



Office of Children and Family Services

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Administrative Directive

Transmittal:	16-OCFS-ADM-20
To:	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies
Issuing Division/Office:	Strategic Planning and Policy Development
Date:	December 20, 2016
Subject:	Fingerprinting and Criminal History Record Checks for Foster and Adoptive Parents
Suggested Distribution:	Child Protective Services Supervisors Child Welfare Supervisors Foster Care Supervisors Adoption Supervisors Staff Development Coordinators CONNECTIONS Implementation Coordinators
Contact Person(s):	Please see section VI for contact information.
Attachments:	<ul style="list-style-type: none"> • <i>What is New?</i> • <i>New York State Office of Children and Family Services Notice Regarding Fingerprinting Requirements (OCFS-2660)</i> • <i>The Request for NYS Fingerprinting Services – Information Form (OCFS-4930ASFA)</i> • <i>LDSS-NOTICE OF RESULTS OF FINGERPRINTING CRIMINAL RECORD FOUND, DENIAL-REVOCAION LETTER (OCFS-2659)</i> • <i>LDSS-NOTICE OF RESULTS OF FINGERPRINTING FBI CRIMINAL RECORD FOUND, DENIAL-REVOCAION LETTER (OCFS-2662)</i> • <i>VA-NOTICE OF RESULTS OF FINGERPRINTING CRIMINAL RECORD FOUND, DENIAL-REVOCAION LETTER (OCFS-2661)</i> • <i>New York State Office Of Children and Family Services Criminal History Record ASFA Review Standards</i> • <i>Criminal History Record Checks & Safety Assessments</i>

Filing References

Previous ADMs/INFs	Releases Cancelled	NYS Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
08-OCFS-INF-04	07-OCFS-ADM-01 08-OCFS-INF-07 08-OCFS-ADM-06 09-OCFS-ADM-18	18 NYCRR §§ 421.15, 421.27, 443.2, 443.5, 443.7 and 443.8	SSL § 378-a (2), Part M of Chapter 54 of the Laws of 2016		

I. Purpose

The purpose of this Administrative Directive (ADM) is to provide updated and comprehensive instructions and guidance to local departments of social services (LDSSs) and voluntary authorized agencies (VAs) regarding the completion of state and national criminal history record checks in accordance with section 378-a (2) of the Social Services Law (SSL). This ADM also includes guidance on Part M of Chapter 54 of the Laws of 2016 (Chapter 54), which prohibits release of the results of criminal history record checks conducted by the Federal Bureau of Investigation (FBI) to VAs, consistent with federal standards that prohibit such dissemination directly to non-government entities. Please refer to the required action section and the attachment titled “What is New?” for specific information on the Chapter 54 provisions.

In order to have current information regarding state and criminal record checks contained in one easy to follow ADM, the New York State Office of Children and Family Services (OCFS) has canceled the following policies: *State and National Criminal History Record Checks for Foster/Adoptive Parents* (07-OCFS ADM-01), *Criminal History Record Checks and Mandatory Disqualifying Crimes (Foster and Adoptive Parents)* (08-OCFS-ADM-06), *Preparation for the Elimination of the “Opt-Out” Provision for Conducting Criminal History Record Checks* (08-OCFS-INF-07), and *Live Scan Technology for Fingerprinting Foster and Adoptive Applicants* (09-OCFS-ADM-18). All information from these policies have been updated and incorporated into this ADM.

II. BackgroundCriminal History Review Statutory Changes Timeline:

1999: Chapter 7 of the Laws of 1999 amended section 378-a of the SSL to impose the requirement of criminal history record checks on foster parents, prospective foster and adoptive parents, approved adoptive parents, and other persons, 18 years of age or older, who reside in the home of such applicants or parents. Chapter 7 included categories of crimes where denial of an application for certification or approval as a foster or adoptive parent was mandated. 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 criminal history information maintained by the New York State Division of Criminal Justice Services (DCJS).

- 2000: Chapter 145 of the Laws of 2000 amended section 378-a (2) of the SSL 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 and to “opt out” of the federal mandatory disqualification standards. The 2000 amendment of section 378-a of the SSL also 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.
- 2006: Chapter 668 of the Laws of 2006 amended section 378-a (2) of the SSL to require a national criminal history record check performed through the FBI for all persons applying for certification or approval as a foster or adoptive parent and other persons 18 years of age or older, who reside in the home of the applicant. The FBI criminal history record check enacted by Chapter 668 was in addition to the criminal history record check of the database maintained by DCJS, thus expanding the scope of a criminal history record search to all states and federal jurisdictions.
- 2006: The *Adam Walsh Child Protection Act of 2006 (P. L. 109-248)* was signed into law on July 27, 2006. It required a national criminal history record check for any person who applies for certification or approval as a foster or adoptive parent regardless of whether the LDSS seeks federal Title IV-E funding for placement in the foster or adoptive home. Compliance with P.L. 109-248 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. P.L. 109-248 eliminated, effective October 1, 2008, the ability of states to opt out of the federal criminal history record check requirements. The elimination of the “opt out” provision meant that certain categories of felony convictions mandate the disqualification of prospective foster and adoptive parents from being certified or approved. This required New York State to revert back to the standards that were originally in place in 1999 with the enactment of ASFA.
- 2008: Chapter 623 of the Laws of 2008 implemented the requirements of P.L. 109-248, by amending section 378-a (2) of the SSL to eliminate New York’s “opting out” of the federal criminal history record check requirements and replace the category of presumptive disqualifying crimes with the category of mandatory disqualifying crimes for applicants for certification or approval as foster or adoptive parents. Effective October 1, 2008, certain crimes committed by applicants to be foster or adoptive parents mandatorily disqualified them from becoming foster or adoptive parents. Furthermore, if already certified or approved foster or adoptive parents are convicted of these crimes after October 1, 2008, their certification or approval was revoked. Chapter 623 did not affect persons who were fully certified or approved as foster or adoptive parents prior to October 1, 2008, and had been convicted prior to that date. Chapter 623 also did not change in any way the requirements or standards regarding crimes committed by household members 18 years of age and older.

2016: As a result of an audit finding issued by the FBI regarding the release of the FBI criminal history information of prospective foster parents, prospective adoptive parents and other persons over the age of 18 residing in the home of the applicant to VAs, OCFS proposed amendments to section 378-a (2) of the SSL that were necessary for New York State to continue to receive criminal history information from the FBI and to maintain Title IV-E compliance. Chapter 54, which includes these provisions, was signed into law on April 4, 2016, and takes effect on December 30, 2016.

To implement the provisions of Chapter 54, OCFS is in the process of promulgating necessary amendments to 18 NYCRR Parts 421 and 443. The regulations impact the role of OCFS in the review and processing of FBI criminal history record checks of prospective foster and adoptive parents who apply to VAs for certification or approval and other adults who reside in the home of the applicant.

Chapter 54 and corresponding OCFS regulatory changes do not affect the review or processing of DCJS or FBI criminal history record checks for applications for certification or approval as foster or adoptive parents made directly to LDSSs,¹ nor do they affect the review and processing of DCJS criminal history record checks of applications for certification or approval as foster or adoptive parents made directly to VAs. Chapter 54 and corresponding OCFS regulatory changes will only affect FBI criminal history record checks for applications for certification or approval as foster or adoptive parents that are made to VAs.

III. Program Implications

New York State law (section 378-a of the SSL) requires fingerprinting for any person applying to be a certified or approved foster parent (including a relative foster parent) or an adoptive parent, and any person 18 years of age or older who resides in the home of the applicant.. The fingerprints are then used to conduct a national criminal history record check through the FBI and a New York State criminal history record check through DCJS.

1. Do sworn statements regarding criminal convictions still need to be taken?²

Yes. The regulatory requirement that the applicant execute a sworn statement whether the applicant or any other household member over the age of 18 was ever convicted of a crime remains in effect. 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 ADM. LDSSs and VAs may also openly discuss with the applicant any convictions of crimes set forth in the sworn criminal history attestation. Certification or approval may be denied if the information provided on the sworn statement is inconsistent with the information referenced in the criminal history record summary provided by OCFS, and the information cannot be satisfactorily reconciled.

¹ In the event that a disqualification is based on FBI criminal history, FBI records disclosure standards only allow the LDSS to notify the person whose record was the basis for the denial of the results of the FBI criminal history record check. The LDSS is not allowed to share that information with the other applicant.

² 18 NYCRR 421.15 (c) (9) and 443.2 (b) (13) (iv).

2. Who must be fingerprinted?

The following people must be fingerprinted:

- A. At the time of application for certification or approval:
 - Prospective foster parents
 - Prospective adoptive parents
 - Persons who are 18 years of age or older and who reside in the home of the prospective foster or adoptive parents, including, but not limited to, foster youth over the age of 18 and persons over the age of 18 residing in family homes under the auspices of the Office for People with Developmental Disabilities, the Office of Mental Health or the Office of Alcoholism and Substance Abuse Services
 - A spouse of a foster parent who comes into the home and applies for certification or approval.

- B. At the time of renewal of certification or approval:
 - Any additional person who resides in the home who turns age 18 or who is 18 years of age or older and has come to reside in the foster home after initial or subsequent certification or approval (this includes any foster child residing in the home 18 years of age or older).³

Foster homes approved or certified on an emergency basis may continue to provide foster care as an emergency approved or emergency certified foster home beyond 90 days of such emergency approval or certification pending completion of the criminal history record check process.⁴

3. 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 foster or adoptive parents must meet the standards for certification, licensure, or approval set by the state in which they reside. This includes completing a criminal history record check. The placement must go through the Interstate Compact on the Placement of Children (ICPC) process.

When the OCFS ICPC office receives an approval from the receiving state to place a New York State foster child into a foster home in that state, it will examine the ICPC package for a copy of the foster home license, certificate or approval for such home. If that document is in the package, the OCFS ICPC office will forward it on to the LDSS placing the foster child. If it is not included, the OCFS ICPC office will request such documentation from the ICPC office in the receiving state. When OCFS receives the applicable license, certificate or approval, OCFS ICPC will forward it to the applicable

³ 18 NYCRR 443.10(a)(5).

⁴ 18 NYCRR 443.7.

district. Unless and until such documentation is received, an LDSS may not claim Title IV-E for the placement. Once such documentation is received, the ability to claim Title IV-E may be retroactive to the date on which full licensure, certification, or approval was in effect. The LDSS must collect and maintain documentation in the form of a copy of the license, certificate or approval of any foster home in which a foster child is placed and for which Title IV-E is being claimed. With respect to a foster home located in another state, the operative documentation is a copy of the license, certificate or approval issued by the applicable licensing authority in the state in which the foster home is located. Such license, certificate, or approval must be in effect during the period in which Title IV-E is claimed.

Once the applicable license, certificate, or approval has been secured from the other state, it will be the responsibility of the LDSS with legal custody of the foster child placed in the foster home in the other state to secure necessary updates of the license, certificate, or approval of the foster home from the applicable licensing entity in the other state. This means the LDSS must ascertain any expiration date of the license, certificate, or approval and seek out documentation that demonstrates that the foster home in the other state was relicensed, recertified or reapproved, and the associated effective date of the event. Documentation of such renewals is required to continue to claim Title IV-E for an otherwise Title IV-E eligible foster child. A copy of each license, certificate, or approval of the foster home must be maintained in the Title IV-E eligibility file for any period in which Title IV-E was claimed.⁵

Please visit http://ocfs.ny.gov/adopt/interstate_compact_Placement_of_Children.asp for more information on the ICPC process.

4. What must an LDSS or VA provide to prospective foster or prospective adoptive parents regarding fingerprinting?

LDSSs and VAs must provide the person(s) applying to be certified or approved as a foster or adoptive parent and all persons 18 years of age or older residing in the home of the applicant with:

- The *Notice Regarding Fingerprinting Requirements (OCFS-2660)*; and
- The *Request for NYS Fingerprinting Services – Information Form (OCFS-4930ASFA)*.
 - LDSSs and VAs must provide instructions on how to complete OCFS-4930ASFA.
 - OCFS-4930ASFA is prefilled with the OCFS originating agency code used by DCJS and the FBI.
 - LDSSs and VAs will need to provide certain information to the applicants to further complete the form such as:
 - Agency ID number, Additional Agency ID information used, Agency Name and Address, and the CONNECTIONS Home Resource ID # and Person ID #, if applying for foster

⁵ 08-OCFS-INF-04.

care. LDSSs and VAs may wish to pre-fill the agency ID number and name and address.

The number of forms provided must match the number of persons in the household 18 years of age or older. OCFS-4930ASFA and OCFS-2660 are attached to this ADM and can also be found on the OCFS website at <http://ocfs.ny.gov/main/forms> in English and Spanish.

5. When should LDSSs and VAs provide prospective foster or adoptive parents with paperwork for fingerprinting?

When conducting the 24-hour study for relative or non-relative foster parents for approval or certification as an emergency relative or an emergency non-relative foster home OCFS-4930ASFA and OCFS-2660 must be provided 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, LDSSs and VAs should exercise judgment in disseminating OCFS-4930ASFA and OCFS-2660. 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.

LDSSs and VAs are also strongly encouraged to disseminate OCFS-4930ASFA and OCFS-2660 at least 60 days before the expiration of the existing foster home certification or approval to families with upcoming recertifications or reapprovals where a person who resides in the home turns age 18 or someone 18 years of age or older has come to reside in the home to allow for sufficient time to process the criminal background check for that person.

6. Do prospective foster or adoptive parents who apply for certification or approval through a VA need to sign a consent form to release the FBI results to the VA?

No. Per Chapter 54, prospective foster or adoptive parents who apply for certification or approval to VAs **no longer** need to be given or be asked to sign consents in order to release the FBI results to the VA. VAs will **no longer** receive from OCFS crime specific information from the FBI criminal history record check.

7. What is the process for fingerprinting?

LDSSs and VAs must provide the forms previously discussed above in question #4. These forms include the following additional instructions to all foster and adoptive parent applicants and persons 18 years of age and older who reside in the home of the applicant.

1. Each person to be fingerprinted must be instructed to schedule an appointment with MorphoTrust either by using its website www.Identogo.com

or by calling 1-844-321-2124. He or she will be able to select the location closest to their home or place of employment. Extended daily hours and weekend services are offered at most locations throughout the state.

2. Each person to be fingerprinted must bring to the scheduled appointment the *Request for NYS Fingerprinting Services – Information Form* (OCFS-4930ASFA), and an acceptable form of ID, (see page 2 of OCFS-4930ASFA for acceptable forms of ID) in order to have his/her fingerprints taken at no cost to such person. Failure to provide OCFS-4930ASFA may result in a charge of fees to the person to be fingerprinted, or denial to take prints at the scheduled appointment time.
3. Each person appearing without the form and acceptable IDs will be directed back to the LDSS or VA for further instructions.
4. Hard-to-print applicants and other persons 18 years of age or older residing in the home of the applicant who have a disabling condition that prevents them from leaving the home, may need to be printed in the traditional format of ink-and-roll prints. Those fingerprints, along with the *Request for NYS Fingerprinting Services* form (OCFS-4930ASFA), should be forwarded to the New York State Office of Children and Family Services Criminal History Review Unit at the following address:

New York State Office of Children and Family Services
Capital View Office Park
52 Washington Street
Criminal History Review Unit, Room 209 South
Rensselaer, NY 12144

It is recommended that the fingerprints are sent with tracking in case there are issues with mail delivery

8. *Are prospective foster or adoptive parents and other persons 18 years of age or older who reside in the home of the applicant charged for fingerprinting?*

No. Persons whose fingerprints are taken **are not** to be charged a fee for the DCJS or the FBI criminal history record check. The fee for such searches will be paid initially by OCFS. Fifty percent of the non-federal share for the searches will be charged back to the social services districts.

9. *What will an LDSS receive from OCFS regarding the results of the DCJS and the FBI checks regarding applications for certification or approval of foster or adoptive parents submitted directly to the LDSS? How must the LDSS use these results in the certification and approval process?*

All results from the DCJS and the FBI will be returned to OCFS where they will be reviewed and compiled by OCFS into a criminal history record summary. OCFS will send

the criminal history record summary to the applicable LDSS to aid the LDSS in decision making related to criminal history and the application for certification or approval. The DCJS and the FBI prohibit dissemination of the actual criminal history record (commonly known as a "Rap sheet"). Therefore, LDSSs will not receive the actual "Rap sheet," which will be retained by OCFS.

Generally, results from DCJS and the FBI will be returned by OCFS in one criminal history record summary letter. However, there may be instances where a fingerprint Live Scan image is accepted by DCJS but is rejected for poor quality by the FBI. If this occurs, the LDSS will be notified of resubmission procedures. Depending on the results received from DCJS, the LDSS may receive separate criminal history record summary letters from OCFS pending receipt of the results from the FBI.

LDSSs will receive a criminal history record summary for each fingerprinted person. The criminal history record summary will contain information from one or more of the following four categories:

- no criminal record found
- mandatory disqualifying crime
- discretionary disqualifying crime
- hold in abeyance

A. No Criminal Record Found

If the results on all fingerprinted persons are "No Criminal Record Found," the LDSS may proceed with the certification, recertification, approval, or reapproval process as usual. Section 378-a (2) of the SSL 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, such as for a violation or infraction, or open arrests for such non-reportable matters, you will also see "No Criminal Record Found."

B. Mandatory Disqualifying Crime

The mandatory disqualifier requirement only applies to applicants for certification or approval or existing foster or adoptive parents, and does not apply to other persons over the age of 18 who reside with the applicant or existing foster or adoptive parent. For other persons over the age of 18 who reside in the home of the applicant, all categories of convictions or charges are treated as discretionary crimes requiring a safety assessment.

The criminal history record summary issued by OCFS will inform the LDSS if the applicant or existing foster or adoptive parent has been convicted of a mandatory disqualifying crime, which includes felonies in the following categories:

- child abuse or neglect
- spousal abuse
- crime against a child, including child pornography

- crime involving violence, including rape, sexual assault or homicide, other than a crime involving physical assault or battery
- physical assault, battery, or drug-related offense conviction within five (5) years of the application

The official list of mandatory disqualifying crimes can be found in the “*New York State Office of Children and Family Services Criminal History Record ASFA Review Standards*” which is attached to this ADM. This list is updated annually by OCFS.

Prospective and current foster and adoptive parents (including those certified or approved on an emergency basis) who have been convicted of a mandatory disqualifying crime, whether reported by DCJS or the FBI, are **ineligible** to be certified, approved, or recertified as foster or adoptive parents. In such cases, the application for certification or approval **must be denied** or the existing certification or approval **revoked**.

In the event that the mandatory denial is based only on the result of the criminal history maintained by DCJS, the LDSS must provide the applicant(s) being denied with:

- LDSS-NOTICE OF RESULTS OF FINGERPRINTING
CRIMINAL RECORD FOUND, DENIAL - REVOCATION LETTER (OCFS-2659), and
- the criminal history record summary received from OCFS.

In the event that there are multiple applicants, and the application is denied due to the FBI criminal history of only one of the applicants, the LDSS must provide separate notices to the applicants. Separate notices must also be provided when both applicants are being denied due to their individual FBI criminal history. FBI records disclosure standards only allow the LDSS to notify the person whose record was the basis for the denial of the results of the FBI criminal history record check. The LDSS is not allowed to share that information with the other applicant.

The LDSS must provide the applicant being denied on the basis of a mandatory disqualifying crime and whose FBI criminal record **is** the basis for the denial with:

- LDSS-NOTICE OF RESULTS OF FINGERPRINTING
FBI CRIMINAL RECORD FOUND, DENIAL-REVOCATION LETTER (OCFS-2662), and
- the criminal history record summary received from OCFS.

The LDSS must provide the applicant being denied on the basis of a mandatory disqualifying crime and whose FBI criminal record **is not** the basis for the denial with:

- LDSS-NOTICE OF RESULTS OF FINGERPRINTING
CRIMINAL RECORD FOUND, DENIAL-REVOCATION LETTER (OCFS-2659).

Where a mandatory disqualifying conviction exists, LDSSs must conduct a safety assessment in accordance with section 378-a(2)(h) of the SSL.⁶ The completion of a timely and thorough safety assessment is particularly important in the case of an emergency certified or emergency approved home with a foster child already in the home. Please see the document, *Criminal History Record Checks and Safety Assessments*, which is attached to this ADM for further information on conducting safety assessments.

The safety assessment includes, but is not limited to the following:

- Whether the subject of the mandatory disqualifying conviction resides in the home
- The extent to which such person may have contact with the foster child or other children residing in the home
- The status, date and nature of the conviction (taken from the criminal history record summary provided by OCFS)

When OCFS provides notice of a mandatory disqualifying conviction to an LDSS, the LDSS must utilize the results of the safety assessment to address the safety of any foster child placed in the home and initiate a plan to move any foster child currently placed in the home in accordance with the removal and conference standards set forth in 18 NYCRR 443.5. These standards include:

- Providing 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.
 - The notification must advise the foster parents that they may 1) request a conference with the LDSS to have the removal reviewed and 2) be advised of the reason for the removal and be allowed the opportunity to submit reasons why the foster child should not be removed. However, because of the conviction for a mandatory disqualifying crime, application must be denied or the certification or approval must be revoked and any foster child must be removed.
 - Absent imminent danger, court order, or consent of the foster or adoptive parent, the foster child is not to be removed 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. Section 400 of the SSL pertains only to foster children placed by an LDSS or a VA under contract with an LDSS.

C. Discretionary Disqualifying Crime

⁶ 18 NYCRR §§ 421.27 (f) and 443.8 (g).

The criminal history record summary issued by OCFS will inform the LDSS if the applicant, existing foster or adoptive parent, or any persons 18 years of age or older residing in the home of the applicant has been convicted of or charged with a discretionary disqualifying crime.

Where a discretionary disqualifying conviction or open charge exists, LDSSs must conduct a safety assessment in accordance with section 378-a (2)(h) of the SSL. Please see the document, *Criminal History Record Checks and Safety Assessments*, which is attached to this ADM for further information on conducting safety assessments.

The safety assessment includes, but is not limited to the following:

- Whether the subject of the discretionary disqualifying conviction resides in the home
- The extent to which such person may have contact with the foster child or other children residing in the home
- The status, date and nature of the conviction (taken from the criminal history summary provided by OCFS)

Depending on the results of the safety assessment, the LDSS may decide whether or not to proceed with certification or approval, or to revoke the certification or approval.

If the LDSS decides not to proceed with certification or approval and denies the application based on the discretionary crime, or revokes a certification or approval, the LDSSs must provide the applicant with a specific denial letter as outlined below.

In the event that the discretionary denial is based only on the result of the criminal history maintained by DCJS, the LDSS must provide the applicant(s) being denied with:

- *LDSS-NOTICE OF RESULTS OF FINGERPRINTING CRIMINAL RECORD FOUND, DENIAL- REVOCATION LETTER* (OCFS-2659), and
- the criminal history record summary received from OCFS.

In the event that there are multiple applicants, and the application is denied due to the FBI criminal history of only one of the applicants, the LDSS must provide separate notices to the applicants. Separate notices must also be provided when both applicants are being denied due to their individual FBI criminal history. FBI records disclosure standards only allow the LDSS to notify the person whose record was the basis for the denial of the results of the FBI criminal history record check. The LDSS is not allowed to share that information with the other applicant.

The LDSS must provide the applicant being denied on the basis of a discretionary disqualifying crime, and whose FBI criminal record is the basis for the denial with:

- *LDSS-NOTICE OF RESULTS OF FINGERPRINTING*

FBI CRIMINAL RECORD FOUND, DENIAL -REVOCATION LETTER (OCFS-2662), and

- the criminal history record summary received from OCFS.

The LDSS must provide the applicant being denied on the basis of a discretionary disqualifying crime and whose FBI criminal record **is not** the basis for the denial with:

- *LDSS-NOTICE OF RESULTS OF FINGERPRINTING CRIMINAL RECORD FOUND, DENIAL-REVOCATION LETTER (OCFS-2659).*

If as a result of the safety assessment the LDSS decides to remove any foster child in the home, the LDSS 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). This includes:

- Providing 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
- The notification must advise the foster parents that they may 1) request a conference with the LDSS to have the removal reviewed and 2) be advised of the reason for the removal and be allowed the opportunity to submit reasons why the foster child should not be removed.
- Absent imminent danger, court order, or consent of the foster or adoptive parent, the foster child is not to be removed 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. Section 400 of the SSL pertains only to foster children placed by an LDSS or a VA under contract with a VA.

D. Hold in Abeyance

The hold in abeyance requirements only apply to applicants for certification or approval or existing foster or adoptive parents, and do not apply to other persons over the age of 18 who reside with the applicant or existing foster or adoptive parent.

The criminal history record summary issued by OCFS will inform the LDSS if the certification or approval must be held in abeyance due to the applicant, or existing foster or adoptive parent having:

- a charge for a crime that could merit a mandatory disqualification which has not yet fully been resolved; or
- a felony conviction that may be for a crime that would merit mandatory disqualification, but where insufficient information exists to determine so with

out additional information (and the agency is awaiting subsequent notification from the OCFS regarding the status of such conviction).

If the criminal history results summary directs the LDSS that certification or approval be “held in abeyance,” then no full certification or approval may occur until the conviction history or arrest is resolved.

If there is a foster child placed in the home, the LDSS must use the safety assessment to determine whether or not he/she can remain. Please see the document, *Criminal History Record Checks and Safety Assessments*, which is attached to this ADM for further information on conducting safety assessments.

The safety assessment includes, but is not limited to the following:

- Whether the subject of the potential mandatory disqualifying conviction resides in the home
- The extent to which such person may have contact with the foster child or other children residing in the home
- The status, date and nature of the conviction (taken from the criminal history summary provided by OCFS).

If the final result of the criminal history record check is a discretionary disqualifying conviction, the procedures set forth on pages 12-13 of this release must be followed.

If the final result of the criminal history record check is a mandatory disqualifying conviction, the procedures set forth on pages 9-12 of this release must be followed.

If the plan is made to deny the application for approval or certification or to revoke a certification or approval and to move any foster child(ren) currently placed in the home, the LDSS 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). This includes:

- Providing 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.
- The notification must advise the foster parents that they may 1) request a conference with the LDSS to have the removal reviewed and 2) be advised of the reason for the removal and be allowed the opportunity to submit reasons why the foster child should not be removed.
- Absent imminent danger, court order, or consent of the foster or adoptive parent, the foster child is not to be removed 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. Section

400 of the SSL pertains only to foster children placed by an LDSS or a VA under contract with a LDSS.

If there is an open charge reported by DCJS involving an arrest and/or crime within New York State, OCFS will secure appropriate documentation of the disposition of the case.

If there is an open charge 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 his/her counsel have a legal right to the person's criminal history information (a right not generally afforded to OCFS or the LDSS) and such person has a vested interest in requesting and receiving this information in order to complete the certification or approval process. Thus, the LDSS official evaluating the application for certification or approval must advise the applicant or existing foster or adoptive parent that:

1. 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. Failure to seek such information within a period of time required by the LDSS may be a basis for denial of full approval or certification.
 - 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.
2. This documentation must be forwarded to the LDSS which, in turn, must forward the information to OCFS for review.
 - The LDSS must include either an attached copy of the criminal history record summary sent by OCFS or include the NYSID # that appears on the copy of the OCFS correspondence and submit the documentation. Upon confirmation of the authenticity and acceptability of the documentation, OCFS will send an updated criminal history record summary to the LDSS.

10. What will a VA receive from OCFS regarding the results of the DCJS criminal history record checks? How must a VA use these results in the certification and approval process?

All procedures described in question #9 for LDSSs are the same for VAs with regard to crimes reported to OCFS by DCJS.

However, if the VA decides not to proceed with certification or approval and deny the application or revokes a certification or approval based on a DCJS criminal record result the form used to advise the applicant(s) of the decision is different. The VA must provide the applicant(s) with:

- *VA-NOTICE OF RESULTS OF FINGERPRINTING CRIMINAL RECORD FOUND, DENIAL -REVOCATION LETTER* (OCFS-2661), and
- the criminal history record summary received from OCFS.

11. What will a VA receive from OCFS regarding the results of the FBI criminal history record checks? How must a VA use the results in the certification and approval process?

The process for VAs and the FBI criminal history record checks results has changed as a result of Chapter 54. The changes are listed below, as well as in the attachment titled “*What Is New?*” The VA will not receive any criminal history record information received by OCFS from the FBI.

OCFS will review the criminal history information received from the FBI to determine whether the prospective foster or adoptive parent, or persons 18 years of age or older have been convicted of a mandatory disqualifying crime; convicted or charged with a discretionary crime that may or may not require denial of the application; convicted or charged with a crime requiring that the application be held in abeyance; or no criminal history. OCFS will make a determination based on the information received and will provide a written notification to the VA with a result in one of three categories:

- OCFS has no objection, solely based on the FBI criminal history record check, for the VA to proceed with a determination on the application based on the standards for certification or approval of a foster or adoptive parent as set forth in OCFS regulations;
- the application must be denied; or
- the application must be held in abeyance pending subsequent notification from OCFS.

A. No objection from OCFS for the VA to proceed with a determination on the application based solely on the FBI criminal history record check

If the VA is notified by OCFS that “OCFS has no objection, solely based on the FBI criminal history record check, for the agency to proceed with a determination on the application based on the standards for certification or approval of a foster or adoptive parent as set forth in OCFS regulations,” the VA may proceed with the certification, recertification, approval, or reapproval process taking into consideration all other applicable certification or approval standards.⁷

B. The application must be denied

If a VA is notified by OCFS that an application of a prospective foster or adoptive parent “must be denied,” the VA must immediately cease the certification or approval of the foster/adoptive home and deny the application.

⁷ 18 NYCRR Part 421 [Adoptive Parents]; 18 NYCRR Part 443 {Foster Parents}.

In addition, OCFS will provide **only** the person whose FBI criminal history is the basis for the denial with a notification letter that contains:

- a copy of the criminal history record summary developed by OCFS from the criminal history record check completed by the FBI;
- a written statement setting forth the reasons for such denial; and
- a description of the FBI process that is available for the person to challenge his or her criminal record.

The VA must inform the applicant of the denial and of such person's appeal rights, which may include the felony spousal abuse exception set forth in section 378-a(2)(j) of the SSL if the felony assault was the basis for the denial. The VA must also provide to the applicant(s) whose application must be denied with:

- *VA-NOTICE OF RESULTS OF FINGERPRINTING CRIMINAL RECORD FOUND, DENIAL-REVOCAION LETTER* (OCFS-2661).

The VA must conduct a safety assessment in accordance with section 378-a (2) (h) of the SSL. 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 child already in the home. Please see the document, *Criminal History Record Checks and Safety Assessments*, which is attached to this ADM for further information on conducting safety assessments.

The safety assessment includes, but is not limited to the following:

- Whether the subject of the mandatory disqualifying conviction resides in the home
- The extent to which such person may have contact with the foster child or other children residing in the home.
- The status, date and nature of the conviction (taken from the criminal history summary provided by OCFS)

When OCFS advises the VA that an application must be denied, the VA must utilize the results of the safety assessment to address the safety of any foster child placed in the home and initiate a plan to move any foster child currently placed in the home in accordance with the removal and conference standards set forth in 18 NYCRR 443.5. This includes:

- Providing 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.
- The notification must advise the foster parents that they may request a conference with the LDSS in order to have the removal reviewed, be advised

of the reason for the removal, and be allowed the opportunity to submit reasons why the foster child should not be removed. However, because of the OCFS direction to deny the application, the application must be denied and any foster child removed.

- Absent imminent danger, court order, or consent of the foster or adoptive parent, the foster child is not to be removed 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. Section 400 of the SSL pertains only to foster children placed by an LDSS or a VA under contract with a LDSS.

C. Hold in abeyance

If OCFS directs the VA that a certification or approval must be “held in abeyance,” then no full certification or full approval may occur until further notification from OCFS.

OCFS will advise the person whose FBI criminal history check resulted in the hold in abeyance that he/she is obligated to secure acceptable documentation of the disposition of the case and forward the appropriate documentation to OCFS for review. Acceptable documentation includes a certificate of conviction or other documentation of the final disposition on letterhead of an appropriate government official, such as the court, district attorney, or probation office. Upon review of the documentation, OCFS will send a written notification to the VA either directing the VA to deny the application or informing the VA that OCFS, solely on the basis of the FBI criminal history record check, has no objection with the VA proceeding with a determination on the application based on applicable OCFS regulations. Failure by the person whose FBI history resulted in the hold in abeyance to provide the requested information within 90 days may be a basis for denial of the application for full approval or certification.

If there is a foster child placed in the home, the VA must use the safety assessment to determine whether or not he/she can remain. Please see the document, *Criminal History Record Checks and Safety Assessments*, which is attached to this ADM for further information on conducting safety assessments.

The safety assessment includes, but is not limited to the following:

- Whether the subject of the potential mandatory disqualifying conviction resides in the home
- The extent to which such person may have contact with the foster child or other children residing in the home
- The status, date and nature of the conviction (taken from the criminal history summary provided by OCFS)

When OCFS advises the VA that an application must be denied, the VA must utilize the results of the safety assessment to address the safety of any foster child placed in the home and to initiate a plan to move any foster child(ren) currently placed in the home in accordance with the notice of removal and conference standards set forth in 18 NYCRR 443.5. This includes:

- Providing 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.
- The notification must advise the foster parents that they may request a conference with the VA in order to have the removal reviewed, be advised of the reason for the removal, and be allowed the opportunity to submit reasons why the foster child should not be removed. However, because of the OCFS direction to deny the application, the application must be denied and any foster child removed.
- Absent imminent danger, court order, or consent of the foster or adoptive parent, the foster child is not to be removed 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. Section 400 of the SSL pertains only to foster children placed by an LDSS or a VA under contract with a LDSS.

12. How long are fingerprints retained by the DCJS and the FBI?

DCJS:

After the criminal history record search is conducted, DCJS will retain the fingerprints 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.” DCJS will retain the fingerprints for all foster parents and relative foster parents and their family members over 18 until the home is closed, and 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.

FBI:

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.

13. Do prospective or current foster or adoptive parents whose application for certification or approval is denied, revoked or not renewed as a result of the DCJS and FBI criminal history record check, have the right to further review?

In the situations listed below a prospective or current foster or adoptive parent whose application for certification or approval has been denied, revoked or not renewed as a result of the criminal history record check process has the right to further review.

- If an application for certification or approval as a foster parent is denied, the applicant has a right to meet with the LDSS or VA that denied the application to discuss the denial.⁸
- When an LDSS or VA revokes a foster home certification or approval or denies renewal of a certificate or approval, the LDSS or VA must comply with the notice and meeting requirements as set forth in 18 NYCRR 443.10.
- If a foster child is currently residing in the foster home and the application for approval or certification of the prospective foster parent is denied or an existing certificate or approval is revoked or not renewed, the LDSS or VA must comply with the notice of removal standards set forth in 18 NYCRR 443.5. This includes 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. If necessary, the prospective foster parent has a right to a conference under 18 NYCRR 443.5 and to an administrative hearing under SSL §400 to contest the removal of the foster child.
- If the applicant or the foster or adoptive parent is disqualified for a felony conviction of spousal abuse, the applicant or foster or adoptive parent may apply to OCFS for an administrative hearing for relief from the disqualification based on the grounds that the offense was not spousal abuse as that term is defined in section 378-a(2)(j) of the SSL.
- A prospective or approved adoptive parent whose application has been denied or approval revoked has the right to request an administrative hearing in accordance with section 372-e of the SSL. The LDSS and VA must also comply with the notification and meeting requirements set forth in 18 NYCRR 421.15(g).

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

The criminal history record summary provided by OCFS to the LDSS or VA is confidential and may be disclosed only as addressed below. LDSSs and VAs may not disclose

⁸ 18 NYCRR 443.2(c)(3).

criminal history information to the applicant or current foster or adoptive parent, **except** when an application is denied, or an approval or certification is revoked or not renewed pursuant to section 378-a(2)(e) of the SSL.⁹ In that case where OCFS has provided the criminal history record summary to the LDSS or VA, the LDSS or VA **must** provide the criminal history record summary to the applicant or current foster or adoptive parent, subject to the exception noted on page 12 of this release. The situation described above is the only circumstance where the criminal history summary is given in writing by an LDSS or VA to an applicant or current foster or adoptive parent.

As discussed above, where OCFS directs the VA to deny an application based on the FBI criminal history record check, the VA does not receive a criminal history record summary from OCFS. OCFS is responsible for providing the criminal history record summary to the person whose criminal history was the basis for the denial.

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, the date 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.

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 criminal history record summary may be provided to the administrative hearing tribunal and/or court. Such disclosure may also be made where a court proceeding relates to the removal of a foster child, the denial of approval of a successor guardian or the termination of a kinship guardianship assistance agreement. 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.

If the individual questions the accuracy of the verbal or written information provided by the LDSS or VA, 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 at (518) 457-9846 (English) or (518) 485-0962 (Spanish) or send a request in writing to the address below:

State Of New York
Division of Criminal Justice Services
80 South Swan Street
Albany NY 12210

⁹ 378-a(2)(g) of the SSL.

ATTN: Record Review

For FBI records, the individual needs to contact the original contributing agency (e.g., police department, court, etc.) that submitted the information to the FBI or the central repository in the state in which the arrest or conviction occurred. These agencies will be able to instruct the individual on how to obtain their own record.

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 VA agency must consult the terms of its purchase of services agreement with the LDSS. Generally, such records must be retained for at least seven years after closure of the home to satisfy potential claiming and Title IV-E reimbursement issues. Finally, LDSSs and VAs 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 record 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.

IV. Required Action

LDSSs and VAs must continue to require all prospective foster and prospective adoptive parents and persons 18 years of age or older who are residing in the applicant's home, to be fingerprinted in order for state and national criminal history record checks to be completed prior to full certification or full approval. These criminal history record checks must be done in accordance with section 378-a(2) of the SSL, 18 NYCRR Part 421 or Part 443, as applicable, and the provisions outlined in the program implications section of this ADM.

Chapter 54 made changes to the process that VAs must follow when processing the FBI portion of the criminal history record check. Please refer to the previous question #10 and the attachment titled "*What Is New?*" for these required actions.

V. Systems Implications

Changes are being made to the fingerprinting section of the Foster and Adoptive Home Development (FAD) section of CONNECTIONS. Information on the specific changes will be released at a later date.

VI. Contacts

Any questions concerning this release should be directed to the appropriate regional office, Division of Child Welfare and Community Services:

Buffalo Regional Office-Amanda Darling (716) 847-3145

Amanda.Darling@ocfs.ny.gov

Rochester Regional Office - Karen Buck (585) 238-8201

Karen.Buck@ocfs.ny.gov

Syracuse Regional Office - Sara Simon (315) 423-1200

Sara.Simon@ocfs.ny.gov

Albany Regional Office - John Lockwood (518) 486-7078

John.Lockwood@ocfs.ny.gov

Spring Valley Regional Office - Yolanda Désarmé (845) 708-2498

Yolanda.Desarme@ocfs.ny.gov

New York City Regional Office - Ronni Fuchs (212) 383-1676

Ronni.Fuchs@ocfs.ny.gov

Native American Services - Heather LaForme (716) 847-3123

Heather.LaForme@ocfs.ny.gov

Close to Home Oversight- Jewel Brown-Gregory (212) 383-1828

Jewel.Brown-Gregory@ocfs.ny.gov

VII. Effective Date

The changes to the FBI criminal history review process for VAs per Chapter 54 will be in effect as of December 30, 2016. All other provisions in this ADM are already in effect.

/s/ Thomas R. Brooks

Issued By:

Name: Thomas R. Brooks

Title: Deputy Commissioner

Division/Office: Strategic Planning and Policy Development