

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 12: Foster Family Home Licensing</b>	<b>Effective Date: July 1, 2011</b>
<b>Section 30: Evaluation of Background Checks for Foster Family Home Licensing</b>	<b>Version: 3</b>	

**POLICY [REVISED]**

The Indiana Department of Child Services (DCS) will evaluate the results of all Fingerprint-Based National Criminal History Checks (Fingerprint-Based Checks) on all required persons for the purpose of foster family home licensing. The DCS local office or Licensing Child Placing Agency (LCPA) licensing worker will evaluate the remaining background checks. See separate policy, 12.29 Conducting Background Checks for Foster Family Home Licensing. The final results will be placed in the licensing file and documented in the Indiana Child Welfare Information System.

**Fingerprint-Based Check**

The DCS Central Office Background Check Unit (COBCU) will evaluate the results and notify the assigned DCS local office or LCPA contact person by emailing the Fingerprint-Based Check Status Letter.

The COBCU will conditionally disqualify all persons whose criminal history is incomplete and requires further verification.

**Note:** The subject of the check will remain in a conditionally disqualified status until the subject provides the COBCU with a copy of required verification of charges, including but not limited to court orders showing disposition and level of conviction, a court order showing dismissal and/or arrest reports. Upon receipt of all necessary verifications, COBCU will reevaluate the status and issue an amended Fingerprint-Based Check status letter to the assigned DCS local office or LCPA contact person by e-mail.

The COBCU will disqualify all persons whose criminal history report includes the following, although some may be eligible to file for a waiver (see Waivers section below):

1. Any misdemeanor related to the health and/or safety of a child;
2. Any felony;
3. Four (4) or more misdemeanor convictions; or
4. A juvenile adjudication for an act that if committed by an adult would be one of the 20 felonies listed in the Waivers section below.

The COBCU will qualify all persons whose Fingerprint-Based Check Report has no criminal history or reflects arrests and/or convictions that do not result in a conditionally disqualified or disqualified status.

**Child Protection Services (CPS) History Checks**

The licensing worker will review the completed CPS history results from Indiana, and if applicable, all other states of residency within the past five (5) years and determine if there are reports of any substantiation of abuse and/or neglect for the subject of the check. If there is

substantiated CPS history in Indiana or the equivalent in another state, the filing and approval of a waiver is required for licensing approval. See below section regarding Waivers.

### **Sex Offender Registry Check**

The licensing worker will evaluate the Sex Offender Registry checks to determine if there are any matches. If there is a match the home cannot be licensed or remain licensed. Notify the COBCU immediately. The COBCU will re-evaluate the Fingerprint-Based Check report.

### **Local Law Enforcement Agency (LEA) Records Check**

The licensing worker will evaluate the results of the LEA Records Checks. If there is a felony, four (4) or more misdemeanors, or a misdemeanor that relates to the health and safety of a child, the licensing worker will contact the COBCU immediately. The COBCU will cross-reference the LEA Records Check with the Fingerprint-Based Check History Report to assure the LEA Records Check do not alter the Fingerprint-Based Check Status. Any time the licensing worker believes the LEA Records Check report may alter the status of the Fingerprint-Based Check Report, the licensing worker will contact the COBCU consultant that is listed on the Fingerprint-Based Check Status Letter for further action.

### **Waivers**

COBCU will accept a request for a waiver of disqualified juvenile history or of substantiated CPS history. COBCU will also accept a waiver of disqualifying criminal history if the subject of the check has not been convicted of a misdemeanor related to the health and safety of a child or has not been convicted of any of the felonies listed below:

1. Murder (IC 35-42-1-1);
2. Causing suicide (IC 35-42-1-2);
3. Assisting suicide (IC 35-42-1-2.5);
4. Voluntary manslaughter (IC 35-42-1-3);
5. Reckless homicide (IC 35-42-1-5);
6. Battery (IC 35-42-2-1) within the last five (5) years;
7. Domestic battery (IC 31-27-4-13);
8. Aggravated battery (IC 35-42-2-1.5);
9. Kidnapping (IC 35-42-3-2);
10. Criminal confinement (IC 35-42-3-3) within the last five (5) years;
11. A felony sex offense under (IC 35-42-4);
12. Carjacking (IC 35-42-5-2) within the last five (5) years;
13. Arson Class (IC 35-43-1-1) within the last five (5) years;
14. Incest (IC 35-46-1-3);
15. Neglect of a dependent (IC 35-46-1-4(a)(1)) and (IC 35-46-1-4(a)(2));
16. Child selling (IC 35-46-1-4(d));
17. A felony involving a weapon within the last five (5) years under (IC 35-47) or (IC 35-47.5);
18. A felony relating to controlled substances within the last five (5) years under (IC 35-48-4);
19. An offense relating to material or a performance that is harmful to minors or obscene under (IC 35-49-3); and/or
20. A felony that is equivalent to a felony listed in subdivisions (1) through (19) for which the conviction was entered in another state.

The licensing worker will immediately deny or revoke the foster family home license if the background check subsequently reveals that an applicant or licensee or an individual living, working, or volunteering in the licensed foster family home:

1. Has a disqualified history or substantiated CPS history that is not waived by DCS; or
2. Has a disqualified history or substantiated CPS history where a waiver is not being actively pursued.

#### Code References

1. IC 31-27-4-5: Applying for license; criminal history checks
2. IC 31-27-4-6: Grounds for denial of license applications
3. IC 31-27-4-13: Denial of license
4. IC 31-27-4-32: Grounds for revocation of license
5. IC 31-27-4-33: Compliance with rules; disciplinary sanctions; revocation of license

#### **PROCEDURE**

The licensing worker will complete the following steps:

1. For a Fingerprint-Based Check, review the Status Letter received from COBCU. Where the status is either conditionally disqualified or disqualified:
  - a. Provide a copy of the Fingerprint-Based Check Status Letter to the subject of the check;
  - b. If disqualified, instruct the subject of the check to contact the COBCU consultant listed on the Fingerprint-Based Check Status Letter to determine if the subject of the check is eligible to apply for a waiver. If eligible and the licensing worker supports the waiver, instruct the subject of the check that a request for a waiver must be submitted to the COBCU within ten (10) days of the date of the Fingerprint-Based Check Status Letter; (See #5 below regarding applying for a waiver)
  - c. If conditionally disqualified, instruct the subject of the check to contact the COBCU consultant listed on the Fingerprint-Based Check Status Letter within ten (10) days of the date of the results letter. Provide the requested documentation to the COBCU consultant. Upon reevaluation, if the status is disqualified refer to "b" above.
2. Review the results of the CPS History Check;
  - a. If a substantiated CPS history is discovered the licensing worker will give the subject of the check a copy of the completed Indiana Request for a Child Protection Services (CPS) History Check (SF52802/CW2128) form showing substantiated history. See separate policy, 2.6 Sharing of Confidential Information, and
  - b. A request for a waiver should be filed within ten (10) days of receiving the CPS history at initial licensing, relicensure and annual review. (See Waivers section below.) The request for the waiver must be granted for the home to be licensed or remain licensed.
3. Review the results of the Sex Offender Registry Check for a match to the subject of the check. If there a match for the subject of the check, do not license the home or recommend revocation;
4. Review the results of the LEA Records Checks and contact COBCU within five (5) days of the check for further evaluation if there is a felony, four (4) or more misdemeanors, or a misdemeanor that relates to the health and safety of a child. At any time the licensing worker believes the LEA Records Check may alter the Fingerprint-Based Check Status, the licensing worker will contact the consultant that is listed on the Fingerprint-Based Check Status Letter for further action;

5. To request a waiver of disqualified criminal history and/or substantiated CPS history submit the below to the COBCU by fax at 317-234-4633 or scan/e-mail at [background.checkunit@dcs.in.gov](mailto:background.checkunit@dcs.in.gov):
  - a. A signed letter from the subject of the check explaining in detail the situation involving the substantiation or criminal act and addressing:
    1. The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect;
    2. The severity of the offense of abuse or neglect, including jail or prison time served and whether they are currently on probation or parole;
    3. Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable; and
    4. The ability of the proposed applicant to provide for the child's safety and well-being.
  - b. A signed letter on agency letterhead or email from the licensing worker explaining his or her observations of the subject of the check as well as the reasons he or she does or does not support the waiver request. Also submit copies of all other background checks (CPS History, Sex Offenders Registry, Fingerprint-Based Check, and LEA Records Check).
6. Place a copy of the results documents for all background checks and any waiver letters in the licensing file and document in the Indiana Child Welfare Information System, if applicable.

**Note:** A criminal history or CPS waiver granted for the purpose of foster family home licensure may not be used for the additional purposes of adoption, employment or any other reason. A new waiver request must be submitted and granted for each additional purpose.

The DCS COBCU will:

1. Evaluate the Fingerprint-Based Checks report within five (5) business days of receipt and notify by e-mail the assigned DCS local office or LCPA contact person regarding the Fingerprint-Based Check status; and
  2. If conditionally disqualified or disqualified provide guidance, re-evaluate history based on the received documentation and issue a new status letter when applicable; and
  3. For waivers of disqualified criminal history and substantiated CPS history:
    - a. Upon receipt of the waiver request letter from the subject of the check and the licensing worker, the COBCU will summarize, make a recommendation, and submit the request to the Deputy General Counsel over COBCU or designee,
    - b. The Deputy General Counsel over COBCU or designee will submit the recommendation to the Background Check Team for a joint decision,
- Note:** The Background Check Review Team is made up of the DCS Local Office Director and Regional Manager in the county in which the foster home is located, and the Deputy General Counsel over the Background Check and Foster Care Licensing Unit or their designee. The team decision may be made via phone or email.
- c. Notify by email the assigned DCS local office or LCPA contact person of the waiver decision. A decision will be returned in approximately ten (10) working days and the status will be either "waiver granted" or "waiver not granted."
  4. For Exception to Fingerprint request, when the exception is granted, generate the Indiana Limited Criminal History (LCH) check and collect any other state's non-fingerprint based

checks from the DCS-licensed agency, evaluate and notify by e-mail the DCS-licensed agency assigned contact person regarding the status.

## PRACTICE GUIDANCE

N/A

## FORMS AND TOOLS

N/A

## RELATED INFORMATION

### **Factors for the Licensing Worker and Background Check Review Team to Consider When Recommending and/or Approving the Background Check Waivers**

Information yielded on all background checks should be considered, including but not limited to the following:

1. The current home environment;
2. The ability of the proposed resource family to provide for the child's safety and well-being;
3. The length of time that has passed since the conviction, juvenile adjudication, or CA/N substantiation;
4. The severity of the offense;
5. Evidence of the person's rehabilitation;
6. The duration and quality of the relationship between the child and the proposed resource family; and
7. Any impact the denial of the placement may have on the ability to keep the sibling group together if siblings are involved.

### **Disclosing Fingerprint-Based Check Information**

Upon request, the DCS local office may receive a copy of the official criminal history transcript that contains criminal history reported by the Federal Bureau of Investigation (FBI) and the Indiana State Police (ISP). Neither LCPAs nor the subject of the check will receive a copy of the official FBI or ISP transcript. DCS may verbally disclose the specific crimes to the subject of the check. If any of the checks conducted by DCS reveal an inaccurate record, the subject of the check may formally challenge the record. A Review Challenge of inaccurate information must be made to the law enforcement agency that posted the record. To refute inaccurate Indiana criminal history records or information, please request a Review Challenge from ISP.

### **Disqualified Fingerprint Status**

Disqualified status means that unless a waiver is granted the subject of the check is ineligible to be a:

1. Foster parent,
2. Household member, or
3. An employee or volunteer of the home who has or will have direct contact, on a regular and continuing basis, with children who are or will be under the direct supervision of the foster family home.

### **Conditionally Disqualified Fingerprint Status**

Conditionally Disqualified status means that until the conditionally disqualifying arrest or conviction is resolved and the status is changed to Qualified (or the status is changed to Disqualified and a Waiver is subsequently granted) the subject of the check is ineligible to be a:

1. Foster parent;
2. Household member, or
3. An employee or volunteer of the home who has or will have direct contact, on a regular and continuing basis, with children who are or will be under the direct supervision of the foster family home.

Examples of reported information on a Fingerprint-Based Check Report that will lead to a conditional disqualification include but are not limited to an arrest without a disposition, a conviction without the level of the conviction being a misdemeanor or a felony, or a conviction where additional information on the circumstances of the arrest and conviction are required.

### **Qualified Fingerprint Status**

Qualified fingerprint status means that the subject of the check is eligible to be a foster parent, household member, or have direct contact, on a regular and continuing basis, with children who are or will be under the direct supervision of the foster family home, as long as the subject of the check passes all other background checks.

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