

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE MANUAL</b>	
	<b>Chapter 8:</b> Out-of-Home Services	<b>Effective Date:</b> July 1, 2011
	<b>Section 7:</b> Evaluation of Background Checks for Unlicensed Placements	<b>Version:</b> 4

**POLICY [REVISED]**

The Indiana Department of Child Services (DCS) will evaluate the results of all background checks conducted. See separate policy, [8.6 Conducting Background Checks](#). The final results will be placed in the child’s file and documented in the Indiana Child Welfare Information System.

**Fingerprint-Based National Criminal History Check of National and State Records Data Bases (Fingerprint-Based Check)**

The DCS Central Office Background Check Unit (COBCU) will evaluate the results and notify the assigned DCS local office contact person of the criminal history clearance status 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, 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 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 waiver 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 History Check (CPS History Check)**

The FCM will review the completed CPS History Check results from Indiana, and if applicable, all other states of residency within the past five 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, a waiver is required for placement. See section below regarding Waivers.

### **Sex Offender Registry Checks**

The FCM will evaluate the Sex Offender Registry Checks to determine if there are any matches. If there is a match, and a child is already placed in the home, remove the child immediately. If there has not yet been a placement, the subject of the check is not eligible to be considered as a placement resource. Notify the COBCU immediately. The COBCU will re-evaluate the Fingerprint-Based Check report.

### **Law Enforcement Agency (LEA) Records Checks**

The FCM 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 FCM will contact the COBCU immediately. The COBCU will cross reference the LEA Records Check with the Fingerprint-Based Check Report to assure the LEA Records Check does not alter the Fingerprint-Based Check Status. At anytime the FCM believes the LEA Records Check may alter the status of the Fingerprint-Based Check Report, the FCM 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 one (1) through (19) for which the conviction was entered in another state.

DCS will immediately remove a child from a home, if a child was placed in out-of-home care on an emergency basis, and the background check subsequently reveals that an individual living, working or volunteering in the home:

1. Has a disqualified criminal history or substantiated CPS history that is not waived by DCS and the placement cannot or is not authorized by the court; or
2. Has a disqualified criminal history or a substantiated CPS history where a waiver is not being actively pursued.

#### Code References

1. [IC 31-34-20-1.5: Placement in household with certain individuals prohibited.](#)
2. [IC 31-34-4-2: Placement of child with relative caretaker; criminal history check required; exceptions](#)

<b>PROCEDURE</b>
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The FCM will complete the following steps:

1. For an Emergency Named-Based Check), evaluate results and determine appropriateness of the emergency placement. Ensure follow-up fingerprints are obtained or the [Follow-Up Action for Name-Based Check Form \(SF53424/CW3619\)](#) is completed;
  - a. If the check returns a conviction or an arrest without a disposition for:
    1. a misdemeanor related to the health and safety of a child; or
    2. a felony that is not eligible for a waiver, placement cannot take place. See Waiver section for all felonies not eligible for a waiver.
  - b. If the check returns a conviction or an arrest without a disposition for a criminal act that is eligible for a waiver, use discretion to determine if placement is in the best interest of the child. Consideration should include, but not be limited to
    1. Any pre-existing relationship between the child and the relative caregiver;
    2. The age of the child in need of placement;
    3. The length of time since the arrest or conviction;
    4. The severity of the arrest or conviction;
    5. The total number of arrest or convictions;
    6. Other available background check results; and
    7. If the applicant is currently on probation or parole.

2. For a Fingerprint-Based Check, review the Status Letter received from COBCU. If the status is conditionally disqualified or disqualified, and the DCS local office believes the placement is in the child's best interest:
  - a. Provide a copy of the Fingerprint-Based Check Status Letter to the subject of the check.
  - b. If disqualified, 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 FCM 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.

**Note:** For emergency placements, the child cannot remain placed unless the waiver is requested timely and granted. For nonemergency placements a child cannot be placed in the home until the waiver is requested and granted.

- c. If conditionally disqualified, 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.

**Note:** Unless the subject of the check is actively working with the COBCU to resolve the conditional disqualification status the child cannot be placed or remain in the home.

3. Review the results of the CPS History Check
  - a. If a substantiated CPS history is discovered and the local office believes this placement is in the child's best interest, the DCS local office 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](#).
  - b. For emergency placements, children cannot remain placed unless the subject of the check is actively working with the COBCU to obtain a waiver. A request for a waiver should be filed within ten (10) days of receiving the CPS history,
  - c. For non-emergency placements, children cannot be placed until a waiver is requested and granted.
4. Review the results of the Sex Offender Registry Check for a match to the subject of the check. If there is a match for the subject of the check, a child cannot be placed and any children already placed must be removed immediately.
5. Review the results of the LEA Records Check 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 anytime the FCM believes the LEA Records Check report may alter the status of the Fingerprint-Based Check, the FCM will contact the COBCU consultant that is listed on the Fingerprint-Based Check Status Letter for further action;
6. To request a waiver of disqualified criminal history and/or substantiated CPS history submit the following 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 the subject of the check is 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 DCS letterhead or e-mail from the FCM 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 check results (CPS History, Sex Offenders Registry, Fingerprint-Based Check, and LEA Records Checks).
  7. Place a copy of the results documents for all background checks and any waiver letters in the child's file and document in the Indiana Child Welfare Information System in the case contacts;
  8. DCS must submit the waiver decision to the court;
  9. See separate policy, [8.8 Preparing Child for Placement](#) if the decision is to approve the placement and the child is not currently placed; and/or
  10. Notify the family and develop alternate placement plans for the child if the decision is to deny the placement. See separate policy, [8.1 Selecting a Placement Option](#).

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

The DCS COBCU will:

1. For Fingerprint-Based Checks, evaluate the report within five (5) business days of receipt and notify by e-mail the assigned DCS local office background check contact person regarding the Fingerprint-Based Check Status;

2. If conditionally disqualified or disqualified provide guidance, re-evaluate history based on the received documentation and issue a new Fingerprint-Based Check 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 FCM, 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 consists of the DCS Local Office Director and Regional Manager of the local office that has supervision of the child, and the Deputy General Counsel over the COBCU or their designee. The team decision may be made via phone or email.

- c. Notify by email the assigned DCS local office background check contact person of the waiver decision. A decision will be returned in approximately ten (10) working days and the status will either be “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**

1. [Application for Criminal History Background Check, \(SF53259/CW3610\)](#)
2. [Request for a Child Protection Services \(CPS\) History Check, \(SF52802/CW2128\)](#)
3. [Follow-up Action for Name-Based Check \(SF 53424/CW3619\)](#)
4. [Background Check Matrix for Unlicensed Placements and Foster Care Desk Guide](#)

#### **RELATED INFORMATION**

## **Factors for the Local Office 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 unlicensed 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 unlicensed resource family; and
7. Any impact the denial of the placement may have on the ability to keep the sibling group together, if applicable.

### **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 Investigations (FBI) and the Indiana State Police (ISP). The subject of the Check is not to 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 record may be formally challenged. A Review Challenge of inaccurate information must be made to the State Police and/or local 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. Unlicensed relative;
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 unlicensed resource.

### **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. Unlicensed Relative;
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 unlicensed resource.

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 placement option, 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 unlicensed resource, as long as the subject of the check passes all other background checks.