

 <b>NEW YORK</b> <small>STATE OF OPPORTUNITY</small> <b>Office of Mental Health</b>	Date issued: 04/08/2024	Page 1 of 5	Section # OM-300
	Section: Operational Management		
	Directive: Criminal History Record Reviews – OMH Employees		
	Policy Owner: Human Resources		
Official Policy Manual			

## A. Policy Statement

Section 7.19 of the Mental Hygiene Law authorizes the Commissioner of OMH, when appointing employees to work at facilities and programs operated by OMH, to take all reasonable and necessary steps, consistent with Article 23-A of the Correction Law, to ensure that any such person so appointed has not previously engaged in any act in violation of any law which could compromise the health and safety of individuals in care. The Commissioner implements this authority by requesting, reviewing, and verifying criminal history information of applicants for employment, thus helping to ensure that staff of facilities and programs operated by OMH are appropriate, properly trained, and represent no threat to the persons they will serve.

The purpose of this policy directive is to establish standards for review of criminal history records obtained in furtherance of this authority. These standards will apply uniformly to all OMH operated facilities and programs.

## B. Relevant Statutes and Standards

NYS Mental Hygiene Law §7.19, Personnel in the office  
NYS Civil Service Law § 50(4), Examinations generally  
NYS Executive Law § 553(f)(5), Powers and duties of the justice center  
NYS Executive Law § 837(6), Functions, powers and duties of division  
NYS Social Services Law § 495, Register of substantiated category one cases of abuse or neglect  
NYS Correction Law Article 23-A, Licensure and employment of persons previously convicted of one or more criminal offenses  
NYS Correction Law § 705(2), Forms and filing  
NYS Executive Law § 296(15), Unlawful discriminatory practices  
NYS Penal Law (NYPL) § 260.00, Abandonment of a child  
NYPL § 260.25, Endangering the welfare of an incompetent or physically disabled person in the first degree  
NYPL § 260.32, Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the second degree  
NYPL § 260.34, Endangering the welfare of a vulnerable elderly person, or an incompetent or physically disabled person in the first degree  
NYS Public Officers Law § 30(1)(e), Creation of vacancies  
OMH Official Policy Directive PC-050 – Safe and Therapeutic Environment Programs

### **C. Definitions**

1. *Commissioner* means the Commissioner of the New York State Office of Mental Health.
2. *Criminal history information, criminal background, or criminal history record* means a record of pending criminal charges, criminal convictions which are not vacated or reversed, and certificates filed pursuant to subdivision (2) of section 705 of the Correction Law, and which the New York State Division of Criminal Justice Services is authorized to maintain pursuant to subdivision (6) of section 837 of the Executive Law. This term may also include information from the Federal Bureau of Investigation as a result of a national criminal history record check, when such information is available.
3. *Division* means the New York State Division of Criminal Justice Services.
4. *Justice Center* means the New York State Justice Center for the Protection of People with Special Needs.
5. *Office* means the New York State Office of Mental Health, including Central Office and OMH State operated facilities.
6. *Prospective employee* means any person to be employed or utilized by OMH.
7. *Staff Exclusion List* means the Statewide Register of Abuse or Neglect, maintained by the Justice Center, which contains the names of individuals (e.g., employee, volunteer, intern, consultant, contractor) found responsible for serious or repeated acts of abuse and neglect. Individuals on the Staff Exclusion List are prohibited from being hired by any state operated, certified or licensed agencies/providers that serve people with special needs.

### **D. Body of the Directive**

This policy directive consists of six components:

1. Requesting criminal history records
2. Review and comparison of criminal history records
3. Denial of an application with option for discretionary approval
4. Evaluate criminal history on basis of approval
5. Automatic denial for a public officer position with felony conviction
6. Arrest notifications

#### **DI. Requesting Criminal History Records**

- (a) The Office shall request from the Justice Center the criminal history records of any prospective employee and shall review the results in accordance with the provisions of this policy directive.

- (b) Prior to requesting criminal history records for any prospective employee who will have the potential for regular and substantial contact with any individual in care or service recipient, the Office<sup>1</sup> shall check the Staff Exclusion List maintained by the Justice Center to ensure the applicant's name does not appear on this Staff Exclusion List.
- (c) If the applicant's name appears on the Staff Exclusion List, the Office shall not process the application. If the applicant's name does not appear on the List, the Office<sup>2</sup> may request criminal history records from the Justice Center with respect to the applicant.

## **2. Review and Comparison of Criminal History Records**

- (a) The Office shall review any criminal history and compare this with any disclosed criminal history on the OMH Application for Employment. Any material omission or misstatement or fraudulent representation may disqualify the candidate from consideration and/or lead to revocation of employment.

## **3. Denial of an Application with Option for Discretionary Approval**

- (a) Except as provided in paragraph 5 of this directive, where the criminal history record of a prospective employee reveals any of the following, the Office shall deny the application unless the Office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of individuals in care in the facility or program:
  - (i) a felony conviction at any time for a sex offense;
  - (ii) a felony conviction within the past ten years involving violence;
  - (iii) a conviction for endangering the welfare of an incompetent or physically disabled person pursuant to Section 260.00, 260.25, 260.32 or 260.34 of the Penal Law; or
  - (iv) as applicable, any comparable offense in any other jurisdiction.

## **4. Evaluate Criminal History on Basis of Approval**

- (a) Except as provided in paragraph 5 of this directive, where the criminal history record of a prospective employee reveals a conviction of a crime other than that identified in paragraph 3 of this directive, the Office shall

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<sup>1</sup> This responsibility may be carried out via facility human resources offices.

<sup>2</sup> This responsibility may be carried out via facility human resources offices.

evaluate the criminal history in relation to the following:

- (i) The public policy of the State of New York to encourage the employment of persons previously convicted of one or more criminal offenses.
- (ii) The specific duties and responsibilities necessarily related to the employment sought or held by the person.
- (iii) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his/her fitness or ability to perform one or more such duties or responsibilities.
- (iv) The time which has elapsed since the occurrence of the criminal offense or offenses.
- (v) The age of the person at the time of occurrence of the criminal offense or offenses.
- (vi) The seriousness of the offense or offenses.
- (vii) Any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct.
- (viii) The legitimate interest of the Office in protecting property, and the safety and welfare of specific individuals or the general public.

#### **5. Automatic Denial for a Public Officer Position with Felony Conviction**

- (a) For any position to be filled by a public officer<sup>3</sup>, such as a position to be filled by a person designated as a peace officer, where the criminal history record of a prospective employee reveals a felony conviction, the Office shall deny the application.

#### **6. Arrest notifications**

- (a) *Facilities and programs:* The Executive Director of the facility or his/her designee shall be promptly notified by the Justice Center of any arrest notification with regard to an employee of the facility or program. Upon receipt of such notice, the Executive Director or his/her designee shall take any and all appropriate action to ensure that the health, safety, and welfare of individuals in care are protected. Such action or actions shall be

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<sup>3</sup> Most OMH State employees are considered public employees and not public officers.

documented. In cases involving pending criminal actions or proceedings against employees, it shall be the responsibility of the Executive Director or his/her designee to monitor the outcome of such proceedings if the employee remains in service with the facility or program.

- (b) *Central Office/Field Offices:* The Commissioner or his/her designee shall be promptly notified by the Justice Center of any arrest notification with regard to an employee of Central Office or a Field Office. The Commissioner or his/her designee shall take any and all appropriate action. Such action or actions shall be documented. In cases involving pending criminal actions or proceedings against employees, it shall be the responsibility of the Commissioner or his/her designee to monitor the outcome of such proceedings if the employee remains in service with the agency.