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Governor

NEW YORK STATE  
OFFICE OF CHILDREN & FAMILY SERVICES  
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RENSSELAER, NY 12144

Gladys Carrión, Esq.  
Commissioner

### Administrative Directive

<b>Transmittal:</b>	08-OCFS-ADM-06
<b>To:</b>	Commissioners of Social Services Executive Directors of Voluntary Authorized Agencies Adoption Agencies
<b>Issuing Division/Office:</b>	Strategic Planning and Policy Development
<b>Date:</b>	September 29, 2008
<b>Subject:</b>	<b>Criminal History Record Checks and Mandatory Disqualifying Crimes (Foster and Adoptive Parents)</b>
<b>Suggested Distribution:</b>	Directors of Services Child Protective Services Supervisors Foster Care Supervisors Adoption Supervisors Homefinding Supervisors Staff Development Coordinators
<b>Contact Person(s):</b>	<u>Any questions concerning this release should be directed to the appropriate Regional Office</u> Buffalo Regional Office – Mary Miller (716) 847-3145 <a href="mailto:Mary.Miller@ocfs.state.ny.us">Mary.Miller@ocfs.state.ny.us</a> Rochester Regional Office – Linda Kurtz (585) 238-8201 <a href="mailto:Linda.Kurtz@ocfs.state.ny.us">Linda.Kurtz@ocfs.state.ny.us</a> Syracuse Regional Office – Jack Klump (315) 423-1200 <a href="mailto:Jack.Klump@ocfs.state.ny.us">Jack.Klump@ocfs.state.ny.us</a> Albany Regional Office – Kerri Barber (518) 486-7078 <a href="mailto:Kerri.Barber@ocfs.state.ny.us">Kerri.Barber@ocfs.state.ny.us</a> Spring Valley Regional Office – Pat Sheehy (845) 708-2498 <a href="mailto:Patricia.Sheehy@ocfs.state.ny.us">Patricia.Sheehy@ocfs.state.ny.us</a> NYC Regional Office – Patricia Beresford (212) 383-1788 <a href="mailto:Patricia.Beresford@ocfs.state.ny.us">Patricia.Beresford@ocfs.state.ny.us</a> Native American Services – Kim Thomas (716) 847-3123 <a href="mailto:Kim.Thomas@ocfs.state.ny.us">Kim.Thomas@ocfs.state.ny.us</a> Out-of-State - Michelle Rafael (518) 474-4352 <a href="mailto:Michelle.Rafael@ocfs.state.ny.us">Michelle.Rafael@ocfs.state.ny.us</a>

<b>Attachments:</b>	1a - NOTICE REGARDING FINGERPRINTING REQUIREMENTS 2a - DENIAL / REVOCATION LETTER / NOTICE OF RESULTS OF FINGERPRINTING / CRIMINAL RECORD FOUND
<b>Attachment Available Online:</b>	Yes

### Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
07-OCFS-ADM-01 08-OCFS-INF-07		18 NYCRR Parts 421 & 443	SSL378-a (2) Chapter 623 of the Laws of 2008 Adam Walsh Child Protection and Safety Act of 2006 (P. L. 109-248)		

### I. Purpose

The purpose of this Administrative Directive (ADM) is to notify social services districts, the St. Regis Mohawk Tribe, voluntary authorized agencies and in-state and out-of-state adoption agencies of the provisions of Chapter 623 of the Laws of 2008 that amended section 378-a (2) of the Social Services Law (SSL) regarding criminal history record checks for foster and adoptive parents. Effective October 1, 2008, certain crimes committed by applicants to be foster or adoptive parents will ***mandatorily disqualify*** 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, they must have their certification or approval ***revoked***. The category of presumptive disqualifying crimes is eliminated by Chapter 623 of the Laws of 2008.

Chapter 623 of the Laws of 2008 does not impact persons who were fully certified or approved as foster or adoptive parents prior to October 1, 2008, for convictions that occurred ***prior*** to that date. Chapter 623 of the Laws of 2008 does not change in any way the requirements regarding crimes committed by household members age 18 and over. Discretionary consideration, based upon a safety assessment, remains the procedure when a criminal history record check reveals any arrests or convictions regarding any such persons.

Regulatory amendments to 18 NYCRR parts 421 and 443 will be filed on an emergency basis to implement the requirements of Chapter 623 of the Laws of 2008.

This ADM is to be used in conjunction with 07-OCFS-ADM-01 [State and National Criminal History Record Checks (for Foster/Adoptive Parents)] issued on February 7, 2007, in order to have complete up-to-date guidance on the subject of criminal history record checks for foster and adoptive parents. 07-OCFS-ADM-01 remains in effect except for the provisions regarding presumptive disqualifying crimes.

## **II. Background**

The federal Adam Walsh Child Protection and Safety Act of 2006 (P.L.109-248) eliminated, effective October 1, 2008, the ability of states to opt out of federal criminal history review standards and requires states to comply with such federal standards in order to receive federal Title IV-E payments for foster care or adoption assistance. Federal law had previously allowed states to opt out of federal criminal history record review requirements for prospective foster or adoptive parents. Federal standards require the application of mandatory disqualification for certain categories of felony convictions.

In both 07-OCFS-ADM-01 and more recently, in 08-OCFS-INF-07 (Preparation for the Elimination of the “Opt-Out” Provision for Conducting Criminal History Record Checks), OCFS provided information to the field about the coming changes and instructed staff to complete timely certifications and approvals, as appropriate.

## **III. Program Implications**

Effective October 1, 2008, the federal statute, New York State law and soon to be filed OCFS implementing regulations prohibit the certification or approval of a prospective foster or adoptive parent who has a felony conviction at any time for a crime involving abuse or neglect, spousal abuse, or a crime against a child, or for a crime involving violence. In addition, certification or approval of a prospective foster or adoptive parent is also prohibited if such person has been convicted within 5 years of such application for assault or a drug related offense. If any felony conviction for one of the above noted categories of crimes occurs after October 1, 2008, the certification or approval must be revoked. Opportunity no longer exists for such person to rebut the presumption that he or she be denied certification or approval or to rebut the presumption that his or her certification or approval be revoked.

OCFS Counsel's office has revised the list of Mandatory Disqualifying Crimes, and that list is routinely kept current. Copies of the updated crime list may be obtained by contacting Kristen Northrup at [Kristen.Northrup@OCFS.state.ny.us](mailto:Kristen.Northrup@OCFS.state.ny.us)

#### **IV. Required Action**

Social services districts, the St. Regis Mohawk Tribe, voluntary authorized agencies and in-state and out-of state adoption agencies that certify or approve foster or adoptive parents must take the following steps:

##### **General requirements**

- On and after October 1, 2008, provide the revised notice (Attachment 1a) to all applicants to be foster or adoptive parents and provide an explanation of the change regarding mandatory disqualifying crimes; and
- Continue to require that all such applicants complete an attestation regarding convictions in New York State and any other jurisdiction.

##### **Prospective foster or adoptive parents (including those foster parents certified or approved on an emergency basis)**

- Evaluate all criminal history results received from OCFS and, for those relating to **prospective foster or adoptive parents (including those foster parents certified or approved on an emergency basis)** determine those who have been convicted of a mandatory disqualifying crime;
- Where a mandatory disqualifying conviction exists, conduct a safety assessment in accordance with section 378-a(2)(h) of the SSL, including:
  - Whether the subject of the mandatory disqualifying conviction resides in the home;
  - The extent to which such person may have contact with foster children or other children residing in the home;
  - The status, date and nature of the conviction (taken from the criminal history summary provided by OCFS);
- Advise prospective foster or adoptive parents (including those certified or approved on an emergency basis) who have been convicted of a mandatory disqualifying crime that they are ineligible to be certified or approved as foster or adoptive parents;
- Provide them with a Denial / Revocation Letter / Notice of Results of Fingerprinting / Criminal Record Found (Attachment 2a). **Please note** that regardless of whether you receive a presumptive disqualifying letter from OCFS or a mandatory disqualifying letter from OCFS,

- there must be a denial if the home was not fully certified or approved by September 30, 2008. OCFS will begin to use the mandatory disqualifying results letter on October 1, 2008;
- If the criminal history results summary directs that certification or approval be “held in abeyance,” then no full certification or approval may occur until the arrest is resolved. If there is a child(ren) placed in the home, use the safety assessment to determine whether or not he/she can remain. If a decision is made to remove the child(ren), follow the removal and conference standards outlined below. If the arrest results in a conviction for a mandatory disqualifying crime, proceed as outlined above. Otherwise, use the results of the safety assessment to determine whether to certify or approve the applicant.

### **Fully certified or approved foster or adoptive parents**

- Evaluate all criminal history results received from OCFS through the search and retain procedures relating to **currently fully certified or approved foster or adoptive parents** to determine those who have been arrested for a mandatory disqualifying crime on or after October 1, 2008;
- Where the arrest would result in a mandatory disqualifying crime if there was a conviction (“potential mandatory disqualifying conviction”), conduct a safety assessment in accordance with section 378-a(2)(h) of the SSL, including:
  - Whether the subject of the potential mandatory disqualifying conviction resides in the home;
  - The extent to which such person may have contact with foster children or other children residing in the home;
  - The status, date and nature of the arrest (taken from the criminal history summary provided by OCFS);
- If there is a child(ren) placed in the home, use the safety assessment to determine whether or not he/she can remain. If a decision is made to remove the child(ren), follow the removal and conference standards outlined below. If the arrest results in a conviction for a mandatory disqualifying crime, proceed as outlined immediately below.
- Revoke the certification or approval, advise them of the revocation and provide them with the Denial / Revocation Letter / Notice of Results of Fingerprinting / Criminal Record Found (Attachment 2a).

### **Removal and conference standards**

- Where OCFS provides notice of a mandatory disqualifying conviction, utilizing the results of the safety assessment and attendant interventions, if any, to address the safety of any child placed in the home, initiate a plan to move any child currently placed in an emergency certified or approved

foster home, or a fully certified or approved foster or adoptive home in accordance with the removal and conference standards.

- The authorized agency must comply with the notice of removal and conference standards set forth in 18 NYCRR 443.5 relating to the removal of foster child(ren). **Such rights include notice at least ten days prior to the proposed removal unless removal is required earlier as a result of imminent risk to the health or safety of the foster child(ren).** However, the foster child is not to be removed, absent imminent danger, court order or consent of the foster or adoptive parent, until at least three days after the notice of the decision following the conference is sent, or prior to the proposed effective date of removal, whichever occurs later. Such notification must also include the right to an administrative hearing to be held after the conference in accordance with section 400 of the SSL. Section 400 of the SSL pertains only to foster children placed with public agencies.
- 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.

## V. Systems Implications

The FAD module in CONNECTIONS will have a new value of “mandatory disqualifier” added to the Fingerprint Results Received dropdown on September 29, 2008. On October 10, 2008, as part of the 08 Quarter 3 Build, a revised notice form (Notice Regarding Fingerprinting Requirements) and a revised denial/revocation letter (Denial / Revocation Letter / Notice of Results of Fingerprinting / Criminal Record Found) that reflects the mandatory disqualifying language will be available in CONNECTIONS in both English and Spanish. Copies of these documents are attached to this ADM (Attachment 1a and Attachment 2a) and should be used, as appropriate, on and after October 1, 2008, until available in CONNECTIONS. Additional edits surrounding these requirements will be available in a later build.

Effective October 1, 2008, for any prospective foster or adoptive parent who has committed a mandatory disqualifying crime, or for any foster or adoptive parent where the home is currently open and such crime has occurred on or after October 1, 2008, complete a closing report in CONNECTIONS and close the home in CONNECTIONS.

**VI. Effective Date**

This ADM is effective on October 1, 2008.

*/s/ Nancy W. Martinez*

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**Issued By:**

Name: Nancy W. Martinez

Title: Director

Division/Office: Strategic Planning and Policy Development

## **Attachment 1a**

### **NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES**

#### **NOTICE REGARDING FINGERPRINTING REQUIREMENTS**

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

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

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

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

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

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

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

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



- **Please be advised:** If you are an applicant or a certified or approved foster or adoptive parent and you have been convicted of a mandatory disqualifying crime, your application will be denied or your certification or approval revoked.

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

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

All criminal history record information is confidential. It may not be made available for public inspection. However, it may be disclosed for judicial or administrative proceedings relating to a denial of an application, revocation of a certificate or approval, or the removal of foster children. Where there is a pending court case, a copy of the summary of the criminal record will be provided to the Family Court or Surrogate's Court.

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

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

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

## **Adjunto 1a**

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

#### **NOTIFICACION ACERCA DE LOS REQUISITOS DE HUELLAS DIGITALES O IMPRESIONES DACTILARES**

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

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

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

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

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

- rechazo o negación de su aplicación;
- revocación de su certificación o aprobación;

- retiro de los niños ya colocados en su hogar.

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

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

**Por favor tenga en cuenta:** Si usted es un solicitante o un padre/madre de crianza o adoptivo(a) aprobado(a) o certificado(a), y usted ha sido convicto de un crimen que lo descalifica por mandato, su aplicación será negada/rechazada o su certificación o aprobación revocada.

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

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

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

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

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

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

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

**Attachment 2a**

**DENIAL / REVOCATION LETTER / NOTICE OF RESULTS OF FINGERPRINTING /  
CRIMINAL RECORD FOUND**

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

Dear Sir/ Madam:

Pursuant to Section 378-a of the Social Services Law, the Division of Criminal Justice Services and/or the Federal Bureau of Investigation has advised us that the above named person was charged or convicted as indicated below. After review of this information the following decision has been made:

- Your request to be certified or recertified as a foster parent, approved or reapproved as a relative foster parent or approved as an adoptive parent has been ***denied***.
- Your certification or approval as a foster parent or approval as an adoptive parent has been ***revoked***.

This denial or revocation is because:

**DENIAL or REVOCATION (based on a mandatory disqualifying crime)**

- You or your spouse has a felony conviction at any time involving:
  - child abuse or neglect;
  - spousal abuse;
  - a crime against a child, including child pornography; or
  - a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery.
- You or your spouse has a felony conviction within the past five years for physical assault, battery, or a drug-related offense.

**DISCRETIONARY DENIAL or REVOCATION**

- You or your spouse has a felony and/or misdemeanor conviction for any other crime which creates a safety concern with regard to boarding or placing children in your home for the purposes of foster care or adoption.
- Someone else over the age of 18 who resides in your household has a felony and/or misdemeanor conviction for any crime which creates a safety concern with regard to boarding or placing children in your home for the purposes of foster care or adoption.
- You, your spouse, or someone else over the age of 18 who resides in your household has

been charged with a crime which creates a safety concern with regard to boarding or placing children in your home for the purposes of foster care or adoption.

## I. DENIAL/REVOCATION RIGHTS

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

If you are a prospective or certified or approved foster parent, or a prospective or approved adoptive parent, and your application has been denied or your certification or approval revoked by an authorized agency because of a criminal history referenced in this letter (and any additional reasons for denial or revocation), you have a right to notice of the reason(s) for denial or revocation.

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

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

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

## II. REMOVAL RIGHTS

If a foster child is to be removed or is removed from your home because of a criminal history referenced in this letter (and any additional reasons), you have a right to a conference with the authorized agency responsible for such removal in accordance with the provisions of 18 NYCRR 443.5. If you are not successful at the conference, you may request an administrative hearing before OCFS in accordance with Section 400 of the Social Services Law. As applicable, additional information concerning the reasons for the agency action and your rights is attached to this letter.

## III. SPOUSAL ABUSE EXCEPTION

If your denial or revocation is based upon spousal abuse, and you believe that such offense was not spousal abuse because the fact that you were abused was a factor in causing you to commit the crime, you may request an administrative hearing from the Office of Children and Family Services by contacting in writing at the address noted above:

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

#### IV. REVIEW OF CRIMINAL HISTORY INFORMATION

If you want to conduct a *DCJS Record Review*, you should call the Record Review Unit or write to the address listed below to request the necessary forms. All record reviews are conducted via mail.

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

If you conduct a Record Review through DCJS and you believe that there are errors on your criminal history record which you seek to challenge, you must provide DCJS with the following documentation:

##### Arrest Data

To modify arrest data (i.e. arrest charges, date of arrest, date of crime) on your Criminal History Record, **YOU** must contact the arresting agency. DCJS **REQUIRES WRITTEN** notification from the **ARRESTING AGENCY** to correct this information.

##### Disposition Data

To correct disposition data or to update missing disposition data, **YOU** must contact the court of adjudication and request a **CERTIFIED** copy of the disposition. Once you have obtained the certified court document, you must forward it to the DCJS Record Review Unit which will review it and update your Criminal History Record. Be advised photostatic copies are **NOT** acceptable unless they contain an embossed (raised design) seal from the issuing court.

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

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

**Adjunto 2b**

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

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

Estimado(a) Señor/Señora:

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

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

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

Esta denegación o revocación de debe a:

**DENEGACIÓN o REVOCACIÓN (basada en un crimen que lo descalifica por mandato)**

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

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

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

**DENEGACIÓN O REVOCACIÓN DISCRECIONAL**

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

( ) Alguna persona más que reside en su hogar y tiene más de 18 años de edad tiene una convicción de felonía y/o de un delito menor por algún crimen que crea un riesgo de seguridad



con respecto al hospedaje o a la colocación de niños en su hogar para propósitos de cuidado de crianza o adopción.

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

## **I. DERECHOS DE DENEGACIÓN/REVOCACIÓN**

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

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

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

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

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

## **II. DERECHOS DE RETIRO**

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

## **III. EXCEPCIÓN REFERENTE AL ABUSO CONYUGAL**

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

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

#### **IV. REVISIÓN DE LA INFORMACIÓN DEL HISTORIAL CRIMINAL**

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

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

Teléfono: (518) 485-7675

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

##### Datos del Arresto

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

##### Disposición de Datos

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

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

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