

## DEPARTMENT OF SOCIAL SERVICES

## CHILDREN'S DIVISION

P. O. BOX 88

JEFFERSON CITY, MISSOURI

October 17, 2007

**What's Inside:**

- Policy changes in relation to FBI Regulations in regard to criminal background checks

**M E M O R A N D U M**

**TO:** REGIONAL EXECUTIVE STAFF, CIRCUIT MANAGERS, AND CHILDREN'S DIVISION STAFF

**FROM:** PAULA NEESE, DIRECTOR

**SUBJECT:** FBI REGULATIONS REGARDING CRIMINAL HISTORY BACKGROUND CHECKS

**DISCUSSION:**

This memorandum is intended to inform staff of specific Federal Bureau of Investigation (FBI) regulations regarding the acquisition, use, storage and destruction of criminal history background checks. The first audit conducted by the FBI in Missouri was for educational purposes only. Audits will be conducted every three years. The FBI can sanction states for failure to meet regulations which may include monetary sanctions or the loss of designation to conduct and/or receive criminal history reports. Staff from the FBI met with representative from state agencies to discuss current procedures and identify changes that need to be made to meet FBI regulations.

The Children's Division had some areas in which improvement was needed to meet regulations. These areas include the acquisition and use of, as well as the storage and destruction of, criminal history records.

**ACQUISITION AND USE**

The Division and its staff should only acquire criminal history records for use in licensing and approving foster, relative, kin, adoptive, and respite homes from the Missouri State Highway Patrol (MSHP) and the FBI. We cannot use any fingerprint records obtained for any purpose other than that stated on the record (i.e. foster home licensing).

Fingerprint records obtained by a foster parent or applicant for the purpose of employment may not be used as the basis for licensure. Criminal history reports are a moment in time report and are only reflective of the record at that moment. They are quickly obsolete.

We should not be sharing our records with other entities. We may release criminal history records to other government agencies which have the same purpose as ours, such as other state's Child Protection Services agencies (commonly ICPC requests). We may share results with Early Childhood staff as they are within our agency. We may share results with the Juvenile Court if the reason for sharing matches the purpose

stated on the criminal history report, i.e. for the purpose of finalizing an adoption or guardianship.

We may also share results with the court on criminal history background checks completed on biological parents/legal guardians for the purpose of reunification as long as that is the stated purpose. Parents may also obtain records themselves; however, the court may question their validity.

Anyone on whom we have obtained criminal history reports may request a copy of these results. The person must make the request in writing and provide photo identification to receive a copy. They must also sign a statement stating they received a copy of their record. This statement should be maintained in their file. We may release records only to the person to whom it belongs. For example, we may not release a copy of a husband's record to his wife. He must present his photo identification and sign for his records. The Division also requires criminal history records on household members age 17 and those under 17 who have been certified as adults by the court. These records cannot be released to anyone other than the individual on whom the record was requested. This means that the parent for the household may not receive copies of these individuals' records as they are considered adults.

FBI regulations state that arrests alone cannot be the basis for disqualification. This means that we should not deny or revoke on the basis of arrests alone, but seek out more information on the disposition or status of the case. Contacting law enforcement and/or the prosecuting attorneys office should provide staff with the additional information necessary. We may use arrest history as one reason for denial or revocation but it should not be the only reason.

#### STORAGE AND DESTRUCTION

Staff should not list specifics in the narrative section of the file when documenting criminal history. The narrative should simply reflect one of the following:

- History is present and the Division is denying/suspending/revoking the license based on the criminal history;
- History was present but will not result in an adverse action to the license; or
- No criminal record found.

Specific criminal history information may be included in the Resource Home Adverse Action Report (CS-20) when it is the basis for denial, suspension or revocation.

**At the time of re-approval or re-licensure, staff should destroy the criminal history report obtained for the last approval/licensure period.** The previous record is obsolete and no longer required to be maintained in the record. Staff should document that the report was destroyed. This should be done only after receipt of the new criminal history report. Staff should not maintain any electronic copies of criminal history records.

The FBI has specific regulations in regard to destruction and archiving of criminal records. State archiving does not meet FBI regulations and **no records should be sent to state archives that contain criminal history records.** This includes foster, relative and kinship licensing records, adoption records, ICPC and family-centered-out-of-home records. This information must be removed from the record prior to being sent to state archives. Specific criminal history information included in the Resource Home Adverse

Action Report (CS-20) should be retained in a separate file in the local office as discussed in memorandum CD07-15.

The FBI requires that criminal history records be destroyed so they are not viewable. Records must be shredded or incinerated in order to meet this requirement. However, records must be destroyed either by a Children’s Division employee or in the presence of a Children’s Division employee. FBI regulations allow for contractors to destroy records as long as a CD staff person is present (i.e. done on-site). However, if the contractor picks documents to be destroyed and takes them to another location, this is considered outsourcing and does not meet FBI regulations.

Each circuit should establish local protocols for staff in regard to the destruction of criminal history records.

<b>NECESSARY ACTION:</b>	
<ol style="list-style-type: none"> <li>1. Review this memorandum with all Children’s Division staff.</li> <li>2. Review revised Child Welfare Manual chapters as indicated below.</li> <li>3. All questions should be cleared through normal supervisory channels and directed to:</li> </ol>	
<b>PDS CONTACT:</b> Venice Wood 573-522-5060 <a href="mailto:Venice.P.Wood@dss.mo.gov">Venice.P.Wood@dss.mo.gov</a>	<b>PROGRAM MANAGER:</b> Melody Yancey 573-562-8040 <a href="mailto:Melody.Yancey@dss.mo.gov">Melody.Yancey@dss.mo.gov</a>
<b>CHILD WELFARE MANUAL REVISIONS:</b> Section 5 Chapter 1.6 <a href="#">Recording Guidelines</a> Section 5 Chapter 2.5 <a href="#">Other Persons/Agencies Entitled to Case Record Information</a> Section 5 Chapter 2.6 <a href="#">Out-of-Home Care Provider Records</a> Section 5 Chapter 4.2 <a href="#">Retention and Destruction – Other Records</a>	
<b>FORMS AND INSTRUCTIONS:</b> Resource Home Adverse Action Report (CS-20)	
<b>REFERENCE DOCUMENTS and RESOURCES:</b> Memorandum <a href="#">CD07-15</a>	
<b>RELATED STATUTE:</b> <a href="#">Title 28 Code of Federal Regulations Section 50.12</a> <a href="#">43.540</a> RSMo <span style="float: right;"><a href="#">210.487</a> RSMo</span> <a href="#">210.117</a> RSMo <span style="float: right;"><a href="#">211.038</a> RSMo</span> <a href="#">210.482</a> .1-5 RSMo	
<b>ADMINISTRATIVE RULE:</b> 13 CSR 35-60.010 <a href="#">Family Homes Offering Foster Care</a>	
<b>COUNCIL ON ACCREDITATION (COA) STANDARDS:</b> N/A	
<b>PROGRAM IMPROVEMENT PLAN (PIP):</b> N/A	
<b>SACWIS REQUIREMENTS:</b> N/A	