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POLICY TRANSMITTAL NO. 07-46	DATE: AUGUST 17, 2007
CHILDREN AND FAMILY SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY

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TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:75-7-15.

EXPLANATION: **Policy revisions were approved by the Commission and the Governor as required by the Administrative Procedures Act.**

340:75-7-15 is amended to bring the foster and adoptive homes approval process into compliance with Senate Bill 553 and: (1) clarifying the exception to the fingerprinting process; (2) clarifying that when an equivalent records check from another state is required, it must be received prior to placement; (3) correcting Department of Public Services to Department of Public Safety (DPS); (4) repealing time frame for kinship applicant's equivalent record check; (5) requiring that OKDHS obtain the out-of-state child abuse and neglect registry check; and (6) repealing court's authority to approve a prospective adoptive parent or long-term placement provider due to specified felonies.

Original signed on 8-17-07

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Linda Smith, Director  
Children and Family Services Division

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Sharon Neuwald, Coordinator  
Office of Legislative Relations and Policy

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WF # 07-12 (NAP)

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## **INSTRUCTIONS FOR FILING MANUAL MATERIAL**

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

### **REMOVE**

340:75-7-15

### **INSERT**

340:75-7-15, pages 1-9, revised 8-3-07

**340:75-7-15. Background investigation and assessment of results**

Revised 8-3-07

(a) **Requirements.** A background investigation is conducted on all adults in the foster applicant's home as a safeguard for children placed in Oklahoma Department of Human Services (OKDHS) custody. Background investigations are conducted at the time of application and include, but are not limited to:

- (1) an Oklahoma State Bureau of Investigation (OSBI) name and records criminal history search, including the Department of Public Safety (DPS) and Sex Offenders Registry, of the applicant and any adult living in the applicant's household;
- (2) a Federal Bureau of Investigation (FBI) national criminal history search, based on the fingerprints of the applicant and any adult members of the household;
- (3) a search of any court involvement;
- (4) a search of all OKDHS records, including Child Welfare (CW) records, for past confirmation of child maltreatment involving the applicant and any adult living in the household;
- (5) a search of all applicable out-of-state child abuse and neglect registries; and
- (6) a search of Juvenile Justice Information System (JOLTS) records for any child older than 13 years of age in the applicant's household. ■1

(b) **Criminal history search.** The applicant and adult household members provide consent for an OSBI and FBI criminal history search by signing Form 04AD003E, Request for Background Check.

(c) **Exception to fingerprinting.** The Director of OKDHS or designee may authorize an exception to the fingerprinting requirement, and authorize use of an alternative procedure for obtaining a national criminal records check for any person residing in the home who has a severe condition that precludes such person being fingerprinted. In limited, case specific circumstances, OKDHS may not be able to obtain:

- (1) an individual's fingerprints as a result of the individual's disability; or
- (2) legible fingerprints due to low quality fingerprints, as a result of age, occupation

or otherwise, thereby making it impossible for the national crime information databases (NCID) to provide results. ■ 2

(d) **Residence time frame.**

(1) If every person age 18 or older residing in the applicant's home has resided in Oklahoma for at least five consecutive years immediately preceding approval, the initial approval may occur upon completion of the entire home assessment process using results per OAC 340:75-7-15(a).

(2) Fingerprints are submitted to the FBI for a national criminal history records search before initial approval. Final approval, per OAC 340:75-7-18(b)(3), is contingent upon receipt of the results of the national criminal history records search.

(3) Applicants or adult household members who have lived in Oklahoma for less than five years must also provide the equivalent background records check from previous state(s) of residence prior to placement. Equivalent records check includes, but is not limited to, a state's criminal history search, including DPS and Sex Offenders Registry. OKDHS obtains the child abuse and neglect registry check from the previous state(s) of residence. ■ 3

(e) **Occupancy of the household.** A criminal history search is completed for every adult who sleeps in the household more than 30 days per calendar year or engages in a pattern of overnight visitation that meets this test. Such persons are considered household members.

(f) **New occupants in the foster home.** The foster parent notifies OKDHS within 24 hours of any person taking up residence in the foster home. OKDHS completes a background investigation, per OAC 340:75-7-15, for persons age 18 years or older. The foster parent's child who reaches age 18 is considered in this category. Adults in this category have no provider responsibility until the background investigation is complete. A foster family's failure to notify OKDHS of a new household member or refusal of a household member to consent to a background check is grounds for cancellation of the foster care contract.

(g) **Kinship applicant criminal background records search after normal business hours or on a holiday.** When OKDHS considers placement of a child with a prospective kinship foster family in an emergency situation, after normal business hours or on a holiday, OKDHS requests that local law enforcement conduct a name based

National Crime Information Center (NCIC) criminal history search. This is based upon submission of the name, race, gender, date of birth, and Social Security number of each person age 18 years or older living in the household. Each person completes and signs Form 04AD003E to initiate the search. ■ 4

(h) **Assessment of background investigation results.**

(1) **History of felony convictions.** OKDHS denies a resource home application if the applicant, or any person residing in the home of the applicant, has a criminal conviction record for any of the felony offenses listed in (A) through (E). The criminal conviction of an approved foster parent or any person residing in the foster home of any of the felony offenses listed in (A) through (E) requires the closure of the foster home, cancellation of the foster care contract, and removal of each child in OKDHS custody. The felony offenses are:

(A) physical assault, battery, or a drug-related offense within the five year period preceding the application date;

(B) child abuse or neglect;

(C) domestic abuse;

(D) a crime against a child, including, but not limited to, child pornography; or

(E) a crime involving violence, including, but not limited to, rape, sexual assault, or homicide, but excluding physical assault or battery. Homicide includes manslaughter.

(2) **Exceptions to history of felony convictions.**

OKDHS does not grant exceptions regarding felony convictions, per OAC 340:75-7-15(h)(1), of a prospective or approved foster parent or of anyone residing in the foster home. Approval may be granted by the county director on a case-by-case basis, per OAC 340:75-7-15(h)(4), for any applicant who has, or is living with a person who has, a prior conviction or charges pending for any other felony or a relevant misdemeanor.

(3) **Sex related crimes.** OKDHS denies the application of an applicant if the applicant, or any person residing in the applicant's home, has been convicted, whether upon a verdict or a plea of guilty or upon a plea of nolo contendere, for any

crime specified per Section 582 of Title 57 of the Oklahoma Statutes. OKDHS denies the application of an applicant if the applicant is subject to, living with, or married to a person who is subject to the Oklahoma Sex Offenders Registration Act.

(4) **History of crimes, charges, or other convictions.** Approval of any applicant who has, or is living with a person who has, a history of arrests, charges, or convictions for any felony other than those listed in OAC 340:75-7-15(h)(1) or a relevant misdemeanor may be approved on a case-by-case basis. A relevant misdemeanor includes, but is not limited to, assault and battery, alcohol or drug related offenses, crimes involving domestic abuse, and other such offenses. ■ 5

(5) **History of child abuse and neglect investigations.** OKDHS determines the approval of any applicant with a history of child abuse and neglect investigations on a case-by-case basis. The county director considers the:

- (A) nature and seriousness of the CW history;
- (B) time elapsed since the CW history;
- (C) circumstances of the CW history;
- (D) degree of rehabilitation;
- (E) risk, if any, to the child by such placement; and
- (F) results of appeals, if applicable. ■ 6

(6) **History of child abuse and neglect investigations on closed foster homes.** OKDHS determines whether to pursue the approval of any applicant that was previously a foster home with a history of child abuse and neglect investigations as a foster parent. The Children and Family Services Division Foster Care Section reviews investigations where there have been abuse or neglect allegations and confirmed findings. ■ 7

(7) **JOLTS information.** The information obtained from a JOLTS search on the child older than 13 years of age living in the applicant's home is used to determine whether that child poses a risk to a child in OKDHS custody. ■ 8

#### **INSTRUCTIONS TO STAFF 340:75-7-15**

Revised 8-3-07

1. **Background checks.** All searches, except for Juvenile Justice Information System (JOLTS), are completed on each foster applicant and adult household member using current and previous names, aliases, and Social Security numbers.

(1) **OSBI and FBI searches.**

(A) **Authorization by signature.** Child Welfare (CW) staff advises the applicant that the applicant's signature on Form 04AD003E, Request for Background Check, authorizes Oklahoma Department of Human Services (OKDHS) to complete an investigation of the applicant.

(B) **Process.** The anticipated time frame for completion of the entire fingerprinting process is eight weeks. The process for obtaining, sharing, and recording an Oklahoma State Bureau of Investigation (OSBI) name and records search and Federal Bureau of Investigation (FBI) national criminal history records search consists of CW staff:

(i) submitting Form 04AD003E to Children and Family Services Division (CFSD) Fingerprint Processing Section;

(ii) retaining a copy of Form 04AD003E in the resource record;

(iii) submitting one Form 04AD003E for the OSBI name search and a separate Form 04AD003E with fingerprint cards for the OSBI records search and FBI national criminal history records search for every adult household member;

(iv) providing two fingerprint cards to every person 18 years or older residing in the applicant's home;

(v) providing the applicant with an automated fingerprinting authorization through Finance AS400;

fingerprinting is completed;

(vii) checking the fingerprint cards for accuracy and forwarding all cards for the applicant's household, along with Form 04AD003E to the Fingerprint Processing Section;

(viii) if the fingerprint cards are rejected and reprinting is necessary, returning the cards to and instructing the person to take the cards to the original vendor, who reprints the person at no additional charge; and

(ix) entering the results of the search in KIDS Criminal Background Check screen.

(2) Court records search. A search is completed to determine whether there has been any court involvement and, if so, the disposition of criminal charges and court involvement. The results are documented on Form 04AF007E, Records Check, and filed in the resource record. CW staff searches:

(A) the Oklahoma State Courts Network (OSCN) at [www.oscn.net](http://www.oscn.net);

(B) offender information and offender lookup through Oklahoma Department of Corrections (DOC) at [www.doc.state.ok.us](http://www.doc.state.ok.us); and

(C) Oklahoma District Court Records (ODCR) at [www.odcr.com](http://www.odcr.com).

(3) OKDHS records search. CW staff completes a search of all OKDHS records including CW history. A search is completed using the Information Management System (IMS) and KIDS with the adult's Social Security number and date of birth. The information is recorded on Form 04AF007E and filed in the resource record.

(4) JOLTS search. CW staff completes a search on JOLTS of all children in the home older than 13. The results are documented on Form 04AF007E and filed in the resource record.

2. Exception. CW staff submits the request for an exception in writing to the Fingerprint Processing Section. Upon review, the Fingerprint Processing

Section determines if the request meets the criteria for an exception and sends the request to the Foster Care Section for approval. It is not acceptable for an alternative background check process to be used when fingerprints impressions are of low quality due to lack of technological capacity or use of improper techniques. The Foster Care Section responds to the CW staff with the determination and the response is placed in the resource file. The Fingerprint Processing Section uses an alternative procedure and requests a name-based check of the NCID.

(1) Inability to obtain fingerprints due to a physical disability. A name-based check of the NCID must be conducted to obtain a comprehensive criminal background check when fingerprints cannot be obtained due to a physical disability. This alternative procedure is for limited and case-specific situations, such as when a fingerprint specialist has documented that the prospective foster parent's disabling condition prevents fingerprinting, or the individual does not have fingers.

(2) Inability to obtain results due to low quality fingerprints. If the individual's fingerprint impressions are rejected by the NCID, an alternate procedure to conduct a name-based check of the NCID must be conducted to obtain a comprehensive criminal background check. This alternative procedure is for limited and case-specific situations.

3. Child Abuse and Neglect information. If information cannot be obtained from the other state(s), the CW staff documents the name of the state(s) and efforts made to obtain the information in the resource record.

4. Kinship applicant criminal background records search after normal business hours or on a holiday. CW staff:

(1) request a purpose code x name-based NCIC criminal history search;

(2) documents the criminal history search by local law enforcement after normal business hours and on holidays in KIDS Resource Contacts screen;

(3) submits signed Form 04AD003E to the Fingerprint Processing Section the next working day, indicating that it is an after hours follow-up;

**(4) submits the fingerprint cards to the Fingerprint Processing Section within five business days of the name-based after hours background records check, attached to a copy of the previously submitted Form 04AD003E; and**

**(5) does not place a child in a kinship foster home if the prospective kinship applicant or person age 18 or older residing in the home refuses fingerprinting. A child in placement is removed if the prospective kinship applicant or person age 18 or older residing in the home refuses fingerprinting.**

**5. Assessment of other related crimes, charges, and convictions. The resource specialist conducts a thorough assessment of the risk potential to the child placed in the home and obtains consultation and written approval of the county director and CW field liaison (CWFL) prior to approving the home. The approval is documented in KIDS Pre-Resource or Resource Contacts screens, as applicable, and filed in the resource record.**

**(1) The resource specialist considers any other issues that may be relevant in assessing appropriateness of the applicant.**

**(2) According to Oklahoma law, a deferred sentence is not a conviction nor considered as such, but a finding or plea of guilty or nolo contendere to a charge may be considered even if the person has been granted a deferred sentence.**

**(3) Assessment of charges and convictions include, but are not limited to:**

**(A) type of crime committed;**

**(B) time elapsed since the crime or conviction;**

**(C) length of the deferment or length and type of sentence imposed;**

**(D) completion date of the sentence;**

**(E) assignment of a probation officer and the officer's information;**

**(F) positive changes the applicant has made in his or her lifestyle and a**

- description of how and why the changes occurred;**
- (G) self-evaluation by the applicant regarding how the experience may help children or youth placed in the home; and**
- (H) provisions for the safety and well-being of a child in the home due to the applicant's criminal history.**
- 6. CW history results. The resource specialist consults on a case-by-case basis with the CW supervisor, CWFL, and county director about any CW history found, including appeal decisions.**
- 7. CW history results on closed foster homes. CFSD Foster Care Section reviews the CW history and makes a recommendation in writing to the county director.**
- 8. JOLTS information. The resource specialist consults on a case-by-case basis with the CW supervisor, CWFL, and county director about any JOLTS history found. The county director considers the:**
- (1) nature and seriousness of the JOLTS history;**
  - (2) time elapsed since the JOLTS history;**
  - (3) circumstances of the JOLTS history;**
  - (4) child's ongoing involvement with Office of Juvenile Affairs (OJA); and**