



**Office of Alcoholism and
Substance Abuse Services**

Criminal Background Check Process

A Provider's Guide

Office of General Counsel
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Effective Date

The requirement for criminal background checks went into effect on June 30, 2013. Any hiring (including employees, volunteers and contractors), credentialing, licensing or other activity which would otherwise be subject to the Justice Center Act must include a criminal background check.

Who is Subject to a Criminal Background Check

Entities Required to Perform Background Checks

Generally, all providers who contract with the Office of Alcoholism and Substance Abuse Services (OASAS) and/or are certified or otherwise authorized to provide services by OASAS are required to comply with this criminal background check process. However, Article 28 hospital programs are exempt.

Individuals Subject to Background Checks

Prospective employees, contractors and volunteers (applicants) who have been offered a position with your organization must undergo criminal background checks if they have the potential to or may be permitted to have regular and substantial unsupervised or unrestricted physical contact with service recipients. To determine whether an applicant is subject to the criminal background check requirement, the duties of their position and unique functions of the program(s) within a facility must be considered. The provider is responsible for determining whether an applicant will have the potential to or may be permitted to have regular and substantial unsupervised or unrestricted physical contact with clients.

Other categories of individuals who must undergo a background check as part of the OASAS Credentialing and Certification process are:

1. Individuals who are seeking or renewing credentials issued by OASAS;
2. Natural persons acquiring an ownership interest in a provider;
3. Natural persons associated with a provider filing its initial application to provide services;
4. Upon a provider's license renewal, any operator who joined the organization after June 30, 2013 who was not checked as part of #3;
5. Any credentialed individual against whom a complaint is filed.

The Criminal Background Check Process

Designation of Authorized Person

Each provider must identify two individuals authorized to receive information regarding criminal background checks on the provider's behalf. The provider must complete the PAS-120 *Authorized Person Designation/Notarized Sworn Statement Form* (www.oasas.ny.gov/JC/Resources.cfm)

and return it to OASAS via e-mail or regular mail. OASAS is prohibited by law from disclosing any information regarding criminal background checks to any person who has not been designated as an Authorized Person (AP).

NOTE: The NYS Justice Center has its own Authorized Person Designation Form for access to check the Staff Exclusion List (SEL). Please contact the Justice Center for the appropriate form.

The Provider's Background Check Responsibilities

A provider should not send an applicant for fingerprinting unless the applicant has accepted an offer of employment contingent upon the results of a criminal background check. The OASAS criminal background check process is not an employment screening tool.

Check the Staff Exclusion List

Prior to sending an applicant for fingerprinting, the provider must check the Justice Center's Staff Exclusion List (SEL). This list is maintained by the Justice Center, not OASAS. To check the list, the provider's authorized person must submit a SEL check request at www.justicecenter.ny.gov. Results will be sent to the provider's authorized person by the Justice Center.

IMPORTANT NOTE: Applicants placed on the SEL cannot be hired. If the applicant is on the list, do not proceed with criminal background check process.

Obtain Consent to Conduct Criminal Background Check

The applicant must consent to a criminal background check. The applicant must complete Form TRS-52 *Applicant Consent Form for Fingerprinting for OASAS Criminal Background Check (CBC)* (www.oasas.ny.gov/JC/Resources.cfm). The provider must retain the completed form in its files. Do not submit the consent form to OASAS.

Additionally, the applicant can obtain, review, and correct information included in their criminal background history at his or her own expense. **This process is separate and distinct from the criminal background check process by OASAS. OASAS cannot review the fingerprint results that an applicant obtains for their own use.** Please provide the *Criminal History Background Checks Personal Criminal History Information Review* document and a copy of *Article 23-A of the Correction Law* to the applicant. If you need copies of these forms, please contact our office at cbc@oasas.ny.gov. These documents are for informational purposes only.

Request Check of the Statewide Central Register of Child Abuse and Maltreatment

Only OASAS certified providers are required to check the Statewide Central Register of Child Abuse and Maltreatment (SCR). Prior to sending an applicant for fingerprinting, the provider must also request a check of the SCR. The SCR is administered by the New York State Office of Children and Family Services (OCFS). More information on the process for checking the SCR is available on the OCFS website (<http://ocfs.ny.gov>). Please contact our office for information on how to request an RID number for the OCFS SCR system.

IMPORTANT NOTE: An applicant can be hired prior to receiving the results of the SCR check; however, if the SCR indicates there is a founded complaint, the provider should utilize the factors set forth in Article 23-A of the Correction Law in determining the employment status of the individual. Please speak with your applicant about the matter.

Send the Applicant for Fingerprinting

MorphoTrust USA conducts all fingerprinting for criminal background checks for OASAS pursuant to the Justice Center Act. The MorphoTrust USA website (www.identogo.com) provides information on fingerprinting locations and online scheduling services. Please schedule fingerprinting appointments at www.identogo.com.

Waivers

If an applicant was recently fingerprinted for an OASAS provider or OASAS credentialing, the provider may request a waiver of the fingerprint requirement. The provider must complete the PAS-123 *Criminal Background Check Waiver Form* (www.oasas.ny.gov/JC/Resources.cfm). Please send the completed form to OASAS via e-mail at cbc@oasas.ny.gov.

Determination of Eligibility for Employment

The criminal background check staff in the General Counsel's Office of OASAS is responsible for overseeing criminal background checks and recommending or determining whether an applicant is eligible for employment. OASAS will receive an applicant's New York State criminal record, as well as criminal history information from the Federal Bureau of Investigation.

OASAS will not automatically disqualify an applicant for employment based on a criminal conviction. The criminal background check staff will assess a candidate's suitability for employment based upon the NYS Correction Law Article 23-A factors:

1. The public policy to encourage licensure and employment of previously convicted persons.
2. The specific duties and responsibilities of the employment sought.
3. The bearing the conviction has on the subject individual's fitness or ability to perform the duties of the position.
4. The time elapsed since the offense.
5. The applicant's age at the time of the offense.
6. The seriousness of the offense.
7. Any evidence produced by the applicant in regard to his or her rehabilitation and good conduct.
8. The protection of property and the safety and welfare of individuals and the general public.

When an applicant has federal criminal history or criminal history in states other than New York, and OASAS determines that the applicant is not suitable for employment, that decision is binding for the provider.

Once OASAS completes the review of the applicant's criminal history information, OASAS will upload a determination or recommendation to the CBC system. Authorized Persons will receive an email stating that the determination is ready to view in the CBC system.

Evidence of Rehabilitation

In many cases, OASAS will require additional information from the applicant in order to make a recommendation. OASAS will contact the applicant directly via certified mail (the applicant must sign for the letter) to request evidence of rehabilitation and good conduct. OASAS uses the address provided to MorphoTrust USA at the time of fingerprint registration to contact the applicant. The applicant must submit this information within fifteen (15) days of the request. The applicant may request an extension of an additional fifteen (15) days by emailing the criminal background check staff at cbc@oasas.ny.gov.

Examples of evidence of rehabilitation include, but are not limited to:

1. A personal statement
2. Evidence of participation in a substance use disorder treatment program.
3. Evidence of attendance at school or job training.
4. Evidence of continued employment and/or volunteer work.
5. Evidence of counseling or other participation in a Social Services program.
6. Letter from parole or probation officer.

Rights of Denied Applicants

An applicant who is denied employment based upon a criminal background check may request from the provider a written statement setting forth the reason for denial. The provider must provide the statement within thirty (30) days of the request. There are no appeal rights.

Temporary Employment

In certain cases, after confirming that an applicant is not on the Staff Exclusion List, a provider may temporarily employ the applicant pending completion of the criminal background check.

Duty to Notify OASAS of Temporary Employment

A provider who temporarily employs an applicant pending results of a criminal background check must immediately notify OASAS of the temporary employment. Please update the employment status in the CBC system.

Applicants Ineligible for Temporary Employment

OASAS does not recommend temporary employment of an applicant pending the results of a criminal background check if he or she has a conviction or pending charge of:

1. A felony sex offense;
2. A violent felony within the past ten (10) years;
3. Abandoning and/or endangering the welfare of a child, incompetent, physically disabled or vulnerable elderly person;
4. Any offense in another jurisdiction which is comparable to the above.

OASAS will notify the provider when temporary employment is not recommended. A provider may temporarily employ an applicant who has a pending felony charge other than those listed above or a pending misdemeanor charge if the provider documents its reasons for granting temporary employment.

Limitation on Job Duties

An applicant hired on a temporary basis pending completion of a criminal background check may not have unsupervised or unrestricted contact with individuals receiving services. “Contact” in this case means face to face communication or interaction, or a reasonable opportunity for such communication or interaction.

Persons Who May Supervise

The temporary employee must remain within reasonable physical proximity of an employee of the provider who either (a) has management oversight or (b) has at least six (6) months of experience and is deemed by the provider to be qualified to provide adequate oversight.

Provider Recordkeeping and Notification

Recordkeeping

The provider is required to maintain the following documentation:

1. A current roster of employees and list of staffing requirements;
2. A current roster of volunteers;
3. A list of the names of all persons for whom the provider requests criminal background checks, including:
 - a. a copy of the consent form;
 - b. the results of the criminal history check for a period of six (6) years after the subject person ceases to be employed by the provider; and
 - c. A record of whether the person was hired, the position he or she holds and any limitation placed upon the person’s service.

IMPORTANT NOTE: If an applicant withdraws his or her application, the provider must destroy all criminal history information received via the criminal background check process. This does not apply to any other employment documentation.

Notifications

A provider must notify OASAS within fourteen (14) days by updating the CBC system if:

1. Any individual for whom a criminal history check was requested later withdrew his/her application or is no longer being considered for a position.
2. A hiring decision was made regarding an individual for whom the provider requested a criminal background check.
3. Any individual for whom a criminal background check was requested is no longer employed by the provider.

Employment statuses must be updated in the CBC system (<https://cbc.justicecenter.ny.gov>). Please contact our office at cbc@oasas.ny.gov if you need log in information for the CBC system. If you need assistance in using the CBC system, please consult the *Criminal Background Check Authorized Person User Manual* available on the OASAS Criminal Background Check website (<http://www.oasas.ny.gov/JC/CBC/index.cfm>).

Subsequent Criminal Charges or Convictions

Notice from OASAS

The Division of Criminal Justice Services (DCJS) will inform OASAS of an arrest of any individual who has undergone a criminal background check. The system will provide notice of arrests occurring within New York State. OASAS will promptly notify the provider of the pending charge or conviction against an individual who is currently employed by the provider.

Provider Responsibility

After being notified of a subsequent pending charge or conviction of an employee, the provider should document any action taken in regard to the employee in accordance with the provider's policies and procedures. The provider is responsible for following up with the employee to determine the disposition of any pending charges.

Resources

OASAS Forms

www.oasas.ny.gov/JC/Resources.cfm

The OASAS Justice Center Webpage

<http://www.oasas.ny.gov/JC/index.cfm>

The New York State Justice Center

<http://www.governor.ny.gov/Justice4SpecialNeeds/home>

MorphoTrust USA

<http://www.identogo.com>

Legal Action Center

<http://lac.org/>

New York State Division of Criminal Justice Services Criminal Background Check Information

<http://www.criminaljustice.ny.gov/ojis/recordreview.htm>

Federal Bureau of Investigation Criminal Background Check Information

<http://www.fbi.gov/about-us/cjis/criminal-history-summary-checks>