



Dear Colleague:

The Justice Center for the Protection of People with Special Needs (Justice Center) was recently created in response to the recognized need to strengthen and standardize the safety net for persons who receive care from New York State's human services agencies. It becomes operational on June 30, 2013.

The Protection of People with Special Needs Act (Act) centralizes the criminal background check process for facilities or providers overseen by the Office of Mental Health (OMH), the Office for People With Developmental Disabilities and the Office of Children and Family Services (OCFS) within the Justice Center.

Staff Exclusion List

The Act establishes in the Justice Center a Vulnerable Persons Central Register (VPCR) that will include a Staff Exclusion List (SEL) containing the names of individuals deemed ineligible to work in a position involving regular and substantial contact with a service recipient. The law requires that prior to requesting a criminal background check, the following entities shall check the SEL when considering an applicant for employment:

- 1) facilities and provider agencies, as defined in Social Services Law §488(4);
- 2) providers of services to persons in programs licensed, certified or funded by any State Oversight Agency, including OMH, as defined in Social Services Law §488(4-a);
and
- 3) other providers or licensing agencies required to conduct an inquiry of the State Central Register of Child Abuse and Neglect (SCR),

The Justice Center will conduct this SEL check upon the request of a person authorized by the provider. The results of the SEL check shall be handled in accordance with Social Services Law §495(3), which provides that certain individuals who have been found to have a substantiated case of abuse or neglect may be precluded from being hired. If the result of the SEL check does not prohibit an applicant from being hired, any provider required to conduct an SEL check shall also conduct an inquiry of the SCR through OCFS, and if authorized to do so, request a criminal background check through the Justice Center.



Criminal Background Checks

For OMH providers, there will be minimal change to the existing criminal background check process. Providers of services, including those that are licensed, who contract with or who are otherwise approved by OMH will still have to request a criminal background check be conducted for each prospective employee or volunteer who will have regular and substantial unsupervised or unrestricted contact with the providers' clients. Prospective operators seeking licenses to provide services are also still required to have a criminal background check. The changes required by the Act for OMH providers include making a request for a check of the SEL and if required, conducting an inquiry of the SCR. In addition, the Justice Center, rather than OMH, will review the criminal history and make the initial determination regarding suitability for employment.

The providers' authorized persons are still empowered to request, receive, and review criminal history information. After June 30, 2013, the providers' authorized persons will also be required to request a check of the SEL prior to requesting a criminal background check. Prospective employees or volunteers who will have regular, unsupervised client contact must still consent to having their fingerprints taken and a criminal history check performed. The fingerprints will still be taken by an OMH designated fingerprinting entity and submitted to the New York State Division of Criminal Justice Services (DCJS). After June 30, 2013, DCJS will provide criminal history information responses to the Justice Center instead of OMH.

The Justice Center will then review the information and advise the provider whether or not the applicant has a criminal history, and, if so, whether the criminal history is of such a nature that the person cannot be hired or retained. In some cases, a person may have a criminal background that does not rise to the level that would preclude being hired or retained. Although the criminal history "rap sheet" cannot legally be shared with the provider, the Justice Center will share sufficient information with the provider to enable the provider to make its own determination as to whether or not to employ or retain such person. There may also be instances in which the criminal history information reveals an arrest or criminal charges without a final disposition. In those cases, the Justice Center will instruct the provider on whether the application will be held in abeyance until the charge is resolved.

Prior to making a determination to deny an application or directing a provider to deny employment, the Justice Center will afford that individual an opportunity to explain, in writing, why his or her application should not be denied. If, after reviewing any materials submitted by the applicant, the Justice Center determines that employment or volunteer opportunity should be



denied, the provider must notify the person that this criminal history information is the basis for the denial of employment or service.

Provider Responsibilities

Providers must notify the Justice Center when an individual for whom a criminal history has been sought is no longer employed or volunteering. Providers must also ensure that prospective employees or volunteers who will be subject to the criminal background check are notified of the provider's right to request his/her criminal history information, and that he or she has the right to obtain, review, and if necessary, seek correction of such information in accordance with DCJS regulations.

The Justice Center is actively working on creating the structure to manage this new system. We are also required under the law to promulgate implementing regulations to carry out the provisions of the Act. To this end, we will strive, as decisions are made, to get information out to the affected provider community in a timely fashion. We are in the process of developing the Justice Center website, upon which we will post letters to the field, regulations, training information, FAQs and other relevant information as it becomes available. We would also encourage affected providers and/or the many mental health trade associations within the state to post this information on their own websites.

A link to Chapter 501 of the Laws of 2012 is provided below for your assistance:
<http://www.governor.ny.gov/assets/justice4specialneeds/LBDCinfo.htm>. We encourage you to read through this legislation, and to contact your State Oversight Agency with any specific questions or concerns.

Sincerely,



Kevin Honikel
Director, Bureau of Criminal
History Information
New York State Office of Mental Health

Sincerely,



Jay Kiyonaga
Director of Justice Center Implementation
Justice Center for Protection of People with
Special Needs

