

# SAMPLE

## CRIMINAL HISTORY BACKGROUND CHECKS POLICY and PROCEDURE

It is the policy of PROVIDER to comply with the Criminal Background Checks (CBC) regulations of the Justice Center. Any prospective employee, volunteer, intern, consultant or contractor who will have regular and substantial unsupervised or unrestricted contact with service recipients must have a CBC done, along with other required pre-employment checks, including but not limited to the Staff Exclusion List check.

### CRIMINAL HISTORY REQUESTS and RESPONSES

Prospective employees, volunteers, interns, consultants or contractors (hereinafter “applicant”) who may have regular and substantial contact with service recipients who PROVIDER is seriously considering hiring are required to be checks against the Justice Center’s Staff Exclusion List. Such checks may be done online via the Justice Center’s webform by PROVIDERS’ Authorized Peron.

Upon receiving results that an applicant is not on the Staff Exclusion List, the prospective applicant who will have regular and substantial unrestricted or unsupervised physical contact with clients is scheduled to meet with the Director of Human Resources or Human Resource Specialist to be registered and sent for fingerprinting.

The applicant will need to provide a signed consent form for the CBC check. This information will be kept confidential within the guidelines of 14 NYCRR Part 701.

Depending upon the determination is received from the Justice Center CBC, the Authorized Person who is coordinating the applicant process ensures that a hiring decision is made in accordance with the Justice Center determination. Once all the information is completed, an offer can go out to the applicant.

After an offer has been extended, Human Resources Staff Person advises the Director of Human Resources of the outcome – whether the applicant has been hired (if so, supplies hire date), or if the application has been withdrawn so the CBC system can be updated with the status. The Authorized Person coordinating the applicant process is required to update the CBC system.

If an applicant is denied employment by the Justice Center, the Director of Human Resources will notify the applicant that the basis of the denial is the criminal history record and the individual has the right (upon written request) to request a copy of his/her criminal history record summary form the PROVIDER. You can refer the applicant to the [Personal Criminal History Information Review](#) form on the Justice Center website if they have a question concerning the accuracy of the CH.

The Director of Human Resources will also be notified of all terminations so that any employees in the CBC system can be updated and removed from the system within 14 days of the employment status change.

## TEMPORARY APPROVAL

If PROVIDER decides to temporarily approve an applicant pending the results of the Justice Center's CBC determination, in order to protect the health, safety and welfare of individuals receiving services, such temporarily approved applicant shall not be permitted to have unsupervised or unrestricted physical contact with individuals receiving services during such time. This means that such person shall not have in-person, face to face communication or interaction with individuals receiving services, or the reasonable opportunity for such communication or interaction, while not at all times in the reasonable physical proximity of another person who is employed by or under contract with the provider of services who has management or oversight authority over such person or has had at least six months of experience as an employee of the provider of services and has been deemed by such provider to be qualified to provide adequate oversight of temporarily approved applicant.

If the temporarily approved applicant is to be assigned personal care activities which require privacy for people receiving services (e.g., bathing, dressing and toileting), the individual designated to supervise such temporarily approved applicant will always be present in the same room at all times while such personal care activities are occurring.

If PROVIDER knows pursuant to the employment application process or is informed by the Justice Center prior to issuance of its determination, that an applicant has an existing conviction or pending charge for any of the following offenses, the Provider shall not permit the applicant to be temporarily approved:

- (A) a felony sex offense;
- (B) a felony within the past ten years involving violence;
- (C) abandoning a child and/or endangering the welfare of an incompetent, physically disabled or vulnerable elderly person pursuant to sections 260.00, 260.25, 260.32 or 260.34 of the Penal Law; or
- (D) any comparable offense in any other jurisdiction.

If PROVIDER knows that the temporarily approved prospective applicant has a pending felony charge other than as specified above or any pending misdemeanor charge, PROVIDER will document its reasons for granting temporary approval, including an explanation as to why such action will not place individuals receiving services at risk of harm.

## SUBSEQUENT ARREST NOTIFICATION

The Authorized Person will receive any arrest notification. The Director of Human Resources will perform a risk or safety assessment by interviewing the individual and his/her supervisor. Once the circumstances of the arrest and the job duties have been documented, the Director of

Human Resources will review the situation with the Executive Director. A determination will be made as to if the individual is a possible danger to the clients we serve or employees. If a possible danger exists, action will be taken to change the job duties or suspend the employee, volunteer, intern, consultant or contractor. In all cases, the individual should advise the Director of Human Resources of the result or final outcome of the court proceedings. Once a final court determination is made, a final decision regarding employment and/or conditions of employment will follow. The Risk/Safety Assessment will be documented and kept in the employee's personnel file and the fingerprinting notification file.

## RECORD KEEPING RESPONSIBILITIES

### Roster

PROVIDER shall keep a list of the names of all subject individuals for whom a request for a criminal history information check was submitted to the Justice Center, identifying whether he or she was applying for employment, volunteer, consultant, intern or contractor position

### Applicant Records

For each applicant for whom a CBC was performed, PROVIDER shall maintain the Applicant Consent for Fingerprinting form signed by the applicant and the results of the criminal history information check suitability determination of the Justice Center and the provider of services determination with regard to the employment or volunteer service of the individual.

PROVIDER will maintain such records in a manner that maintains the security of the information contained therein, but which also enables the State agency with licensing and/or monitoring jurisdiction over the provider to obtain immediate and unrestricted access to such information upon its request, for the purpose of monitoring compliance with its regulations.

### Status Change

The Director of Human Resources will also be notified of all terminations, decisions not to hire, or withdrawal from consideration so that any employees/applicants' records can be updated and removed from the CBC system within 14 days of the employment or consideration status change.

Any employee, volunteer, intern, consultant or contractor who changes position from one that does not require fingerprinting to one that does require fingerprinting, will have to follow the steps above before a position change is approved. In addition, if a position change occurs from one that required fingerprinting to one that does not require fingerprinting, the CBC system must be updated.

### Retention/Disposal of Information

All files are stored in a locked file cabinet in the office of the Director of Human Resources. Files of those terminated are kept for 6 years post termination date.

Disposal of criminal history information and/or any other information obtained about a subject individual and Justice Center determinations shall be performed in a manner that ensures the confidentiality of the information.