than a year has elapsed, all criminal history record checks on existing foster parents should be complete. In the event that final determinations have not been completed on any such homes, if the foster parent(s) made timely and sufficient application for the renewal of his or her certification or approval, the existing certification or approval does not expire until the application has been finally determined by the applicable agency. A foster parent is considered to have made timely and sufficient application if he or she has submitted the following documents before the existing certification or approval expires: a completed application, the physician statement or report when required, and fingerprint cards for everyone in the household over 18 years of age.

NOTE: Criminal history record checks must be completed on any additional person over the age of 18 who have thereafter come to reside in the foster home when 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 new family member over the age of 18 has come to reside in the home.

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

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

NOTE: Criminal history record checks must be completed before any adoption is finalized.

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

If a child is placed out-of-state for the purposes of adoption or foster care, including relative foster care, the adoptive 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 the federal Adoption and Safe Families Act. The placement must go through the Interstate Compact on the

Placement of Children (ICPC) in the usual manner. (Please also refer to the Section V. "Special Instructions for Adoption Agencies.")

C. What shall we provide to applicants/providers?

OCFS provided you with a supply of fingerprint cards, mailers and a sample required notice (see Attachment 1 Notice Regarding Fingerprinting Requirements. A Spanish version is also provided in this ADM). This notice explains the new fingerprinting requirements and how these cards will be used. This notice must be given to:

- * each applicant seeking to be a foster or adoptive parent;
- * each person certified or approved as a foster parent; and
- * each person approved as an adoptive parent where the adoption has not been completed by the court.

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

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. Use of names and other identifiers and a log with each person's Agency ID number will aid in this process. The Agency ID # is a combination of the Agency ID assigned by OCFS [it is 3 characters, generally, but not always, alpha numeric in format; all numeric for Administration for Children's Services (ACS)], followed by up to 5 characters (numbers or letters) assigned by the social services district or voluntary authorized agency for a maximum of 8 characters. This ID will allow each person in the State who is fingerprinted to have a unique identifier in the system.

It may be useful to appoint a single liaison in your social services district or voluntary authorized agency to have responsibility for fingerprint tracking and the coordination of assigning unique Agency IDs to each person who will be fingerprinted. 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 will be 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 Exchange to the attention of Linda Fylak, or by Internet Email to: "89q078@dfa.state.ny.us", or by mail to her attention at OCFS, 52 Washington Street, Room 320, 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 may not be processed. Therefore, you should review the instructions with applicants/providers 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 or reordered by faxing your order to the Criminal History Review Unit at (518) 486-9470. You may also order by E-mailing Linda Fylak through Exchange or by Internet Email to: "89q078@dfa.state.ny.us". Be sure to include the number of cards and/or mailers needed and clear mailing instructions. Order the quantity you think your agency will need for 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." Criminal histories on file with the Division of Criminal Justice Services (DCJS) cannot be accessed using finger images. When speaking with law enforcement, you must determine whether a fee will be charged for the taking of the prints. In addition, you should determine with law enforcement who will mail the fingerprint cards to OCFS for processing. 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. Multiple cards 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 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 who 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 Family and Children's Services Block Grant. Therefore, it is necessary that you document the actual local costs and the precise category of these costs separately from other foster care and adoption services costs. OCFS has issued a separate LCM (99 OCFS LCM-15, May 14, 1999) to the social services districts regarding claiming for these costs.

A fingerprinting equipment list is shown in Attachment 3.

G. What happens after the fingerprints are taken?

Fingerprint cards must be mailed directly to Criminal History Review Unit, NYS Office of Children & Family Services, PO Box 839, Rensselaer, NY 12144-9953. This address will appear on the mailer. Do not mail the fingerprint cards directly to DCJS. OCFS will be responsible for forwarding all cards to DCJS, where they will be processed.

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 search for a criminal history record. The fee for such searches will be paid by OCFS. A portion of the costs for the fees will be charged back to the social services districts. This apportionment includes the fees associated with both social services district and voluntary authorized agency submissions. The costs will be allocated based on a formula which takes into account the number of each district's children in foster boarding homes (including relative foster boarding homes and approved adoptive homes where the adoption is not yet final), compared to the total number of children in foster boarding homes (including relative foster boarding homes and approved adoptive homes where the adoption is not yet final) statewide.

I. How will my agency receive the results?

All results from DCJS will be returned to OCFS, where they will be reviewed and transferred into a summary that will aid you in decision making related to this review. DCJS prohibits dissemination of the actual criminal history

record (commonly known as a "RAP sheet"). Therefore, you will not receive the actual "RAP sheet"; it will be retained by OCFS. You will receive a summary for each fingerprinted person. It will contain information in one of the following categories: (I) No Criminal Record Found or No Reportable Criminal Record Found; (IIA) History of One or More Convictions / 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). Furthermore, if there is an open charge, OCFS will use its best efforts to research the open charge and advise you of any resolution as soon as possible. You will be advised by means of an updated summary.

It should be noted that after the search is made, DCJS will retain the fingerprints for a prescribed period, and will notify OCFS upon any future arrest for a fingerprintable offense. This practice is often referred to as "search and retain." OCFS will use 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 will be as follows: for all foster parents and relative foster parents and their family members over 18, until the home is closed; for all prospective adoptive parents and their family members over 18, until finalization of the adoption. If foster parents who already have been fingerprinted apply to become adoptive parents, there is no need to have them refingerprinted, as long as the foster home remains continually open through the adoption finalization since the "search and retain" procedure remains in effect for them. This is also the case if there is more than one adoption, and a subsequent application to adopt overlaps the prefinalization period of the earlier adoption.

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 or No Reportable Criminal Record Found

If the results on all fingerprinted household members are "No Criminal Record Found" or "No Reportable Criminal Record Found", proceed with the certification, recertification, approval or reapproval process as usual. For your information, the 1999 Law makes only convictions (or open arrests) reportable for felonies and misdemeanors. Therefore, if a history exists

with DCJS, other than for convictions for felonies or misdemeanors, or open arrests for such crimes, you will see "No Reportable Criminal Record Found". This means a person was arrested for, but not convicted of, a crime. The disposition of the arrest may have been: conviction for a violation (such as disorderly conduct or loitering) or a traffic infraction; dismissal of the charge; or an acquittal.

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

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 such applicant was convicted of a felony which fits under one of the SSL Section 378-a(2)(e)(1) 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 SSL Section 378-a(2)(e)(4) and (5) as added by the 2000 Law.]

Where a person had been certified or approved as a foster parent prior to the effective date of the new legislation (July 1, 2000), and prior to such date an authorized agency had automatically denied his or her application for renewal, or had automatically revoked his or her certification or approval because of a felony conviction for what had been a mandatory disqualifying crime, pursuant to the 1999 Law, such person may apply to the authorized agency for renewal of the prior certificate or approval. Upon application, the authorized agency is to apply the same standards noted above in relation to the issues of health, safety and best interests of the child. [See SSL Section 378-a(2)(e)(1) as amended by the 2000 Law.] If the authorized agency grants the application, and a foster child or children had been removed from the home, the authorized agency may return such child or children to the home of the foster parent, if such agency determines that it is in the best interests of the child or children to do so.

This process also applies to a prospective adoptive parent who had not completed the adoption process and had his or her approval revoked prior to July 1, 2000. The same process and standard for application and renewal applies, along with the standards for return of any foster child or children who had been removed.

Such person may be approved or certified as a foster parent, or approved as an adoptive parent, if such person can demonstrate to the certifying or approving authorized agency that denial would create an unreasonable risk of harm to the child and that the child's safety would not be jeopardized and that such placement is in the best interests of the child.

The exception standards set forth above to a presumptive disqualification also apply to the situation where the criminal conviction takes place after the initial criminal history record check. Notification of this event could occur 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 enclosed herein as Attachment 7 NOTICE OF EXCEPTION TO PRESUMPTIVE DISQUALIFICATION. 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 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, 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 was 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 none of which are foster children, and there is no plan by the agency to place any foster child in the home, nor is there 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 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 State Central Register, in accordance with the standards set forth in SSL Section 413.

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, nor is there 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 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 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 foster parent for several years since birth. The permanency goal is adoption. The permanency plan is for the foster parent to adopt the child. A strong attachment has developed between the foster parent and the child. However, at the time of the first recertification of the foster parent following the enactment of the criminal history record requirements of the 1999 Law, the foster parent's application was held in abeyance because of an open charge for a presumptive disqualifying crime. Based on a response from the applicable court, OCFS was able to determine that the foster parent was convicted 20 years ago for criminal possession of a weapon. The foster parent has had no subsequent involvement with the criminal justice system. The foster parent 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.

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 (prospective or existing foster or adoptive parent) by the category selected on the fingerprint card (field 30 reverse of card). Thus it is very important that this field be completed accurately on all submissions. Failure to do so will result in the card being returned to the submitting agency.

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 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.

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.

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 a determination 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 notifies the authorized agency of 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, such 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: letters #4a, #4b and #4c correspond to this section. These versions accommodate 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 these letters 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 (prospective or existing foster or adoptive parent) by the category selected on the fingerprint card (field 30 reverse of card). Thus it is very important that this field be completed accurately on all submissions. Failure to do so will result in the card being returned to the submitting agency.

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 process available for the person with the criminal history to review and/or challenge his or her criminal history records and any remedial

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processes provided to the applicant, certified or approved foster parent, or approved adoptive parent by OCFS.

This notice, sent by the authorized agency, must also include information about the ability of an individual who was denied or disapproved, had his or 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 SSL Section 372-e.

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 Section 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 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 Section 443.5 relating to the removal of foster child(ren). Such rights include notice at least 10 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 (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. Such notification must also include the right to an administrative hearing to be held after the conference in accordance with SSL Section 400. 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 you 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 to an applicant or current foster or adoptive parent. During the course of decision-making, including the conducting of the safety assessment, neither the summary nor the information contained in the summary may be provided in written or oral form. If the individual can not tell the agency worker about his criminal record, or the record the individual describes does not match the DCJS summary, the individual should be directed to obtain his or her own criminal history from DCJS. The individual may call the DCJS Record Review Unit or write to the address listed below:

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

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 such 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 they 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. All decisions made and actions taken with regard to these results, including safety assessments, must be documented in the applicant / provider file. Appropriate steps must be taken to maintain the confidentiality of the criminal history information and to prevent the unauthorized disclosure of such information.

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. The guidelines "Evaluating Applicants with Criminal Conviction Records" issued in 1986 (revised 12/87) must be applied in a manner consistent with the standards and criteria established by the 1999 and 2000 Laws and this ADM. Note: You may openly discuss with the applicant crimes set forth in the criminal history attestation.

IV. SYSTEM INSTRUCTIONS

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

Procedure

- * 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 received must be recorded in the Person Detail window to reflect the completion of the process. Where results identify that criminal records have been found, that must be recorded in the applicant / provider file as described elsewhere in this ADM.

In addition, please note that CONNECTIONS has added two new closure reasons to the Closure Reason codes table:

- * 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 law, a criminal history record check must be completed when an authorized agency is evaluating a person who has applied to be an approved adoptive parent and such 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 information, references, State Central Register clearance and a home study.

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

An agency which only performs a home study and/or post placement supervision on behalf of a person seeking to adopt a child is not authorized to perform a criminal history record check pursuant to either Section 378-a of the Social Services Law or 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 the State Division of Criminal Justice Services

(DCJS). Fingerprint cards in such cases are not processed through OCFS. Other requests for a home study, outside of a home study which is part of the adoptive parent approval process, are also not subject to the procedures set forth in Section 378-a of the Social Services Law. The agency would have to evaluate if some other authority for a criminal history record check is required. In any case, requests would not be directed through 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 usual and the rules of the other state with regard to criminal history record checks also apply.

Please note that pursuant to Section 378-a (2)(k) of the Social Services Law, OCFS must inform the DCJS when a person is no longer certified or approved as a foster parent or is no longer a prospective adoptive parent so DJCS may terminate its retain processing with regard to such person and any person over the age of eighteen who is residing in the home of the foster parent or prospective adoptive parent. At least once a year, 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 ADOPTION AND SAFE FAMILIES ACT IMPLICATIONS

Pursuant to the 2000 Law, effective July 1, 2000, New York State is opting out of federal Title IV-E criminal history record review mandates set forth in Section 471(a)(20)(A) of the Social Security Act. As outlined above, the State will continue to conduct criminal history background checks for certification and approval of foster care and pre-adoptive homes but it is now able to establish its own safety standards independent of the federal standards. 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 background 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.

William F. Baccaglini
Director, Strategic Planning and
Policy Development

Attachment A

- Attachment 1 Notice Regarding Fingerprinting Requirements
Notice Regarding Fingerprinting Requirements - Spanish Version
- 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
- Attachment 7 Notice of Exception to Presumptive Disqualification
- Attachment 8 Criminal History Record Checks & Safety Assessments
- Attachment 9 Notification of Adoption Finalization
(Notice to Expunge Associated Fingerprint Cards)

NOTE: This document, in its entirety (including all Attachments) can be found as follows:

- DFA Public Folders
 - All
 - Statewide
 - OCFS
 - ASFA Policy/Practice