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State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0841/1
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BB0199

DOA:.....Rhodes - Background investigations of proposed foster parents and adoptive parents

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Recently, the U.S. Congress enacted the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) (Adam Walsh Act), which amends Title IV-E of the federal Social Security Act to require the states to provide procedures for criminal records checks, including fingerprint-based checks of national crime information databases, of prospective foster or adoptive parents before those parents may be finally approved for placement of a child, regardless of whether foster care maintenance or adoption assistance payments are to be made. Prior federal law required criminal records checks, but not fingerprint-based checks, of those prospective parents and required criminal records checks of those prospective parents only if the placement involved a child on whose behalf those payments were to be made.

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The Adam Walsh Act also requires a state to check any child abuse or neglect registry maintained by the state for information on any prospective foster or adoptive parent and on any other adult living in the home of that prospective parent (adult nonclient resident), and to check any child abuse or neglect registry maintained by any other state in which any prospective foster or adoptive parent or adult nonclient

resident has resided in the preceding five years, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance or adoption assistance payments are to be provided on behalf of the child.

X In addition, the Adam Walsh Act requires the federal secretary of health and human services to create a national registry of substantiated cases of child abuse or neglect consisting of information supplied by the states on persons reported as perpetrators of substantiated cases of child abuse or neglect. That information must contain case-specific identifying information that is limited to the name of the perpetrator and the nature of the abuse or neglect.

This bill conforms state law relating to criminal history and child abuse or neglect record searches (background checks) of prospective foster, treatment foster, and adoptive homes to federal law, as affected by the Adam Walsh Act. Specifically, the bill requires DHFS, a county department of human services or social services (county department), or a child welfare agency to conduct a background check of a person who is seeking a license to operate a foster or treatment foster home or to adopt a child and of any adult nonclient resident of the home, regardless of whether foster care maintenance or adoption assistance payments will be provided after the placement is made or the adoption is finalized.

The bill also requires DHFS, a county department, or a child welfare agency to request a fingerprint-based check of the national crime information databases for a person who is seeking a license to operate a foster or treatment foster home or to adopt a child. In addition, if at any time within the five years preceding the date of the background check that person or adult nonclient resident has not been a resident of this state, the bill requires DHFS, a county department, or a child welfare agency to check any child abuse or neglect registry maintained by any state or other United States jurisdiction in which the person or adult nonclient resident was a resident within those preceding five years.

X Further, the bill requires DHFS to establish and maintain a child abuse or neglect registry that contains identifying information about each case in which it is determined that a specific person has abused or neglected a child. For each case, the registry must include the name of the person who abused or neglected the child and findings concerning the nature of the abuse or neglect. Information maintained in the registry is confidential and may be disclosed only to the federal secretary of health and human services for inclusion in the national registry of substantiated cases of child abuse or neglect, to a person requesting that information for purposes of a background check of a caregiver under the law of this state or a comparable law of another state, or as permitted under current law.

Finally, the bill permits a person to appeal a determination that he or she has abused or neglected a child by filing, within 30 days after the date of the determination, a written request for a hearing with the Division of Hearings and Appeals in DOA.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 48.685 (1) (ad) of the statutes is created to read:

48.685 (1) (ad) "Adoptive home" means the home of a person who is seeking to adopt a child and who is the subject of a home study, investigation, or screening under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), regardless of whether adoption assistance will be provided under s. 48.975 after the adoption is finalized.

SECTION 2. 48.685 (1) (ag) 1. c. of the statutes is created to read:

48.685 (1) (ag) 1. c. A person who is seeking to adopt a child and who is the subject of a home study, investigation, or screening under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), regardless of whether adoption assistance will be provided under s. 48.975 after the adoption is finalized.

SECTION 3. 48.685 (1) (b) of the statutes is amended to read:

48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption or to license foster homes or treatment foster homes; a foster home or treatment foster home that is licensed under s. 48.62; a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a day care provider that is certified under s. 48.651; an adoptive home; or a temporary employment agency that provides caregivers to another entity.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 4. 48.685 (1) (bg) of the statutes is amended to read:

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48.685 (1) (bg) "Foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized any facility described in s. 48.02 (6), regardless of whether foster care maintenance payments under s. 48.62 (4) are being provided or will be provided after the placement is made.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 5. 48.685 (1) (d) of the statutes is amended to read:

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48.685 (1) (d) "Treatment foster home" includes a placement for adoption under s. 48.833 of a child for whom adoption assistance will be provided under s. 48.975 after the adoption is finalized any facility described in s. 48.02 (17q), regardless of whether foster care maintenance payments under s. 48.62 (4) are being provided or will be provided after the placement is made.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 6. 48.685 (2) (am) (intro.) of the statutes is amended to read:

48.685 (2) (am) (intro.) The department, a county department, a child welfare agency, or a school board shall obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. b. or c., a nonclient resident of an entity, and a person under 18 years of age, but not under 12 years of age, who is a caregiver of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 7. 48.685 (2) (am) 4. of the statutes is amended to read:

48.685 (2) (am) 4. Information maintained by the department in the registry under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect against the person.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 8. 48.685 (2) (am) 5. of the statutes is amended to read:

48.685 (2) (am) 5. Information maintained by the department under this section and under ss. 48.651 (2m), 48.75 (1m), 48.837 (4) (c), 48.839 (2) (d), 48.88 (3) (b), and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification, or a contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5., regarding any report or certification of the unsuitability of the person to adopt a child for a reason specified in sub. (4m) (a) 1. to 5., and regarding any denial to the person of employment at, a contract with, or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment, or permission to reside, or has been reported or certified as unsuitable, as described in this subdivision, the department, a county department, a child welfare agency, or a school board need not obtain the information specified in subs. 1. to 4.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 9. 48.685 (2) (b) 1. (intro.) of the statutes is amended to read:

48.685 (2) (b) 1. (intro.) Every entity shall obtain all of the following with respect to a caregiver specified in sub. (1) (ag) 1. a. of the entity:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 10. 48.685 (2) (b) 1. d. of the statutes is amended to read:

48.685 (2) (b) 1. d. Information maintained by the department in the registry under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect against the person.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 11. 48.685 (2) (b) 1. e. of the statutes is amended to read:

48.685 (2) (b) 1. e. Information maintained by the department under this section and under ss. 48.651 (2m), 48.75 (1m), 48.837 (4) (c), 48.839 (2) (d), 48.88 (3)

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(b), and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification, or a contract to operate an entity for a reason specified in sub. (4m) (a) 1. to 5., regarding any report or certification of the unsuitability of the person to adopt a child for a reason specified in sub. (4m) (a) 1. to 5., and regarding any denial to the person of employment at, a contract with, or permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, employment, or permission to reside, or has been reported or certified as unsuitable, as described in this subd. 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 12. 48.685 (2) (c) of the statutes is created to read:

48.685 (2) (c) 1. If the person who is the subject of the search under par. (am) is seeking a license to operate a foster home or treatment foster home or is seeking to adopt a child, the department, county department, or child welfare agency shall request under 42 USC 16962 a fingerprint-based check of the national crime information databases, as defined in 28 USC 534 (f) (3) (A). The department, county department, or child welfare agency may require the person to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the person fingerprinted and obtaining records of his or her criminal arrests and convictions. The department, county department, or child welfare agency may release any information obtained under this subdivision only to appropriate staff of the

department, county department, or child welfare agency or to other authorized persons, as defined by the department by rule.

2. If the person who is the subject of the search under par. (am) is seeking a license to operate a foster home or treatment foster home, is seeking to adopt a child, or is an adult nonclient resident of the foster home, treatment foster home, or adoptive home and if the person is not, or at any time within the 5 years preceding the date of the search has not been, a resident of this state, the department, county department, or child welfare agency shall check any child abuse or neglect registry maintained by any state or other U. S. jurisdiction in which the person is a resident or was a resident within those 5 years for information that is equivalent to the information specified in par. (am) 4. The department, county department, or child welfare agency may not use any information obtained under this subdivision for any purpose other than a search of the person's background under par. (am).

SECTION 13. 48.685 (3) (a) of the statutes is amended to read:

48.685 (3) (a) Every 4 years or at any time within that period that the department, a county department, a child welfare agency, or a school board considers appropriate, the department, county department, child welfare agency, or school board shall request the information specified in sub. (2) (am) 1. to 5. for all persons caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, for all persons who are nonclient residents of an entity such a caregiver, and for all persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (4) or of a day care provider that is certified under s. 48.651.

SECTION 14. 48.685 (3) (b) of the statutes is amended to read:

48.685 (3) (b) Every 4 years or at any time within that period that an entity considers appropriate, the entity shall request the information specified in sub. (2) (b) 1. a. to e. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the entity other than persons under 18 years of age, but not under 12 years of age, who are caregivers of a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) or of a day care provider that is certified under s. 48.651.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 15. 48.685 (3m) of the statutes is amended to read:

48.685 (3m) Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a county department, a child welfare agency, or a school board has obtained the information required under sub. (2) (am) or (3) (a) with respect to a person who is a caregiver specified in sub. (1) (ag) 1. b. or c. and that person is also an employee, contractor, or nonclient resident of an entity, the entity is not required to obtain the information specified in sub. (2) (b) 1. or (3) (b) with respect to that person.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 16. 48.685 (4m) (a) (intro.) of the statutes is amended to read:

48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in par. (ad) and sub. (5), the department may not license, or continue or renew the license of, a person to operate an entity, a county department may not certify a day care provider under s. 48.651, a county department or a child welfare agency may not license, or renew the license of, a foster home or treatment foster home under s. 48.62, the department, a county department, or a child welfare agency may not report or certify that an adoptive home is suitable for a child under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), and a school board may not contract with

a person under s. 120.13 (14), if the department, county department, child welfare agency, or school board knows or should have known any of the following:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 17. 48.685 (4m) (ad) of the statutes is amended to read:

48.685 (4m) (ad) The department, a county department, or a child welfare agency may license a foster home or treatment foster home under s. 48.62 or report or certify that an adoptive home is suitable for a child under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), a county department may certify a day care provider under s. 48.651, and a school board may contract with a person under s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am) indicating that the person is not ineligible to be licensed, reported or certified as suitable, certified, or contracted with for a reason specified in par. (a) 1. to 5.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 18. 48.685 (4m) (b) (intro.) of the statutes is amended to read:

48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1) (ag) 1. a. or permit a nonclient resident to reside at the entity if the entity knows or should have known any of the following:

(bm)

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 19. 48.685 (5) (a) of the statutes is amended to read:

48.685 (5) (a) The Subject to par. (am), the department may license to operate an entity, a county department may certify under s. 48.651, a county department or a child welfare agency may license under s. 48.62, the department, a county department, or a child welfare agency may report or certify as suitable under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), and a school board may contract with under s. 120.13 (14) a person who otherwise may not be licensed, certified, reported or certified as suitable, or contracted with for a reason specified

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in sub. (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside at the entity a person who otherwise may not be employed, contracted with, or permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the county department, the child welfare agency, or the school board or, in the case of an entity that is located within the boundaries of a reservation, to the person or body designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and in accordance with procedures established by the department by rule or by the tribe that he or she has been rehabilitated.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 20. 48.685 (5) (bm) (intro.) of the statutes is amended to read:

48.685 (5) (bm) (intro.) For purposes of licensing a foster home or treatment foster home for the placement of a child on whose behalf foster care maintenance payments under s. 48.62 (4) will be provided or of reporting on or certifying the suitability of an adoptive home for the placement of a child on whose behalf adoption assistance payments will be provided under s. 48.975, no person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 21. 48.685 (5m) of the statutes is amended to read:

48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license a person to operate an entity, a county department or a child welfare agency may refuse to license a foster home or treatment foster home under s. 48.62, the department, a county department, or a child welfare agency may refuse to report or certify an adoptive home as suitable under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), and an entity may refuse to employ or contract with a

caregiver or permit a nonclient resident to reside at the entity if the person has been convicted of an offense that is not a serious crime, but that is, in the estimation of the department, county department, child welfare agency, or entity, substantially related to the care of a client. Notwithstanding s. 111.335, the department may refuse to license a person to operate a day care center, a county department may refuse to certify a day care provider under s. 48.651, a school board may refuse to contract with a person under s. 120.13 (14), and a day care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14) and or a day care provider that is certified under s. 48.651 may refuse to employ or contract with a caregiver or permit a nonclient resident to reside at the day care center or day care provider if the person has been convicted of or adjudicated delinquent on or after his or her 12th birthday for an offense that is not a serious crime, but that is, in the estimation of the department, county department, school board, day care center, or day care provider, substantially related to the care of a client.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 22. 48.685 (6) (a) of the statutes is amended to read:

48.685 (6) (a) The department shall require any person who applies for issuance, continuation, or renewal of a license to operate an entity, a county department shall require any day care provider who applies for initial certification under s. 48.651 or for renewal of that certification, a county department or a child welfare agency shall require any person who applies for issuance or renewal of a license to operate a foster home or treatment foster home under s. 48.62, the department, a county department, or a child welfare agency shall require any person who is the subject of a home study, investigation, or screening under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), and a school board shall require

any person who proposes to contract with the school board under s. 120.13 (14) or to renew a contract under that subsection, to complete a background information form that is provided by the department.

History: 1997 a. 27, 237, 281; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2003 a. 321; 2005 a. 149, 184, 277; s. 13.93 (2) (c).

SECTION 23. 48.837 (4) (c) of the statutes is amended to read:

48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the department or a county department under s. 48.57 (1) (e) or (hm) to investigate the proposed adoptive placement, to interview each petitioner, to provide counseling if requested and to report its recommendation to the court at least 5 days before the hearing on the petition. If a licensed child welfare agency has investigated the proposed adoptive placement and interviewed the petitioners, the court may accept a report and recommendation from the child welfare agency in place of the court-ordered report required under this paragraph. An investigation under this paragraph shall include a check of the proposed adoptive parent's background under s. 48.685. If the check indicates that the proposed adoptive parent is unsuitable to adopt the child for a reason specified in s. 48.685 (4m) (a) 1. to 5., the county department or child welfare agency that conducted that check shall provide the department with information regarding the reason for the unsuitability of the proposed adoptive parent.

History: 1981 c. 81; 1985 a. 176; 1989 a. 161; 1993 a. 446; 1997 a. 27, 104, 191; 2005 a. 293; 2005 a. 443 s. 265.

SECTION 24. 48.839 (2) (d) of the statutes is created to read:

48.839 (2) (d) ~~An~~ home study under par. (b) or (c) shall include a check of the guardian's background under s. 48.685. If the check indicates that the guardian is unsuitable to adopt the child for a reason specified in s. 48.685 (4m) (a) 1. to 5., the person that conducted that check shall provide the department with information regarding the reason for the unsuitability of the guardian.

SECTION 25. 48.88 (2) (c) of the statutes is amended to read:

48.88 (2) (c) If a stepparent has filed a petition for adoption and no agency has guardianship of the child, the court shall order the department, in a county having a population of 500,000 or more, or a county department or, with the consent of the department in a county having a population of less than 500,000 or a licensed child welfare agency, order the department or the child welfare agency to conduct a screening, consisting of no more than one interview with the petitioner and a check of the petitioner's background through public records, including records maintained by the department or any county department under s. 48.981 under s. 48.685. The department, county department, or child welfare agency that conducts the screening shall file a report of the screening with the court within 30 days. After reviewing the report, the court may proceed to act on the petition, may order the department in a county having a population of 500,000 or more or the county department to conduct an investigation as described under par. (a) (intro.), or may order the department in a county having a population of less than 500,000 or a licensed child welfare agency to make the investigation if the department or child welfare agency consents.

History: 1975 c. 39, 199, 307; 1977 c. 271; 1981 c. 81, 384; 1988 a. 190; 1985 a. 176; 1997 a. 27.

SECTION 26. 48.88 (3) of the statutes is renumbered 48.88 (3) (a).

SECTION 27. 48.88 (3) (b) of the statutes is created to read:

48.88 (3) (b) An investigation or screening under sub. (2) (a) (intro.) or (c) shall include a check of the proposed adoptive parent's background under s. 48.685. If the check indicates that the proposed adoptive parent is unsuitable to adopt the child for a reason specified in s. 48.685 (4m) (a) 1. to 5., the county department, licensed child welfare agency, or other agency that conducted that check shall provide the

department with information regarding the reason for the unsuitability of the proposed adoptive parent.

SECTION 28. 48.981 (3) (c) 5m. of the statutes is amended to read:

48.981 (3) (c) 5m. If the county department or, in a county having a population of 500,000 or more, the department or a licensed child welfare agency under contract with the department determines under subd. 4. that a specific person has abused or neglected a child, the county department, department, or licensed child welfare agency, within 15 days after the date of the determination, shall notify the person in writing of the determination, the person's right to appeal the determination, and the procedure by which the person may appeal the determination, and the person may appeal the determination in accordance with the procedures established by the department under this subdivision. The department. The person may appeal the determination by filing, within 30 days after the date of the determination, a written request for a hearing under s. 227.44 with the division of hearings and appeals in the department of administration and by providing a copy of that written request to the county department, department, or licensed child welfare agency that made the determination. The administrator of that division shall designate a hearing examiner to preside over the appeal and to recommend under s. 227.46 a decision to that administrator, whose decision shall be the final administrative decision. After consultation with the department, the administrator of that division shall promulgate rules establishing procedures for conducting an appeal under this subdivision. Those procedures shall include a procedure permitting an appeal under this subdivision to be held in abeyance pending the outcome of any criminal proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect

or the outcome of any investigation that may lead to the filing of a criminal complaint or a petition under s. 48.13 based on the alleged abuse or neglect.

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SECTION 29. 48.981 (3m) of the statutes is created to read:

48.981 (3m) CHILD ABUSE OR NEGLECT REGISTRY. (a) From the information provided under par. (b), the department shall establish and maintain a registry that contains identifying information about each case in which it is determined under sub. (3) (c) 4. that a specific person has abused or neglected a child. For each case, the registry shall include all of the following information:

1. The name of the person determined under sub. (3) (c) 4. to have abused or neglected a child, if any of the following apply:

a. The person did not appeal the determination under sub. (3) (c) 5m.

b. The person appealed the determination under sub. (3) (c) 5m., but the final administration decision under s. 227.46 upheld the determination.

c. The person appealed the final administration decision under s. 227.46, but that decision was confirmed on judicial review under ss. 227.52 to 227.58.

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2. Findings of the department, county department, or licensed child welfare agency under sub. (3) (c) 4. of or the hearing examiner under sub. (3) (c) 5m. concerning the nature of the abuse or neglect perpetrated by that person.

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(b) If a determination is made under sub. (3) (c) 4. that a specific person has abused or neglected a child and that decision is not reversed, remanded, or modified, the county department, subunit of the department, or licensed child welfare agency making the determination shall report the information specified in par. (a) to the subunit of the department maintaining the registry under this subsection.

(c) Information maintained in the registry under this subsection is confidential and may be disclosed only as permitted under sub. (7) or as follows:

1. To the secretary of the federal department of health and human services for inclusion in the national registry of substantiated cases of child abuse or neglect under 42 USC 16990.

2. To a person requesting that information under s. 48.685 (2) (am) 4. or (b) 1. d. or 50.065 (2) (am) 4. or (b) 4. or under a comparable law of another state.

SECTION 30. 50.065 (2) (am) 4. of the statutes is amended to read:

50.065 (2) (am) 4. Information maintained by the department in the registry under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect against the person.

History: 1997 a. 27, 105, 237; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2005 a. 25, 184, 277, 351; s. 13.93 (2) (c).

SECTION 31. 50.065 (2) (b) 4. of the statutes is amended to read:

50.065 (2) (b) 4. Information maintained by the department in the registry under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect against the person.

History: 1997 a. 27, 105, 237; 1999 a. 9, 32, 56, 185, 186; 2001 a. 109; 2005 a. 25, 184, 277, 351; s. 13.93 (2) (c).

SECTION 9321. Initial applicability; Health and Family Services.

(1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES. The treatment of sections 48.685 (1) (ad), (ag) 1. c., (b), (bg), and (d), (2) (am) (intro.) and 5., (b) 1. (intro.) and e., and (c), (3) (a) and (b), (3m), (4m) (a) (intro.), (ad), and (b) (intro.), (5) (a) and (bm) (intro.), and (6) (a), 48.837 (4) (c), 48.839 (2) (d), and 48.88 (2) (c) of the statutes, the renumbering of section 48.88 (3) of the statutes, and the creation of section 48.88 (3) (b) of the statutes first apply to a person who applies for a license to operate a foster home or treatment foster home or for a home study, investigation, screening, or certification of a proposed adoptive home on the effective date of this subsection.

(2) CHILD ABUSE AND NEGLECT APPEALS. The treatment of section 48.981 (3) (c) 5m. of the statutes first applies to determinations under section 48.981 (3) (c) 4. of

(5m),

X

the statutes that a specific person has abused or neglected a child made on the effective date of this subsection.

SECTION 9421. Effective dates; Health and Family Services.

(1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES AND CHILD ABUSE AND NEGLECT APPEALS. The treatment of sections 48.685 (1) (ad), (ag) 1. c., (b), (bg), and (d), (2) (am) (intro.), 4., and 5., (b) 1. (intro.), d., and e., and (c), (3) (a) and (b), (3m), (4m) (a) (intro.), (ad), and (b) (intro.), (5) (a) and (bm) (intro.), and (6) (a), 48.837 (4) (c), 48.839 (2) (d), 48.88 (2) (c), 48.981 (3) (c) 5m. and 8, and (3m), and 50.065 (2) (am) 4. and (b) 4. of the statutes, the renumbering of section 48.88 (3) of the statutes, and the creation of section 48.88 (3) (b) of the statutes of the statutes take effect on January 1, 2008.

(END)

(5m)

X

X

no change

Insert 15-2

Section #. 48.981 (3) (c) 8. of the statutes is amended to read:

And to maintain the registry

under sub. (3m)

The

shall use the information

48.981 (3) (c) 8. Using the format prescribed by the department, each county department shall provide the department with information about each report that the county department receives or that is received by a licensed child welfare agency that is under contract with the county department and about each investigation that the county department or a licensed child welfare agency under contract with the county department conducts. Using the format prescribed by the department, a licensed child welfare agency under contract with the department shall provide the department with information about each report that the child welfare agency receives and about each investigation that the child welfare agency conducts. ~~This information shall be used by the department to monitor services provided by county departments or licensed child welfare agencies under contract with county departments or the department.~~ The department shall use nonidentifying information to maintain statewide statistics on child abuse and neglect and on unborn child abuse, and for planning and policy development purposes.

History: Sup. Ct. Order, 59 Wis. 2d R1, R3 (1973); 1977 c. 355; 1977 c. 447 s. 210; 1979 c. 300; 1983 a. 172, 190, 299, 538; 1985 a. 29 ss. 917 to 930m, 3200 (56); 1985 a. 176, 234; 1987 a. 27, 186, 209; 1987 a. 332 s. 64; 1987 a. 334, 355, 399, 403; 1989 a. 31, 41, 102, 316, 359; 1991 a. 160, 263; 1993 a. 16, 105, 218, 227, 230, 246, 272, 318, 395, 443, 446, 491; 1995 a. 275, 289, 369, 456; 1997 a. 27, 114, 292, 293; 1999 a. 9, 20, 32, 56, 84, 149, 192; 2001 a. 16, 38, 59, 69, 70, 103, 105; 2003 a. 33, 279, 321; 2005 a. 113, 232, 344, 406, 434; 2005 a. 443 s. 265; s. 13.93 (2) (c).

(end of insert)

Malaise, Gordon

From: Connolly, Cathleen - DHFS
Sent: Thursday, December 14, 2006 3:24 PM
To: Forsaith, Andrew C - DHFS; Dennis Rhodes; Malaise, Gordon
Cc: Campbell, Mark D - DHFS; Dow, Susan M - DHFS; Durkin, Therese A - DHFS; Langer, Dale W - DHFS; Mitchell, Mark S - DHFS; Tuohy, John O - DHFS
Subject: LRB Draft -7-0841-1 Background investigations of proposed foster parents and adoptive parent
Attachments: Memo to LRB re Adam Walsh LRB 0841-1.doc



Memo to LRB re
Adam Walsh LRB ...

Andy, Dennis and Gordon,
I met with Mark Mitchell and Therese Durkin and reviewed the draft. I am attaching our comments. If Dennis and Gordon think it would be helpful to meet we can do so. Right now Mark, Therese, Dale Langer, and I have Wed. 12/20/06 in the afternoon available.
Thank you.

Cathleen Connolly
Legislative and Policy Consultant
Bureau of Programs and Policies
Division of Children and Family Services Department of Health and Family Services
608-261-8306
connocl@dhfs.state.wi.us

LRB-0841/1 BILL DRAFT
(Adam Walsh Child Protection and Safety Act Implementation)

Requested Changes

1. **Section 1** of the bill. We would like all references to adoptive homes to be removed from s. 48.865, because it may cause confusion about some relative adoptive families being barred from adopting because of information in their record. A modification of **Section 25** of the bill would be best.
2. **Section 4 and 5** of the bill, please remove definitions of foster home and treatment foster home entirely – we will rely on s. 48.02 definitions.
3. **To cover adoptive families** can we insert language into s. 48.88, to the effect that any adoptive family that needs to obtain a foster home license before they can adopt must undergo the entire criminal background check in s. 48.865,? Either we can refer back to 48.695 or put the same language in Section 12 into s. 48.88(2)(a), Stats. The reason is that **ACF** in response to a question about how broad was the application of Adam Walsh to adoptions, said that if the home needed to be licensed then clearly Adam Walsh applied, however, they could not give clear guidance on whether it applied to all foreign adoptions, relative adoptions, or private adoptions. We have not received any written guidance.
4. **Sections 8, 11, 16, 17, 19, 21, 23, 24** all reference the department or county department determining a prospective adoptive parent is unsuitable to be certified to be an adoptive parent. Adam Walsh only requires that fingerprint based background checks and CAN registry checks be done, not what the agency has to do with the knowledge. And if an agency finds based on the information that the unlicensed family is not a good adoption placement resource then they can simply decide not to work with them, but we do not want to create any appeal rights etc. Under s. 48.839(2) requires that the department certify that all preadoptive requirements are met, the background check which is required for an adoption is met; the suitability or unsuitability is not addressed in the statute.
5. **Section 12**, WI Department of Justice will want to see this language to ensure that it will meet the requirements of the FBI. Do we need to talk about scanning as a means of capturing fingerprints?
6. **Section 24**, WI requires parents who are bringing a foreign child into WI under a guardianship order to adopt the child in the United State, to become licensed foster homes. So they would be covered by the requirements of Adam Walsh. For those parents who bring a child into WI with a foreign adoption judgement, our practice is to require caregiver background checks be completed but we do not actually license those folks. So it is not clear if we want to capture those people also in the new requirements.
7. **Section 25**, we should not make changes because it is not clear that ACF is interpreting Adam Walsh to apply to stepparent adoptions at all.
8. **Section 29 and 30**, does this make it clear that the name should never go to the Registry until all appeals are exhausted or the person decides not to appeal and the time runs? We do not want names going on and then off the Registry if the substantiation changed, and Therese pointed out that if the name got on the registry and the person appealed the

determination in circuit court and the determination was overturned it would fall into the category of an administrative appeal that was upheld under s. 227.46 and we could not take the name off. Very bad.



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0841/1
GMM:kif:nwn
↑
+wlj

DOA:.....Rhodes, BB0199 - Background investigations of proposed foster parents and adoptive parents

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

1

DO NOT GEN

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Recently, ^(STET) the U.S. Congress enacted the Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) (Adam Walsh Act), which amends Title IV-E of the federal Social Security Act to require the states to provide procedures for criminal records checks, including fingerprint-based checks of national crime information databases, of prospective foster or adoptive parents before those parents may be finally approved for placement of a child, regardless of whether foster care maintenance or adoption assistance payments are to be made. Prior federal law required criminal records checks, but not fingerprint-based checks, of those prospective parents and required criminal records checks of those prospective parents only if the placement involved a child on whose behalf those payments were to be made.

The Adam Walsh Act also requires a state to check any child abuse or neglect registry maintained by the state for information on any prospective foster or adoptive parent and on any other adult living in the home of that prospective parent (adult nonclient resident), and to check any child abuse or neglect registry maintained by any other state in which any prospective foster or adoptive parent or adult nonclient

of a person licensed to operate a foster or treatment foster home who is seeking to

resident has resided in the preceding five years, before the prospective foster or adoptive parent may be finally approved for placement of a child, regardless of whether foster care maintenance or adoption assistance payments are to be provided on behalf of the child.

In addition, the Adam Walsh Act requires the federal secretary of health and human services to create a national registry of substantiated cases of child abuse or neglect consisting of information supplied by the states on persons reported as perpetrators of substantiated cases of child abuse or neglect. That information must contain case-specific identifying information that is limited to the name of the perpetrator and the nature of the abuse or neglect.

This bill conforms state law relating to criminal history and child abuse or neglect record searches (background checks) of prospective foster, treatment foster, and adoptive homes to federal law, as affected by the Adam Walsh Act. Specifically, the bill requires DHFS, a county department of human services or social services (county department), or a child welfare agency to conduct a background check of a person who is seeking a license to operate a foster or treatment foster home or to adopt a child, and of any adult nonclient resident of the home, regardless of whether foster care maintenance or adoption assistance payments will be provided after the placement is made or the adoption is finalized.

The bill also requires DHFS, a county department, or a child welfare agency to request a fingerprint-based check of the national crime information databases for a person who is seeking a license to operate a foster or treatment foster home or to adopt a child. In addition, if at any time within the five years preceding the date of the background check that person or adult nonclient resident has not been a resident of this state, the bill requires DHFS, a county department, or a child welfare agency to check any child abuse or neglect registry maintained by any state or other United States jurisdiction in which the person or adult nonclient resident was a resident within those preceding five years.

Further, the bill requires DHFS to establish and maintain a child abuse or neglect registry that contains identifying information about each case in which it is determined that a specific person has abused or neglected a child. For each case, the registry must include the name of the person who abused or neglected the child and findings concerning the nature of the abuse or neglect. Information maintained in the registry is confidential and may be disclosed only to the federal secretary of health and human services for inclusion in the national registry of substantiated cases of child abuse or neglect, to a person requesting that information for purposes of a background check of a caregiver under the law of this state or a comparable law of another state, or as permitted under current law.

Finally, the bill permits a person to appeal a determination that he or she has abused or neglected a child by filing, within 30 days after the date of the determination, a written request for a hearing with the Division of Hearings and Appeals in DOA.

and of a person licensed to operate a foster or treatment foster home who is seeking to

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.685 (1) (ad) of the statutes is created to read:

2 48.685 (1) (ad) "Adoptive home" means the home of a person who is seeking to
3 adopt a child and who is the subject of a home study, investigation, or screening under
4 s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), regardless of
5 whether adoption assistance will be provided under s. 48.975 after the adoption is
6 finalized.

7 **SECTION 2.** 48.685 (1) (ag) 1. c. of the statutes is created to read:

8 48.685 (1) (ag) 1. c. A person who is seeking to adopt a child and who is the
9 subject of a home study, investigation, or screening under s. 48.837 (4) (c), 48.839 (2)
10 (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), regardless of whether adoption assistance
11 will be provided under s. 48.975 after the adoption is finalized.

12 **SECTION 3.** 48.685 (1) (b) of the statutes is amended to read:

13 48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s.
14 48.60 to provide care and maintenance for children, to place children for adoption or
15 to license foster homes or treatment foster homes; a foster home or treatment foster
16 home that is licensed under s. 48.62; a group home that is licensed under s. 48.625;
17 a shelter care facility that is licensed under s. 938.22; a day care center that is
18 licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a day
19 care provider that is certified under s. 48.651; an adoptive home; or a temporary
20 employment agency that provides caregivers to another entity.

21 **SECTION 4.** 48.685 (1) (bg) of the statutes is amended to read:

~~1 48.685 (1) (bg) "Foster home" includes a placement for adoption under s. 48.833
 2 of a child for whom adoption assistance will be provided under s. 48.975 after the
 3 adoption is finalized any facility described in s. 48.02 (6), regardless of whether foster
 4 care maintenance payments under s. 48.62 (4) are being provided or will be provided
 5 after the placement is made.~~

SECTION 5. 48.685 (1) (d) of the statutes is amended to read:

~~7 48.685 (1) (d) "Treatment foster home" includes a placement for adoption
 8 under s. 48.833 of a child for whom adoption assistance will be provided under s.
 9 48.975 after the adoption is finalized any facility described in s. 48.02 (17q),
 10 regardless of whether foster care maintenance payments under s. 48.62 (4) are being
 11 provided or will be provided after the placement is made.~~

SECTION 6. 48.685 (2) (am) (intro.) of the statutes is amended to read:

~~13 48.685 (2) (am) (intro.) The department, a county department, a child welfare
 14 agency, or a school board shall obtain all of the following with respect to a caregiver
 15 specified in sub. (1) (ag) 1. b. or c., a nonclient resident of an entity, and a person under
 16 18 years of age, but not under 12 years of age, who is a caregiver of a day care center
 17 that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14)
 18 or of a day care provider that is certified under s. 48.651:~~

SECTION 7. 48.685 (2) (am) 4. of the statutes is amended to read:

~~20 48.685 (2) (am) 4. Information maintained by the department in the registry
 21 under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect
 22 against the person.~~

~~23 **SECTION 8.** 48.685 (2) (am) 5. of the statutes is amended to read:~~

~~24 48.685 (2) (am) 5. Information maintained by the department under this
 25 section and under ss. 48.651 (2m), 48.75 (1m), 48.837 (4) (c), 48.839 (2) (d), 48.88 (3)~~

SEC# RP; 480625 (1)(bg)
 SEC# RP; 480625 (1)(d)

1 ~~(b), and 120.13 (14) regarding any denial to the person of a license, continuation or~~
 2 ~~renewal of a license, certification, or a contract to operate an entity for a reason~~
 3 ~~specified in sub. (4m) (a) 1. to 5., regarding any report or certification of the~~
 4 ~~unsuitability of the person to adopt a child for a reason specified in sub. (4m) (a) 1.~~
 5 ~~to 5., and regarding any denial to the person of employment at, a contract with, or~~
 6 ~~permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the~~
 7 ~~information obtained under this subdivision indicates that the person has been~~
 8 ~~denied a license, continuation or renewal of a license, certification, a contract,~~
 9 ~~employment, or permission to reside, or has been reported or certified as unsuitable,~~
 10 ~~as described in this subdivision, the department, a county department, a child~~
 11 ~~welfare agency, or a school board need not obtain the information specified in subs.~~
 12 ~~1. to 4.~~

13 **SECTION 9.** 48.685 (2) (b) 1. (intro.)[✓] of the statutes is amended to read:

14 48.685 (2) (b) 1. (intro.) Every entity shall obtain all of the following with
 15 respect to a caregiver specified in sub. (1) (ag) 1. a.[✓] of the entity:

16 **SECTION 10.** 48.685 (2) (b) 1. d. of the statutes is amended to read:

17 48.685 (2) (b) 1. d. Information maintained by the department in the registry
 18 under s. 48.981 (3m)[✓] regarding any substantiated reports of child abuse or neglect
 19 against the person.

20 **SECTION 11.** ~~48.685 (2) (b) 1. e. of the statutes is amended to read:~~

21 ~~48.685 (2) (b) 1. e. Information maintained by the department under this~~
 22 ~~section and under ss. 48.651 (2m), 48.75 (1m), 48.837 (4) (c), 48.839 (2) (d), 48.88 (3)~~
 23 ~~(b), and 120.13 (14) regarding any denial to the person of a license, continuation or~~
 24 ~~renewal of a license, certification, or a contract to operate an entity for a reason~~
 25 ~~specified in sub. (4m) (a) 1. to 5., regarding any report or certification of the~~

1 ~~unsuitability of the person to adopt a child for a reason specified in sub. (4m) (a) 1.~~
 2 ~~to 5., and regarding any denial to the person of employment at, a contract with, or~~
 3 ~~permission to reside at an entity for a reason specified in sub. (4m) (b) 1. to 5. If the~~
 4 ~~information obtained under this subd. 1. e. indicates that the person has been denied~~
 5 ~~a license, continuation or renewal of a license, certification, a contract, employment,~~
 6 ~~or permission to reside, or has been reported or certified as unsuitable, as described~~
 7 ~~in this subd. 1. e., the entity need not obtain the information specified in subd. 1. a.~~
 8 ~~to d.~~

9 SECTION 12. 48.685 (2) (c) of the statutes is created to read:

10 48.685 (2) (c) 1. If the person who is the subject of the search under par. (am) ✓
 11 is seeking a license to operate a foster home or treatment foster home ~~or is seeking~~
 12 ~~to adopt a child,~~ ✓ the department, county department, or child welfare agency shall
 13 request under 42 USC 16962 a fingerprint-based check of the national crime
 14 information databases, as defined in 28 USC 534 (f) (3) (A). The department, county
 15 department, or child welfare agency may require the person to be fingerprinted on
 16 2 fingerprint cards, each bearing a complete set of the person's fingerprints. The
 17 department of justice may provide for the submission of the fingerprint cards to the
 18 federal bureau of investigation for the purposes of verifying the identity of the person
 19 fingerprinted and obtaining records of his or her criminal arrests and convictions.
 20 The department, county department, or child welfare agency may release any
 21 information obtained under this subdivision only to appropriate staff of the
 22 department, county department, or child welfare agency or to other authorized
 23 persons, as defined by the department by rule.

24 2. If the person who is the subject of the search under par. (am) ✓
 25 is seeking a license to operate a foster home or treatment foster home, ~~is seeking to adopt a child,~~ ✓

① or is an adult ^{STET} ~~nonclient~~ resident of the foster home, ^{or} treatment foster home ~~or~~
 2 ~~adoptive home~~ and if the person is not, or at any time within the 5 years preceding
 3 the date of the search has not been, a resident of this state, the department, county
 4 department, or child welfare agency shall check any child abuse or neglect registry
 5 maintained by any state or other U.S. jurisdiction in which the person is a resident
 6 or was a resident within those 5 years for information that is equivalent to the
 7 information specified in par. (am) 4. The department, county department, or child
 8 welfare agency may not use any information obtained under this subdivision for any
 9 purpose other than a search of the person's background under par. (am).

10 **SECTION 13.** 48.685 (3) (a) of the statutes is amended to read:

11 48.685 (3) (a) Every 4 years or at any time within that period that the
 12 department, a county department, a child welfare agency, or a school board considers
 13 appropriate, the department, county department, child welfare agency, or school
 14 board shall request the information specified in sub. (2) (am) 1. to 5. for all persons
 15 caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to
 16 operate an entity, for all persons who are nonclient residents of an entity such a
 17 caregiver, and for all persons under 18 years of age, but not under 12 years of age,
 18 who are caregivers of a day care center that is licensed under s. 48.65 or established
 19 or contracted for under s. 120.13 (4) or of a day care provider that is certified under
 20 s. 48.651.

21 **SECTION 14.** 48.685 (3) (b) of the statutes is amended to read:

22 48.685 (3) (b) Every 4 years or at any time within that period that an entity
 23 considers appropriate, the entity shall request the information specified in sub. (2)
 24 (b) 1. a. to e. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the
 25 entity other than persons under 18 years of age, but not under 12 years of age, who

1 are caregivers of a day care center that is licensed under s. 48.65 or established or
2 contracted for under s. 120.13 (14) or of a day care provider that is certified under s.
3 48.651.

4 ~~SECTION 15. 48.685 (3m) of the statutes is amended to read:~~

5 48.685 (3m) Notwithstanding subs. (2) (b) 1. and (3) (b), if the department, a
6 county department, a child welfare agency, or a school board has obtained the
7 information required under sub. (2) (am) or (3) (a) with respect to a person who is a
8 caregiver specified in sub. (1) (ag) 1. b. or c. and that person is also an employee,
9 contractor, or nonclient resident of an entity, the entity is not required to obtain the
10 information specified in sub. (2) (b) 1. or (3) (b) with respect to that person.

11 ~~SECTION 16. 48.685 (4m) (a) (intro.) of the statutes is amended to read:~~

12 48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in
13 par. (ad) and sub. (5), the department may not license, or continue or renew the
14 license of, a person to operate an entity, a county department may not certify a day
15 care provider under s. 48.651, a county department or a child welfare agency may not
16 license, or renew the license of, a foster home or treatment foster home under s. 48.62,
17 the department, a county department, or a child welfare agency may not report or
18 certify that an adoptive home is suitable for a child under s. 48.837 (4) (c), 48.839 (2)
19 (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), and a school board may not contract with
20 a person under s. 120.13 (14), if the department, county department, child welfare
21 agency, or school board knows or should have known any of the following:

22 ~~SECTION 17. 48.685 (4m) (ad) of the statutes is amended to read:~~

23 48.685 (4m) (ad) The department, a county department, or a child welfare
24 agency may license a foster home or treatment foster home under s. 48.62 or report
25 or certify that an adoptive home is suitable for a child under s. 48.837 (4) (c), 48.839

1 ~~(2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), a county department may certify a day~~
2 ~~care provider under s. 48.651, and a school board may contract with a person under~~
3 ~~s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am)~~
4 ~~indicating that the person is not ineligible to be licensed, reported or certified as~~
5 ~~suitable, certified, or contracted with for a reason specified in par. (a) 1. to 5.~~

6 **SECTION 18.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

7 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in
8 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)
9 (ag) 1. a. or permit a nonclient resident to reside at the entity if the entity knows or
10 should have known any of the following:

11 **SECTION 19.** 48.685 (5) (a) of the statutes is amended to read:

12 48.685 (5) (a) The Subject to par. (bm), the department may license to operate
13 an entity, a county department may certify under s. 48.651, a county department or
14 a child welfare agency may license under s. 48.62, the department, a county
15 department, or a child welfare agency may report or certify as suitable under s.
16 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), and a school board
17 may contract with under s. 120.13 (14) a person who otherwise may not be licensed,
18 certified, reported or certified as suitable, or contracted with for a reason specified
19 in sub. (4m) (a) 1. to 5., and an entity may employ, contract with, or permit to reside
20 at the entity a person who otherwise may not be employed, contracted with, or
21 permitted to reside at the entity for a reason specified in sub. (4m) (b) 1. to 5., if the
22 person demonstrates to the department, the county department, the child welfare
23 agency, or the school board or, in the case of an entity that is located within the
24 boundaries of a reservation, to the person or body designated by the tribe under sub.
25 (5d) (a) 3., by clear and convincing evidence and in accordance with procedures

1 established by the department by rule or by the tribe that he or she has been
2 rehabilitated.

3 **SECTION 20.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

4 48.685 (5) (bm) (intro.) For purposes of licensing a foster home or treatment
5 foster home for the placement of a child on whose behalf foster care maintenance

6 payments under s. 48.62 (4) will be provided ~~or of reporting on or certifying the~~
7 ~~suitability of an adoptive home for the placement of a child on whose behalf adoption~~
8 ~~assistance payments will be provided under s. 48.975,~~ no person who has been

9 convicted of any of the following offenses may be permitted to demonstrate that he
10 or she has been rehabilitated:

11 **SECTION 21.** ~~48.685 (5m) of the statutes is amended to read:~~

12 48.685 (5m) Notwithstanding s. 111.335, the department may refuse to license
13 a person to operate an entity, a county department or a child welfare agency may
14 refuse to license a foster home or treatment foster home under s. 48.62, the
15 department, a county department, or a child welfare agency may refuse to report or
16 certify an adoptive home as suitable under s. 48.837 (4) (c), 48.839 (2) (b) or (c), 48.88
17 (2) (a) or (c), or 48.98 (1), and an entity may refuse to employ or contract with a
18 caregiver or permit a nonclient resident to reside at the entity if the person has been
19 convicted of an offense that is not a serious crime, but that is, in the estimation of the
20 department, county department, child welfare agency, or entity, substantially
21 related to the care of a client. Notwithstanding s. 111.335, the department may
22 refuse to license a person to operate a day care center, a county department may
23 refuse to certify a day care provider under s. 48.651, a school board may refuse to
24 contract with a person under s. 120.13 (14), and a day care center that is licensed
25 under s. 48.65 or established or contracted for under s. 120.13 (14) and or a day care

1 provider that is certified under s. 48.651 may refuse to employ or contract with a
2 caregiver or permit a nonclient resident to reside at the day care center or day care
3 provider if the person has been convicted of or adjudicated delinquent on or after his
4 or her 12th birthday for an offense that is not a serious crime, but that is, in the
5 estimation of the department, county department, school board, day care center, or
6 day care provider, substantially related to the care of a client.

7 **SECTION 22.** 48.685 (6) (a) of the statutes is amended to read:

8 48.685 (6) (a) The department shall require any person who applies for
9 issuance, continuation, or renewal of a license to operate an entity, a county
10 department shall require any day care provider who applies for initial certification
11 under s. 48.651 or for renewal of that certification, a county department or a child
12 welfare agency shall require any person who applies for issuance or renewal of a
13 license to operate a foster home or treatment foster home under s. 48.62, the
14 department, a county department, or a child welfare agency shall require any person
15 who is the subject of a home study, investigation, or screening under s. 48.837 (4) (c),
16 48.839 (2) (b) or (c), 48.88 (2) (a) or (c), or 48.98 (1), and a school board shall require
17 any person who proposes to contract with the school board under s. 120.13 (14) or to
18 renew a contract under that subsection, to complete a background information form
19 that is provided by the department.

20 **SECTION 23.** 48.837 (4) (c) of the statutes is amended to read:

21 48.837 (4) (c) Shall, when the petition has been filed under sub. (1), order the
22 department or a county department under s. 48.57 (1) (e) or (hm) to investigate the
23 proposed adoptive placement, to interview each petitioner, to provide counseling if
24 requested and to report its recommendation to the court at least 5 days before the
25 hearing on the petition. If a licensed child welfare agency has investigated the

1 proposed adoptive placement and interviewed the petitioners, the court may accept
2 a report and recommendation from the child welfare agency in place of the
3 court-ordered report required under this paragraph. An investigation under this
4 paragraph shall include a check of the proposed adoptive parent's background under
5 s. 48.685. If the check indicates that the proposed adoptive parent is unsuitable to
6 adopt the child for a reason specified in s. 48.685 (4m) (a) 1. to 5., the county
7 department or child welfare agency that conducted that check shall provide the
8 department with information regarding the reason for the unsuitability of the
9 proposed adoptive parent.

10 **SECTION 24.** 48.839 (2) (d) of the statutes is created to read:

11 48.839 (2) (d) A home study under par. (b) or (c) shall include a check of the
12 guardian's background under s. 48.685. If the check indicates that the guardian is
13 unsuitable to adopt the child for a reason specified in s. 48.685 (4m) (a) 1. to 5., the
14 person that conducted that check shall provide the department with information
15 regarding the reason for the unsuitability of the guardian.

16 **SECTION 25.** 48.88 (2) (c) of the statutes is amended to read:

17 48.88 (2) (c) If a stepparent has filed a petition for adoption and no agency has
18 guardianship of the child, the court shall order the department, in a county having
19 a population of 500,000 or more, or a county department or, with the consent of the
20 department in a county having a population of less than 500,000 or a licensed child
21 welfare agency, order the department or the child welfare agency to conduct a
22 screening, consisting of no more than one interview with the petitioner and a check
23 of the petitioner's background through public records, including records maintained
24 by the department or any county department under s. 48.981 under s. 48.685. The
25 department, county department, or child welfare agency that conducts the screening

1 shall file a report of the screening with the court within 30 days. After reviewing the
 2 report, the court may proceed to act on the petition, may order the department in a
 3 county having a population of 500,000 or more or the county department to conduct
 4 an investigation as described under par. (a) (intro.), or may order the department in
 5 a county having a population of less than 500,000 or a licensed child welfare agency
 6 to make the investigation if the department or child welfare agency consents.

7 **SECTION 26.** 48.88 (3) of the statutes is renumbered 48.88 (3) (a).

8 **SECTION 27.** 48.88 (3) (b) of the statutes is created to read:

9 48.88 (3) (b) An investigation or screening under sub. (2) (a) (intro.) or (c) shall
 10 include a check of the proposed adoptive parent's background under s. 48.685. If the
 11 check indicates that the proposed adoptive parent is unsuitable to adopt the child for
 12 a reason specified in s. 48.685 (4m) (a) 1. to 5., the county department, licensed child
 13 welfare agency, or other agency that conducted that check shall provide the
 14 department with information regarding the reason for the unsuitability of the
 15 proposed adoptive parent.

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16 **SECTION 28.** 48.981 (3) (c) 5m. of the statutes is amended to read:

17 48.981 (3) (c) 5m. If the county department or, in a county having a population
 18 of 500,000 or more, the department or a licensed child welfare agency under contract
 19 with the department determines under subd. 4. that a specific person has abused or
 20 neglected a child, the county department, department, or licensed child welfare
 21 agency, within 15 days after the date of the determination, shall notify the person in
 22 writing of the determination, the person's right to appeal the determination, and the
 23 procedure by which the person may appeal the determination, and the person may
 24 appeal the determination in accordance with the procedures established by the
 25 department under this subdivision. The department. The person may appeal the

1 determination by filing, within 30 days after the date of the determination, a written
2 request for a hearing under s. 227.44 with the division of hearings and appeals in the
3 department of administration and by providing a copy of that written request to the
4 county department, department, or licensed child welfare agency that made the
5 determination. The administrator of that division shall designate a hearing
6 examiner to preside over the appeal and to recommend under s. 227.46 a decision to
7 that administrator, whose decision shall be the final administrative decision. After
8 consultation with the department, the administrator of that division shall
9 promulgate rules establishing procedures for conducting an appeal under this
10 subdivision. Those procedures shall include a procedure permitting an appeal under
11 this subdivision to be held in abeyance pending the outcome of any criminal
12 proceedings or any proceedings under s. 48.13 based on the alleged abuse or neglect
13 or the outcome of any investigation that may lead to the filing of a criminal complaint
14 or a petition under s. 48.13 based on the alleged abuse or neglect.

15 **SECTION 29.** 48.981 (3) (c) 8. of the statutes is amended to read:

16 48.981 (3) (c) 8. Using the format prescribed by the department, each county
17 department shall provide the department with information about each report that
18 the county department receives or that is received by a licensed child welfare agency
19 that is under contract with the county department and about each investigation that
20 the county department or a licensed child welfare agency under contract with the
21 county department conducts. Using the format prescribed by the department, a
22 licensed child welfare agency under contract with the department shall provide the
23 department with information about each report that the child welfare agency
24 receives and about each investigation that the child welfare agency conducts. ~~This~~
25 ~~information shall be used by the~~ The department shall use the information to

1 monitor services provided by county departments or licensed child welfare agencies
2 under contract with county departments or the department and to maintain the
3 registry under sub. (3m). The department shall use nonidentifying information to
4 maintain statewide statistics on child abuse and neglect and on unborn child abuse,
5 and for planning and policy development purposes.

6 SECTION 30. 48.981 (3m) of the statutes is created to read:

7 48.981 (3m) CHILD ABUSE OR NEGLECT REGISTRY. (a) From the information
8 provided under par. (b), the department shall establish and maintain a registry that
9 contains identifying information about each case in which it is determined under
10 sub. (3) (c) 4. that a specific person has abused or neglected a child. For each case,
11 the registry shall include ~~all of the following information:~~ **Not**

12 ~~1. The name of the person determined under sub. (3) (c) 4. to have abused or~~
13 ~~neglected a child, if any of the following apply:~~ *and the time for filing an appeal*
has passed or

14 ~~a. ^{the} The person did not appeal the determination under sub. (3) (c) 5m.~~

15 ~~b. ^{that} The person appealed the determination under sub. (3) (c) 5m., but the final~~
16 ~~administration decision under s. 227.46 upheld the determination.~~

17 ~~c. The person appealed the final administration decision under s. 227.46, but~~
18 ~~that decision was confirmed on judicial review under ss. 227.52 to 227.58.~~

19 ~~2. ^{Not} Findings ^{and findings} of the department, county department, or licensed child welfare~~
20 ~~agency under sub. (3) (c) 4. or of the hearing examiner under sub. (3) (c) 5m.~~
21 ~~concerning the nature of the abuse or neglect perpetrated by that person. **Not**~~

22 (b) If a determination is made under sub. (3) (c) 4. that a specific person has
23 abused or neglected a child and that decision is not reversed, remanded, or modified,
24 the county department, subunit of the department, or licensed child welfare agency

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1 making the determination shall report the information specified in par. (a) to the
2 subunit of the department maintaining the registry under this subsection.

3 (c) Information maintained in the registry under this subsection is confidential
4 and may be disclosed only as permitted under sub. (7) or as follows:

5 1. To the secretary of the federal department of health and human services for
6 inclusion in the national registry of substantiated cases of child abuse or neglect
7 under 42 USC 16990.

8 2. To a person requesting that information under s. 48.685 (2) (am) 4. or (b) 1.
9 d. or 50.065 (2) (am) 4. or (b) 4. or under a comparable law of another state.

10 SECTION 31. 50.065 (2) (am) 4. of the statutes is amended to read:

11 50.065 (2) (am) 4. Information maintained by the department in the registry
12 under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect
13 against the person.

14 SECTION 32. 50.065 (2) (b) 4. of the statutes is amended to read:

15 50.065 (2) (b) 4. Information maintained by the department in the registry
16 under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect
17 against the person.

18 SECTION 9321. Initial applicability; Health and Family Services.

19 (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES. The treatment of
20 sections 48.685 (1) (ad), (ag), (b), (bg) and (d), (2) (am) (intro.) and 5 (b) 1. (intro.)
21 and e., and (c), (3) (a) and (b), (3m), (4m) (a) (intro.), (ad), and (b) (intro.), (5) (a) and
22 (bm) (intro.), (5m), and (6) (a), 48.837 (4) (c), 48.839 (2) (d), and 48.88 (2) (c) of the
23 statutes, the renumbering of section 48.88 (3) of the statutes, and the creation of
24 section 48.88 (3) (b) of the statutes first apply to a person who applies for a license
25 to operate a foster home or treatment foster home or for a home study investigation,

1 ~~screening, or certification~~ of a proposed adoptive home on the effective date of this
2 subsection.

3 (2) CHILD ABUSE AND NEGLECT APPEALS. The treatment of section 48.981 (3) (c)
4 5m. of the statutes first applies to determinations under section 48.981 (3) (c) 4. of
5 the statutes that a specific person has abused or neglected a child made on the
6 effective date of this subsection.

7 **SECTION 9421. Effective dates; Health and Family Services.**

8 (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES AND CHILD ABUSE AND
9 NEGLECT APPEALS. The treatment of sections 48.685 (1) ~~(ad), (ag), (c), (d), (bg)~~ and
10 (d), (2) ~~(am)~~ ^(am) (intro.), 4. ~~and 5.~~ ^(am) (b) 1. (intro.) ~~d. and e.~~ ^(am) and (c), (3) (a) and (b), ~~(3m)~~ ^(3m),
11 (4m) ~~(a) (intro.), (ad), and~~ ^(am) (b) (intro.), (5) (a) and (bm) (intro.), ~~(5m) and (6) (a), 48.837~~
12 ~~(4) (c), 48.839 (2) (d), 48.88 (2) (a), 48.981 (3) (c) 5m. and 8. and (3m), and 50.065 (2)~~ ^(am)
13 (am) 4. and (b) 4. of the statutes, ~~the renumbering of section 48.88 (3) of the statutes,~~
14 ~~and the creation of section 48.88 (3) (b) of the statutes~~ ^(am) take effect on January 1, 2008.

15 (END)

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LEGISLATIVE REFERENCE BUREAU

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(INSERT (13-15))

SECTION ~~X~~ 48.88 (2) (am) of the statutes is created to read:

48.88 (2) (am) 1. If the petitioner was required to obtain a license to operate a foster home or treatment foster home before placement of the child for adoption, the agency making the investigation shall obtain a criminal history search from the records maintained by the department of justice and request under 42 USC 16962 a fingerprint-based check of the national crime information databases, as defined in 28 USC 534 (f) (3) (A), with respect to the petitioner. The agency may require the petitioner to be fingerprinted on 2 fingerprint cards, each bearing a complete set of the petitioner's fingerprints. The department of justice may provide for the submission of the fingerprint cards to the federal bureau of investigation for the purposes of verifying the identity of the petitioner and obtaining records of his or her criminal arrests and convictions. The agency may release any information obtained under this subdivision only to appropriate staff of the agency or to other authorized persons, as defined by the department by rule. In the case of a child on whose behalf adoption assistance payments will be provided under s. 48.975, if the petitioner has been convicted of any of the offenses specified in s. 48.685 (5) (bm) 1. to 4., the agency may not report that the petitioner's home is suitable for the child.

2. If the petitioner was required to obtain a license to operate a foster home or treatment foster home before placement of the child for adoption, the agency making the investigation shall obtain information maintained by the department in the registry under s. 48.981 (3m) regarding any substantiated reports of child abuse or neglect against the petitioner and any other adult residing in the petitioner's home. If the petitioner or other adult residing in the petitioner's home is not, or at any time

within the 5 years preceding the date of the search has not been, a resident of this state, the agency shall check any child abuse or neglect registry maintained by any state or other U.S. jurisdiction in which the petitioner or other adult is a resident or was a resident within those 5 years for information that is equivalent to the information maintained under s. 48.981 (3m). The agency may not use any information obtained under this subdivision for any purpose other than a background search under this subdivision.

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The county department, subunit of the department, or child welfare agency making the determination may not report that information to the subunit of the department maintaining the registry until the time for filing an appeal under sub. (3) (c) 5m. has expired, if no appeal is filed, or, if an appeal is filed, until a final decision is made after all administrative and judicial review has been exhausted or waived.

(END OF INSERT)

Malaise, Gordon

From: Rhodes, Dennis - DOA
Sent: Thursday, January 11, 2007 3:25 PM
To: Malaise, Gordon
Subject: 0481/2 Background Investigations

Gordon,

Please delete Section 13 and any references that say DOA Hearings and Appeals is going to hear appeals of abuse and neglect findings.

Thanks,

Dennis

