

Adam Walsh Child Protection and Safety Act of 2006: Summary of Child Welfare Provisions

BACKGROUND

Adam Walsh Child Protection and Safety Act of 2006

- ❖ An act to protect children from sexual exploitation and violent crime, to prevent child abuse and child pornography, to promote Internet safety, and to honor the memory of Adam Walsh and other child crime victims.

Bill Number:

Introduced as H.R. 4472

When introduced:

12/8/2005

Status of Bill:

Signed into Law on July 27, 2006 [Public Law 109-248]

Brief Overview:

P. L. 109-248 is primarily intended to protect children from violent crime with a particular emphasis placed on preventing sex offenders' access to children. To achieve these aims, P. L. 109-248 increases the capacity of an array of Federal, State, tribal, and local systems (particularly justice systems) to create, pool, and share resources (e.g., national registries of sex offenders and perpetrators of child abuse, neglect, and exploitation) to identify individuals who pose a threat of harm to children. P. L. 109-248 strengthens the ability of the courts to administer penalties to perpetrators of child sex offenses. In addition, P. L. 109-248 promotes and prescribes initiatives and programs (e.g., funds for online child safety and fingerprinting printing programs) aimed at preventing crimes against children.

SUMMARY OF CHILD WELFARE PROVISIONS

Title I - Sex Offender Registration and Notification Act

Subtitle C – Access to Information and Resources Needed to Ensure that Children are Not Attacked or Abused

Section - 151 Access to national crime information databases

Section - 152 Requirement to complete background checks before approval of any foster or adoptive placement and to check national crime information data bases and State child abuse registries; suspension and subsequent elimination of Opt-Out.

Section - 153 Schools Safe Act

Access to National Crime Information Databases

- ✓ Section 151 will permit State social service agencies, with child protection responsibilities, to have “access to the national crime information databases (NCID)” administered by the Department of Justice for purposes specifically related to “investigating or responding to reports of child abuse, neglect, or exploitation.”

However, access to the NCID will be limited to personnel who meet security and training standards established by the Attorney General.

- ✓ Section 153 requires the Attorney General to conduct fingerprint-based checks of the NCID for “child welfare agencies” (see definition below) pursuant to a request submitted for the purpose of an investigation relating to an incident of abuse or neglect of a minor. The Attorney General must conduct such checks upon request from the chief executive officer of a State.
 - ❖ *National crime information databases* (NCID) means the National Crime Information Center and its incorporated criminal history databases. The NCID consists of identification records, criminal history records, protection orders, and wanted person records that may be disseminated to civil or criminal courts for use in domestic violence or stalking cases.
 - ❖ *Child Welfare Agency* means the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act” AND “any other public agency, or any other private agency under contract with the State or local agency responsible for administering the plan under part B or part E of the title IV of the Social Security Act, that is responsible for the licensing or approval of foster or adoptive parents.

Increases Criminal Background Check Procedures Concerning Prospective Foster/Adoptive Parents and Other Adults in the Foster/Adoptive Home & Amends title IVE State Plan Requirements

- ✓ *(Effective on October 1, 2006)*

Section 152 requires the States to have procedures in place to conduct criminal background checks on prospective foster and adoptive parents *regardless of whether foster care maintenance payments or adoption assistance payments are to be made of behalf of the child under the State plan.* In addition to the criminal background check procedures specified in the IVE State plan, P. L. 109-248 will require States to include fingerprint-based checks of prospective foster and adoptive parents through a national crime information database “before the prospective foster/adoptive parent may be finally approved for placement of a child.”
- ✓ Section 153 requires the Attorney General to conduct fingerprint-based checks of the NCID for “child welfare agencies” (see definition below) pursuant to a request submitted for the purpose of “conducting a background check required under section 471(a)(20) of the Social Security Act on individuals under consideration as prospective foster or adoptive parents.” The Attorney General must conduct such checks upon request from the chief executive officer of a State.
- ✓ Section 152 adds a new subparagraph “C” to the title IVE State Plan requirements at section 471(a)(20) which requires the States to:
 - conduct a background check using its child abuse and neglect registry system with respect to prospective foster/adoptive parents and any other adult(s) living in the home of such prospective parent. “Before a prospective foster or adoptive parent may be finally approved for placement of a child,” the States will be required to check child abuse and neglect registries in each State the prospective foster/adoptive parents, and other adult(s) living in the home, have resided in the

preceding 5 years. These background checks must be made before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the IVE State plan;

- have safeguards in place to 1) prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State and 2) prohibits the State from sharing the information obtained from the registry pursuant to the foster/adoptive parent background check requirement for any other purpose; and
 - comply with child abuse and neglect registry background check requests (i.e., foster/adoptive parent and any other adult living in the home of such prospective parent) made by other States.
- ✓ While Section 152 adds requirements to the States' criminal background procedures that must be completed before a prospective foster or adoptive parent may be finally approved for placement of a child regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child under the IVE State plan, the specific criminal convictions that prohibit (by statute) a child from being placed in a foster/adoptive home apply only to "any case involving a child on whose behalf such payments are to be made:" [see a Section 471(a)(20)(A)(i) and 471(a)(20)(A)(ii)]
- (i) in any case involving a child on whose behalf such payments are to be made in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted; and
 - (ii) in any case involving a child on whose behalf such payments are to be made in which a record check reveals a felony conviction for physical assault, battery, or a drug-related offense, if a State finds that a court of competent jurisdiction has determined that the felony was committed with the past 5 years, such final approval shall not be granted.

Suspension and Elimination of Opt-Out Provision

- ✓ Section 152: States can only opt-out of the IVE State Plan criminal background requirements specified in section 471(a)(20)(A) [including the Adam Walsh amendments to 471(a)(20)(A)] of the Social Security Act if the State "opted out" on or before September 30, 2005.
- ✓ Regardless of the State's "opt-out" status, effective October 1, 2006, all States must comply with the new subparagraph "C" added to title IVE section 471(a)(20) of the Social Security Act by the Adam Walsh law; i.e., child abuse and neglect registry check requirements.
- ✓ P. L. 109-248 eliminates the opt-out provision completely for all States effective October 1, 2008.

Delay Permitted if State Legislation Required

- ✓ If State legislation is required before changes can be made to a IVE State Plan to comply with P. L. 109-248, the State will be afforded a specific time-frame to make the necessary changes. The statutory time-frame is linked to that State's scheduled legislative session.

Title II – Federal Criminal Law Enhancements Needed to Protect Children from Sexual Attacks and Other violent Crimes.

Section 209 – Child Abuse Reporting

Section 209

- ✓ Amends section 2258 of title 18, United States Code and would increase the penalty for a “covered professional” found guilty of failure to report child abuse from a Class B misdemeanor to a fine and/or imprisonment for not more than one year. This section applies to “covered professionals” engaged in professional activity on federal land or in a federally operated (or contracted) facility.

Title VI - Grants, Studies, and Programs for Children and Community Safety

Subtitle C – Grants, Studies, and Other Provisions

Section 633. National Registry of Substantiated Cases of Child Abuse

Creation of a National Registry of Substantiated Cases of Child Abuse

Section 633

- ✓ Requires that an electronic national registry of substantiated cases of child abuse and neglect be created by the Secretary of Health and Human Services (HHS), in consultation with the Attorney General. P.L. 109-248 requires that the national registry contain case-specific identifying information that is limited to the name of the perpetrator and the nature of the substantiated case of child abuse and neglect. Applies to State and Tribal cases of child abuse and neglect.
- ✓ The aim of the national registry is to make case-specific identifying information about perpetrators of substantiated child abuse and neglect accessible to the States, Indian tribes, and local government entities needed to carry out their responsibilities under the law to protect children from abuse and neglect. As follows, the data needed to maintain this national registry will be supplied to HHS by the States, Indian tribes, or at the option of a State, by political subdivisions of such State. P. L. 109-248 requires that the national registry be designed in such a manner that the collection and dissemination of these case-specific data will in compliance with existing privacy and protection provisions in the Child Abuse Prevention and Treatment Act.
- ✓ Authorizes \$500,000 to be appropriated to HHS for FYs 2006 and 2007 to conduct a study to address the following issues related to the creation an electronic national registry of substantiated cases of child abuse and neglect: costs/benefits of data collection standards; data collection standards utilized by each State, tribes, and/or political subdivisions of a State, standards to inform models of promising practices; and a due process procedure for a national registry. Also, in one year from the enactment of P. L. 109-248, the Secretary of Homeland Security will submit a report of recommendations and findings to specified House and Senate Committees concerning the mandated study.