



# CRIMINAL BACKGROUND CHECKS: THE PROCESS

Counsel's Office  
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Andrew M. Cuomo  
Governor

Arlene González-Sánchez  
Commissioner

# Background – A Refresher

- All criminal background checks (CBC) will begin on or after 6/30/13.
  - For prospective employees and volunteers;
  - For new credentialing and certification applicants;
  - For credentialed individuals upon renewal.
- OASAS will pay the fingerprinting costs for prospective employees (including volunteers) for not for profit providers.
- **MorphoTrust** is the OASAS fingerprinting vendor.
- **CASAC training schools** – suggest your students obtain their criminal histories.

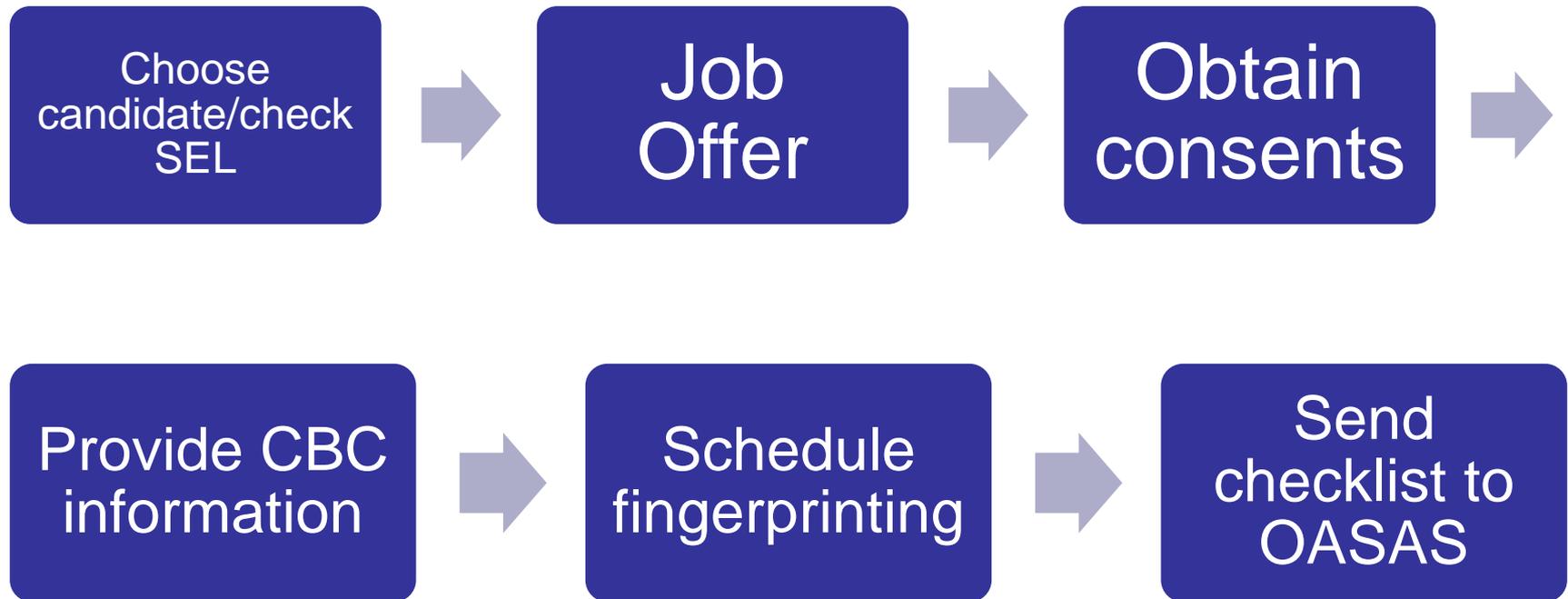


# Who is checked?

- **Prospective employees, volunteers or contractors** of any provider certified or funded by OASAS who will have ***the potential for, or may be permitted, regular and substantial unsupervised or unrestricted contact with clients;***
- All applicants for an OASAS credential (or renewal);
- All applicants for an operating certificate.



# CBC Process Overview



# CBC Process

1. Providers will initiate the CBC process only after choosing an employee/volunteer candidate for the job.
2. Before making a job offer to the chosen candidate, providers will check the Staff Exclusion List (SEL), which is maintained by the Justice Center and tracks those who have committed a substantiated category one case of abuse or neglect.
  - Providers will fill out the Justice Center's Request for Staff Exclusion List Check Form and FAX it to the Justice Center.
  - The Request form can be found on the Justice Center's website.
  - The Justice Center will provide a response to the provider's authorized person by EMAIL.
  - If the individual is on the SEL, the provider CANNOT hire the individual.
  - If the individual is NOT on the SEL, the provider may proceed with the CBC process.



# CBC Process (con't)

**Please note: between July 1, 2013 - July 14, 2013, a provider may proceed with the hiring process before receiving a response from the Justice Center to the SEL check request because there will be no individuals on the list.**

3. After making a job offer to a potential employee or volunteer , and job offer accepted, providers will obtain consent from the individual to conduct a CBC.
  - OASAS has developed a consent form for providers.
  - This form will be available on our website.
4. Providers will provide this form to the individual to fill out. The provider will sign the form and keep it on file. The consent form does not need to be sent to OASAS.



# CBC Process (con't)

5. While obtaining the individual's consent, providers will advise the individual of the following:
  - Procedures to obtain, review and, if necessary, seek correction of the individual's criminal history information. The applicant should be given a copy of the *Personal Criminal History Review* form.
  - The right to withdraw his or her application for employment or volunteer service without prejudice, any time before employment or volunteer service is communicated.
  - The results of the criminal history information check forwarded to OASAS by the Division of Criminal Justice Services and the FBI shall be confidential and shall only be disclosed to persons authorized by law.
  - Criminal history information will be considered pursuant to Article 23-A of the NYS Correction Law in making hiring determinations.



# CBC Process (con't)

6. The provider will schedule the individual's fingerprinting with MorphoTrust through their website - [www.identogo.com](http://www.identogo.com)
7. Providers will be asked to complete the Provider CBC checklist. This form is designed to assist providers through the CBC process and ensure OASAS that all of the appropriate steps have been completed. This form can be found on our website.



# Temporary Employment

- A provider may temporarily hire an applicant pending a CBC.
- The temporary employee may NOT have **unsupervised or unrestricted physical contact with individuals receiving services.**
  - Unsupervised or unrestricted contact = in-person, face to face communication or interaction; or a reasonable opportunity for such contact while not in a reasonable physical proximity of another person who is employed by the provider and who has management oversight; or at least 6 months of experience with the provider and has been deemed by the provider to be qualified.



# Temporary Employment (con't)

- An applicant is not eligible for temporary employment if he or she has a conviction or pending charge of a felony sex offense; violent felony within last 10 years; abandoning and/or endangering the welfare of a child, incompetent, physically disabled or vulnerable elderly person; or any comparable offense in another jurisdiction.
- A provider may temporarily employ an applicant who has a pending felony charge other than that specified or any pending misdemeanor charge if the provider documents the reason for granting temporary approval.



# OASAS Review

- OASAS Counsel's Office will receive the confidential results of the fingerprinting/background check from the Division of Criminal Justices Services (DCJS) and begin our review.
- If the applicant has **no criminal history**, the provider will be notified via e-mail and the provider may continue its hiring process.
- OASAS will review the applicant's criminal history in accordance with Article 23-A of the Corrections Law and a determination will be communicated to the provider via regular mail.
- The determination letter will include a summary of the New York State criminal history, but will not include convictions from other jurisdictions.
- When the provider receives the OASAS determination, the provider shall also consider Article 23-A when deciding whether to hire the individual.



# OASAS Review (con't)

- General guidelines for our determinations based on the findings of the CBC:
  - **Felony conviction** (*sex offense, violent felony within past 10 years, endangering the welfare of an incompetent or physically disabled person or endangering the welfare of a vulnerable elderly person or an incompetent or physically disabled person or any comparable offense*) – OASAS shall deny unless OASAS determines that employment will not jeopardize the health, safety or welfare of clients in the facility or program;
  - **Pending felony charge** – OASAS shall hold the application in abeyance until charge is finally resolved;
  - **Pending misdemeanor** – OASAS shall hold the application in abeyance until charge is finally resolved.



# OASAS Review (con't)

- If OASAS recommends to DENY an individual employment, OASAS will afford the individual the opportunity to explain in writing, within 15 days from the date the notice is mailed, why the application should not be denied.
  - Evidence of rehabilitation will be required.
    - Examples: A Certificate of Relief or a Certificate of Good Conduct, letter(s) of recommendation from the prospective employer, letter(s) of recommendation from any other individual who may be able to attest to rehabilitation and/or good conduct , letter(s) or document(s) showing participation in an ex-offender program, letter(s) or document(s) showing educational and/or training achievements, letter(s) or document(s) showing professional achievements, letter(s) or document(s) showing community service participation, letter(s) or document(s) showing participation in, and completion of, a drug and/or alcohol treatment or rehabilitation program, or anger management program, letter(s) or document(s) showing work experience.
- When OASAS directs a denial, the provider must notify the individual in writing that the criminal history information is basis of the denial.



# Provider Record Keeping

- A provider shall establish, maintain and keep current a record of the following:
  - Roster of employees and list of staffing assignments;
  - Roster of volunteers;
  - Names of all persons for whom a CBC request was submitted to OASAS with position identified;
  - Copy of person's signed informed consent form, results of CBC and OASAS determination; and
  - Record whether individual was hired, position held, and any limitations placed on the job.
- Records shall be maintained securely, but with assurance for immediate access by OASAS.



# Provider Record Retention and Disposal

- A provider shall maintain records for at least 6 years after the individual is no longer employed or volunteers in a position that involves regular and substantial contact with clients unless otherwise directed by OASAS.
- If directed by OASAS to do so, the provider shall dispose of the summary of criminal history information or any other CBC information.
- Disposal shall be performed in a manner that ensures confidentiality.
- If individual withdraws from the application process, depending on where the provider or OASAS is in the CBC process, any fingerprints or criminal history information shall be destroyed.



# Provider Notifications

- A provider must immediately notify OASAS, but no later than 14 days, of the following:
  - The individual has withdrawn his or her application or is no longer considered for the position;
  - A hiring decision has been made with respect to the individual who was subject to and underwent a CBC; and/or
  - An individual who was subject to and underwent a CBC is no longer employed.



# Subsequent Arrests

- As a result of the CBC, OASAS will receive secure and confidential notifications of arrests from DCJS.
- OASAS will promptly notify the provider's authorized person.
- A provider shall take any and all appropriate action to ensure that the health, safety, and welfare of its clients are protected AND document any action taken.
- **The provider is responsible for inquiring as to the outcome of the charges.**



# Resources

- OASAS Justice Center:
  - [www.oasas.ny.gov/JC/index.cfm](http://www.oasas.ny.gov/JC/index.cfm)
  - This website will be updated often with information pertinent to the CBC process.
  - Forms.
- Legal Action Center [www.lac.org](http://www.lac.org)
  - Provides information regarding obtaining and correcting criminal history information, as well as how to obtain evidence of rehabilitation.
- Questions – email us at [cbc@oasas.ny.gov](mailto:cbc@oasas.ny.gov)



# Important Reminder

- If you have not provided OASAS with your authorized person designation form, please do so immediately.
- The form can be found on the Justice Center website under Forms.
- **IF A PROVIDER HAS NOT DESIGNATED AN AUTHORIZED PERSON, IT CANNOT HIRE ANYONE SUBJECT TO THE JUSTICE CENTER ACT AFTER JUNE 30, 2013**

