

OFFICE OF CHILDREN AND FAMILY SERVICES

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|      INFORMATIONAL LETTER      | TRANSMITTAL: 00 OCFS INF-2
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DIVISION: Strategic Planning
and Policy Development

TO: Commissioners of
Social Services
Executive Directors
of Voluntary Agencies

DATE: February 11, 2000

SUBJECT: Criminal History Record Checks (for Foster/Adoptive
Parents) /Revisions to 99 OCFS INF-7

SUGGESTED

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

CONTACT PERSON: Any questions of a programmatic nature
concerning this release should be directed to the
appropriate Regional Office of the Office of Children and
Family Services (OCFS) and questions involving legal issues
should be directed to Counsel's Office at OCFS.

BRO - Linda Brown (716)847-3145 USER ID: 89D421

RRO - Linda Kurtz (716) 238-8201 USER ID: 0FH010

SRO - Jack Klump (315)423-1200 USER ID: 89W005

ARO - Bill McLaughlin (518)432-2751 USER ID: 0FN010

NYCRO - Gail Hallerdin (212)383-1788 USER ID: AA0120

YRO - Pat Sheehy (914)377-2080 USER ID: AM4110

Out-of-State - Michelle Rafael (518)474-4352

Internet Email: "ofd030@dfa.state.ny.us"

Legal Questions - John Stupp (518)474-8490 USER ID: 73U119

ATTACHMENTS: See Attachment A

FILING REFERENCES

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
99 OCFS			378-a SSL		Guidelines
LCM-8					"Evaluating
99 OCFS					Applicants
LCM-15					with
99 OCFS					Criminal
INF-7					Conviction
					Records"
					1986; rev.
					12/87

The purpose of this release is to transmit revised notification letters previously released in 99 OCFS INF-7. These notification letters are: Notice Regarding Fingerprinting Requirements (Attachment 1 of 99 OCFS INF-7 {continues to be Attachment 1 to this informational letter}) and Denial/Revocation Letter/Notice of Results of Fingerprinting/Criminal Record Found (Attachment 6 of 99 OCFS INF-7 {now Attachment 5 to this informational letter}). This release transmits three new notification letters to be used under certain circumstances. They are: Notice of Denial of Recertification or Reapproval of Foster Parent Based on Felony Conviction of Mandatory Disqualifying Crime (Attachment 2); Notice of Revocation of Approval of Adoptive Parent Based on Felony Conviction of Mandatory Disqualifying Crime (Attachment 3); and Notice of Revocation Based on Felony Conviction of Mandatory Disqualifying Crime (Approved Emergency Relative Foster Home, Certified Emergency Foster Home, Search and Retain) (Attachment 4). Their use is described below.

o Notice Regarding Fingerprinting Requirements {REVISED} (Attachment 1)

This notice, available in both English and Spanish, now contains additional language to provide existing foster and adoptive parents at the time of fingerprinting with information regarding the options available to them if they already have foster children in their home and they have been convicted of a Category 1 crime (mandatory disqualifying crime). Specifically they are informed that they have a right to consult with private legal counsel concerning potential options available to the foster parent or adoptive parent to continue as the caretaker of the child or children in a capacity other than a foster parent or adoptive parent. The notice outlines that those legal options include:

- assumption of legal custody pursuant to Article 6 of the Family Court Act;
- assumption of legal guardianship pursuant to Article 6 of the Family Court Act or Article 17 of the Surrogate's Court Procedure Act; or
- assumption of legal custody pursuant to section 353.3(1), 756(a) or 1055(a) of the Family Court Act.

o Notice of Denial of Recertification or Reapproval of Foster Parent Based on Felony Conviction of Mandatory Disqualifying Crime (Attachment 2)

This notice is to be used when a criminal history background check performed at the time of recertification or reapproval of a certified or approved foster parent with foster child(ren) in the home reveals that such certified or approved foster parent has been convicted of a Category 1 crime (mandatory disqualifying crime). This new notice letter, Notice of Denial of Recertification or Reapproval of Foster Parent Based Upon Felony Conviction of Mandatory Disqualifying Crime, sets forth a process whereby the foster child(ren) may continue to reside in the home of the certified or approved foster parent upon the conditions set forth below.

o Notice of Revocation of Approval of Adoptive Parent Based on Felony Conviction of Mandatory Disqualifying Crime (Attachment 3)

This notice is to be used when a criminal history background check of an approved adoptive parent with foster child(ren) in the home reveals that such approved adoptive parent has been convicted of a Category 1 crime (mandatory disqualifying crime). This new notice letter, Notice of Revocation of Approval of Adoptive Parent Based on Mandatory Disqualifying Crime, sets forth a process whereby the foster child(ren) may continue to reside in the home of the approved adoptive parent upon the conditions set forth below.

o Notice of Revocation Based on Felony Conviction of Mandatory Disqualifying Crime (Approved Emergency Relative Foster Home, Certified Emergency Foster Home, Search and Retain) (Attachment 4)

This notice is to be used in three potential situations. They include when a criminal history background check performed for either an approved emergency relative foster parent or a certified emergency foster parent with foster child(ren) in the home reveals that such approved emergency relative foster parent or certified emergency foster parent has been convicted of a Category 1 crime (mandatory disqualifying crime). The other situation involves where a certified or approved foster parent has initially completed the criminal history background check process but is subsequently arrested and convicted of a Category 1 crime (mandatory disqualifying crime). Such situations would arise as a result of the ongoing search and retain process. This new notice letter, Notice of Revocation Based on Felony Conviction of Mandatory Disqualifying Crime (Approved Emergency Relative Foster Home, Certified Emergency Foster Home, Search and Retain), sets forth a process whereby the foster child(ren) may continue to reside in the home of the foster parent upon the conditions set forth below.

o Denial/Revocation Letter/Notice of Results of Fingerprinting/Criminal Record Found {REVISED} (Attachment 5)

This notice is to be used in all other cases involving the denial or revocation of certification or approval of a foster or adoptive parent. This includes the situation when there is a denial of an initial application to be a foster or adoptive parent based on any category of crime. This also includes the situation when there are no foster child(ren) in the home of a certified or approved foster parent or approved adoptive parent who has been convicted of a Category 1 crime (mandatory disqualifying crime). Finally, this situation includes where the criminal history background check reveals a conviction of a crime other than a Category 1 crime (mandatory disqualifying crime) irrespective of whether there are foster child(ren) in the home. Such crimes are Category 2 crimes (non mandatory disqualifying crimes).

Circumstances Under Which Foster Children May Continue to Reside in the Home When a Mandatory Disqualifying Crime Exists

In addition to the new and revised notification letters, this informational letter will also address the length of time foster child(ren) may remain in a foster or preadoptive home where the certified or approved foster or

adoptive parent has a conviction for a Category 1 crime (mandatory disqualifying crime).

A certified or approved foster parent or approved adoptive parent who has been convicted of a Category 1 crime may not continue to serve as a foster parent or adoptive parent. Consistent with the process set forth below, the authorized agency must remove any child(ren) in a foster child status from the home. There are no exceptions to the inability of the person to continue to function as a certified or approved foster parent or approved adoptive parent.

Upon notification that a certified or approved foster parent or approved adoptive parent has been convicted of a Category 1 crime (mandatory disqualifying crime), the authorized agency must perform an assessment of imminent danger to the foster child(ren) to determine how quickly to remove the foster child(ren). The safety of the foster child(ren) must be the paramount concern in the decision on how quickly the foster child(ren) must be removed and whether the foster child(ren) may remain in the home in accordance with the process set forth below. The authorized agency should also review and consider any additional charges and convictions listed in the summary of criminal history in order to determine how quickly the foster child(ren) should be removed. Unless the foster parent or adoptive parent pursues direct custody or guardianship of the foster child(ren) as set forth below, the authorized agency is to terminate the foster parent's certification or approval or revoke the adoptive parent's approval effective 20 days after receipt of such notification by the foster or adoptive parent (see 18 NYCRR 444.7 and 18 NYCRR 444.10).

As the notification letters (Attachments 2, 3, and 4) provide, the foster or adoptive parent will be informed that he or she has the right to consult with private legal counsel to discuss potential options for assuming direct legal custody or guardianship of the foster child(ren) through the statutory provisions referenced in these notification letters. The authorized agency should inquire of the foster parent or adoptive parent whether the foster parent or adoptive parent intends to pursue direct legal custody or guardianship. If the foster parent or adoptive parent informs the authorized agency that he or she does not intend to pursue direct legal custody or guardianship or if the foster parent or adoptive parent advises the authorized agency that he or she does intend to do so but fails to petition the court for direct legal custody or guardianship within 30 days of the receipt of the notification letter, then the authorized agency is to proceed with the removal of the foster child(ren) in accordance with the procedures set forth in 18 NYCRR 443.5. In addition, the authorized agency is to terminate the foster parent's certification or approval or revoke the adoptive parent's approval.

If the foster parent or adoptive parent petitions the court within 30 days of the receipt of the notification letter for direct legal custody or guardianship, the authorized agency may not remove the foster child(ren), as long as:

- o the authorized agency determines the foster child(ren) are safe in the foster parent's or adoptive parent's home;

- o the foster parent or adoptive parent continues to cooperate with the authorized agency to enable the authorized agency to assess the safety and the clinical and program needs of the foster child(ren) and to carry out the permanency plan established for the foster child(ren); and
- o the foster parent or adoptive parent cooperates with the court and diligently pursues temporary or permanent legal custody or guardianship of the foster child(ren).

The foster parent or adoptive parent must inform the authorized agency as soon as he or she is informed by the court that the foster parent's or adoptive parent's petition for legal custody or guardianship is granted or denied.

It is recognized that neither the authorized agency nor the foster parent or adoptive parent may mandate that the court render a decision on the petition for direct legal custody or guardianship within a specific period of time. Therefore, the foster child(ren) may remain in the home of the foster parent or adoptive parent for a reasonable time following the filing of the petition and while the determination is pending. The authorized agency retains the authority to remove the foster child(ren) from the foster parent's or adoptive parent's home upon a determination that the foster child(ren) are no longer safe or that the placement can no longer satisfy the clinical or program needs of the foster child(ren) or is no longer consistent with the permanency plan of the foster child(ren). The authorized agency should check periodically with the court to ascertain the status of the court proceeding.

Upon the removal of the foster child(ren) from the home of the foster parent or adoptive parent or the granting of temporary or permanent legal custody or guardianship of the foster child(ren) by the court to the foster parent or adoptive parent, the foster home must be decertified or approval revoked or the approval of the adoptive parent must be revoked. A 10 day notice of intention to remove foster child(ren) is not required pursuant to 18 NYCRR 443.5(a). However, a notice of the person's right to a conference is still required and any aggrieved person will thereafter be entitled to an administrative hearing in accordance with Section 400 of the Social Services Law.

It is recommended that you make a notation on 99 OCFs INF-7 that revisions to comparable notices set forth in that information letter have been made by this transmittal.

This informational letter takes effect immediately.

William F. Baccaglioni
Director
Strategic Planning
and Policy Development