



**CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR COMMUNITY BASED SERVICES
COA ACCREDITED AGENCY**

Matthew G. Bevin
Governor

275 East Main Street, 3E-C
Frankfort, KY 40621
Phone (502) 564-6852
Fax (502) 564-4653
www.chfs.ky.gov

Vickie Yates Brown Glisson
Secretary

Contract Correspondence Transmittal (CCT)

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Issuance: Division of Protection and Permanency, Assistant Director – Michelle Anderson <i>MA</i>	
Key Words/Phrases: Adam Walsh Child Protection and Safety Background Check Authorization	
Attachments/Forms: User Agreement for Private Entities	

Background

The Department for Community Based Services (DCBS) received negative findings from the Federal Bureau of Investigation (FBI) in the last two audits of its background check programming for the approval of foster and adoptive parent applicants. These findings could result in compromise to the background check programming, up to and including its suspension or shutdown. DCBS has argued that the restrictions on sharing foster/adoptive parent applicants' criminal background check histories with private child-placing agencies ultimately compromises child safety, because private child-placing agencies do not have direct access to the full histories to use in tandem with the home evaluation and parent interviews.

During the last audit in November 2016, there was suggestion that the state through Governor Bevin request Adam Walsh Child Protection and Safety Background Check Authorization under 42 U.S.C. 16962. DCBS worked through the Kentucky State Police (KSP) with successful submission of the request February 15, 2017. On April 25, 2017, KSP advised that the FBI granted the authorization. Since then, DCBS has worked with KSP on instruction and user agreements to officially implement the new authorization.

Once implemented, this authorization will allow DCBS to directly provide complete criminal histories of individuals to private child-placing agencies through U.S. mail or facsimile/fax.



Next Steps

DCBS is updating its user agreement with KSP. In addition, attached herein is the user agreement that must be completed by each private child-placing agency accepting children from DCBS. Agreements must be in place prior to the provision of foster/adoptive parent applicants' complete criminal histories. Until all user agreements with private child-placing agencies are in place, the DCBS Records Management Section will process checks as usual.

Administrative regulations governing foster care will also be reviewed for alignment.

Prohibitions and Restrictions-

- User agreements must be in place to authorize the provision of criminal histories.
- Criminal histories are highly confidential. KSP advised that private child-placing agencies must treat and secure the criminal histories similarly to protected health information.
- KSP states there is a prohibition regarding the electronic or e-mail exchange of criminal histories, through U.S. mail and facsimile/fax are acceptable methods.
- The FBI audits KSP and thereby DCBS, one of the largest consumers of background checks, every three years. Once the authorization is implemented, private child-placing agencies can expect to be selected for FBI audit regarding their handling of criminal histories. KSP advised that, based on current numbers, at least two to five private child-placing agencies will be selected in the next audit.
- DCBS is private child-placing agencies' point of contact for foster/adoptive parent applicants' background checks. If there is a question about processing or check results, private child-placing agencies must contact DCBS. KSP will direct a private child-placing agency to DCBS if KSP is contacted for these reasons.
- KSP retains criminal background check results for six months. If replacement results are needed by a child-placing agency within six months of the criminal check request's processing, the agency should contact DCBS.

The user agreements will need to be completed by November 1, 2017. The completed/signed agreements should be returned to Toby Smith, Branch Manager (CHFS/DAFM). Please inbox the completed forms to DCBS.contracts@ky.gov with a carbon copy (Cc) to toby.smith@ky.gov . If you would like to mail the completed hard copy form you can do so at:

**DAFM Attn: Toby Smith
275 East Main St. 3W-B
Frankfort, KY 40601**

If you have any questions regarding this transmittal or require greater clarification, please contact Gayle Learned via email (gayle.learned@ky.gov) or by telephone at (502) 564-6852, ext. 3608 or Melanie Taylor via email (Melanie.taylor@ky.gov) or by telephone at (502) 564-6852, ext. 3636.

Private Entity Criminal History Record Information User Agreement

Terms and Conditions

This User Agreement (Agreement) is entered into by and between the Kentucky State Police, (KSP), and _____ (User Agency). The purpose of this Agreement is to set forth the User Agency's responsibility when receiving, accessing, and utilizing, criminal history record information and to ensure the confidentiality of this information consistent with applicable guidelines and statutory mandates.

1. Definitions

For the purposes of this Agreement, the definitions listed in this section shall represent the common and exclusive understanding of the parties hereto. The singular and plural form, as well as the small or upper case, of any defined term can be used interchangeably regardless of whether the definition refers to the singular or plural term, or uses the small or upper case.

1.1 "Adequate security" shall mean administrative, technical, and physical, safeguards to ensure the security and confidentiality of CHRI, protect against system misuse and any anticipated threats or hazards to the security of CHRI.

1.2 "Applicant" shall mean an individual who is the subject of a fitness determination by User Agency pursuant to a criminal record background check authorized by state or federal law.

1.3 "Approved employee" shall mean an User Agency employee that:

- a. requires access to CHRI to make fitness determinations;
- b. has signed an employee acknowledgement;
- c. has complied with the security awareness training requirement of the CJIS Security Policy; and
- d. has undergone a state and national fingerprint-supported criminal record check by KSP and the FBI pursuant to the CJIS Security Policy.

1.4 "CJIS" shall mean the Criminal Justice Information Services Division of the FBI.

1.5 "Criminal history record information" or "CHRI" shall mean any of the following:

- a. KSP and FBI rap sheets provided to User Agency pursuant to a criminal record background check authorized by state or federal law;
- b. Cover letters, and documents, attached to KSP and FBI rap sheets; and
- c. Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.

1.6 "Disclose" and "disclosure" shall mean the sale, lease, circulation, release, publication, distribution, dissemination, broadcast or other means of making CHRI known, or available, to any individual, entity, or group, other than KSP, FBI, User Agency, approved employee, or applicant.

1.7 "Employee acknowledgement" shall mean a written statement signed by a User Agency employee providing that he or she agrees to be subject to the duties and responsibilities required of User Agency by this Agreement.

1.8 "FBI" shall mean the Federal Bureau of Investigation.

1.9 "Fitness determination" shall mean a User Agency determination, utilizing CHRI, of whether an applicant is eligible for employment or licensing based on applicable state or federal law.

1.10 "Herein," "hereto," "hereof" and "hereunder" shall be deemed to refer to this Agreement generally, and not to any particular provision of the Agreement.

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1.11 "Include," "includes" and "including" shall be deemed to be followed by the phrase "but not necessarily limited to."

1.12 "System misuse" is the mishandling, misappropriation or exploitation, with or without financial remuneration, of CHRI, and shall include:

- a. access, disclosure, or use, without authorization;
- b. access, disclosure, or use, exceeding authorization;
- c. access, disclosure, or use, for an improper purpose; or
- d. access, disclosure, or use, contrary to state or federal law.

2. User Agency Responsibilities

2.1 User Agency shall not disclose CHRI.

2.2 User Agency hereby acknowledges that it has received a copy of, is familiar with, and shall comply with and be subject to, the contents of the CJIS Security Policy and CJIS Security Addendum.

2.3 User Agency shall use adequate security for CHRI and maintain a security program consistent with federal and state laws, regulations, and standards, (including Title 28, Code of Federal Regulations, Part 20 and the CJIS Security Policy and Addendum).

2.4 User Agency shall immediately report to KSP any system misuse, or breach of adequate security, and cooperate with any investigation of it.

2.5 To the extent permitted by the laws of the Commonwealth of Kentucky, User Agency agrees that KSP shall not be liable in tort, contract, or otherwise, to User Agency or its employees, for any damages or losses sustained, directly or indirectly, from fitness determinations, hiring, or use of CHRI.

2.6 User Agency shall use CHRI only for fitness determinations.

2.7 User Agency agrees that it shall not allow access to CHRI to anyone other than KSP, FBI, or an approved employee.

2.8 User Agency shall direct its employees to comply with the terms of this Agreement, as well as the contents of the CJIS Security Policy and CJIS Security Addendum.

2.9 User Agency agrees to retain employee acknowledgements during the term of this Agreement and provide copies of them to KSP upon request.

2.10 User Agency shall cooperate with any Law Information Network of Kentucky (LINK) and CJIS systems audit by KSP and FBI. User Agency further agrees that KSP and its employees shall not be required to sign or otherwise agree to a confidentiality agreement, acceptable use agreement or any other agreement prior to conducting an audit.

2.11 User Agency shall ensure that all fingerprints and background check requests are properly submitted to KSP to ensure appropriate fee payment and designation of the reason fingerprinted.

2.12 Notwithstanding the provisions of this Agreement, User Agency may provide a copy of an applicant's KSP and FBI rap sheets to the applicant. User Agency shall establish policies and procedures for an identity verification process to ensure they are providing the KSP and FBI rap sheets to the subject of the record. User Agency shall maintain a written, or electronic, record showing the information that was released to the applicant and the date of release.

2.13 Prior to fingerprinting, User Agency shall provide the following notice to applicants:

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- a. that their fingerprints will be used to check the criminal history records of KSP and FBI;
- b. that they will have the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record within thirty (30) days;
- c. the procedures for changing, correcting, or updating a FBI identification record as set forth in Title 28, C.F.R., § 16.34; and
- d. the procedures for requesting a review, or challenge, of a KSP identification record as set forth in 502 KAR 30:070.

2.14 User Agency shall promptly destroy an applicant's CHRI (including scanned images, photographs, copies or other reproductions) after his or her final fitness determination is completed. The destruction of CHRI shall be performed by User Agency, or under its supervision, in accordance with the CJIS Security Policy and Addendum. In lieu of destruction, User Agency may retain CHRI in accordance with the CJIS Security Policy and Addendum. User Agency agrees to ensure that its agency retention schedule is revised to accommodate this provision.

2.15 Within thirty (30) days of the effective date of this Agreement, User Agency shall provide KSP with a copy of:

- a. its CHRI storage, sharing, and transmission methodology;
- b. photographs, and diagrams, of the site where CHRI is stored, including the placement of any computers and servers; and
- c. its network diagram showing the structure, layout, and data flow, of the computer network on which CHRI will be stored or transmitted.

2.16 User Agency shall provide a contact to receive communications related to this Agreement and promptly update the contact information as necessary.

2.17 User Agency shall ensure that its personnel comply with any and all applicable statutes, regulations, Kentucky Justice and Public Safety Cabinet policies and procedures, Department of Kentucky State Police policies and procedures, and any and all other necessary directives issued by KSP pertaining to this Agreement.

2.18 To the extent permitted by law, User Agency agrees to indemnify and hold harmless KSP against any and all claims, losses, demands, obligations, or litigation that result from or by: (1) the erroneous or negligent acts, or omissions, of User Agency, its officers, or employees, in the performance of, or otherwise pertaining to, this Agreement, (2) the policies and procedures used by User Agency during the term of this Agreement, and (3) any failure of User Agency, its officers, or employees, to observe Kentucky and federal laws, including labor laws and minimum wage laws.

2.19 User Agency shall not allow, or authorize, its personnel to financially obligate Commonwealth funds.

2.20 User Agency hereby acknowledges and agrees that disclosure of CHRI, or use of CHRI, in a manner inconsistent with this Agreement will cause irreparable damage, and in such event KSP shall have the right to equitable and injunctive relief, and to seek any other legal or equitable remedies available as a result of violation of the terms of this Agreement by User Agency or its employees.

3. Other terms and conditions

3.1 The section headings in this Agreement are for convenience of reference only and are not intended to be part of, or to affect the meaning or interpretation of, this Agreement. The section headings shall not be construed to limit or extend the meaning of this Agreement.

3.2 This Agreement shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.

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3.3 The parties agree that any claim, action, or lawsuit arising under this Agreement must be brought in Franklin Circuit Court in the Commonwealth of Kentucky.

3.4 No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

3.5 If any term or provision or any part of this Agreement is declared invalid or unenforceable, the remainder of this Agreement shall not be affected, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by the law.

3.6 No party shall assign its respective rights or obligations under this Agreement without prior written consent of the other party.

3.7 This Agreement may only be amended by mutual written consent of both parties.

3.8 This Agreement is the final and exclusive agreement between the parties. All prior negotiations and agreements are merged into this Agreement.

3.9 Pursuant to the Executive Branch Code of Ethics, Kentucky Revised Statutes Chapter 11A, and in order to avoid conflicts of interest more generally, dual-status personnel may not manage or administer this Agreement or any of its individual terms and conditions. Dual-status personnel are defined as any and all individuals who are employed by, or receive a tangible benefit from, KSP and User Agency simultaneously.

3.10 Dual-status personnel shall be considered KSP personnel and shall not be considered User Agency personnel for the purposes of this Agreement, except for the terms and conditions of this Agreement that apply to dual-status personnel by virtue of their dual status.

3.11 The parties agree that they receive all information communicated between them before the execution of this Agreement in strict confidence and that the receiving party, its agents, or employees shall not, without prior written consent of the other party, disclose any such information, subject to Commonwealth of Kentucky and federal disclosure laws.

3.12 Neither party shall represent that a working copy, draft, or the finalized version of this Agreement is identical to a previous iteration of this Agreement if the party has made edits since the last iteration. The parties shall clearly present all edits either through editing functions in word processing software or as a list provided contemporaneously with the most recently edited iteration.

3.13 At no point shall any User Agency personnel be considered an employee of the Justice and Public Safety Cabinet, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, workers' compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee of User Agency.

3.14 In no event shall any User Agency personnel be deemed to be a third-party beneficiary of this Agreement.

3.15 This Agreement shall commence on the date of the last signature of the duly authorized representatives of KSP and User Agency and remain in effect until terminated by either party.

3.16 CHRI shall at all times remain the property of KSP, and no grant of any proprietary rights is hereby given or intended, including any express or implied license, other than the limited right of User Agency to use CHRI for fitness determinations.

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3.17 In order for KSP to maintain control and integrity of its records, User Agency agrees that any subpoena, Freedom of Information Act request, or Open Records Request pursuant to KRS 61.870, et seq., seeking access to CHRI, will be referred for response to the KSP as the official custodian of the records.

3.18 Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

Approvals

This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures. In addition, the parties verify that they are authorized to bind this agreement between the parties and that they accept the terms of the agreement.

IN WITNESS WHEREOF, the parties hereto caused this agreement to be executed by the proper officers and officials:

Name and Title of User Agency's Representative (Please Print)

Signature of User Agency's Representative

Date of Signature

Signature of KSP Representative

Date of Signature