

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Community Based Services

Division of Protection and Permanency

(Amended After Comments)

922 KAR 1:490. Background checks for foster and adoptive parents and relative and fictive kin caregivers.

RELATES TO: KRS 17.500-17.580, 27A.090, 194A.005(1), 199.011(6), (9), (14), 199.462(1), 199.470(4), 211.684, 600.020(7), (28), (40), (61), (62), 605.090(1)(b), (6), 605.120, 605.130, 620.050(5), Chapter 625, 45 C.F.R. 1356.30, 42 U.S.C. 247d, 671(a)(20), 5106a, 5141

STATUTORY AUTHORITY: KRS 194A.050(1), 199.462(5), 199.640(5), 605.120(5), (6), 605.130(7), 605.150

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the secretary to promulgate administrative regulations necessary to implement programs mandated by federal law, qualify for the receipt of federal funds, and necessary to cooperate with other state and federal agencies for the proper administration of the cabinet and its programs. KRS 199.462(5) requires the cabinet to promulgate an administrative regulation for the purpose of requiring a criminal background investigation on behalf of a foster or adoptive parent applicant, an adult member of the applicant's household, or a relative or fictive kin caregiver. KRS 605.150 authorizes the cabinet to promulgate administrative regulations to implement the provisions of KRS 605.130(7), by which the cabinet shall perform other services as may be deemed necessary for the protection of children. KRS 199.640(5) requires the secretary to promulgate administrative regulations establishing basic standards of care and service for child-placing agencies relating to the health and safety of all children in the care of the agency. 45 C.F.R. 1356.30 requires criminal record checks be conducted for prospective foster and adoptive parents. This administrative regulation establishes background check requirements for relative and fictive kin caregivers, applicants seeking to provide foster or adoptive services, or individuals seeking an independent adoption. Additionally, this administrative regulation imposes a stricter requirement than the federal mandate because the cabinet requires the denial of an applicant if: (1) a criminal record check conducted on behalf of an adult household member reveals physical abuse, battery, or a drug or alcohol-related felony within the previous five (5) year period or a felony involving a spouse, a child, sexual violence, or death; or (2) a child abuse or neglect check conducted by the cabinet reveals that a household member, twelve (12) years of age or older, committed sexual abuse or sexual exploitation of a child, has been responsible for a child fatality related to abuse or neglect, or has had parental rights terminated involuntarily.

Section 1. Definitions.

- (1) "Address check" means a search of the Sex Offender Registry to determine if an address is a known address of a registered sex offender.
- (2) "Administrative review" means that the status of the individual subject to the child abuse and neglect check is pending the outcome of an:
 - (a) Investigation or assessment in accordance with 922 KAR 1:330; or
 - (b) Appeal concerning a cabinet substantiated finding of child abuse or neglect.
- (3) "Adolescent member of the household" means a youth who:
 - (a) Resides in the home of:
 1. An individual who applies for approval or has been approved to provide foster or adoptive services; or
 2. A relative or fictive kin caregiver;

- (b) Is age twelve (12) through age seventeen (17); and
- (c) Is not placed in the home by a state agency.
- (4) "Adult member of the household" means an adult who:
 - (a) Resides in the home of:
 - 1. An individual who applies for approval or has been approved to provide foster or adoptive services;
 - 2. A relative or fictive kin caregiver; or
 - 3. An individual applying for an independent non-relative adoption as defined in 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4); and
 - (b) Is eighteen (18) years of age or older.
- (5) "Applicant" means an individual who applies for approval as a foster or adoptive parent of a child under:
 - (a) 922 KAR 1:350, Requirements for public child welfare agency foster parents, adoptive parents, and respite care providers;
 - (b) 922 KAR 1:310, Standards for child-placing agencies placing children who are in the custody of a state agency;
 - (c) 922 KAR 1:315, Standards for child-placing agencies placing children who are not in the custody of a state agency; or
 - (d) 922 KAR 1:010, Independent non-relative adoptions.
- (6) "Cabinet" is defined by KRS 194A.005(1) and 600.020(7).
- (7) "Child fatality" is defined by KRS 211.684.
- (8) "Child-placing agency" is defined by KRS 199.011(6).
- (9) "Fictive kin" is defined by KRS 199.011(9) and 600.020(28).
- (10) "KARES system" means the cabinet's secure, web-based application used to access abuse and neglect registries and facilitate fingerprint-supported state and national criminal background checks for authorized users of the system.
- (11) "Kentucky National Background Check Program" or "NBCP" means a background screening program administered by the cabinet in accordance with 906 KAR 1:190.
- (12) "Near fatality" is defined by KRS 600.020(40) and 42 U.S.C. 5106a(b)(4)(A).
- (13) "Rap back system" is defined by KRS 199.011(14).
- (14) "Relative caregiver" means a relative with whom the child is, or shall be, placed by the cabinet.
- (15) "Sex Offender Registry" means the registration system for adults who have committed sex crimes or crimes against minors established in accordance with KRS 17.500 through 17.580.
- (16) "Sexual abuse" is defined by KRS 600.020(61).
- (17) "Sexual exploitation" is defined by KRS 600.020(62).

Section 2. Background Checks Required for Foster or Adoptive Parent Applicants.

- (1) An applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350, and each adult member of the household, shall submit to a background check in accordance with Section 4 of this administrative regulation, which shall include:
 - (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 - 1. Kentucky Justice and Public Safety Cabinet; or
 - 2. Administrative Office of the Courts;
 - (b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years;
 - (c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and
 - (d) An address check of the Sex Offender Registry.

(2) Prior to approval of an applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350, each adolescent member of the household shall complete a DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members, and submit to a child abuse or neglect check conducted by the cabinet.

(3) An exemption to the fingerprint check requirement pursuant to subsection (1)(c) of this section may be granted by the department if an adult household member of the applicant is medically unable to appear for fingerprints, as set forth in a written request submitted by the agency to designated department staff, which shall include:

- (a) The adult household member's name and date of birth;
- (b) The nature of the adult household member's medical condition necessitating an exemption; and
- (c) Attached medical documentation of the adult household member's medical condition.

Section 3. Background Checks for Foster or Adoptive Applicants Who Will Accept Placement of a Child Not in the Custody of the Cabinet.

(1) An individual applying to accept placement of a child not in the custody of or otherwise made the legal responsibility of the cabinet or the Department of Juvenile Justice, pursuant to 922 KAR 1:315, shall be exempt from enrollment in KARES and subject to the requirements established in Section 9(3) of this administrative regulation.

(2) An applicant pursuant to 922 KAR 1:315 and each adult and adolescent member of the household shall complete a separate DPP-157 and submit to:

- (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts;
- (b) A child abuse or neglect check conducted by the cabinet pursuant to 922 KAR 1:470;
- (c) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation; and
- (d) An address check of the Sex Offender Registry.

(3) A Kentucky child abuse or neglect check conducted by the cabinet shall identify the name of each applicant, adolescent member of the household, or adult member of the household who has:

- (a) Been found by the cabinet to have:
 1. Committed sexual abuse or sexual exploitation of a child;
 2. Been responsible for a child fatality or near fatality related to abuse or neglect;
 3. Abused or neglected a child within the seven (7) year period immediately prior to the application; or
 4. Had parental rights terminated; or
- (b) A matter pending administrative review.

(4) An applicant shall not be approved if:

- (a) A criminal records check reveals that the applicant, or adult member of the household, has a:
 1. Felony conviction involving:
 - a. A spouse, a child, sexual violence, or death as described by 42 U.S.C. 671(a)(20); or
 - b. Physical abuse, battery, a drug, or alcohol within the five (5) year period prior to application; or
 2. Criminal conviction relating to child abuse or neglect;
- (b) A child abuse or neglect check reveals that the applicant, adolescent member of the household, or adult member of the household, has been found to have:

1. Committed sexual abuse or sexual exploitation of a child;
 2. Been responsible for a child fatality or near fatality related to abuse or neglect; or
 3. Had parental rights terminated involuntarily in accordance with KRS 625.050 through 625.120 or another state's laws; or
- (c) An address check of the Sex Offender Registry and supporting documentation confirm that a sex offender resides at the applicant's home address.
- (5) An individual identified in accordance with subsection (3) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 4. Fingerprint-Based Background Checks.

- (1) Fingerprint-based background checks shall be conducted for the following individuals through the Kentucky National Background Check Program pursuant to 906 KAR 1:190, using the KARES system:
- (a) An applicant pursuant to 922 KAR 1:310 or 922 KAR 1:350 and each adult member of the household; and
 - (b) A relative or fictive kin caregiver who has lived outside of the state of Kentucky within the last five (5) years.
- (2) An individual meeting the criteria of subsection (1) of this section shall provide to the cabinet or child-placing agency:
- (a) A copy of his or her driver's license or other government-issued photo identification for verification that the photograph and name clearly match the individual submitting to the check; and
 - (b) A completed and signed:
 1. DPP-162, Applicant Waiver Agreement and Statement; and
 2. DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members.
- (3) Cabinet or child-placing agency staff shall log on to the NBCP portal and enter the individual's information for a check of the:
- (a) Child abuse and neglect check conducted by the cabinet for each state of residence during the past five (5) years;
 - (b) National Crime Information Center's National Sex Offender Registry in accordance with 34 U.S.C. 20921;
 - (c) Sex Offender Registry in accordance with KRS 17.500 through 17.580;
 - (d) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 1. Kentucky Justice and Public Safety Cabinet; or
 2. Administrative Office of the Courts; and
 - (e) A criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation.
- (4)
- (a) In accordance with KRS 199.462(2) and 42 U.S.C. 671(a)(20), the cabinet or child-placing agency shall submit payment by credit or debit card for a state and national fingerprint-supported criminal history background check performed by the Department of Kentucky State Police (KSP) and the Federal Bureau of Investigation (FBI), including the rap back system. If an applicant's rap back has not expired, a new fingerprint check shall not be required.
 - (b) A child-placing agency enrolled in the NBCP shall pay a fee not to exceed thirty (30) dollars in addition to any fees charged in accordance with paragraph (a) of this subsection for the actual cost of processing a fingerprint-supported state and national criminal background check and for providing rap back services for each applicant.
- (5) Cabinet or child-placing agency staff shall have no more than ninety (90) calendar days from the date of payment pursuant to subsection (4) of this section to submit the

applicant's fingerprints at an authorized collection site for NBCP.

(6) Upon completion of the background check required by this section, Section 6, or Section 7 of this administrative regulation, the cabinet shall provide notice to the requesting agency that the applicant or individual is:

- (a) Approved; or
- (b) Not approved due to a disqualifying background check result pursuant to subsection (7) of this section.

(7) An applicant or individual shall not be approved if the results of the background check indicate a:

- (a) Felony conviction involving:
 - 1. A spouse, a child, sexual violence, or death as established in 42 U.S.C. 671(a)(20); or
 - 2. Physical abuse, battery, drugs, or alcohol within the five (5) year period prior to application;
- (b) Criminal conviction relating to child abuse or neglect;
- (c) Civil judicial determination related to child abuse or neglect;
- (d) Result of a child abuse or neglect check in which the applicant, relative or fictive kin caregiver, adolescent member of the household, or adult member of the household, has been found to have:
 - 1. Committed sexual abuse or sexual exploitation of a child;
 - 2. Been responsible for a child fatality or near fatality related to abuse or neglect; or
 - 3. Had parental rights terminated involuntarily pursuant to KRS 625.050 through 625.120 or another state's laws; or
- (e) Result of an address check in the Sex Offender Registry and supporting documentation that a sex offender resides at the applicant's or individual's home address.

(8) An applicant or individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 5. Request for a Child Abuse or Neglect Check from Another State.

(1) The cabinet shall conduct a child abuse or neglect check as required by 42 U.S.C. 671(a)(20) if a:

- (a) Completed DPP-157 or DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members, is submitted to the cabinet; or
- (b) Request is received on agency letterhead and includes two (2) numeric identifiers.

(2) The cabinet shall:

- (a) Protect the confidentiality of the information transmitted by the cabinet to a child welfare agency; and
- (b) Waive the fee specified in 922 KAR 1:470.

Section 6. Background Checks Required for a Relative or Fictive Kin Caregiver.

(1) A relative or fictive kin caregiver, and each adult member of the household, shall complete a DPP-159 and submit to:

- (a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:
 - 1. Kentucky Justice and Public Safety Cabinet; or
 - 2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet; and

(c) An address check of the Sex Offender Registry conducted by the cabinet;

(2) A relative or fictive kin caregiver, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a fingerprint-based background check conducted through the NBCP, pursuant to Section 4 of this administrative regulation.

(3) An adolescent member of a relative or fictive kin caregiver's household shall complete a DPP-159 and submit to a child abuse or neglect check conducted by the cabinet.

(4) A child abuse or neglect check conducted by the cabinet shall identify the name of each applicant and adolescent and adult member of the household and include any finding consistent with Section 4(7) of this administrative regulation.

(5) A relative or fictive kin caregiver shall not be approved if a criminal records check, a child abuse and neglect check, or an address check of the Sex Offender Registry reveals a finding consistent with Section 4(7) of this administrative regulation.

(6) An individual meeting the requirement of subsection (1) of this section may submit an open records request in accordance with 922 KAR 1:510.

Section 7. Background Check Requirements for an Independent Relative or Non-Relative Adoption.

(1) An individual applying for an independent non-relative adoption pursuant to 922 KAR 1:010 or an independent relative adoption petitioner who is exempt as defined in KRS 199.470(4), and each adult member of the household, shall submit to a background check, which shall include:

(a) An in-state criminal records check, conducted pursuant to KRS 199.462(1), by the:

1. Kentucky Justice and Public Safety Cabinet; or
2. Administrative Office of the Courts;

(b) A child abuse or neglect check conducted by the cabinet for each state of residence during the past five (5) years; and

(c) An address check of the Sex Offender Registry conducted by the cabinet.

(2) An applicant, and each adult member of the household, who has lived outside the state of Kentucky during the past five (5) years shall complete a criminal records check conducted by means of a fingerprint check of the Criminal History Record Information administered by the Federal Bureau of Investigation.

(3) Prior to approval of an individual, each adolescent member of the household shall complete a DPP-157 and submit to a child abuse or neglect check conducted by the cabinet.

Section 8. Approval.

(1) Except for the provisions of Section 4(7) or 6(5) of this administrative regulation, approval of an applicant, including an applicant for an independent adoption, fictive kin, or relative caregiver who has been convicted of a nonviolent felony or misdemeanor, has been found by the cabinet or another child welfare agency to have abused or neglected a child, or whose parental rights have been terminated voluntarily, shall be handled on a case-by-case basis with consideration given to the:

(a) Nature of the offense;

(b) Length of time that has elapsed since the event; and

(c) Applicant's life experiences during the ensuing period of time.

(2) Except for the provisions of Section 4(7) or 6(5) of this administrative regulation, an applicant, fictive kin, or relative caregiver may be approved on a case-by-case basis in accordance with the criteria described by subsection (1)(a) through (c) of this section if:

(a) An adolescent member of the household has:

1. Been found by the cabinet to have abused or neglected a child; or
2. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws; or

(b) An adult member of the household has:

1. Been convicted of a nonviolent felony or misdemeanor;
2. Been found to have abused or neglected a child; or

3. Had parental rights terminated voluntarily in accordance with KRS 625.040 through 625.046 or another state's laws.

Section 9. Reevaluation.

(1) Once enrolled in KARES, an approved foster or adoptive parent and each adult member of the household shall maintain enrollment in KARES.

(2)

(a) An approved foster or adoptive parent and each adult member of the household enrolled in KARES shall annually, prior to or during the anniversary month of initial KARES determination, undergo:

1. A child abuse or neglect check conducted by the cabinet; and
2. An address check of the Sex Offender Registry conducted by the cabinet.

(b) An active foster or adoptive home shall be closed if an individual undergoing an annual check pursuant to this subsection has a disqualifying background check result established in Section 4(7) of this administrative regulation.

(3) An applicant specified in Section 3 of this administrative regulation and not enrolled in KARES shall submit annually, prior to or during the anniversary month of initial approval, to:

- (a) A criminal records check as described in Section 2(1)(a) of this administrative regulation;
- (b) A child abuse or neglect check conducted by the cabinet; and
- (c) An address check of the Sex Offender Registry.

(4)

(a) If an adult becomes a new member of an approved foster or adoptive parent's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 4 of this administrative regulation.

(b) If an adult becomes a new member of a relative or fictive kin caregiver's household, the new adult member of the household shall submit to background checks within thirty (30) calendar days of residence within the household in accordance with Section 6 of this administrative regulation. If an adolescent becomes a new member of an approved foster or adoptive parent or a relative or fictive kin caregiver's household, the new adolescent member of the household shall submit to a child abuse and neglect check conducted by the cabinet within thirty (30) calendar days of residence within the household in accordance with Section 2(2) or 6(2) of this administrative regulation, respectively.

Section 10. Maintenance of Records.

(1) A child-placing agency shall maintain the approval status of each foster and adoptive applicant who has submitted to a fingerprint-based criminal background check by reporting the status in the NBCP web-based system.

(2) A completed copy of each DPP-157 submitted pursuant to Section 2(2), 3(2), or 5 of this administrative regulation shall be maintained by the child-placing agency.

(3) A completed copy of each DPP-159 submitted and criminal records check conducted pursuant to Section 5 or 6 of this administrative regulation shall be maintained.

Section 11. Communications. This administrative regulation shall not limit the cabinet's ability to discuss the qualifications or fitness of an applicant or an existing foster or adoptive parent with a child-placing agency in accordance with:

(1) KRS 620.050(5); or

(2) The terms and conditions of:

- (a) A release of information signed by the applicant or foster or adoptive parent; or
- (b) The agreement between the cabinet and the child-placing agency.

Section 12. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) "DPP-157, Background Check Request for Foster or Adoptive Applicants and Adolescent or Adult Household Members", 10/24;
- (b) "DPP-159, Background Check Request for Relative and Fictive Kin Caregivers, or Adolescent and Adult Household Members", 10/24;
- (c) "DPP-162, Applicant Waiver Agreement and Statement", 07/21; and
- (d) "DPP-163, Disclosures to be Provided to and Signed by the Applicant and Adult Household Members", 06/21.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Cabinet for Health and Family Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. This material may also be viewed on the department's Web site at <https://chfs.ky.gov/agencies/dCBS/Pages/default.aspx>.

LESA DENNIS, Commissioner

ERIC C. FRIEDLANDER, Secretary

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