



Dear Colleague:

This letter is the third of our series of informational letters to the field regarding the transition of the criminal history background check process to the Justice Center for the Protection of People with Special Needs (Justice Center), which becomes operational on June 30, 2013. You are receiving this letter because you are a provider of mental health services that is currently subject to the criminal history background check requirements set forth in Section 31.35 of the Mental Hygiene Law.

In this letter, we wish to:

- (1) share information about provider responsibilities with respect to the Staff Exclusion List (SEL);
- (2) clarify requirements for OMH providers that also operate programs under the jurisdiction of the Office of Children and Family Services (OCFS); and
- (3) explain the reason for the recent time delay we have been experiencing with respect to receipt of criminal history background check results from the Division of Criminal Justice Services (DCJS).

I. Staff Exclusion List (SEL).

In earlier guidance, we described how the Justice Center will operate a Vulnerable Persons Central Register (VPCR) which will receive allegations of abuse and neglect of persons receiving services from various human service agencies, including those operated or licensed by OMH. The VPCR will also create and maintain a Staff Exclusion List (SEL), which will contain the names of individuals who have been found to have a substantiated Category 1 case of abuse and neglect (generally, serious physical abuse, sexual abuse, or other serious conduct by custodians), or two substantiated findings of Category 2 cases of abuse and neglect (conduct which does not rise to the level of Category 1, but which seriously endangered the health, safety, or welfare of a service recipient) within a three year period.

On or after June 30, 2013, before providers of mental health services authorized by Mental Hygiene Law Section 31.35 to request a criminal history background check can do so with respect to a particular applicant they must first request a check of the SEL by the Justice Center. If the applicant's name appears with a Category 1 finding or two Category 2 findings within a three year period, that person is ineligible for any position involving regular and substantial contact with a service recipient. In a case such as this, the provider must reject the application and cannot continue the process by requesting a criminal background check.



However, if the applicant's name does *not* appear on the SEL as described above, the provider can then proceed with a request of a criminal background check. In addition, for all prospective employees, volunteers, consultants, or contractors who will have regular and substantial unsupervised contact with persons served by the provider, a check of the Statewide Register of Child Abuse and Maltreatment (SCR) must be conducted through OCFS. *This provision also applies only to those applications that are received on or after June 30, 2013.*

The details for the process for conducting a check of the SEL with the Justice Center are being finalized, but it is expected that providers will fax a request to the Justice Center's Criminal Background Check Unit for a check of the SEL. The Justice Center will respond via a secure email to the Authorized Person designated by the provider to receive criminal history check results. The form for requesting an SEL check is being developed for this purpose and will be forwarded upon completion and available on the Justice Center's website on June 30, 2013.

II. OMH/OCFS Providers

Many OMH providers that also operate programs licensed or funded by OCFS have asked whether their OCFS programs will also request criminal background checks through the Justice Center. The Justice Center will be processing criminal background checks for those agencies licensed by OCFS to operate residential programs for children. The SEL check process also applies to these programs. As with the OMH provider component, if an individual is identified on the SEL, the OCFS provider cannot hire such person in a position that has the potential for regular and substantial contact with a service recipient, and cannot proceed with a request a criminal background check. However, for OCFS licensed residential programs, if the results of the SEL check do not prohibit an applicant from being hired in such a position, the provider must then conduct an inquiry of SCR through OCFS, and then, if authorized to do so, request a criminal background check through the Justice Center.

We have included a chart with this letter that sets forth the entities that are required to conduct a SEL check with the Justice Center, those required to make an inquiry of the SCR through OCFS, and those authorized to request a criminal background check through the Justice Center. We hope this is helpful to you as we move forward with this transition.

III. Delayed Results Issue

Some OMH providers have recently experienced delays in obtaining results of criminal history record checks due to a recent migration of DCJS systems. Please be advised that the Justice Center and OMH will continue to monitor the situation and anticipate that any DCJS system issues will be resolved prior to the implementation of the Justice Center's CBC system.



Once again, thank you for your patience and cooperation as we move forward with this important initiative. Please do not hesitate to contact the OMH Bureau of Criminal History Information should you have any specific questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Kevin C. Honikel".

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