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# Pre-Employment Checks

UPDATE for OPWDD Providers  
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# Acronym Page

- SEL – Staff Exclusion List
- CBC – Criminal Background Check
- OMH – NYS Office of Mental Health
- OPWDD – NYS Office for People With Developmental Disabilities
- OCFS – NYS Office of Children and Family Services
- SCR - Statewide Registry of Child Abuse and Maltreatment
- MHL – Mental Hygiene Law
- VPCR – Vulnerable Persons Central Register
- SOA – State Oversight Agency
- OASAS – NYS Office of Alcoholism and Substance Abuse Services
- DOH – NYS Department of Health
- AP – Authorized Person
- DDSO – Developmental Disabilities Service Office



# Pre-Employment Checks

- The Justice Center Staff Exclusion List (SEL) check is the first step in the pre-employment check process.
- The Justice Center Criminal Background Check (CBC) is conducted for OMH, OPWDD and certain OCFS Providers.
- State Central Register of Child Abuse and Maltreatment (SCR) inquiry is conducted with OCFS.



# Pre-Employment Checks for OPWDD providers

- OPWDD performs the Mental Hygiene Law (MHL) § 16.34 check for OPWDD Providers.
- The Justice Center performs an Executive Law § 562 check for OPWDD Providers.



## Staff Exclusion List

- Vulnerable Persons Central Register (VPCR) includes the SEL.
- SEL contains individuals found ineligible to work in certain positions involving regular and substantial contact with a service recipient.
- Prior to requesting a CBC, certain entities must request a check of the SEL when seriously considering an applicant for employment.



# Entities Required to Request SEL Check

- Facilities and provider agencies, as defined in Social Services Law § 488(4);
- Providers of services to *vulnerable persons*\* in programs licensed, certified or funded by any State oversight agency (SOA); and
- Other providers or licensing agencies required to conduct an inquiry of the SCR.

\* *“Vulnerable person” means a person who, due to physical or cognitive disability, or the need for services or placement, is receiving services from a facility or provider agency.*



# Entities Required to Request SEL Check

## Entities that must request an SEL check

### 1) Facility/Provider Agency

(defined in Social Services Law § 488[4]):

- a) Facility or program operated, licensed or certified by OMH, OPWDD or OASAS
- b) Facility or program operated by OCFS for youth in OCFS custody; Residential programs for children licensed or certified by OCFS; including family-type home for adults certified by OCFS
- c) DOH adult care facilities (80+ beds with at least 25% residents with serious mental illness)
- d) Overnight summer camps for children with developmental disabilities regulated by DOH
- e) State operated schools for Deaf/Blind,
- f) State supported schools with a residential component,
- g) Special act school districts;
- h) In-state private special education schools with residential programs

### 2) Other providers of services in programs licensed, certified or funded by a State Oversight Agency (SOA)



# Entities Required to Request SEL Check

**3) Provider or provider agencies defined in Social Services Law § 424-a(3) that are not otherwise covered by 1 or 2 above, such as:**

a) Authorized agencies defined in Social Services Law § 371(10)

b) OCFS

c) Licensed child day care centers, including Head Start programs

d) Early intervention service

e) Approved 4410 providers (preschool special education)

Municipalities that contract for related services for preschool children with disabilities

f) School-age child care programs



# Entities Required to Request SEL Check

4) <b>Licensing Agency defined in Social Services Law § 424-a(4) not otherwise covered in 1 or 2 above, such as:</b>
a) an authorized agency defined in Social Services Law § 371(10) which:
<i>i) has received an application to become an adoptive parent; or</i>
<i>ii) has received an application for a certificate or license to receive, board of keep any child; or</i>
<i>iii) has received an application from a relative of parent or step-parent; or the child's legal guardian for approval to receive, board or keep such child</i>
b) A state or local government agency that receives an application to provide:
<i>i) child day care services in a child day care center, or</i>
<i>ii) school age child care program, or</i>
<i>iii) family day care home or group family day care home</i>
c) NYC DOHMH when it receives an application for certificate of approval to provide child day care services in a child day care center
d) OMH or OPWDD when it receives an application for an operating certificate to operate a family care home
e) A state or local government official who receives an application for a permit to operate a camp which is subject to Public Health Law Article 13-A or 13-B
f) OCFS when it has received an application for a certificate to receive, board or keep any child at a foster home (Executive Law Articles 19G and H)



## Staff Exclusion List (SEL)

- In order to request a check of the SEL, an Authorized Person (AP) Designation Form for SEL Checks must be submitted to the Justice Center.
- OPWDD Providers who haven't already submitted an AP Designation Form to the Justice Center should submit the AP Designation Form for SEL Check found on the Justice Center website ([www.justicecenter.ny.gov](http://www.justicecenter.ny.gov)) under Forms tab (JC CBC 2).



## SEL OPWDD

- PLEASE NOTE – The existing “Authorized Party” of OPWDD Voluntary and Registered Providers were incorporated into the Justice Center CBC system, so as to not disrupt the flow of criminal history responses when the Justice Center became responsible for processing these checks.



## SEL OPWDD

- However, if they haven't already done so, Providers should submit a completed Justice Center AP Designation Form for CBC (JC CBC 1) and AP Designation Form for SEL Check, (JC CBC 2) for persons they wish to authorize to conduct such checks.
- These forms are found under the Forms tab on the Justice Center website.



# What Individuals are subject to an SEL Check?

- “Any person” who will have “regular and substantial contact” with a service recipient.
- “Any person” can include an employee, administrator, consultant, intern, volunteer, or contractor.



# Requesting an SEL Check

- Interim SEL check protocol: Until December 18, 2013 a Provider's "Authorized Person" shall check the SEL by clicking the [Read More] portion of the red banner on the homepage of the Justice Center website, printing the Interim Request for SEL Check page, and keeping it with the employment application. This indicates, as of the date checked, that no one is on the SEL.



# SEL Check Request Automation

- Later this month, the Justice Center plans to launch an automated SEL check request process where Providers' APs will enter the applicant's information on a webform located on the Justice Center website.
- A informational webinar will be placed on the Justice Center website under the Pre-Employment tab which will explain the new automated procedure.



# SEL Check Request Automation

- PLEASE NOTE: A Social Security Number or Alien Registration Number will be required in order to utilize the automated SEL process.
- Authority for collecting a Social Security Number for the purpose of a SEL check is found in 14 NYCRR Part 702.
- If a Social Security Number or Alien Registration Number is not available, APs must fax the SEL Request Form to the Justice Center CBC Unit.



# SEL Check Request Automation

- Please be advised that faxing the SEL request increases the length of response time.
- Every effort should be made to obtain and utilize the Social Security Number or Alien Registration Number.



## If the Applicant is on the SEL...

- If the applicant is on the SEL, a facility, provider agency, and all other providers of services in programs *operated, licensed or certified* by any SOA shall **not** hire or otherwise allow such a person to have regular and substantial contact with a service recipient.
- No CBC check or SCR inquiry is required if an applicant is on the SEL for these Providers.



## If the Applicant is on the SEL...

- Providers of services in programs funded by a SOA and certain other providers and provider or licensing agencies required to check the SCR, who are not covered within the definition of facility or provider agency, shall determine whether to hire or allow such person to have regular or substantial contact with a service recipient in accordance with guidelines developed by OCFS.



# If the Applicant is Not on the SEL...

- A CBC, if required, and an inquiry of the SCR must be conducted.



# Criminal Background Checks

- The Protection of People with Special Needs Act centralizes within the Justice Center the CBC process for facilities or providers overseen by:
  - OMH;
  - OPWDD; and
  - any residential programs for children licensed or certified by OCFS or juvenile detention facilities operated by OCFS.



# CBC for OPWDD Providers

- Applicants who will provide services to a provider through a third party contractor, such as a staffing agency, are subject to CBC if they will have regular and substantial unsupervised or unrestricted physical contact with the service recipient.
- OPWDD Registered Providers are entities that provide transportation services or staff under a contract with OPWDD or an OPWDD Voluntary Provider. The Registered Provider is responsible for requesting the CBC for their employees with the requisite level of contact.
- Programs that are certified or operated by OPWDD must request the CBC for the employees of contractors that are not registered providers.



# CBC for OPWDD Providers

- The manner in which OPWDD Providers register applicants for fingerprinting will be changing early next year. OPWDD Providers will be given direct access to the CBC system. They will be able to register applicants for fingerprinting and check on and update an applicant's status directly into the Justice Center CBC. More information will be forthcoming.



# CBC for OPWDD Providers

- For the time being, OPWDD Providers will continue to register applicants for fingerprinting using Justice Center forms and sending applicants to existing LiveScan fingerprint sites. A list of LiveScan sites for OPWDD Providers can be found on the OPWDD website:

<http://www.opwdd.ny.gov/node/1488> for Voluntary agencies

<http://www.opwdd.ny.gov/node/1487> for DDSOs

- Responses will continue to be returned to APs via secure email.



# CBC for OPWDD Providers

- Sites that offer LiveScan services are encouraged to partner with nearby providers to increase the hours of availability. For example, if Site A has fingerprint equipment and Site B is within a reasonable distance, Site B could provide a staff member to Site A for a designated period of time each week. Site A staff would need to train Site B staff to use the equipment and request access for Site A staff. Niagara Cerebral Palsy, Rivershore and Opportunities Unlimited currently share the equipment that is located at Niagara Cerebral Palsy.



# CBC for OPWDD Providers

- For the time being, OPWDD Providers should update an applicant's employment status by sending an email to [cbc@justicecenter.ny.gov](mailto:cbc@justicecenter.ny.gov) advising whether the applicant has been hired or not. This is a change from past practice.
- When a decision has been made to terminate employment, OPWDD Providers should submit the Justice Center Change in Status Form (JC CBC 7).



# CBC for OPWDD Providers

- Another anticipated change concerns how the OPWDD Providers' applicants' fingerprints are submitted.
- The maintenance of outdated LiveScan equipment utilized by OPWDD Providers since fingerprinting was required in 2005 is becoming increasingly difficult. OPWDD is considering other options, including utilizing a vendor that submits electronic fingerprints for many other State agencies. More information will be forthcoming.



## CBC Waiver

- If a Provider operates a program for OMH, OPWDD and/or residential programs for children for OCFS, only one CBC is required for an applicant who meets the fingerprinting criteria.
- The Provider shall request a CBC for that applicant by indicating in the job duties section of the applicant registration process that the applicant will be providing services for the covered programs.



# CBC Waiver Example 1

- Provider A operates both an OPWDD and OCFS program and is hiring an applicant who will be, or may, work at both programs. If Provider A registers that applicant for fingerprinting at a DDSO or OPWDD LiveScan site, it should indicate that the applicant will be providing services in both the OPWDD and OCFS program in the job duties part of the Fingerprint Submission Authorization Form (JC CBC 6).



# CBC Waiver Example 1

- If Provider A registers that applicant for the OCFS program in MorphoTrust, it should indicate that the applicant will be providing services in both the OPWDD and OCFS program in the job duties text box.
- Doing so will allow the Justice Center to render a suitability determination for both the OPWDD and the OCFS programs.



## CBC Waiver Example 2

- Provider B operates both an OPWDD and OMH program and is hiring an applicant who will be, or may, work at both programs. If Provider B registers that applicant for fingerprinting at a DDSO or OPWDD LiveScan site, it should indicate that the applicant will be providing services in both the OPWDD and OMH program in the job duties part of the Fingerprint Submission Authorization Form (JC CBC 6).



## CBC Waiver Example 2

- If Provider B registers that applicant for the OMH program in the Justice Center CBC system, it should indicate that the applicant will be providing services in both the OMH and OPWDD program in the job duties text box.
- Doing so will allow the Justice Center to render a suitability determination for both the OPWDD and the OMH programs.



# Justice Center OASAS Waiver

- If an applicant meets the fingerprinting criteria for the Justice Center CBC and OASAS CBC, the Provider may request such a waiver at the time of registering for the fingerprint submission.
- The Justice Center and OASAS will separately proceed with reviews of the applicant's criminal history and will independently advise the Provider's AP of their determinations.



# Justice Center OASAS Waiver

- When a waiver is requested, the OPWDD Provider's AP needs to register the applicant for fingerprinting either at a DDSO or OPWDD LiveScan site and select "Yes" in the Justice Center/OASAS waiver box on the Fingerprint Submission Authorization Form (JC CBC 6) or select "Y" for the Justice Center/OASAS waiver option when registering an applicant via MorphoTrust on [www.identogo.com](http://www.identogo.com).



## MHL § 16.34 Checks

- OPWDD Providers are also required to request a MHL § 16.34 check. Information about doing so can be found on the OPWDD website:  
<http://www.opwdd.ny.gov/node/4637>
- The Justice Center is not involved with MHL § 16.34 checks.



# Executive Law § 562 checks

- Upon an OPWDD Provider's request for a pre-employment check for an applicant, the Justice Center shall provide a notification of substantiated reports of category 2 conduct to the Provider's AP and the applicant, if such reports exist.
- The OPWDD Provider's AP will be notified via email if the applicant has a final category 2 substantiated finding. If the Provider wants a summary of the conduct, the AP will be able to request the summary by emailing [cbc@justicecenter.ny.gov](mailto:cbc@justicecenter.ny.gov).



# Statewide Central Register Inquiries

- List of providers that must check the SCR was expanded to include “facility or provider agency” as defined in Social Services Law § 488(4).
- If newly required (after June 30, 2013) to check the SCR as part of the pre-employment screening, a provider must apply with OCFS for such access.
- All entities that are required to do an SEL check must also do an SCR check if the subject of inquiry is not on the SEL.



# SCR Inquiry

- Social Services Law § 424-a(3)(4) list providers, and provider or licensing agencies required to conduct an inquiry of the SCR through OCFS.
- Having an indicated report on the SCR is not a bar to hiring.
- The Justice Center is not involved with the pre-employment SCR inquiry.



# SCR Investigation Inquiry

- After an allegation of abuse or neglect, an investigator must request the Justice Center to conduct a subject search of the SCR. Information about this check may be found at:

<http://www.justicecenter.ny.gov/investigations-prosecution/office-investigations/statewide-central-register-scr-check>

- The Justice Center *CBC Unit* is not involved with the SCR Investigation inquiry.



# Questions?

Please direct any questions to:

[cbc@justicecenter.ny.gov](mailto:cbc@justicecenter.ny.gov)

A copy of these slides will be placed on the Justice Center's website under the Pre-Employment tab.





For the Protection  
of People with  
Special Needs

# Thank you!

Contact information for the Justice Center CBC Unit:

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