§ 378-a. Access to conviction records by authorized agencies. 1. Every authorized agency which operates a residential program for children licensed or certified by the office of children and family services, and the office of children and family services in relation to any juvenile justice program it operates, shall request that the justice center for the protection of people with special needs check, and upon such request, such justice center shall request and shall be authorized to receive from the division of criminal justice services and the federal bureau of investigation criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law concerning each prospective operator, employee or volunteer of such a residential program who will have regular and substantial unsupervised or unrestricted physical contact with children in such program.

(a) Provided however, any authorized agency required to request criminal history information pursuant to this subdivision that operates a residential program for foster children that is licensed or certified by the office of children and family services shall request that the justice center for the protection of people with special needs check, and upon such request, such justice center shall request and shall be authorized to receive from the division of criminal justice services and the federal bureau of investigation criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, for every: (i) prospective employee of such program that is not already required to be cleared pursuant to the opening paragraph of this subdivision; and (ii) notwithstanding any other provision of law to the contrary, prior to April first, two thousand twenty and in accordance with a schedule developed by the office of children and family services, any person who is employed in a residential foster care program that has not previously had a clearance conducted pursuant to this section in connection to such employment.

(b) For the purposes of this section, "operator" shall include any natural person with an ownership interest in the authorized agency.

(c) Access to and the use of information obtained pursuant to this subdivision shall be governed by the provisions of section eight hundred forty-five-b of the executive law.

1-a. Excluding the authorized agencies authorized to request and receive criminal history information pursuant to subdivision one of this section, and subject to the rules and regulations of the division of criminal justice services, an authorized agency defined in subdivision ten of section three hundred seventy-one of this title shall have access to criminal history information, as such phrase is defined in paragraph (c) of subdivision one of section eight hundred forty-five-b of the executive law, pertaining to persons who have applied for and are under active consideration for employment by such authorized agency in positions where such persons will have the potential for regular and substantial unsupervised and unrestricted physical contact with children in the program. Upon receipt of such criminal history information, the authorized agency shall provide the prospective employee with a copy of such criminal history information and a copy of article twenty-three-A of the correction law and inform such prospective employee of his or her right to seek correction of any incorrect information contained in such criminal history information pursuant to the regulations and procedures established by the division of criminal justice services. The authorized agency shall designate one or two persons in its employ who shall be authorized to request, receive and review the criminal history information pursuant to this subdivision, and only such persons and the prospective employee to which the criminal history information relates shall have access to such information; provided, however, that such criminal history information may be disclosed to other personnel empowered by the agency to make decisions concerning prospective employees. The authorized agency shall notify the division of criminal justice services of each person authorized to have access to such criminal history information pursuant to this subdivision. Except as otherwise provided in this subdivision, such criminal history information shall be confidential and any person who willfully permits the release of such confidential criminal history information to persons not permitted by this subdivision to receive such information shall be guilty of a misdemeanor.

2. (a) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice

services, an authorized agency, as defined in subdivision ten of section three hundred seventy-one of this title, shall perform a criminal history record check with the division of criminal justice services regarding any prospective foster parent or prospective adoptive parent or, a prospective successor guardian in accordance with paragraph (d) of subdivision two of section four hundred fifty-eight-b of this article, and any person over the age of eighteen who is currently residing in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian. Provided, however, that for prospective foster parents and prospective adoptive parents and other persons over the age of eighteen in their homes, the checks required by this paragraph shall be conducted before the foster parent or adoptive parent is finally certified or approved for the placement of a child. Persons who are over the age of eighteen residing in the home of a certified or approved foster parent and who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the foster parent applies for renewal of his or her certification or approval as a foster parent. The division of criminal justice services is authorized to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check pursuant to and consistent with public law 92-544 to determine whether such prospective foster parent, prospective adoptive parent, prospective successor guardian or person over the age of eighteen currently residing in the home of such prospective parent or guardian has a criminal history in any state or federal jurisdiction. The provisions and procedures of this section, including the criminal history record check of persons over the age of eighteen who are currently residing in the home of the foster parent, also shall apply to prospective foster parents certified by the office of children and family services and to family homes certified by any other state agency where such family homes care for foster children in accordance with a memorandum of understanding with the office of children and family services.

(b) Every authorized agency shall obtain a set of the prospective foster parent, prospective adoptive parent or prospective successor guardian's fingerprints and those of any person over the age of eighteen who currently resides in the home of such prospective foster parent,

prospective adoptive parent or prospective successor guardian, and such other information as is required by the office of children and family services and the division of criminal justice services. The authorized agency shall provide to the applicant blank fingerprint cards and a description of how the completed fingerprint cards will be used upon submission to the authorized agency. The authorized agency shall promptly transmit such fingerprint cards to the office of children and family services. The office of children and family services shall promptly submit such fingerprint cards and the processing fee imposed pursuant to subdivision eight-a of section eight hundred thirty-seven of the executive law to the division of criminal justice services for its full search and retain processing. Notwithstanding any other provision of law to the contrary, the processing fee shall be submitted by the office of children and family services and no part thereof shall be charged to the prospective foster parent, prospective adoptive parent, prospective successor guardian or any person over the age of eighteen who currently resides in the home of such prospective foster parent, prospective adoptive parent or prospective successor guardian who submitted a fingerprint card pursuant to this subdivision.

(c) The division of criminal justice services shall promptly provide to the office of children and family services a criminal history record, if any, with respect to the prospective foster parent, prospective adoptive parent or prospective successor guardian and any other person over the age of eighteen who resides in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian, or a statement that the individual has no criminal history record.

(d) Notwithstanding any other provision of law to the contrary, the office of children and family services, upon receipt of a criminal history record from the division of criminal justice services, may request, and is entitled to receive, information pertaining to any offense contained in such criminal history record from any state or local law enforcement agency or court for the purposes of determining whether any ground relating to such criminal conviction or pending criminal charge exists for denying an application.

(e) Except as set forth in paragraph (m) of this section, after reviewing any criminal history record information provided by the

division of criminal justice services, the office of children and family services shall promptly notify the authorized agency or other state agency that:

(1) Notwithstanding any other provision of law to the contrary, an application for certification or approval of a prospective foster parent or prospective adoptive parent shall be denied and, in the event of death or incapacity of a relative guardian, an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article shall not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where a criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian, as applicable, reveals a conviction for:

(A) a felony conviction at any time involving: (i) child abuse or neglect; (ii) spousal abuse; (iii) a crime against a child, including child pornography; or (iv) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; or

(B) a felony conviction within the past five years for physical assault, battery, or a drug-related offense, unless such offense is eligible for expungement pursuant to section 160.50 of the criminal procedure law; or

(2) Notwithstanding any other provision of law to the contrary, a final determination of an application for certification or approval of a prospective foster parent or prospective adoptive parent and, in relation to prospective successor guardians, approval pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article shall be held in abeyance whenever the criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian, as applicable, reveals:

(A) a charge for a crime set forth in subparagraph one of this paragraph which has not been finally resolved; or

(B) a felony conviction that may be for a crime set forth in subparagraph one of this paragraph. An authorized agency may proceed with a determination of such application, in a manner consistent with this subdivision, only upon receiving subsequent notification from the

office of children and family services regarding the status of such charge or the nature of such conviction; or

(3) consistent with the provisions of article twenty-three-A of the correction law, an application for certification or approval of a prospective foster parent or prospective adoptive parent may be denied, an agreement to provide payments to a prospective successor guardian pursuant to title ten of this article may not be approved pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article, as applicable, where:

(A) a criminal history record of the prospective foster parent, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of a crime other than one set forth in subparagraph one of this paragraph; or

(B) a criminal history record of any other person over the age of eighteen who resides in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian reveals a charge or a conviction of any crime; or

(4) Notwithstanding any other provision of law to the contrary, an application for renewal of the certification or approval of a foster parent submitted on or after October first, two thousand eight shall be denied based on the conviction of the foster parent of a crime set forth in subparagraph one of this paragraph where such conviction occurred on or after October first, two thousand eight; or

(5) Notwithstanding any other provision of law to the contrary, the certification or approval of a foster parent, or the approval of an adoptive parent who has not completed the adoption process, shall be revoked based on the conviction of the foster parent or the adoptive parent of a crime set forth in subparagraph one of this paragraph; or

(6) the prospective foster parent, prospective adoptive parent or prospective successor guardian and any person over the age of eighteen who is residing in the home of the prospective foster parent, prospective adoptive parent or prospective successor guardian has no criminal history record.

(f) Except as otherwise set forth in this paragraph, any notification by the office of children and family services pursuant to paragraph (e) of this subdivision shall include a summary of the criminal history record provided by the division of criminal justice services, including,

but not limited to, the specific crime or crimes for which the prospective foster parent or parents, adoptive parent or parents or prospective successor guardian or guardians or any adults over the age of eighteen living in the home have been charged or convicted, as applicable. When responding to an inquiry from a voluntary authorized agency or other non-public agency with respect to the results of a national criminal history check performed by the federal bureau of investigation, the office of children and family services shall advise the voluntary authorized agency or other non-public agency of the category or categories of crime or crimes and shall not provide the voluntary authorized agency or other non-public agency with the specific crime or crimes absent the written consent of the person for whom the national criminal history check was performed.

(g) When an authorized agency has denied an application or approval in accordance with the provisions of paragraph (e) of this subdivision, the authorized agency shall provide to the applicant a written statement setting forth the reasons for such denial, including, as authorized by paragraph (f) of this subdivision, the summary of the criminal history record provided to the authorized agency by the office of children and family services. The authorized agency shall also provide a description of the division of criminal justice services' record review process and any remedial processes provided by the office of children and family services to any prospective foster parent, prospective adoptive parent or prospective successor guardian. If the applicant is disqualified under item (ii) of clause (A) of subparagraph one of paragraph (e) of this subdivision, then the applicant may apply for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in paragraph (j) of this subdivision.

(h) Where a criminal history record of the certified or approved foster parent, prospective adoptive parent or of any other person over the age of eighteen who resides in the home of the certified or approved foster parent or prospective adoptive parent reveals a charge or conviction of any crime, the authorized agency shall perform a safety assessment of the conditions in the household. Such assessment shall include: whether the subject of the charge or conviction resides in the household; the extent to which such person may have contact with foster

children or other children residing in the household; and the status, date and nature of the criminal charge or conviction. The authorized agency shall thereafter take all appropriate steps to protect the health and safety of such child or children, including, when appropriate, the removal of any foster child or children from the home. Where the authorized agency denies the application or revokes the approval or certification of the foster parent or the prospective adoptive parent in accordance with the standards set forth in paragraph (e) of this subdivision, such authorized agency shall remove any foster child or children from the home of the foster parent or the prospective adoptive parent.

(i) Any criminal history record provided by the division of criminal justice services, and any summary of the criminal history record provided by the office of children and family services to an authorized agency pursuant to this subdivision, is confidential and shall not be available for public inspection; provided, however, nothing herein shall prevent an authorized agency, the office of children and family services or other state agency referenced in paragraph (a) of this subdivision from disclosing criminal history information to any administrative or judicial proceeding relating to the denial or revocation of a certification or approval of a foster parent or an adoptive parent or the removal of the foster child from the home or the failure to approve a prospective successor guardian pursuant to subparagraph (ii) of paragraph (b) of subdivision five of section four hundred fifty-eight-b of this article or the termination of an agreement for payments pursuant to title ten of this article that is made in accordance with paragraph (h) of subdivision four of section four hundred fifty-eight-b of this article. Where there is a pending court case, the authorized agency which received the criminal history record summary from the office of children and family services, shall provide a copy of such summary to the family court or surrogate's court.

(j) For the purposes of this subdivision "spousal abuse" is an offense defined in section 120.05, 120.10, 121.12 or 121.13 of the penal law where the victim of such offense was the defendant's spouse; provided, however, spousal abuse shall not include a crime in which the prospective foster parent, prospective adoptive parent or prospective successor guardian, who was the defendant, has received notice pursuant

to paragraph (g) of this subdivision and the office of children and family services finds after a fair hearing held pursuant to section twenty-two of this chapter, that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the prospective foster parent, prospective adoptive parent or prospective successor guardian to commit such offense.

(k) The office of children and family services shall inform the division of criminal justice services when a person is no longer certified or approved as a foster parent or is no longer a prospective adoptive parent so that the division of criminal justice services may terminate its retain processing with regard to such person and any person over the age of eighteen who is residing in the home of the foster parent or prospective adoptive parent. At least once a year, the office of children and family services will be required to conduct a validation of the records maintained by the division of criminal justice services.

(l) The office of children and family services, in consultation with the division of criminal justice services, shall promulgate regulations for the purpose of implementing the provisions of this subdivision relating to the standards for the certification or approval of foster parents or adoptive parents.

(m)(1) The office of children and family services shall not release the content of the results of the nationwide criminal history record check conducted by the federal bureau of investigation in accordance with this subdivision to an authorized agency, as defined in paragraphs (a) or (c) of subdivision ten of section three hundred seventy-one of this title.

(2) For any application made to such an authorized agency under this subdivision, the office of children and family services shall:

(A) review and evaluate the results of the nationwide criminal history record check of the prospective foster parent, prospective adoptive parent and any other person over the age of eighteen who resides in the home of such applicant in accordance with the standards set forth in paragraph (e) of this subdivision relating to mandatory disqualifying convictions, hold in abeyance charges or convictions, and discretionary charges and convictions; and

(B) based on the results of the nationwide criminal history record check, inform such authorized agency that the application for certification or approval of the prospective foster parent or the prospective adoptive parent either: (i) must be denied; (ii) must be held in abeyance pending subsequent notification from the office of children and family services; or (iii) that the office of children and family services has no objection, solely based on the nationwide criminal history record check, for the authorized agency to proceed with a determination on such application based on the standards for certification or approval of a prospective foster parent or prospective adoptive parent, as set forth in the regulations of the office of children and family services.

(3) Where the office of children and family services directs the authorized agency to deny the application of a prospective foster parent or a prospective adoptive parent in accordance with this paragraph, the office of children and family services shall also notify the prospective foster parent, prospective adoptive parent or other person over the age of eighteen who resided in the home of the applicant whose criminal history was the basis for the denial and shall provide such prospective foster parent, prospective adoptive parent or other person a copy of the results of the nationwide criminal history record check upon which such denial was based and a written statement setting forth the reasons for such denial. If the applicant is disqualified under item (ii) of clause (A) of subparagraph one of paragraph (e) of this subdivision, then the applicant may apply for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in paragraph (j) of this subdivision.

(4) This paragraph does not apply to nationwide criminal history record checks conducted by the federal bureau of investigation on behalf of state agencies or authorized agencies, as defined in paragraph (b) of subdivision ten of section three hundred seventy-one of this title, or to the results of statewide criminal history record checks conducted by the division of criminal justice services.