



State of Wisconsin  
2007 - 2008 LEGISLATURE

FB

LRB-0841/2  
GMM:kjf+wlj:tw

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DMR

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

1 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.

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 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 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, of a person licensed to operate a foster or treatment foster home who is seeking to adopt a child, and of any adult 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 and of a person licensed to operate a foster or treatment foster home who is seeking to adopt a child. In addition, if at any time within the five years preceding the date of the background check that person or an adult 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 resident was a resident within those preceding five years.

*Finally* 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.

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

1           **SECTION 1.** 48.685 (1) (bg) of the statutes is repealed.

2           **SECTION 2.** 48.685 (1) (d) of the statutes is repealed.

3           **SECTION 3.** 48.685 (2) (am) 4. of the statutes is amended to read:

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

7           **SECTION 4.** 48.685 (2) (b) 1. (intro.) of the statutes is amended to read:

8           48.685 (2) (b) 1. (intro.) Every entity shall obtain all of the following with  
9 respect to a caregiver specified in sub. (1) (ag) 1. a. of the entity:

10          **SECTION 5.** 48.685 (2) (b) 1. d. of the statutes is amended to read:

11          48.685 (2) (b) 1. d. 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 6.** 48.685 (2) (c) of the statutes is created to read:

15          48.685 (2) (c) 1. If the person who is the subject of the search under par. (am)  
16 is seeking a license to operate a foster home or treatment foster home, the  
17 department, county department, or child welfare agency shall request under 42 USC  
18 16962 a fingerprint-based check of the national crime information databases, as  
19 defined in 28 USC 534 (f) (3) (A). The department, county department, or child  
20 welfare agency may require the person to be fingerprinted on 2 fingerprint cards,  
21 each bearing a complete set of the person's fingerprints. The department of justice

1 may provide for the submission of the fingerprint cards to the federal bureau of  
2 investigation for the purposes of verifying the identity of the person fingerprinted  
3 and obtaining records of his or her criminal arrests and convictions. The  
4 department, county department, or child welfare agency may release any  
5 information obtained under this subdivision only to appropriate staff of the  
6 department, county department, or child welfare agency or to other authorized  
7 persons, as defined by the department by rule.

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

19 **SECTION 7.** 48.685 (3) (a) of the statutes is amended to read:

20 48.685 (3) (a) Every 4 years or at any time within that period that the  
21 department, a county department, a child welfare agency, or a school board considers  
22 appropriate, the department, county department, child welfare agency, or school  
23 board shall request the information specified in sub. (2) (am) 1. to 5. for all persons  
24 caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to  
25 operate an entity, for all persons who are nonclient residents of an entity such a

1 caregiver, and for all persons under 18 years of age, but not under 12 years of age,  
2 who are caregivers of a day care center that is licensed under s. 48.65 or established  
3 or contracted for under s. 120.13 (4) or of a day care provider that is certified under  
4 s. 48.651.

5 **SECTION 8.** 48.685 (3) (b) of the statutes is amended to read:

6 48.685 (3) (b) Every 4 years or at any time within that period that an entity  
7 considers appropriate, the entity shall request the information specified in sub. (2)  
8 (b) 1. a. to e. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the  
9 entity other than persons under 18 years of age, but not under 12 years of age, who  
10 are caregivers of a day care center that is licensed under s. 48.65 or established or  
11 contracted for under s. 120.13 (14) or of a day care provider that is certified under s.  
12 48.651.

13 **SECTION 9.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

14 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in  
15 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)  
16 (ag) 1. a. or permit a nonclient resident to reside at the entity if the entity knows or  
17 should have known any of the following:

18 **SECTION 10.** 48.685 (5) (a) of the statutes is amended to read:

19 48.685 (5) (a) The Subject to par. (bm), the department may license to operate  
20 an entity, a county department may certify under s. 48.651, a county department or  
21 a child welfare agency may license under s. 48.62 and a school board may contract  
22 with under s. 120.13 (14) a person who otherwise may not be licensed, certified or  
23 contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may  
24 employ, contract with, or permit to reside at the entity a person who otherwise may  
25 not be employed, contracted with, or permitted to reside at the entity for a reason

1 specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the  
2 county department, the child welfare agency, or the school board or, in the case of an  
3 entity that is located within the boundaries of a reservation, to the person or body  
4 designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and  
5 in accordance with procedures established by the department by rule or by the tribe  
6 that he or she has been rehabilitated.

7 **SECTION 11.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

8 48.685 (5) (bm) (intro.) For purposes of licensing a foster home or treatment  
9 foster home for the placement of a child on whose behalf foster care maintenance  
10 payments under s. 48.62 (4) will be provided, no person who has been convicted of  
11 any of the following offenses may be permitted to demonstrate that he or she has been  
12 rehabilitated:

13 **SECTION 12.** 48.88 (2) (am) of the statutes is created to read:

14 48.88 (2) (am) 1. If the petitioner was required to obtain a license to operate  
15 a foster home or treatment foster home before placement of the child for adoption,  
16 the agency making the investigation shall obtain a criminal history search from the  
17 records maintained by the department of justice and request under 42 USC 16962  
18 a fingerprint-based check of the national crime information databases, as defined  
19 in 28 USC 534 (f) (3) (A), with respect to the petitioner. The agency may require the  
20 petitioner to be fingerprinted on 2 fingerprint cards, each bearing a complete set of  
21 the petitioner's fingerprints. The department of justice may provide for the  
22 submission of the fingerprint cards to the federal bureau of investigation for the  
23 purposes of verifying the identity of the petitioner and obtaining records of his or her  
24 criminal arrests and convictions. The agency may release any information obtained  
25 under this subdivision only to appropriate staff of the agency or to other authorized

1 persons, as defined by the department by rule. In the case of a child on whose behalf  
2 adoption assistance payments will be provided under s. 48.975, if the petitioner has  
3 been convicted of any of the offenses specified in s. 48.685 (5) (bm) 1. to 4., the agency  
4 may not report that the petitioner's home is suitable for the child.

5 2. If the petitioner was required to obtain a license to operate a foster home or  
6 treatment foster home before placement of the child for adoption, the agency making  
7 the investigation shall obtain information maintained by the department in the  
8 registry under s. 48.981 (3m) regarding any substantiated reports of child abuse or  
9 neglect against the petitioner and any other adult residing in the petitioner's home.  
10 If the petitioner or other adult residing in the petitioner's home is not, or at any time  
11 within the 5 years preceding the date of the search has not been, a resident of this  
12 state, the agency shall check any child abuse or neglect registry maintained by any  
13 state or other U.S. jurisdiction in which the petitioner or other adult is a resident or  
14 was a resident within those 5 years for information that is equivalent to the  
15 information maintained under s. 48.981 (3m). The agency may not use any  
16 information obtained under this subdivision for any purpose other than a  
17 background search under this subdivision.

18 **SECTION 13.** 48.981 (3) (c) 5m. of the statutes is amended to read:

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

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

17 **SECTION 14.** 48.981 (3) (c) 8. of the statutes is amended to read:

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

1 receives and about each investigation that the child welfare agency conducts. This  
2 ~~information shall be used by the~~ The department shall use the information to  
3 monitor services provided by county departments or licensed child welfare agencies  
4 under contract with county departments or the department and to maintain the  
5 registry under sub. (3m). The department shall use nonidentifying information to  
6 maintain statewide statistics on child abuse and neglect and on unborn child abuse,  
7 and for planning and policy development purposes.

8 **SECTION 15.** 48.981 (3m) of the statutes is created to read:

9 48.981 (3m) CHILD ABUSE OR NEGLECT REGISTRY. (a) From the information  
10 provided under par. (b), the department shall establish and maintain a registry that  
11 contains identifying information about each case in which it is determined under  
12 sub. (3) (c) 4. that a specific person has abused or neglected a child. For each case,  
13 the registry shall include the name of the person determined under sub. (3) (c) 4. to  
14 have abused or neglected a child, and findings of the department, county  
15 department, or licensed child welfare agency under sub. (3) (c) 4. or of the hearing  
16 examiner under sub. (3) (c) 5m. concerning the nature of the abuse or neglect  
17 perpetrated by that person.

18 (b) If a determination is made under sub. (3) (c) 4. that a specific person has  
19 abused or neglected a child and that decision is not reversed, remanded, or modified,  
20 the county department, subunit of the department, or licensed child welfare agency  
21 making the determination shall report the information specified in par. (a) to the  
22 subunit of the department maintaining the registry under this subsection. The  
23 county department, subunit of the department, or child welfare agency making the  
24 determination may not report that information to the subunit of the department  
25 maintaining the registry until the time for filing an appeal under sub. (3) (c) 5m. has

1 expired, if no appeal is filed, or, if an appeal is filed, until a final decision is made after  
2 all administrative and judicial review has been exhausted or waived.

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 16.** 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 17.** 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) (bg) and (d), (2) (b) 1. (intro.) and (c), (3) (a) and (b), (4m) (b) (intro.),  
21 and (5) (a) and (bm) (intro.), and 48.88 (2) (am) of the statutes first applies to a person  
22 who applies for a license to operate a foster home or treatment foster home or for an  
23 investigation of a proposed adoptive home on the effective date of this subsection.

24 ~~((2) CHILD ABUSE AND NEGLECT APPEALS. The treatment of section 48.981 (3) (c)~~  
25 ~~5m. of the statutes first applies to determinations under section 48.981 (3) (c) 4. of~~

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

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

4 (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES AND CHILD ABUSE AND  
5 NEGLECT APPEALS. The treatment of sections 48.685 (1) (bg) and (d), (2) (am) 4., (b) 1.  
6 (intro.) and d. and (c), (3) (a) and (b), (4m) (b) (intro.), and (5) (a) and (bm) (intro.),  
7 48.88 (2) (am), 48.981 (3) (c) ~~5m and~~ 8. and (3m), and 50.065 (2) (am) 4. and (b) 4. of  
8 the statutes takes effect on January 1, 2008.

9 (END)

## Malaise, Gordon

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**From:** Connolly, Cathleen - DHFS  
**Sent:** Thursday, January 25, 2007 11:31 AM  
**To:** Dennis Rhodes  
**Cc:** Campbell, Mark D - DHFS; Phillip Collins; Durkin, Therese A - DHFS; Johnson, Sarah Kate K - DHFS; Mitchell, Mark S - DHFS; Tuohy, John O - DHFS; Malaise, Gordon  
**Subject:** Background checks LRB 0841/3 - Adam Walsh

**Importance:** High

\*\* High Priority \*\*

Dennis,

✓ The Division would like to remove the provisions in LRB 0841/3 that establish a child abuse and neglect registry or that make reference to a Wisconsin child abuse and neglect registry. To comply with Adam Walsh, the Division will develop a procedure to respond to inquiries regarding child abuse and neglect substantiations from out-of-state and in-state using eWISACWIS and current staffing. The Division is concerned that if it seeks to establish a registry per se without sufficient resources in place it will not be able to respond to appropriate inquiries.

✓ The provisions that require agencies to check other state's CAN registries should stay in.

The Division will continue to review confidentiality concerns, which exist under our current laws in addition to new confidentiality provisions in Adam Walsh, but will address those outside of the budget bill.

✓ Finally, for sections 6 and 12 which deal with fingerprinting, we need it to be clear that is it required at initial licensure for prospective foster and adoptive parents, but is not required again "as long as the home remains continuously licensed or approved". The quoted language is from ACF's Program Instructions which came out yesterday.

✓ Also, to address the FBI's concerns, my suggestion is in Section 6, in subsection 1, please delete at line 19 the words starting with "The department, county department", ... through line 7 on page 4. The same language should be deleted from Section 12, subsection 1, page 6, line 19, starting with the words, "The agency may require" .... through page 7, line 1, "...as defined by the department by rule."

The goal is to make the fingerprinting requirement come out of the Adam Walsh law. If Gordon would like to talk to Phil Collins (267-2235) at DOJ directly about the FBI concerns, we certainly do not object.

I recognize that the bill is being finalized but, if possible, could we see draft /4 and I will try to get a review from DOJ and the FBI. If it is not possible to do before the bill closes, I will still seek a review.

Thank you for your patience.

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  
connoc1@dhfs.state.wi.us

## Malaise, Gordon

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**From:** Connolly, Cathleen - DHFS  
**Sent:** Thursday, January 25, 2007 7:33 AM  
**To:** Rhodes, Dennis - DOA  
**Cc:** Campbell, Mark D - DHFS; Durkin, Therese A - DHFS; Johnson, Sarah Kate K - DHFS; Mitchell, Mark S - DHFS; Malaise, Gordon  
**Subject:** RE: LRB 0841/3 Background investigations of proposed fosterparents and adoptive parents

A lot, the FBI won't give the fingerprints to private agencies contracting with government agencies (read Milwaukee) if we don't explicitly and only say that the fingerprints are being submitted under Adam Walsh. Can I have until close of business today - our meeting is at 10 and I can contact DOJ right after.

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

>>> "Rhodes, Dennis - DOA" <dennis.rhodes@wisconsin.gov> 1/24/2007 5:17 PM >>>

OK. The window to get changes in is closing fast. Can you tell exactly what you want dropped? Not to be flippant, but how much do we care what the FBI says?

-----Original Message-----

From: Connolly, Cathleen [mailto:Connocl@dhfs.state.wi.us]  
Sent: Wednesday, January 24, 2007 11:50 AM  
To: Rhodes, Dennis - DOA  
Cc: Campbell, Mark D - DHFS; Johnson, Sarah Kate K - DHFS; Mitchell, Mark S - DHFS; Durkin, Therese A - DHFS  
Subject: LRB 0841/3 Background investigations of proposed foster parents and adoptive parents  
Importance: High

Hi Dennis,  
Mark Campbell forwarded the /3 draft of the Adam Walsh bill. We had provided a copy of /2 to the WI Dept. of Justice and they forwarded it to the FBI. The FBI had problems with the language used in section 6 of the bill, regarding fingerprinting. The FBI wants the statute to reference only federal law as a basis for fingerprinting. So we cannot have any discussion about state rulemaking. I asked about the sentence on fingerprint cards and Phil Collins of the Dept. of Justice said the WI Dept. of Transportation has some newer language, BUT, I think we may not need that level of detail in the statute, the first sentence of section 6 (in /3) may be sufficient.

If that change is made, we should provide a /4 to Phil Collins at DOJ and ask that he ask his contact at the FBI to review it again.

At a program level we still have concerns regarding including the CAN registry within the caregiver background check statute, which allows the registry to be used by a wide range of people for a range of reasons. Adam Walsh seems to require that information obtained from a CAN registry for licensing foster and adoptive not be used for any other purpose. We have not received clarification from ACF on that point.

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



State of Wisconsin  
2007 - 2008 LEGISLATURE

DN 01E

LRB-0841/3  
GMM:kjf&wlj:pe  
stays  
RAR

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

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

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*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.

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 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 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, of a person licensed to operate a foster or treatment foster home who is seeking to adopt a child, and of any adult 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, and of a person licensed to operate a foster or treatment foster home who is seeking to adopt a child. In addition, if at any time within the five years preceding the date of the background check that person or an adult 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 resident was a resident within those preceding five years.

Finally, 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.

who was who was required to obtain an initial license

after

an initial

or licensure following a break in licensure

or of a child after a break in licensure before placement for adoption

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) (bg) of the statutes is repealed.

2 SECTION 2. 48.685 (1) (d) of the statutes is repealed.

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7 SECTION 4. 48.685 (2) (b) 1. (intro.) of the statutes is amended to read:

8 48.685 (2) (b) 1. (intro.) Every entity shall obtain all of the following with  
9 respect to a caregiver specified in sub. (1) (ag) 1. a. of the entity:

10 SECTION 5. 48.685 (2) (b) 1. d. of the statutes is amended to read:

11 48.685 (2) (b) 1. d. 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.

or is seeking relicensure after  
a break in licensure

14 SECTION 6. 48.685 (2) (c) of the statutes is created to read:

15 48.685 (2) (c) 1. If the person who is the subject of the search under par. (am)  
16 is seeking <sup>an initial</sup> license to operate a foster home or treatment foster home, the  
17 (b) department, county department, or child welfare agency shall request under 42 USC  
18 16962 a fingerprint-based check of the national crime information databases, as  
19 defined in 28 USC 534 (f) (3) (A). ~~The department, county department, or child~~  
20 ~~welfare agency may require the person to be fingerprinted on 2 fingerprint cards~~  
21 ~~each bearing a complete set of the person's fingerprints. The department of justice~~

1 ~~may provide for the submission of the fingerprint cards to the federal bureau of~~  
 2 ~~investigation for the purposes of verifying the identity of the person fingerprinted~~  
 3 ~~and obtaining records of his or her criminal arrests and convictions.~~ The  
 4 department, county department, or child welfare agency may release any  
 5 information obtained under this subdivision only to ~~appropriate staff of the~~  
 6 ~~department, county department, or child welfare agency or to other authorized~~  
 7 ~~persons, as defined by the department by rule.~~

(e)  
 as permitted under 42 USC 16962

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

19 **SECTION 7.** 48.685 (3) (a) of the statutes is amended to read:

20 48.685 (3) (a) Every 4 years or at any time within that period that the  
 21 department, a county department, a child welfare agency, or a school board considers  
 22 appropriate, the department, county department, child welfare agency, or school  
 23 board shall request the information specified in sub. (2) (am) 1. to 5. for all persons  
 24 caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to  
 25 operate an entity, for all persons who are nonclient residents of an entity such a

1 caregiver, and for all persons under 18 years of age, but not under 12 years of age,  
2 who are caregivers of a day care center that is licensed under s. 48.65 or established  
3 or contracted for under s. 120.13 (4) or of a day care provider that is certified under  
4 s. 48.651.

5 **SECTION 8.** 48.685 (3) (b) of the statutes is amended to read:

6 48.685 (3) (b) Every 4 years or at any time within that period that an entity  
7 considers appropriate, the entity shall request the information specified in sub. (2)  
8 (b) 1. a. to e. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the  
9 entity other than persons under 18 years of age, but not under 12 years of age, who  
10 are caregivers of a day care center that is licensed under s. 48.65 or established or  
11 contracted for under s. 120.13 (14) or of a day care provider that is certified under s.  
12 48.651.

13 **SECTION 9.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

14 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in  
15 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)  
16 (ag) 1. a. or permit a nonclient resident to reside at the entity if the entity knows or  
17 should have known any of the following:

18 **SECTION 10.** 48.685 (5) (a) of the statutes is amended to read:

19 48.685 (5) (a) The Subject to par. (bm), the department may license to operate  
20 an entity, a county department may certify under s. 48.651, a county department or  
21 a child welfare agency may license under s. 48.62 and a school board may contract  
22 with under s. 120.13 (14) a person who otherwise may not be licensed, certified or  
23 contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may  
24 employ, contract with, or permit to reside at the entity a person who otherwise may  
25 not be employed, contracted with, or permitted to reside at the entity for a reason

1 specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the  
2 county department, the child welfare agency, or the school board or, in the case of an  
3 entity that is located within the boundaries of a reservation, to the person or body  
4 designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and  
5 in accordance with procedures established by the department by rule or by the tribe  
6 that he or she has been rehabilitated.

7 **SECTION 11.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

8 48.685 (5) (bm) (intro.) For purposes of licensing a foster home or treatment  
9 foster home for the placement of a child on whose behalf foster care maintenance  
10 payments under s. 48.62 (4) will be provided, no person who has been convicted of  
11 any of the following offenses may be permitted to demonstrate that he or she has been  
12 rehabilitated:

*Handwritten notes:*  
- A circled scribble at the top right.  
- A line from the scribble points to the word "after" in the text below.  
- A bubble containing "or relicense or a break in license" is connected to "after".

13 **SECTION 12.** 48.88 (2) (am) of the statutes is created to read:

14 48.88 (2) (am) 1. If the petitioner was required to obtain a license to operate  
15 a foster home or treatment foster home before placement of the child for adoption,  
16 the agency making the investigation shall obtain a criminal history search from the  
17 records maintained by the department of justice and request under 42 USC 16962  
18 a fingerprint-based check of the national crime information databases, as defined  
19 in 28 USC 534 (f) (3) (A), with respect to the petitioner. ~~The agency may require the~~  
20 ~~petitioner to be fingerprinted on 2 fingerprint cards, each bearing a complete set of~~  
21 ~~the petitioner's fingerprints. The department of justice may provide for the~~  
22 ~~submission of the fingerprint cards to the federal bureau of investigation for the~~  
23 ~~purposes of verifying the identity of the petitioner and obtaining records of his or her~~  
24 ~~criminal arrests and convictions.~~ The agency may release any information obtained  
25 under this subdivision only to appropriate staff of the agency or to other authorized

*Handwritten note:* "as in the"

*Handwritten note:* "(b)" in a circle, with an arrow pointing to the word "adoption" in the text.

by the department regarding substantiated reports  
of child abuse or neglect

as permitted under 42 USC 16962 (e)

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.

**SECTION 13.** 48.981 (3) (c) 8. of the statutes is amended to read:

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

1 department with information about each report that the child welfare agency  
2 receives and about each investigation that the child welfare agency conducts. ~~This~~  
3 ~~information shall be used by the~~ The department shall use the information to  
4 monitor services provided by county departments or licensed child welfare agencies  
5 under contract with county departments or the department ~~and to maintain the~~  
6 ~~registry under sub. (3m).~~ The department shall use nonidentifying information to  
7 maintain statewide statistics on child abuse and neglect and on unborn child abuse,  
8 and for planning and policy development purposes.

9 ~~SECTION 14. 48.981 (3m) of the statutes is created to read:~~ ✓

10 48.981 **(3m)** CHILD ABUSE OR NEGLECT REGISTRY. (a) From the information  
11 provided under par. (b), the department shall establish and maintain a registry that  
12 contains identifying information about each case in which it is determined under  
13 sub. (3) (c) 4. that a specific person has abused or neglected a child. For each case,  
14 the registry shall include the name of the person determined to have abused or  
15 neglected a child and findings concerning the nature of the abuse or neglect  
16 perpetrated by that person.

17 (b) If a determination is made under sub. (3) (c) 4. that a specific person has  
18 abused or neglected a child and that decision is not reversed, remanded, or modified,  
19 the county department, subunit of the department, or licensed child welfare agency  
20 making the determination shall report the information specified in par. (a) to the  
21 subunit of the department maintaining the registry under this subsection. The  
22 county department, subunit of the department, or child welfare agency making the  
23 determination may not report that information to the subunit of the department  
24 maintaining the registry until the time for filing an appeal under sub. (3) (c) 5m. has

1 expired, if no appeal is filed, or, if an appeal is filed, until a final decision is made after  
2 all administrative and judicial review has been exhausted or waived.

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 15.** 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 16.** 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) (bg) and (d), (2) (b) 1. (intro.) and (c), (3) (a) and (b), (4m) (b) (intro.),  
21 and (5) (a) and (bm) (intro.), and 48.88 (2) (am) of the statutes first applies to a person  
22 who applies for a license to operate a foster home or treatment foster home or for an  
23 investigation of a proposed adoptive home on the effective date of this subsection.

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

stat

1 (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES AND CHILD ABUSE AND  
 2 NEGLECT APPEALS. The treatment of sections 48.685 (1) (bg) and (d), (2) ~~and~~ (b) 1.  
 3 (intro.) ~~and~~ and (c), (3) (a) and (b), (4m) (b) (intro.), and (5) (a) and (bm) (intro.),  
 4 48.88 (2) (am) ~~and~~ <sup>(and)</sup> 48.981 (3) (c) 8. ~~and~~ (3m) ~~and~~ 50.065 (2) (a) 4. and (b) 4. of the  
 5 statutes takes effect on January 1, 2008.

(END)

D-Note

Date

LRB-0841/4dn  
Gmm:lgf

DRAFT

Dennis

Dennis and Cathy:

deviates only

This redraft deviates only slightly from Cathy's

Instructions. Specifically, the redraft maintains the confidentiality

confidentiality language in ss. 48.685 (2)(c) 1. and 48.88

(2)(am) 1., but ties that language to the Adam Walsh Act

DHFS's rules

rather than to DHS's rules. I figure that having that

language in the statute is a good reminder and is

consistent with DHFS's intent that the fingerprinting requirements comply with that act.

GMM

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0841/4dn  
GMM:kjf:nwn

January 25, 2007

Dennis and Cathy:

This redraft deviates only slightly from Cathy's instructions. Specifically, the redraft maintains the confidentiality language in ss. 48.685 (2) (c) 1. and 48.88 (2) (am) 1., but ties that language to the Adam Walsh Act rather than to DHFS's rules. I figure that having that language in the statutes is a good reminder and is consistent with DHFS's intent that the fingerprinting requirements comply with that act.

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State of Wisconsin  
2007 - 2008 LEGISLATURE

DN - 1E

LRB-0841/4  
GMM:kjf&wlj:rw (5)  
stays  
PMR

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

Don't Gen

1 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.

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 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 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, of a person licensed to operate a foster or treatment foster home who is seeking to adopt a child, and of any adult 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 an initial license to operate a foster or treatment foster home or relicensure after a break in licensure and of a person who was required to obtain an initial license to operate a foster or treatment foster home or relicensure after a break in licensure before placement of a child for adoption. In addition, if at any time within the five years preceding the date of the background check that person or an adult 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 resident was a resident within those preceding five years.

~~Finally, 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.~~

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

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

1           **SECTION 1.** 48.685 (1) (bg) of the statutes is repealed.

2           **SECTION 2.** 48.685 (1) (d) of the statutes is repealed.

3           **SECTION 3.** 48.685 (2) (b) 1. (intro.) of the statutes is amended to read:

4           48.685 (2) (b) 1. (intro.) Every entity shall obtain all of the following with  
5 respect to a caregiver specified in sub. (1) (ag) 1. a. of the entity:

6           **SECTION 4.** 48.685 (2) (c) of the statutes is created to read:

7           48.685 (2) (c) 1. If the person who is the subject of the search under par. (am)  
8 is seeking an initial license to operate a foster home or treatment foster home or is  
9 seeking relicensure after a break in licensure, the department, county department,  
10 or child welfare agency shall request under 42 USC 16962 (b) a fingerprint-based  
11 check of the national crime information databases, as defined in 28 USC 534 (f) (3)  
12 (A). The department, county department, or child welfare agency may release any  
13 information obtained under this subdivision only as permitted under 42 USC 16962  
14 (e).

15           2. If the person who is the subject of the search under par. (am) is seeking a  
16 license to operate a foster home or treatment foster home or is an adult nonclient  
17 resident of the foster home or treatment foster home and if the person is not, or at  
18 any time within the 5 years preceding the date of the search has not been, a resident  
19 of this state, the department, county department, or child welfare agency shall check  
20 any child abuse or neglect registry maintained by any state or other U.S. jurisdiction  
21 in which the person is a resident or was a resident within those 5 years for

1 information that is equivalent to the information specified in par. (am) 4. The  
2 department, county department, or child welfare agency may not use any  
3 information obtained under this subdivision for any purpose other than a search of  
4 the person's background under par. (am).

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

6 48.685 (3) (a) Every 4 years or at any time within that period that the  
7 department, a county department, a child welfare agency, or a school board considers  
8 appropriate, the department, county department, child welfare agency, or school  
9 board shall request the information specified in sub. (2) (am) 1. to 5. for all persons  
10 caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to  
11 operate an entity, for all persons who are nonclient residents of an entity such a  
12 caregiver, and for all persons under 18 years of age, but not under 12 years of age,  
13 who are caregivers of a day care center that is licensed under s. 48.65 or established  
14 or contracted for under s. 120.13 (4) or of a day care provider that is certified under  
15 s. 48.651.

16 **SECTION 6.** 48.685 (3) (b) of the statutes is amended to read:

17 48.685 (3) (b) Every 4 years or at any time within that period that an entity  
18 considers appropriate, the entity shall request the information specified in sub. (2)  
19 (b) 1. a. to e. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the  
20 entity other than persons under 18 years of age, but not under 12 years of age, who  
21 are caregivers of a day care center that is licensed under s. 48.65 or established or  
22 contracted for under s. 120.13 (14) or of a day care provider that is certified under s.  
23 48.651.

24 **SECTION 7.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

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

5           **SECTION 8.** 48.685 (5) (a) of the statutes is amended to read:

6           48.685 (5) (a) The Subject to par. (bm), the department may license to operate  
7 an entity, a county department may certify under s. 48.651, a county department or  
8 a child welfare agency may license under s. 48.62 and a school board may contract  
9 with under s. 120.13 (14) a person who otherwise may not be licensed, certified or  
10 contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may  
11 employ, contract with, or permit to reside at the entity a person who otherwise may  
12 not be employed, contracted with, or permitted to reside at the entity for a reason  
13 specified in sub. (4m) (b) 1. to 5., if the person demonstrates to the department, the  
14 county department, the child welfare agency, or the school board or, in the case of an  
15 entity that is located within the boundaries of a reservation, to the person or body  
16 designated by the tribe under sub. (5d) (a) 3., by clear and convincing evidence and  
17 in accordance with procedures established by the department by rule or by the tribe  
18 that he or she has been rehabilitated.

19           **SECTION 9.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

20           48.685 (5) (bm) (intro.) For purposes of licensing a foster home or treatment  
21 foster home for the placement of a child on whose behalf foster care maintenance  
22 payments under s. 48.62 (4) will be provided, no person who has been convicted of  
23 any of the following offenses may be permitted to demonstrate that he or she has been  
24 rehabilitated:

25           **SECTION 10.** 48.88 (2) (am) of the statutes is created to read:

1           48.88 (2) (am) 1. If the petitioner was required to obtain an initial license to  
2 operate a foster home or treatment foster home before placement of the child for  
3 adoption or relicensure after a break in licensure, the agency making the  
4 investigation shall obtain a criminal history search from the records maintained by  
5 the department of justice and request under 42 USC 16962 (b) a fingerprint-based  
6 check of the national crime information databases, as defined in 28 USC 534 (f) (3)  
7 (A), with respect to the petitioner. The agency may release any information obtained  
8 under this subdivision only as permitted under 42 USC 16962 (e). In the case of a  
9 child on whose behalf adoption assistance payments will be provided under s. 48.975,  
10 if the petitioner has been convicted of any of the offenses specified in s. 48.685 (5) (bm)  
11 1. to 4., the agency may not report that the petitioner's home is suitable for the child.

12           2. If the petitioner was required to obtain a license to operate a foster home or  
13 treatment foster home before placement of the child for adoption, the agency making  
14 the investigation shall obtain information maintained by the department regarding  
15 any substantiated reports of child abuse or neglect against the petitioner and any  
16 other adult residing in the petitioner's home. If the petitioner or other adult residing  
17 in the petitioner's home is not, or at any time within the 5 years preceding the date  
18 of the search has not been, a resident of this state, the agency shall check any child  
19 abuse or neglect registry maintained by any state or other U.S. jurisdiction in which  
20 the petitioner or other adult is a resident or was a resident within those 5 years for  
21 information that is equivalent to the information maintained by the department  
22 regarding substantiated reports of child abuse or neglect. The agency may not use  
23 any information obtained under this subdivision for any purpose other than a  
24 background search under this subdivision.

25           **SECTION 11.** 48.981 (3) (c) 8. of the statutes is amended to read:

1           48.981 (3) (c) 8. Using the format prescribed by the department, each county  
2           department shall provide the department with information about each report that  
3           the county department receives or that is received by a licensed child welfare agency  
4           that is under contract with the county department and about each investigation that  
5           the county department or a licensed child welfare agency under contract with the  
6           county department conducts. Using the format prescribed by the department, a  
7           licensed child welfare agency under contract with the department shall provide the  
8           department with information about each report that the child welfare agency  
9           receives and about each investigation that the child welfare agency conducts. ~~This~~  
10          ~~information shall be used by the~~ The department shall use the information to  
11          monitor services provided by county departments or licensed child welfare agencies  
12          under contract with county departments or the department. The department shall  
13          use nonidentifying information to maintain statewide statistics on child abuse and  
14          neglect and on unborn child abuse, and for planning and policy development  
15          purposes.

16           **SECTION 9321. Initial applicability; Health and Family Services.**

17           (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES. The treatment of  
18           sections 48.685 (1) (bg) and (d), (2) (b) 1. (intro.) and (c), (3) (a) and (b), (4m) (b) (intro.),  
19           and (5) (a) and (bm) (intro.), and 48.88 (2) (am) of the statutes first applies to a person  
20           who applies for a license to operate a foster home or treatment foster home or for an  
21           investigation of a proposed adoptive home on the effective date of this subsection.

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

23           (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES AND CHILD ABUSE AND  
24           NEGLECT APPEALS. The treatment of sections 48.685 (1) (bg) and (d), (2) (b) 1. (intro.)

1 and (c), (3) (a) and (b), (4m) (b) (intro.), and (5) (a) and (bm) (intro.), 48.88 (2) (am),  
2 and 48.981 (3) (c) 8. of the statutes takes effect on January 1, 2008.

3 (END)

DN = RE

Date

LRB-0841/4  
Gmm:kjf

Dennis:

The redraft simply deletes from the analysis  
references to a child abuse and neglect registry, which registry was  
deleted from the draft by LRB-0841/4.

Gmm

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0841/5dn  
GMM:kjf:pg

January 26, 2007

Dennis:

The redraft simply deletes from the analysis references to a child abuse and neglect registry, which registry was deleted from the draft by LRB-0841/4.

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State of Wisconsin  
2007 - 2008 LEGISLATURE

LRB-0841/5  
GMM:kjf&wlj:pg

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

FOR 2007-09 BUDGET -- NOT READY FOR INTRODUCTION

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

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*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.

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 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 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.

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, of a person licensed to operate a foster or treatment foster home who is seeking to adopt a child, and of any adult 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 an initial license to operate a foster or treatment foster home or relicensure after a break in licensure and of a person who was required to obtain an initial license to operate a foster or treatment foster home or relicensure after a break in licensure before placement of a child for adoption. In addition, if at any time within the five years preceding the date of the background check that person or an adult 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 resident was a resident within those preceding five years.

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

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

1           **SECTION 1.** 48.685 (1) (bg) of the statutes is repealed.

2           **SECTION 2.** 48.685 (1) (d) of the statutes is repealed.

3           **SECTION 3.** 48.685 (2) (b) 1. (intro.) of the statutes is amended to read:

4           48.685 (2) (b) 1. (intro.) Every entity shall obtain all of the following with  
5 respect to a caregiver specified in sub. (1) (ag) 1. a. of the entity:

6           **SECTION 4.** 48.685 (2) (c) of the statutes is created to read:

1           48.685 (2) (c) 1. If the person who is the subject of the search under par. (am)  
2 is seeking an initial license to operate a foster home or treatment foster home or is  
3 seeking relicensure after a break in licensure, the department, county department,  
4 or child welfare agency shall request under 42 USC 16962 (b) a fingerprint-based  
5 check of the national crime information databases, as defined in 28 USC 534 (f) (3)  
6 (A). The department, county department, or child welfare agency may release any  
7 information obtained under this subdivision only as permitted under 42 USC 16962  
8 (e).

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

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

21           48.685 (3) (a) Every 4 years or at any time within that period that the  
22 department, a county department, a child welfare agency, or a school board considers  
23 appropriate, the department, county department, child welfare agency, or school  
24 board shall request the information specified in sub. (2) (am) 1. to 5. for all persons  
25 caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to

1 operate an entity, for all persons who are nonclient residents of an entity such a  
2 caregiver, and for all persons under 18 years of age, but not under 12 years of age,  
3 who are caregivers of a day care center that is licensed under s. 48.65 or established  
4 or contracted for under s. 120.13 (4) or of a day care provider that is certified under  
5 s. 48.651.

6 **SECTION 6.** 48.685 (3) (b) of the statutes is amended to read:

7 48.685 (3) (b) Every 4 years or at any time within that period that an entity  
8 considers appropriate, the entity shall request the information specified in sub. (2)  
9 (b) 1. a. to e. for all persons who are caregivers specified in sub. (1) (ag) 1. a. of the  
10 entity other than persons under 18 years of age, but not under 12 years of age, who  
11 are caregivers of a day care center that is licensed under s. 48.65 or established or  
12 contracted for under s. 120.13 (14) or of a day care provider that is certified under s.  
13 48.651.

14 **SECTION 7.** 48.685 (4m) (b) (intro.) of the statutes is amended to read:

15 48.685 (4m) (b) (intro.) Notwithstanding s. 111.335, and except as provided in  
16 sub. (5), an entity may not employ or contract with a caregiver specified in sub. (1)  
17 (ag) 1. a. or permit a nonclient resident to reside at the entity if the entity knows or  
18 should have known any of the following:

19 **SECTION 8.** 48.685 (5) (a) of the statutes is amended to read:

20 48.685 (5) (a) The Subject to par. (bm), the department may license to operate  
21 an entity, a county department may certify under s. 48.651, a county department or  
22 a child welfare agency may license under s. 48.62 and a school board may contract  
23 with under s. 120.13 (14) a person who otherwise may not be licensed, certified or  
24 contracted with for a reason specified in sub. (4m) (a) 1. to 5., and an entity may  
25 employ, contract with, or permit to reside at the entity a person who otherwise may

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

8 **SECTION 9.** 48.685 (5) (bm) (intro.) of the statutes is amended to read:

9 48.685 (5) (bm) (intro.) For purposes of licensing a foster home or treatment  
10 foster home for the placement of a child on whose behalf foster care maintenance  
11 payments under s. 48.62 (4) will be provided, no person who has been convicted of  
12 any of the following offenses may be permitted to demonstrate that he or she has been  
13 rehabilitated:

14 **SECTION 10.** 48.88 (2) (am) of the statutes is created to read:

15 48.88 (2) (am) 1. If the petitioner was required to obtain an initial license to  
16 operate a foster home or treatment foster home before placement of the child for  
17 adoption or relicensure after a break in licensure, the agency making the  
18 investigation shall obtain a criminal history search from the records maintained by  
19 the department of justice and request under 42 USC 16962 (b) a fingerprint-based  
20 check of the national crime information databases, as defined in 28 USC 534 (f) (3)  
21 (A), with respect to the petitioner. The agency may release any information obtained  
22 under this subdivision only as permitted under 42 USC 16962 (e). In the case of a  
23 child on whose behalf adoption assistance payments will be provided under s. 48.975,  
24 if the petitioner has been convicted of any of the offenses specified in s. 48.685 (5) (bm)  
25 1. to 4., the agency may not report that the petitioner's home is suitable for the child.

1           2. If the petitioner was required to obtain a license to operate a foster home or  
2 treatment foster home before placement of the child for adoption, the agency making  
3 the investigation shall obtain information maintained by the department regarding  
4 any substantiated reports of child abuse or neglect against the petitioner and any  
5 other adult residing in the petitioner's home. If the petitioner or other adult residing  
6 in the petitioner's home is not, or at any time within the 5 years preceding the date  
7 of the search has not been, a resident of this state, the agency shall check any child  
8 abuse or neglect registry maintained by any state or other U.S. jurisdiction in which  
9 the petitioner or other adult is a resident or was a resident within those 5 years for  
10 information that is equivalent to the information maintained by the department  
11 regarding substantiated reports of child abuse or neglect. The agency may not use  
12 any information obtained under this subdivision for any purpose other than a  
13 background search under this subdivision.

14           **SECTION 11.** 48.981 (3) (c) 8. of the statutes is amended to read:

15           48.981 (3) (c) 8. Using the format prescribed by the department, each county  
16 department shall provide the department with information about each report that  
17 the county department receives or that is received by a licensed child welfare agency  
18 that is under contract with the county department and about each investigation that  
19 the county department or a licensed child welfare agency under contract with the  
20 county department conducts. Using the format prescribed by the department, a  
21 licensed child welfare agency under contract with the department shall provide the  
22 department with information about each report that the child welfare agency  
23 receives and about each investigation that the child welfare agency conducts. ~~This~~  
24 ~~information shall be used by the~~ The department shall use the information to  
25 monitor services provided by county departments or licensed child welfare agencies

1 under contract with county departments or the department. The department shall  
2 use nonidentifying information to maintain statewide statistics on child abuse and  
3 neglect and on unborn child abuse, and for planning and policy development  
4 purposes.

5 **SECTION 9321. Initial applicability; Health and Family Services.**

6 (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES. The treatment of  
7 sections 48.685 (1) (bg) and (d), (2) (b) 1. (intro.) and (c), (3) (a) and (b), (4m) (b) (intro.),  
8 and (5) (a) and (bm) (intro.), and 48.88 (2) (am) of the statutes first applies to a person  
9 who applies for a license to operate a foster home or treatment foster home or for an  
10 investigation of a proposed adoptive home on the effective date of this subsection.

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

12 (1) BACKGROUND CHECKS OF FOSTER AND ADOPTIVE HOMES AND CHILD ABUSE AND  
13 NEGLECT APPEALS. The treatment of sections 48.685 (1) (bg) and (d), (2) (b) 1. (intro.)  
14 and (c), (3) (a) and (b), (4m) (b) (intro.), and (5) (a) and (bm) (intro.), 48.88 (2) (am),  
15 and 48.981 (3) (c) 8. of the statutes takes effect on January 1, 2008.

16 (END)