

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

### Introduction

The process of screening and assessing an applicant's ability to provide a safe and nurturing environment for children includes the completion of a criminal, Montana motor vehicle and protective service background check on all applicants and adult members of his/her household.

42 U.S.C. 671 requires fingerprint based checks of the National Crime Information Databases for prospective foster and adoptive parents. Mont. Code Ann. § 52-2-622(4) requires completion of a fingerprint based criminal records check for youth foster care applicants. Mont. Code Ann. § 42-3-203(2)(a) requires completion of a criminal records check for adoptive applicants.

**An exception to a *national* fingerprint based check is allowed under the limited circumstances described in the section EXCEPTIONS TO FINGERPRINT BASED RESULTS below.**

### New Resource Families

Applicants and adult household members must have either fingerprint based results or meet all of the criteria for one of the exceptions. If the criminal history results are satisfactory, both the Federal and State requirement for licensure or approval are met.

The criminal history results used to license or approve an applicant must be less than 12 months old at the time the license is issued.

### Former Resource Families

If there is any gap in licensure or approval, all applicants and adults in the home of an applicant **must have either new fingerprint based results or meet all of the criteria for one of the exceptions.**

However, foster parents seeking to be approved to adopt or become guardians who have a satisfactory fingerprint based criminal background check or have met the criteria for an exception at the time of the foster care license application will be considered to have met the criminal records check requirement for new adoptive or guardianship applicants.

**Child and Family Services Licensing Policy Manual: Resource Family  
Criminal Records and Protective Service Checks**

---

**Obtaining  
Fingerprints**

CFSD staff must obtain a notarized DPHHS-CFS/LIC-018, Release of Information form to conduct a criminal record, motor vehicle and protective service background check on each applicant and each adult member of the applicant's household.

The FRS (or assigned worker) is responsible for assuring that a fingerprint card is provided to each applicant and adult member of the applicant's household and that the applicant is provided information on the local fingerprinting process.

The applicant should be advised if there is a fee charged for taking the prints and how this cost is to be paid. Whenever possible, the Division will arrange to be billed for the cost of obtaining the fingerprints. In some instances, the applicant may have to pay the cost of having the fingerprints taken and may request reimbursement from the Division.

*Noncriminal Justice  
Applicants Rights*

DOJ also requires that at any time we obtain fingerprints from an applicant that they sign and be given a copy of the Noncriminal Justice Applicant Rights (Privacy Act Statement). <http://ours.hhs.mt.gov/forms/CFSforms/ResourceFamilyandLicensingForms/NoncriminalJusticeApplicantRights.pdf> A signed copy of this DOJ form shall be kept in the applicant's file. This document informs the applicant of his/her rights and how to obtain a copy of their records from DOJ.

The FRS (or assigned worker) is also responsible for ensuring that fingerprint cards are reviewed for completeness prior to being sent to the Department of Justice (DOJ) to reduce the number of rejected cards due to poor quality prints, e.g., smeared prints, fingers in wrong place, etc.

**Fingerprint Based  
Check Requests**

A fingerprint based criminal records check must be requested for all applicants and adults in an applicant's household. Results from a fingerprint based check provide the best information and must be obtained whenever possible. If the first fingerprint card is rejected, a second card must be submitted to DOJ. If the second card is also rejected, an exception to fingerprint based results is acceptable unless the rejections are due to poor quality prints,

**FINGERPRINT  
CARD  
REJECTIONS**

If a person who has been fingerprinted has a medical condition which made the person difficult to print, a memo should be attached to the fingerprint card describing the medical condition

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

**Medical Conditions**      which made the person difficult to fingerprint. The memo should include a request that **the fingerprint card be forwarded to the FBI for rejection if it can not be successfully read.** The fingerprint card and memo should be mailed to the “Lead Worker” at the Criminal Records and Identification Services of the DOJ.

A second fingerprint card should be submitted with the same information and request. If two fingerprint cards are rejected by the FBI, a national name based check can be obtained. Other than national fingerprint based check results, a national name-based check provides the best criminal history information.

This circumstance qualifies for an exception to fingerprint based results (see #1. below)

**Other Rejections**      If two fingerprint cards have been rejected by DOJ for reasons other than poor quality prints, the Division may utilize the exception process described in 2. or 3. below.

**EXCEPTIONS TO FINGERPRINT BASED RESULTS**      The following circumstances meet the exception requirements:

1. Two fingerprint cards rejected by the FBI and a national name based check; or
2. **For applicants or other adult household members who have not lived in a state other than Montana:**
  - a. Two fingerprint cards rejected by the Montana DOJ (for reasons other than poor quality prints), and
  - b. A Montana name-based check;
3. **For applicants or other adult household members who have lived in a state other than Montana:**
  - a. Two fingerprint cards rejected by the Montana DOJ (for reasons other than poor quality prints);
  - b. A Montana name-based check;
  - c. Documentation of a written request for criminal history from every state in which the person has lived in the past 15 years; and
  - d. Documentation of the violent offender and criminal history registries for each state in which the applicant has lived if this information is

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

available in states in which the applicant has lived.

### *Affidavit*

If after 45 days, the Division has been unable to obtain results of the criminal history from all states in which an applicant who has lived in Montana for at least five years, the Division may utilize an ***affidavit*** attesting to the lack of criminal history or to the details of the criminal history

All documentation necessary for an exception must be in DocGen under one heading.

### **Payment for Criminal Records Checks**

**The Regional CFSD office will pay the costs incurred in conducting a criminal records check for prospective, licensed or approved CFSD foster parents, adoptive parents or guardians.**

The DOJ will bill the Division for the cost of conducting and providing the criminal history check results if a memo is attached to the fingerprint card instructing the DOJ to bill CFSD. The memo must indicate what region should be billed for the cost of the fingerprint check by including the regional billing number. The billing number for each region is available from the Regional Fiscal Officer.

All fingerprint cards are sent to:

Department of Justice  
Criminal Records and Identification Services  
P.O. Box 201403  
Helena, MT 59620

### **Private Agencies**

Fees associated with fingerprint checks for applicants to a licensed child-placing agency are the responsibility of the agency or the applicants.

### **Tribal Law Enforcement Checks**

If the family lives or has lived on a reservation, a request to tribal law enforcement for criminal history must be made and documentation of the request maintained in the licensing file.

### ***Pending charges***

If an applicant or adult household member has been **charged** with a crime that bears upon the individual's fitness to assume care and responsibility for the safety and well-being of children, the licensing or approval must remain in a pending status until there is a resolution to the charge.

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

### ***Felony convictions***

If an applicant, licensee or other household member has had a **felony conviction** at any time for one of the following crimes, the applicant cannot be licensed or approved, and if licensed or approved, the license must be revoked:

- child abuse or neglect;
- child sexual abuse;
- partner or family member assault; (spousal abuse)
- a crime against children (including child pornography);
- or a crime involving violence, including rape, sexual assault, homicide

### ***Felony Convictions within the last Five years***

If an applicant, licensee or other household member has had a **felony conviction** within the past five years for one of the following crimes, the applicant cannot be licensed or approved, and if licensed or approved, the license must be revoked:

- physical assault;
- battery; or
- a drug related offense, including alcohol related convictions such as DUI..\*

### **Other serious crimes if convicted within the past five years**

The department, through written notice to the applicant, licensee, or potential emergency placement will deny, revoke, or restrict a license or emergency placement upon finding that the applicant, licensee, or member of the applicant's or licensee's household has a conviction for any of the following types of crimes within the past five years:

- misdemeanor assault
- misdemeanor battery
- misdemeanor partner-family member assault
- robbery
- burglary

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

### ***Abuse and Exploitation of Elderly or Persons with Developmental Disabilities***

If the applicant, licensee, or household member has been convicted of a crime in Mont. Admin. R. 37.51.210(1) including abuse, sexual abuse, neglect, or exploitation of an elderly person or a person with a developmental disability, the department will revoke, deny or restrict a license or emergency placement.

### **If Criminal History Exists**

If an applicant or adult member of the applicant's household has a criminal history, the decision to take negative licensing action must be made in consultation with the FRS supervisor and Regional Administrator prior to contact with the Legal Unit and must meet the requirements of Mont. Admin. R. 37.51.216(1) and (2)

### **Denial of Application**

If the criminal history information is used to deny an application, the applicant must be notified of the reason for denial and directed to the Criminal Records History Section (406-444-3625) if they want to challenge the record.

In addition, if an **application** is denied based on the criminal history information:

- the FRS must clearly document the reason for the denial as it relates to the crime's impact on the applicant's ability to provide safe and appropriate care for children; and
- documentation must be included in the negative licensing action/fair hearing notice letter.

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

<b>Satisfactory Criminal Records Check</b>	A satisfactory criminal records check is a check in which the results document that the applicant or other household member has not been convicted of or is not charged with a crime that bears upon the applicant's fitness or ability to provide safe and appropriate care to children placed in the applicant's home.
<b>Documentation of Criminal Record Background Check</b>	<p>Completion of a criminal record background check must be documented on PRPD. Codes should be entered as follows:</p> <p><b>NCH = No Criminal History.</b> A criminal record check has been completed and no criminal history exists</p> <p><b>YCH = Yes Criminal History.</b> A criminal record check has been completed which revealed a criminal history.</p> <p>If there is existing criminal history, the code to be used is YCH (Yes Criminal History) whether or not the applicant will be recommended for licensure or approval. The rationale for recommending approval or denial of the application must be clearly documented and addressed in the written assessment completed on the applicant.</p>
<b>Storage, Dissemination and Destruction of Fingerprint based Criminal Background Checks</b>	Department of Justice Division of Criminal Investigation, Criminal Records and Identification Services (DOJ) has provided guidelines for storage, dissemination of and destruction of criminal background checks including fingerprint cards and results.
<b>Storage of Fingerprint Based Criminal Record Background Checks Results (CHRI)</b>	Department of Justice (DOJ) requires that all fingerprint based criminal record background checks (CHRI) be stored separately from the applicant and case files in a locked storage unit to prevent an unauthorized viewing of the document. The Federal (National) name based check is to be stored in the same manner.
<b>Recording of CHRI</b>	<p>Upon receipt and review of the fingerprint based search and results (CHRI) received by DOJ, the results shall be recorded on the Federal (National) Background Check Determination. (CFS-LIC-062). The recording shall include:</p> <ul style="list-style-type: none"> <li>• the date that results were <b>completed</b> by DOJ;</li> </ul>

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

- the purpose of the fingerprint request; (check all that apply) and;
- determination that the results are in compliance or not in compliance with the Federal and State standards.

### ***Dissemination of the CHRI***

The only dissemination of the results that shall occur are in cases where:

- the record needs to be reviewed by a supervisor/team member in a different location requiring mailing or sending of record for purposes of approval;
- the record needs to be forwarded to a different field office within CFSD as a result of the foster/kinship parent relocating to facilitate continuity of service;
- the record results in a denial or revocation and a fair hearing, and it is necessary to forward the record to Office of Legal Affairs for evidence.

A Dissemination log provided by DOJ shall be completed to record this exchange of documents.

Applicants who are requesting copies of the record or wish to challenge the record shall be referred directly to DOJ, Criminal Records History Section [dojitsdpublicrecords@mt.gov](mailto:dojitsdpublicrecords@mt.gov) or 406 444-3625.

### ***Destruction of Cards and results***

In cases where there is ***no criminal record*** reported or it is determined that the results ***do not impede*** the licensing process, the fingerprint card and the results (upon recording) shall be shredded or supervised by the requestor during shredding.

In cases where a criminal record **results in grounds for denial** of a license, the results shall be stored in a locked file **separate** from a resource applicant's working file until the fair hearing process is completed and the final decision is made. The fingerprint results shall be shredded at that time.



## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

Fingerprint cards can be shredded once the results (CHRI) return as the cards cannot be reused.

### **Youth Court Records Checks**

**Adoptive Applicants Only:** Youth Court Records for any person over age 13 living in the home of adoptive applicants may be reviewed. A release of information signed by the applicant for his or herself and any teenage children living in the home should be sent to the juvenile probation office in the county where the family resides, or resided when family members were teenagers. If the family has moved from another state, the FRS does not need to attempt to obtain these records from another state.

### **In-State CPS Checks**

The FRS (or assigned worker) is also responsible for assuring that a thorough CAPS person search has been completed. If any of the names are found in CAPS, a determination must be made as to whether there is any history of substantiated child abuse or neglect referrals or if history indicates that the person may pose a risk to the child.

### ***Notice of Substantiation***

If a protective service check reveals that an applicant has been named as a perpetrator in a referral of abuse or neglect in Montana, the FRS (or assigned worker) should determine:

- if a notice of substantiation of abuse or neglect has been sent to the person or persons named as the perpetrator; and
- whether the deadline for requesting an appeal has passed.

If the applicant has requested an appeal of the substantiation within the allowable time frames, the appeal should be resolved prior to the FRS (or assigned worker) taking further licensing approval action.

Detail regarding notice to perpetrators of abuse and neglect is found in Section 202-4, Documentation of Investigation & Opening A Case.

If allegations of abuse and neglect have been substantiated against an applicant and/or household member and the FRS (or assigned worker) determines that no notice of substantiation of

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

abuse or neglect has been sent to the person or persons named as the perpetrator, the FRS should:

- defer action on the application;
- notify the appropriate Child Protection Specialist Supervisor of the omission; and
- request that a letter of substantiation be sent to the applicant following the policy set forth in Section 202-4 Documentation of Investigation.  
<https://dphhs.mt.gov/Portals/85/cfsd/documents/cfsdmanual/202-4.pdf>

Once the perpetrator has been sent the notice of substantiation and the deadline for appeal has passed, the FRS (or assigned worker) can proceed with licensing or approval action.

If the perpetrator appeals the substantiation, licensing or approval action should be deferred until the appeal process has ended and the substantiation is upheld or denied.

Completion of an applicant's Child Protective Service Background Check should be documented on PRPD. Codes should be entered as described in Documentation of Child Protective Service Background Check.

***Other CPS history indicating applicant may pose a risk***

If the CAPS check reveals numerous founded or unsubstantiated reports or extensive agency involvement prior to CAPS, or other court actions, the FRS must further evaluate and assess the information to determine if these occurrences pose a risk to a potential foster child.

**Out-of-state CPS Checks**

42 U.S.C. 671 requires that a CPS registry check be requested from each state in which prospective foster and adoptive parents and other adults living in the home of prospective foster and adoptive parents have lived within the past five years.

ARM 37.51.310, states that a CPS check must be requested from all states in which an applicant has lived since the birth date of the applicant's oldest child if the applicant has children. If the oldest child is less than five years old, the requirements of

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

42 U.S.C. 671 must be met, and a CPS registry check going back five years requested. If the applicant has no children, ARM 37.51.310 requires that a CPS check must go back fifteen years.

Two sources for information on other state's contacts for CPS information are:

<http://www.ccid.ca.gov/Res/word/AWStateContacts.doc> ; and

[http://www.hunter.cuny.edu/socwork/nrcfcpp/info\\_services/Adam-Walsh.html](http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/Adam-Walsh.html)

Both sites are updated frequently.

If an applicant has lived out-of-state, the FRS (or assigned worker) is responsible for contacting the appropriate Child Abuse and Neglect registry in the other state(s) to ascertain whether an applicant or member of the household has been a perpetrator in a substantiated referral of abuse or neglect. The request must be made in writing and may be sent by mail or by e-mail depending on the receiving state's criteria.

### Initial Request

If the request is sent by mail, it must be sent "return receipt requested". A copy of the request and the return receipt must be maintained in the applicant's file. If the request is sent via e-mail, a record of the message delivery must be maintained in the applicant's file along with a copy of the actual message.

A copy of all correspondence from another state relating to CPS check information must be maintained in the applicant's file.

**If a state does not maintain a CAN registry, the state is not required by Section 471(a)(20)(C)(i) of the Social Security Act to provide information to a requesting state or check further for child abuse and neglect information within the state on a prospective foster parent or other adult living in the home. Once the FRS has verified that another state does not maintain a CAN registry, the FRS is not required to keep making requests to that state to make a registry check. Documentation of that verification (a letter from that receiving state) shall be kept in the applicant's file.**

### For States that do not Maintain a Registry

Follow-up requests may be made at any time after the initial request if no response to the initial request has been received. At least one follow-up request must be made a minimum of 30

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

days after the initial request has been made. Follow-up requests may be by phone, fax or letter. Documentation of the request must be maintained in the applicant's file.

### Follow-up Requests

If after 45 days from the date of the initial request, no response has been received from a state from which CPS information was requested, the applicant may sign an affidavit attesting to the lack of CPS history, or the details of existing CPS history as provided in Mont. Admin. Rule 37.51.310(9) **if the CPS history that has not been received is from a state in which the applicant lived more than five years prior to the date the information was requested.**

### Action if CPS History Exists

Admin. Rule Mont. 37.51.210 (1) states that "an applicant against whom child abuse or neglect has been substantiated or who has been convicted of abuse, sexual abuse, neglect, or exploitation of an elderly person or person with a developmental disability shall be denied a foster care license unless an exception is granted by a Department Regional Administrator in his discretion, after careful review of extenuating circumstances which justify the issuance of a restricted license."

37.51.210(2) states that "an applicant whose child has been in foster care shall be denied a foster care license, unless an exception is granted by a Department Regional Administrator because the circumstances leading to the provision of services and placement no longer exist."

In cases where the applicant(s) are potential kinship providers and s/he or other household members have received services for substantiated abuse or neglect or CPS history indicates that the applicant or adult member(s) of the household may pose a risk to the child, and the FRS in collaboration with CPS determines that the applicant remains the best viable resource for a specific child and other licensing requirements are met, justification must be made in writing regarding what the extenuating circumstances were that led to the provision of services and that they no longer exist. These circumstances shall be reviewed by the Regional Administrator who in his

## Child and Family Services Licensing Policy Manual: Resource Family Criminal Records and Protective Service Checks

---

discretion may grant an exception. In these cases, the license shall be restricted to that specific child.

### Documentation of Protective Service Background Check CAPS

**NPS = No Protective Service History.** A protective services record check has been completed and no protective service history exists. CAPS entry on PRPD screen.

**YPS = Yes Protective Service History.** A protective service record check has been completed which revealed a protective service history. CAPS entry on the PRPD screen.

If there is existing protective services history, the code entry would be YPS (Yes Protective Services History) even if the applicant will be approved. In any case, the rationale for recommending approval or denial of the application should be clearly documented in the licensing case file and addressed in the written assessment completed on the applicant.

### References

42 U.S.C. 671  
Mont. Code Ann. §52-2-622  
Mont. Code Ann. §42-3-203  
Admin. R. Mont. 37.51.210  
Admin. R. Mont. 37.51.216  
Admin. R. Mont. 37.51.310

Rev. 05/07  
Rev. 10/08  
Rev. 01/12  
Rev. 03/13  
Rev. 07/15