

	<b>INDIANA DEPARTMENT OF CHILD SERVICES CHILD WELFARE POLICY</b>	
	<b>Chapter 13:</b> Adoption/Permanency	<b>Effective Date:</b> July 1, 2017
	<b>Section 8:</b> Evaluating Background Checks for Adoptions	<b>Version:</b> 7

<b>STATEMENTS OF PURPOSE</b>
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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 adoption. The DCS Local Office or Licensing Child Placing Agency (LCPA) adoption worker will evaluate the remaining background checks. See separate policy, [13.7 Conducting Background Checks for Adoptions](#). The final results will be placed in the child's file and documented in the Management Gateway for Indiana's Kids (MaGIK).

**Fingerprint-Based Check**

The DCS Central Office Background Check Unit (COBCU) will evaluate the results of the Fingerprint-Based Check and notify the assigned contact person at the DCS local office or LCPA contact person of the criminal history clearance status by e-mailing 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 the 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 re-evaluate 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 convictions or pending convictions although some may be eligible to file for a Waiver (see [Waivers](#) section below):

1. Any misdemeanor that may 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 (1) of the 22 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 Protective Services History Checks (CPS) History Checks**

The adoption worker will review the completed CPS history results from Indiana and all other states of residency within the past five (5) years (if applicable), and the adoption worker will

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 by COBCU of a CPS waiver is required for DCS to recommend the adoption (see section on [Waivers](#)).

### **Sex Offender Registry Check**

The adoption worker will evaluate the Sex Offender Registry Check to determine if there are any matches. If there is a match, the adoption cannot proceed. Notify the COBCU immediately. The COBCU will re-evaluate the Fingerprint-Based criminal history report.

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

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

### **Waivers**

Upon receipt of the positive written recommendation of support for employment and/or volunteering from the adoption worker<sup>1</sup>, 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, or is pending conviction, 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 past five (5) years;
7. [Domestic battery \(IC 35-42-2-1.3\)](#);
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 past five (5) years;
11. [Human Trafficking \(IC 35-42-3.5\)](#);
12. [A felony sex offense under \(IC 35-42-4\)](#);
13. [Carjacking \(IC 35-42-5-2\)](#) (repealed) within the past five (5) years prior to repeal;
14. [Arson \(IC 35-43-1-1\)](#) within the past five (5) years;
15. [Incest \(IC 35-46-1-3\)](#);
16. Neglect of a dependent ([IC 35-46-1-4\(a\)\(1\)](#)) and ([IC 35-46-1-4\(a\)\(2\)](#));
17. Child selling ([IC 35-46-1-4\(d\)](#));
18. A felony involving a weapon under ([IC 35-47](#)) or ([IC 35-47.5](#)) within the past five (5) years;
19. A felony relating to controlled substances under ([IC 35-48-4](#)) within the past five (5) years;
20. An offense relating to material or a performance that is harmful to minors or obscene under ([IC 35-49-3](#));

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<sup>1</sup> "Adoption Worker" is defined as the Local Office Family Case Manager or LCPA worker

21. A felony under [IC 9-30-5](#) within the past five (5) years;
22. A felony that is substantially equivalent to a felony listed in subdivisions one (1)- (21) for which the conviction was entered in another state.

DCS cannot recommend the adoption if the background check reveals that an individual living in the home has a disqualified criminal history or CPS history that is not waived by DCS.

#### Code References

1. [IC 9-30-5: Operating a Vehicle While Intoxicated](#)
2. [IC 31-19-11-1: Decree; affidavit; criminal convictions and juvenile adjudications](#)

### **PROCEDURE**

The adoption worker<sup>2</sup> will complete the following steps:

1. For a Fingerprint-Based Check, review the results letter received from COBCU. Where the Fingerprint-Based Check Status results are a conditionally disqualified or disqualified status:
  - 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 adoption worker supports the Waiver, instruct the subject of the check that a request for a Waiver must be submitted to the COBCU within 10 days of the date of the Fingerprint-Based Check Status Letter (see #5 below regarding applying for a Waiver), and
  - c. If conditionally disqualified, instruct the subject of the check to contact the COBCU consultant listed on the Fingerprint-Based Check Status Letter within 10 days of the date of the results letter. Provide the requested documentation to the COBCU consultant. Upon re-evaluation, 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 adoption worker will give the subject of the check a copy of the completed [Request for a Child Protection Services \(CPS\) History Check \(SF 52802\)](#) form showing substantiated history (see separate policy, [2.6 Sharing Confidential Information](#)), and
  - b. A request for a Waiver should be filed within ten (10) days of receiving the CPS history (see #5 below regarding applying for a Waiver). The request for the waiver must be granted for the subject of the check, or DCS cannot recommend the adoption.
3. 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, the adoption cannot proceed and any children already placed must be removed immediately;
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 adoption worker believes the LEA Record Check may alter the Fingerprint-Based Check Status, the adoption worker will contact the Consultant that is listed on the Fingerprint-Based Check Status Letter for further action;

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<sup>2</sup> "Adoption Worker" is defined as the Local Office Family Case Manager or LCPA worker

5. To request a Waiver of disqualified criminal history and/or substantiated CPS history submit 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 (parent or guardian may write if the subject of the check is a minor and he or she is unable to write his or her own letter; however, the minor should sign if able) explaining in detail the situation involving the substantiation or criminal act and addressing:
    - i. The length of time since the person committed the offense, delinquent act, or act that resulted in the substantiated report of abuse or neglect;
    - ii. The severity of the offense of abuse or neglect, including jail or prison time served and whether they are currently on probation or parole;
    - iii. Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable; and
    - iv. The ability of the proposed applicant to provide for the child's safety and well-being.
  - b. A signed letter on agency letterhead or an e-mail from the adoption worker who completed the home study explaining:
    - i. His or her observations of the subject of the check;
    - ii. The reasons he or she supports or does not support the waiver request;
    - iii. If the child is already placed with the subject; and
    - iv. The relationship of the child to the subject of the waiver request, if any.
  - c. An Indiana [Request for a Child Protection Services \(CPS\) History Check \(SF 52802\)](#). If substantiation of abuse and/or neglect is found, there must be a 311 included for all substantiations reported on the form above form. Also, if the subject has resided outside the state of Indiana in the past five (5) years, the other state's CPS search results must also be submitted,
  - d. A screen print of the Sex Offender Registry Check completed from the required National Sex Offender website, if 14 years or older,
  - e. A copy of the written results of all LEA checks, if 18 years and older, and
  - f. A copy of the fingerprint-based status letter which was e-mailed to the adoption worker, if requesting a CPS waiver only. This is required for checks completed for the purpose of adoption showing the Fingerprint-Based Status of qualified, if 18 years and older.
6. Place a copy of the results documents for all background checks and any waiver letters in the child's file and document in the MaGIK system.

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

The DCS COBCU will:

1. For Fingerprint-Based Checks, evaluate the criminal history report within five (5) business days of receipt and notify by e-mail the assigned DCS local office or LCPA contact person regarding the clearance status;
2. If conditionally disqualified or disqualified provide guidance, re-evaluate history based on the received documentation and issue a new status letter when applicable;
3. For Waivers of disqualified criminal history and substantiated CPS history:

- a. Upon receipt of the complete waiver request packet, the COBCU will summarize, make a recommendation, and submit the request to the Deputy Director of Placement Support and Compliance, or designee,
- b. Deputy Director of Placement Support and Compliance, or designee will submit the recommendation to the Background Check Team for a joint decision, and

**Note:** The Background Check Review Team is made up of the Adoption and Youth Connections Programs Manager, the DCS Local Office Director (LOD), Regional Manager (RM), and the Deputy Director of Placement Support and Compliance or their designee. The team’s decision may be made via phone or e-mail.

- c. Notify by e-mail the assigned DCS local office or LCPA background check contact person of the waiver decision. A decision will be returned in approximately 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 notify by e-mail the DCS local office or LCPA background check contact person regarding the status.

#### **PRACTICE GUIDANCE**

N/A

#### **FORMS AND TOOLS**

1. [Assessment of Alleged Child Abuse or Neglect \(SF113\)](#) – Available in MaGIK
2. [Background Check Matrix for Adoptions Desk Guide](#)
3. [Request for a Child Protection Services \(CPS\) History Check \(SF 52802\)](#)

#### **RELATED INFORMATION**

##### **Factors for the Adoption 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 the 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. Prospective adoptive parent; or
2. Household member.

### **Conditionally Disqualified Fingerprint Status**

Conditionally Disqualified status means that the subject of the check is ineligible 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. Prospective adoptive parent; or
2. Household member.

Examples of reported information on a fingerprint based criminal history 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 as a prospective adoptive parent or household member, as long as the subject of the check passes all other background checks.