

<h1>ACF</h1> <p>Administration for Children and Families</p>	U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES Administration on Children, Youth and Families	
	<b>1. Log No:</b> ACYF-CB-IM-06-04	<b>2. Issuance Date:</b> September 1, 2006
	<b>3. Originating Office:</b> Children's Bureau	
	<b>4. Key Words:</b> Criminal Background Checks; Child Abuse and Neglect National Registry; Foster and Adoptive Parents	

**INFORMATION MEMORANDUM**

**TO:** State, Tribal and Territorial Agencies Administering or Supervising the Administration of Title IV-E of the Social Security Act, Indian Tribes and Indian Tribal Organizations

**SUBJECT:** **NEW LEGISLATION:** The Adam Walsh Child Protection and Safety Act of 2006 (Public Law (P.L.) 109-248)

**REFERENCES:** Title IV-E of the Social Security Act (the Act); P.L. 109-248

**PURPOSE:** This is to inform State, Tribal and Territorial Title IV-B and IV-E agencies of the enactment of the Adam Walsh Child Protection and Safety Act of 2006 and provide basic information about the provisions of this law.

**INFORMATION:** The President signed the Adam Walsh Child Protection and Safety Act of 2006 into law on July 27, 2006. Among other things, the new law: 1) amends the Title IV-E background check requirements; 2) makes information in the National Crime Information Databases (NCID) available to government agencies when investigating child abuse or neglect; 3) requires the Attorney General to conduct fingerprint-based checks of the NCID for child welfare agencies for certain purposes; and 4) requires the U.S. Department of Health and Human Services (HHS) to establish a national registry of substantiated cases of child abuse and neglect.

We discuss the major child welfare provisions in more detail below:

### *Title IV-E Criminal Background Check Amendments (Section 152)*

P.L. 109-248 amends Section 471(a)(20) of the Act in several ways with regard to the background checks for prospective foster and adoptive parents:

- States must have procedures for conducting fingerprint-based checks of the NCID for all prospective foster and adoptive parents (Section 471(a)(20)(A) of the Act as amended);
- States must check any child abuse and neglect registry in each State the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years. These checks must be made regardless of whether Title IV-E foster care maintenance payments or adoption assistance payments are to be made on behalf of the child (new Section 471(a)(20)(C)(i) of the Act); and
- States must have safeguards in place to: 1) prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State; 2) prohibit the State from sharing the information obtained from the registry pursuant to the foster and adoptive parent check requirement for any other purpose; and 3) comply with child abuse and neglect registry check requests made by other States (new Section 471(a)(20)(C)(ii) and (iii) of the Act).

### *Effective Dates of the Title IV-E Provisions*

- States that opted out of the criminal record check requirements in Section 471(a)(20) of the Act, prior to September 30, 2005, have until October 1, 2008, to have a procedure for criminal record checks, including fingerprint-based checks of the NCID. All other States must comply with the criminal record check requirements as amended effective October 1, 2006, unless the exception below applies.
- All States must comply with the child abuse and neglect registry check requirements in Section 471(a)(20)(C) of the Act effective October 1, 2006, unless the exception below applies.
- Exception: If the Secretary of HHS determines that State legislation is required before changes can be made to a Title IV-E State plan to comply with the amendments to Section 471 of the Act, the State will be afforded a specific time frame to comply. The statutory time frame is linked to that State's regular legislative session.

*HHS to Create a National Child Abuse and Neglect Registry (Section 633)*

- P.L. 109-248 requires HHS to create an electronic national registry of substantiated cases of child abuse and neglect in consultation with the Attorney General. The national registry is to contain case-specific identifying information that is limited to the name of the perpetrator and the nature of the substantiated case of child abuse and neglect.
- The data needed to maintain this national registry will be supplied to HHS by the States, Indian Tribes, or at the option of a State, by political subdivisions of the State.
- The law authorizes \$500,000 to be appropriated to HHS for Federal fiscal years 2006 and 2007 to conduct a study to address specific issues related to the creation of an electronic national registry of substantiated cases of child abuse and neglect.

*Access to National Crime Information Databases (Sections 152 and 153)*

- The Attorney General is now required to conduct fingerprint-based checks of the NCID for “child welfare agencies”<sup>1</sup> pursuant to a request submitted for the purpose of: 1) an investigation relating to child abuse or neglect; and 2) a criminal background check required under Section 471(a)(20) of the Act. The Attorney General must conduct such checks upon request from the chief executive officer of a State.
- The Attorney General shall ensure access to the NCID by governmental social service agencies with child protection responsibilities, to be used by such agencies only in investigating or responding to reports of child abuse, neglect, or exploitation. However, access to the NCID will be limited to personnel who meet security and training standards established by the Attorney General.

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<sup>1</sup> Section 153(g)(1) and (2) of P.L. 109-248 defines child welfare agency as “the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act” and “any other public agency, or any other private agency under contract with the State or local agency responsible for administering the plan under part B or part E of title IV of the Social Security Act, that is responsible for the licensing or approval of foster or adoptive parents.”

**EFFECTIVE**

**DATE:** See the section titled “Effective Dates of the Title IV-E Provisions.”  
Other child welfare related provisions summarized herein are effective  
upon enactment, July 27, 2006.

**INQUIRIES TO:** Regional Administrators, ACF Regions I-X

/s/

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Joan E. Ohl  
Commissioner  
Administration on Children,  
Youth and Families

Attachment

1 ~~(4) perform such other functions as the Attorney~~  
2 ~~General may delegate.~~

3 **Subtitle C—Access to Information**  
4 **and Resources Needed To En-**  
5 **sure That Children Are Not At-**  
6 **tacked or Abused**

7 **SEC. 151. ACCESS TO NATIONAL CRIME INFORMATION**  
8 **DATABASES.**

9 (a) *IN GENERAL.*—Notwithstanding any other provi-  
10 sion of law, the Attorney General shall ensure access to the  
11 national crime information databases (as defined in section  
12 534 of title 28, United States Code) by—

13 (1) *the National Center for Missing and Ex-*  
14 *ploited Children, to be used only within the scope of*  
15 *the Center’s duties and responsibilities under Federal*  
16 *law to assist or support law enforcement agencies in*  
17 *administration of criminal justice functions; and*

18 (2) *governmental social service agencies with*  
19 *child protection responsibilities, to be used by such*  
20 *agencies only in investigating or responding to re-*  
21 *ports of child abuse, neglect, or exploitation.*

22 (b) *CONDITIONS OF ACCESS.*—The access provided  
23 under this section, and associated rules of dissemination,  
24 shall be—

25 (1) *defined by the Attorney General; and*

1           (2) *limited to personnel of the Center or such*  
 2           *agencies that have met all requirements set by the At-*  
 3           *torney General, including training, certification, and*  
 4           *background screening.*

5 **SEC. 152. REQUIREMENT TO COMPLETE BACKGROUND**

6           **CHECKS BEFORE APPROVAL OF ANY FOSTER**  
 7           **OR ADOPTIVE PLACEMENT AND TO CHECK**  
 8           **NATIONAL CRIME INFORMATION DATABASES**  
 9           **AND STATE CHILD ABUSE REGISTRIES; SUS-**  
 10          **PENSION AND SUBSEQUENT ELIMINATION OF**  
 11          **OPT-OUT.**

12          (a) *REQUIREMENT TO COMPLETE BACKGROUND*  
 13          *CHECKS BEFORE APPROVAL OF ANY FOSTER OR ADOPTIVE*  
 14          *PLACEMENT AND TO CHECK NATIONAL CRIME INFORMA-*  
 15          *TION DATABASES AND STATE CHILD ABUSE REGISTRIES;*  
 16          *SUSPENSION OF OPT-OUT.—*

17               (1) *REQUIREMENT TO CHECK NATIONAL CRIME*  
 18               *INFORMATION DATABASES AND STATE CHILD ABUSE*  
 19               *REGISTRIES.—Section 471(a)(20) of the Social Secu-*  
 20               *rity Act (42 U.S.C. 671(a)(20)) is amended—*

21                       (A) *in subparagraph (A)—*

22                               (i) *in the matter preceding clause*

23                               (I)—

24   (I) *by inserting “, including fin-*  
 25   *gerprint-based checks of national crime*

1            *information databases (as defined in*  
2            *section 534(e)(3)(A) of title 28, United*  
3            *States Code),” after “criminal records*  
4            *checks”; and*

5            (II) *by striking “on whose behalf*  
6            *foster care maintenance payments or*  
7            *adoption assistance payments are to be*  
8            *made” and inserting “regardless of*  
9            *whether foster care maintenance pay-*  
10           *ments or adoption assistance payments*  
11           *are to be made on behalf of the child”;*  
12           *and*

13           (ii) *in each of clauses (i) and (ii), by*  
14           *inserting “involving a child on whose behalf*  
15           *such payments are to be so made” after “in*  
16           *any case”; and*

17           (B) *by adding at the end the following:*

18           “(C) *provides that the State shall—*

19                  *“(i) check any child abuse and neglect reg-*  
20                  *istry maintained by the State for information on*  
21                  *any prospective foster or adoptive parent and on*  
22                  *any other adult living in the home of such a pro-*  
23                  *spective parent, and request any other State in*  
24                  *which any such prospective parent or other adult*  
25                  *has resided in the preceding 5 years, to enable*

1           *the State to check any child abuse and neglect*  
2           *registry maintained by such other State for such*  
3           *information, before the prospective foster or*  
4           *adoptive parent may be finally approved for*  
5           *placement of a child, regardless of whether foster*  
6           *care maintenance payments or adoption assist-*  
7           *ance payments are to be made on behalf of the*  
8           *child under the State plan under this part;*

9           *“(ii) comply with any request described in*  
10          *clause (i) that is received from another State;*  
11          *and*

12          *“(iii) have in place safeguards to prevent*  
13          *the unauthorized disclosure of information in*  
14          *any child abuse and neglect registry maintained*  
15          *by the State, and to prevent any such informa-*  
16          *tion obtained pursuant to this subparagraph*  
17          *from being used for a purpose other than the*  
18          *conducting of background checks in foster or*  
19          *adoptive placement cases;”.*

20          (2)    *SUSPENSION OF OPT-OUT.—Section*  
21          *471(a)(20)(B) of such Act (42 U.S.C. 671(a)(20)(B))*  
22          *is amended—*

23                *(A) by inserting “, on or before September*  
24                *30, 2005,” after “plan if”; and*

1                   (B) by inserting “, on or before such date,”  
2                   after “or if”.

3           (b) *ELIMINATION OF OPT-OUT.*—Section 471(a)(20) of  
4 such Act (42 U.S.C. 671(a)(20)), as amended by subsection  
5 (a) of this section, is amended—

6           (1) in subparagraph (A), in the matter preceding  
7 clause (i), by striking “unless an election provided for  
8 in subparagraph (B) is made with respect to the  
9 State,”; and

10           (2) by striking subparagraph (B) and redesignig-  
11 nating subparagraph (C) as subparagraph (B).

12           (c) *EFFECTIVE DATE.*—

13           (1) *GENERAL.*—The amendments made by sub-  
14 section (a) shall take effect on October 1, 2006, and  
15 shall apply with respect to payments under part E of  
16 title IV of the Social Security Act for calendar quar-  
17 ters beginning on or after such date, without regard  
18 to whether regulations to implement the amendments  
19 are promulgated by such date.

20           (2) *ELIMINATION OF OPT-OUT.*—The amend-  
21 ments made by subsection (b) shall take effect on Oc-  
22 tober 1, 2008, and shall apply with respect to pay-  
23 ments under part E of title IV of the Social Security  
24 Act for calendar quarters beginning on or after such

1       date, without regard to whether regulations to imple-  
2       ment the amendments are promulgated by such date.

3               (3) *DELAY PERMITTED IF STATE LEGISLATION*  
4       *REQUIRED.*—If the Secretary of Health and Human  
5       Services determines that State legislation (other than  
6       legislation appropriating funds) is required in order  
7       for a State plan under section 471 of the Social Secu-  
8       rity Act to meet the additional requirements imposed  
9       by the amendments made by a subsection of this sec-  
10      tion, the plan shall not be regarded as failing to meet  
11      any of the additional requirements before the first day  
12      of the first calendar quarter beginning after the first  
13      regular session of the State legislature that begins  
14      after the otherwise applicable effective date of the  
15      amendments. If the State has a 2-year legislative ses-  
16      sion, each year of the session is deemed to be a sepa-  
17      rate regular session of the State legislature.

18 **SEC. 153. SCHOOLS SAFE ACT.**

19       (a) *SHORT TITLE.*—This section may be cited as the  
20      “Schools Safely Acquiring Faculty Excellence Act of 2006”.

21       (b) *IN GENERAL.*—The Attorney General of the United  
22      States shall, upon request of the chief executive officer of  
23      a State, conduct fingerprint-based checks of the national  
24      crime information databases (as defined in section

1 534(f)(3)(A) of title 28, United States Code as redesignated  
2 under subsection (e)) pursuant to a request submitted by—

3 (1) a child welfare agency for the purpose of—

4 (A) conducting a background check required  
5 under section 471(a)(20) of the Social Security  
6 Act on individuals under consideration as pro-  
7 spective foster or adoptive parents; or

8 (B) an investigation relating to an incident  
9 of abuse or neglect of a minor; or

10 (2) a private or public elementary school, a pri-  
11 vate or public secondary school, a local educational  
12 agency, or State educational agency in that State, on  
13 individuals employed by, under consideration for em-  
14 ployment by, or otherwise in a position in which the  
15 individual would work with or around children in the  
16 school or agency.

17 (c) *FINGERPRINT-BASED CHECK*.—Where possible, the  
18 check shall include a fingerprint-based check of State crimi-  
19 nal history databases.

20 (d) *FEES*.—The Attorney General and the States may  
21 charge any applicable fees for the checks.

22 (e) *PROTECTION OF INFORMATION*.—An individual  
23 having information derived as a result of a check under  
24 subsection (b) may release that information only to appro-  
25 priate officers of child welfare agencies, public or private

1 *elementary or secondary schools, or educational agencies or*  
2 *other persons authorized by law to receive that information.*

3 (f) *CRIMINAL PENALTIES.—An individual who know-*  
4 *ingly exceeds the authority in subsection (b), or knowingly*  
5 *releases information in violation of subsection (e), shall be*  
6 *imprisoned not more than 10 years or fined under title 18,*  
7 *United States Code, or both.*

8 (g) *CHILD WELFARE AGENCY DEFINED.—In this sec-*  
9 *tion, the term “child welfare agency” means—*

10 (1) *the State or local agency responsible for ad-*  
11 *ministering the plan under part B or part E of title*  
12 *IV of the Social Security Act; and*

13 (2) *any other public agency, or any other private*  
14 *agency under contract with the State or local agency*  
15 *responsible for administering the plan under part B*  
16 *or part E of title IV of the Social Security Act, that*  
17 *is responsible for the licensing or approval of foster*  
18 *or adoptive parents.*

19 (h) *DEFINITION OF EDUCATION TERMS.—In this sec-*  
20 *tion, the terms “elementary school”, “local educational*  
21 *agency”, “secondary school”, and “State educational agen-*  
22 *cy” have the meanings given to those terms in section 9101*  
23 *of the Elementary and Secondary Education Act of 1965*  
24 *(20 U.S.C. 7801).*

1       (i) *TECHNICAL CORRECTION.*—Section 534 of title 28,  
2 *United States Code*, is amended by redesignating the second  
3 *subsection (e) as subsection (f).*

4 ~~**SEC. 154. MISSING CHILD REPORTING REQUIREMENTS.**~~

5       ~~(a) *IN GENERAL.*—Section 3702 of the *Crime Control*  
6 *Act of 1990 (42 U.S.C. 5780) is amended—*~~

7             ~~(1) *by redesignating paragraphs (2) and (3) as*  
8 *paragraphs (3) and (4), respectively;*~~

9             ~~(2) *by inserting after paragraph (1) the fol-*  
10 *lowing:*~~

11             ~~“(2) *ensure that no law enforcement agency*  
12 *within the State establishes or maintains any policy*  
13 *that requires the removal of a missing person entry*  
14 *from its State law enforcement system or the National*  
15 *Crime Information Center computer database based*  
16 *solely on the age of the person, and”;* and~~

17             ~~(3) *in paragraph (3), as redesignated, by strik-*  
18 *ing “immediately” and inserting “within 2 hours of*  
19 *receipt”.*~~

20       ~~(b) *DEFINITIONS.*—Section 403(1) of the *Comprehen-*  
21 *sive Crime Control Act of 1984 (42 U.S.C. 5772) is amend-*  
22 *ed by striking “if” through subparagraph (B) and inserting*  
23 *a semicolon.*~~

1 ~~(1) \$3,000,000 for fiscal year 2007;~~

2 ~~(2) \$5,000,000 for fiscal year 2008; and~~

3 ~~(3) \$8,000,000 for fiscal year 2009.~~

4 ~~(d) OTHER EXISTING APPLICABLE LAW. Nothing in~~  
5 ~~this section shall be construed to limit any existing author-~~  
6 ~~ity under any other provision of Federal or State law for~~  
7 ~~law enforcement agencies to locate or apprehend fugitives~~  
8 ~~through task forces or any other means.~~

9 **SEC. 633. NATIONAL REGISTRY OF SUBSTANTIATED CASES**  
10 **OF CHILD ABUSE.**

11 (a) *IN GENERAL.*—The Secretary of Health and  
12 Human Services, in consultation with the Attorney Gen-  
13 eral, shall create a national registry of substantiated cases  
14 of child abuse or neglect.

15 (b) *INFORMATION.*—

16 (1) *COLLECTION.*—The information in the reg-  
17 istry described in subsection (a) shall be supplied by  
18 States and Indian tribes, or, at the option of a State,  
19 by political subdivisions of such State, to the Sec-  
20 retary of Health and Human Services.

21 (2) *TYPE OF INFORMATION.*—The registry de-  
22 scribed in subsection (a) shall collect in a central elec-  
23 tronic registry information on persons reported to a  
24 State, Indian tribe, or political subdivision of a State

1 *as perpetrators of a substantiated case of child abuse*  
2 *or neglect.*

3 *(c) SCOPE OF INFORMATION.—*

4 *(1) IN GENERAL.—*

5 *(A) TREATMENT OF REPORTS.—The infor-*  
6 *mation to be provided to the Secretary of Health*  
7 *and Human Services under this section shall re-*  
8 *late to substantiated reports of child abuse or ne-*  
9 *glect.*

10 *(B) EXCEPTION.—If a State, Indian tribe,*  
11 *or political subdivision of a State has an elec-*  
12 *tronic register of cases of child abuse or neglect*  
13 *equivalent to the registry established under this*  
14 *section that it maintains pursuant to a require-*  
15 *ment or authorization under any other provision*  
16 *of law, the information provided to the Secretary*  
17 *of Health and Human Services under this sec-*  
18 *tion shall be coextensive with that in such reg-*  
19 *ister.*

20 *(2) FORM.—Information provided to the Sec-*  
21 *retary of Health and Human Services under this*  
22 *section—*

23 *(A) shall be in a standardized electronic*  
24 *form determined by the Secretary of Health and*  
25 *Human Services; and*

1           (B) shall contain case-specific identifying  
2           information that is limited to the name of the  
3           perpetrator and the nature of the substantiated  
4           case of child abuse or neglect, and that complies  
5           with clauses (viii) and (ix) of section  
6           106(b)(2)(A) of the Child Abuse Prevention and  
7           Treatment Act (42 U.S.C. 5106(b)(2)(A) (viii)  
8           and (ix)).

9           (d) CONSTRUCTION.—This section shall not be con-  
10          strued to require a State, Indian tribe, or political subdivi-  
11          sion of a State to modify—

12           (1) an equivalent register of cases of child abuse  
13          or neglect that it maintains pursuant to a require-  
14          ment or authorization under any other provision of  
15          law; or

16           (2) any other record relating to child abuse or  
17          neglect, regardless of whether the report of abuse or  
18          neglect was substantiated, unsubstantiated, or deter-  
19          mined to be unfounded.

20           (e) ACCESSIBILITY.—Information contained in the na-  
21          tional registry shall only be accessible to any Federal, State,  
22          Indian tribe, or local government entity, or any agent of  
23          such entities, that has a need for such information in order  
24          to carry out its responsibilities under law to protect chil-  
25          dren from child abuse and neglect.

1       (f) *DISSEMINATION.*—*The Secretary of Health and*  
2 *Human Services shall establish standards for the dissemi-*  
3 *nation of information in the national registry of substan-*  
4 *tiated cases of child abuse or neglect. Such standards shall*  
5 *comply with clauses (viii) and (ix) of section 106(b)(2)(A)*  
6 *of the Child Abuse Prevention and Treatment Act (42*  
7 *U.S.C. 5106(b)(2)(A) (viii) and (ix)).*

8       (g) *STUDY.*—

9           (1) *IN GENERAL.*—*The Secretary of Health and*  
10 *Human Services shall conduct a study on the feasi-*  
11 *bility of establishing data collection standards for a*  
12 *national child abuse and neglect registry with rec-*  
13 *ommendations and findings concerning—*

14                   (A) *costs and benefits of such data collection*  
15 *standards;*

16                   (B) *data collection standards currently em-*  
17 *ployed by each State, Indian tribe, or political*  
18 *subdivision of a State;*

19                   (C) *data collection standards that should be*  
20 *considered to establish a model of promising*  
21 *practices; and*

22                   (D) *a due process procedure for a national*  
23 *registry*

24           (2) *REPORT.*—*Not later than 1 year after the*  
25 *date of enactment of this Act, the Secretary of Home-*

1     *land Security shall submit to the Committees on the*  
2     *Judiciary in the House of Representatives and the*  
3     *United States Senate and the Senate Committee on*  
4     *Health, Education, Labor and Pensions and the*  
5     *House Committee on Education and the Workforce a*  
6     *report containing the recommendations and findings*  
7     *of the study on data collection standards for a na-*  
8     *tional child abuse registry authorized under this sub-*  
9     *section.*

10           (3) *AUTHORIZATION OF APPROPRIATIONS.—*  
11     *There is authorized to be appropriated \$500,000 for*  
12     *the period of fiscal years 2006 and 2007 to carry out*  
13     *the study required by this subsection.*

14 ~~SEC. 634. COMPREHENSIVE EXAMINATION OF SEX OF~~  
15 ~~FENDER ISSUES.~~

16 ~~(a) IN GENERAL. The National Institute of Justice~~  
17 ~~shall conduct a comprehensive study to examine the control,~~  
18 ~~prosecution, treatment, and monitoring of sex offenders,~~  
19 ~~with a particular focus on—~~

20 ~~(1) the effectiveness of the Sex Offender Registra-~~  
21 ~~tion and Notification Act in increasing compliance~~  
22 ~~with sex offender registration and notification re-~~  
23 ~~quirements, and the costs and burdens associated with~~  
24 ~~such compliance,~~