

# **LEGISLATIVE RESEARCH UNIT**

---

PATRICK D. O'GRADY, EXECUTIVE DIRECTOR

September 4, 2008

## **BACKGROUND CHECKS OF PROSPECTIVE ADOPTIVE OR FOSTER PARENTS**

You asked us about policies of Illinois and other states on background checks of prospective adoptive and foster parents. You specifically asked whether any state bans sex offenders from becoming adoptive or foster parents. In a followup conversation, you said we could limit our research to placement of children in the custody of the Department of Children and Family Services (DCFS).

All states require criminal background checks of prospective foster and adoptive parents. Some states, including Illinois, also require child abuse and neglect registry checks. Illinois checks its sex offender registry, and bars a person convicted of a sex crime from getting a foster family home license. Our findings are described below.

### **Federal Laws**

Several federal laws starting in 1972 have had significant effects on state child protection and child welfare services.<sup>1</sup> Since the most recent one, in 2006, has the most extensive provisions, we will describe it before moving on to Illinois laws.

**LRU**

## Adam Walsh Child Protection and Safety Act of 2006

This Act<sup>2</sup> will require, beginning October 1, 2008, that every state (as a condition of getting federal payments for foster care maintenance or adoption assistance) do a fingerprint-based check of the national crime information databases on all prospective foster and adoptive parents before licensing, or approving the placement of a child in, a foster or adoptive home, whether or not foster care maintenance payments or adoption assistance payments are made on behalf of the child.<sup>3</sup> The Act eliminates a provision<sup>4</sup> that had allowed states to opt out of a federal requirement for background checks by September 30, 2005. Nine states (not including Illinois) did so. To continue getting those federal funds, they will need to change their procedures to provide for such background checks.<sup>5</sup>

The Act also requires state child abuse registry checks for all adults living in the home of a prospective foster or adoptive parent. The checks must examine registries of the state in which they live and any other state in which they lived in the last 5 years.<sup>6</sup> This requirement has applied to all prospective foster and adoptive families since October 2006.<sup>7</sup> It also requires states to have "safeguards" (not specified) to prevent use of information obtained from child abuse and neglect registry checks for any other purpose.<sup>8</sup>

### Illinois Laws and Procedures

The Child Care Act of 1969 requires a foster care license from DCFS to become a foster parent or to operate a foster family home.<sup>9</sup> (DCFS regulations require an adoptive home to be licensed as a foster family home before an unrelated child can be placed for adoption.<sup>10</sup>) The Act also states requirements for a prospective foster family home to be licensed.<sup>11</sup> An application to operate a foster family home must include, at a minimum:

- a completed form;
- written authorization by the applicant and all adult members of the applicant's household to conduct a criminal background investigation;
- a medical report on forms prescribed by DCFS that the applicant and all members of the household are free from communicable diseases or physical and mental conditions affecting their ability to provide care for the child or children;
- the names and addresses of at least three persons not related to the applicant who can attest to the applicant's moral character; and

- fingerprints submitted by the applicant and all adult members of the applicant's household.<sup>12</sup>

The Children and Family Services Act,<sup>13</sup> as amended in 2007,<sup>14</sup> requires DCFS to conduct a criminal records background check of each prospective foster or adoptive parent, including fingerprint-based checks of the national crime information databases, before giving final approval to place the child. DCFS may not give such approval if the check shows that a prospective foster or adoptive parent has a felony conviction for child abuse or neglect, spousal abuse, a crime against children, or a crime involving violence (including rape,<sup>15</sup> sexual assault, and homicide, but not other assaults or batteries); or a felony conviction for a physical assault, battery, or a drug-related crime committed in the last 5 years. DCFS must also check for reports on every adult living in the home in its child abuse and neglect registry, and the registry of any other state in which such an adult lived in the last 5 years—although the Act does not bar persons having such reports from becoming foster or adoptive parents.

The Act authorizes DCFS to obtain criminal history record information as defined in the Illinois Uniform Conviction Information Act.<sup>16</sup> That Act distinguishes between (1) conviction information and (2) criminal history record information. It defines criminal history record information as all individually identifiable descriptions or notations of arrests, detentions, indictments, informations, pretrial proceedings, trials, and other formal events in the criminal justice system (including criminal violations of municipal ordinances), and their dispositions.<sup>17</sup>

The Child Care Act of 1969 also mandates fingerprint-based checks of both state and FBI criminal history records databases. Beginning January 1, 2004 a new applicant (including an applicant for license renewal) cannot operate, or be licensed to operate, a foster family care home, and no adult may reside in a licensed home, who has been convicted of any of numerous crimes listed in the Act.<sup>18</sup> DCFS regulations further require that all members of the household who are 13 or older, except foster children, successfully complete a criminal records background check.<sup>19</sup>

The 1969 Act has a long list of crimes that disqualify a person from becoming a foster parent.<sup>20</sup> DCFS keeps a list of the crimes that will automatically cause a rejection of an application for a license. We enclose a copy of this document, which DCFS calls the "Bar List."

A person convicted of any of numerous sex crimes is disqualified from becoming a foster parent. DCFS regulations list the following sex crimes that automatically disqualify a person as a foster or adoptive parent:

Indecent solicitation of a child  
 Indecent solicitation of an adult  
 Public indecency  
 Sexual exploitation of a child  
 Custodial sexual assault  
 Sexual relations within families  
 Prostitution  
 Soliciting for a prostitute  
 Soliciting for a juvenile prostitute  
 Solicitation of a sexual act  
 Pandering  
 Keeping a place of prostitution  
 Keeping a place of juvenile prostitution  
 Patronizing a prostitute  
 Patronizing a juvenile prostitute  
 Pimping  
 Juvenile pimping  
 Exploitation of a child  
 Obscenity  
 Child pornography  
 Harmful material  
 Tie-in sales of obscene publication to distributors  
 Posting of identifying information on a pornographic Internet site

The regulations also list some sex crimes as automatic bars to a foster care license: criminal sexual assault, aggravated criminal sexual assault, and predatory criminal sexual assault of a child. We enclose the entire list.

The Child Care Act of 1969 also bars licensing, or employment in a licensed facility for child care, of any person who has been declared a sexually dangerous person under the Sexually Dangerous Persons Act.<sup>21</sup>

Thus Illinois has four lists of crimes that automatically disqualify a person from getting a foster family care license:

- Subsection 4.2(b) of the Child Care Act of 1969.<sup>22</sup>
- Subsection 5(v-1) of the Children and Family Services Act.<sup>23</sup>
- DCFS regulations in 89 Ill. Adm. Code Part 402, Appendix A (enclosed).
- DCFS Bar List (enclosed).

## Child Abuse and Neglect Registry

The Child Care Act of 1969 also requires a check of the DCFS child abuse and neglect registry to learn whether an applicant for a foster care license is listed as a perpetrator in an "indicated" report of child abuse or neglect.<sup>24</sup> But the Act does not prohibit persons so listed from becoming adoptive or foster parents.

## Sex Offender Registry

DCFS regulations bar anyone listed in the Illinois Sex Offender Registry, or convicted of any of a long list of crimes in Illinois or similar crimes in another state, from getting a foster care license.<sup>25</sup> (The Registry, maintained by the Department of State Police, lists persons convicted of committing or attempting to commit felony sex crimes.<sup>26</sup>)

A sex offender registry search is done first in the Illinois Sex Offender Registry<sup>27</sup> and then on the Dru Sjodin National Sex Offender Public Website, which has links to all 50 states, D.C., Guam, and Puerto Rico.<sup>28</sup> This site is authorized by a 2006 federal law<sup>29</sup> and maintained by the U.S. Department of Justice.

Illinois requires sex offenders to register for 10 years after release from prison; or if not imprisoned, 10 years after conviction. A "sexual predator" as defined in the law,<sup>30</sup> and anyone found to be a sexually violent or sexually dangerous person, must register for life.<sup>31</sup>

## Summary

In Illinois, a foster family care license applicant must get three background checks:

- (1) A state and national fingerprint-based criminal history records information background check.
- (2) A check of the Illinois child abuse and neglect registry and of the child abuse and neglect registry check in each state where the prospective foster or adoptive parent or any other adult living in the home have resided in the last 5 years. (Being listed does not automatically bar an applicant from being licensed.)
- (3) A check of the Illinois Sex Offender Registry and the Dru Sjodin National Sex Offender Public Website.

## Other States

The Child Welfare Information Gateway of the U.S. Department of Health and Human Services in April 2008 issued the results of a survey of federal and state laws on background checks for foster and adoptive parents.<sup>32</sup> The state portion is posted at:

[http://www.childwelfare.gov/systemwide/laws\\_policies/state/index.cfm?event=stateStatutes.processSearch](http://www.childwelfare.gov/systemwide/laws_policies/state/index.cfm?event=stateStatutes.processSearch)

We also found an October 2002 report on this topic by the American Public Human Services Association (APHSA).<sup>33</sup> It showed considerable diversity among states in types of background checks required, and whether they use only names or also fingerprints. Of the 49 states participating (all except New Hampshire), 46 required state criminal background checks and 34 required national database checks. The types of background checks they required in 2002 can be summarized as follows:

| <i>Description</i>   | <i>States</i> |
|--|---------------|
| <u>National criminal records check required</u>                                  |               |
| All applicants were checked  | 20            |
| Only foster parent applicants were checked                                       | 1             |
| Only adoptive parent applicants were checked                                     | 2             |
| Applicants not meeting minimum state residency requirements were checked         | <u>11</u>     |
| <b>Total</b>   | <b>34</b>     |
| <u>State records check required</u><br>(for both foster and adoptive applicants) |               |
| Criminal records check required  | 46            |
| Child abuse and neglect registry check required                                  | 23            |
| Sex offender registry check required   | 4             |

Information on fingerprinting requirements for state criminal records checks was reported by 45 states. Of those, 25 required at least some applicants to provide fingerprints. Of those 25, 19 required fingerprinting as part of the state check of all foster and adoptive parent applicants. The remaining 20 states required only name-based checks.<sup>34</sup>

The results of the April 2008 survey by the Child Welfare Information Gateway can be summarized as follows:<sup>35</sup>

| <i>Description</i>  | <i>States</i> |
|---|---------------|
| <u>Foster parent applicants</u>   |               |
| State criminal records checked  | 50            |
| National criminal records checked   | 38            |
| Fingerprint-based checks required   | 38            |
| Child abuse and neglect records searched  | 40            |
| Sex-offender registries checked<br>(Illinois, Iowa, Nebraska, Oklahoma, South Carolina) | 5             |
| <u>Adoption applicants</u>  |               |
| State criminal records checked  | 48            |
| National criminal records checked   | 31            |
| Fingerprint-based checks required   | 31            |
| Child abuse and neglect records searched  | 37            |
| Sex-offender registries checked<br>(Alaska, Illinois, Oklahoma, South Carolina)         | 4             |

It is difficult to summarize states' laws on disqualifying sex offenders as foster or adoptive parents, in part because there is no agreed definition of "sex offender." Taken most broadly, it means any person who has been convicted of a sex crime; but there is a wide variety of such crimes, ranging in severity (in Illinois) from Class X felonies<sup>36</sup> to misdemeanors.<sup>37</sup>

As discussed above, Illinois has a long list of sex crimes that disqualify a person as a foster or adoptive parent. A 1997 federal law seeks to prevent any person convicted of a crime against a child (including child pornography), rape, or sexual assault from being a foster or adoptive parent—along with anyone convicted of felony child abuse or neglect. Illinois' Children and Family Services Act, as amended in 2007, similarly bars persons convicted of felony child abuse or neglect, or a felony "crime against children," among other types of crimes listed.<sup>38</sup>

An irrebuttable presumption that a person is unfit to be a foster or adoptive parent due to such convictions may violate the Due Process clause of the Illinois or U.S. Constitution. Lower courts of New York so held in two 1999 cases<sup>39</sup> which

were not appealed to that state's highest court. The Pennsylvania Commonwealth Court<sup>40</sup> in 2004 held that a lifetime ban on a convicted person's working in child care violated the Equal Protection clause of the Pennsylvania Constitution due to lack of a rational relation between the classification used and the legitimate governmental interest in protecting children.<sup>41</sup> (That case arose when a county human services caseworker was removed from his job for a 20-year old felony conviction for aggravated assault.) The Pennsylvania Supreme Court declined to review that decision.

We checked the states surrounding Illinois by land or water (Indiana, Iowa, Kentucky, Michigan, Missouri, and Wisconsin), and found some variation in which sex offenders can be foster or adoptive parents.

#### Indiana

A person convicted of any felony, or of a misdemeanor related to the health and safety of a child, may not become a foster parent<sup>42</sup> or adopt a child.<sup>43</sup>

#### Iowa

Anyone convicted of the following offenses is barred from becoming a foster<sup>44</sup> or adoptive parent:<sup>45</sup>

- A drug-related offense within 5 years before application.
- Child endangerment, or neglect or abandonment of a dependent person.
- A crime against a child, including sexual exploitation of a minor.
- A forcible felony.

#### Kentucky

Persons convicted of sexual abuse or sexual exploitation of a child are barred from becoming foster and adoptive parents. Also barred is any applicant who has been found responsible for a child fatality related to abuse or neglect; was found to have abused or neglected a child in the 7 years before the application; or has had parental rights terminated.<sup>46</sup>



## Michigan

Children in Department of Human Services custody can be placed for adoption only by a licensed child-placing agency or the Department. A person wanting to adopt a child must have a pre-placement assessment prepared by the agency or DHS. The assessment must state whether the applicant has ever been the respondent in a domestic violence proceeding, or a proceeding concerning a child who was allegedly abused, dependent, deprived, neglected, abandoned, or delinquent, and the outcome of the proceeding; or has ever been convicted of a crime.<sup>47</sup> There is no list of crimes that automatically prevent adoption; the decision is at the discretion of DHS or the agency.

A DHS regulation says: "All persons, including minors, residing in the child care home shall be of good moral character and be suitable to assure the welfare of children."<sup>48</sup> A DHS publication says the term "suitable" as used there means that the child care home family, among other things, does not have a criminal or protective services history.<sup>49</sup> Another regulation prohibits issuing a license for a child care home to a person who lacks good moral character.<sup>50</sup> There is a rebuttable presumption that anyone convicted of any of a long list of crimes is not of good moral character.<sup>51</sup> They include criminal sexual conduct in any degree; activity for profit involving child abuse, neglect, or exploitation; and prostitution.<sup>52</sup> Applicants with such convictions can try to show at informal hearings that they are of good moral character.<sup>53</sup>

## Missouri

Prospective foster and adoptive parents who have been found to have committed harmful acts may be denied approval, but it is not automatic. The relevance of these findings to child-care responsibilities is determined in each case by the Department of Social Services' Division of Family Support.<sup>54</sup>

## Wisconsin

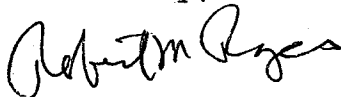
A person may not be licensed as a foster parent if:

- (1) convicted of a serious crime;
- (2) found to have abused or neglected a client, or to have misappropriated any client's property; or
- (3) determined to have abused or neglected a child.<sup>55</sup>

Like Illinois, Wisconsin requires that if a child is in state custody, any prospective adoptive parents get a foster parent license.<sup>56</sup>

We hope this information is helpful.

Sincerely,



Robert M. Rogers  
Staff Attorney

RMR:mf

#### Enclosures

1. DCFS "Bar List" (undated, provided by Nancy Wadsworth, Licensing Division).
2. 89 Ill. Adm. Code part 420, Appendix A.

#### Notes

1. Pub. L. 92-544, 86 Stat. 1109 (1972); Pub. L. 103-29, sec. 3, 107 Stat. 2491 (1993); Pub. L. 108-36, 117 Stat. 800 (2003); Pub. L. 105-89, 111 Stat. 2116 (1997); and Pub. L. 109-248, 120 Stat. 587 (2006).
2. Pub. L. 109-248, 120 Stat. 587 (2006); 42 U.S. Code subsec. 671(20).
3. 42 U.S. Code subsec. 671(a)(20)(A) (see note following sec. 671 describing change made by Pub. L. 109-248, effective October 1, 2008).
4. 42 U.S. Code subsec. 671(a)(20)(B).
5. Pub. L. 109-248, subsec. 151(c)(2) (2006).
6. 42 U.S. Code subsec. 671(a)(20)(C)(i).
7. Pub. L. 109-248, subsec. 152(c).
8. 42 U.S. Code subsec. 671(a)(20)(C)(iii).
9. 225 ILCS 10/3.
10. 89 Ill. Adm. Code sec. 402.28.
11. 225 ILCS 10/3.
12. 225 ILCS 10/4(b).
13. 20 ILCS 505/1 ff.
14. P.A. 95-10, sec. 2 (2007), adding subsections (v-1) and (v-2) to section 5 of the Children and Family Services Act (20 ILCS 505/5).
15. That term was formerly used for some of the actions now defined in 720 ILCS 5/12-13 to 5/12-16 (criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, and aggravated criminal sexual abuse).
16. 20 ILCS 505/5(v).
17. 20 ILCS 2635/3(G).
18. 225 ILCS 10/4.2(b-1).

19. 89 Ill. Adm. Code subsec. 412(j).
20. 225 ILCS 10/4.2.
21. 225 ILCS 10/4.2(b). The Sexually Dangerous Persons Act is in 725 ILCS 205/1.01 ff.
22. 225 ILCS 10/4.2(b).
23. 20 ILCS 505/5(v-1).
24. 225 ILCS 10/4.3.
25. 89 Ill. Adm. Code part 385, Appendix A, paragraph (a).
26. See 730 ILCS 150/3 and 89 Ill. Adm. Code sec. 385.20.
27. "Illinois Sex Offender Information: Offender Search" (downloaded August 14, 2008 from Department of State Police Internet site).
28. See Dru Sjodin National Sex Offender Public Website (<http://www.nsopr.gov/>).
29. Pub. L. 109-248, sec. 152 (2006).
30. 730 ILCS 150/2(E) defines a "sexual predator" as anyone who is (1) convicted of keeping a place of juvenile prostitution, juvenile pimping, exploitation of a child, child pornography, criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, aggravated criminal sexual abuse, or ritualized abuse of a child; (2) found to be sexually dangerous or sexually violent; or (3) convicted of a repeat offense that requires registration as a sex offender.
31. 730 ILCS 150/7.
32. Child Welfare Information Gateway, "Criminal Background Checks for Prospective Foster and Adoptive Parents: State Statute Series" (April 2008, downloaded from Child Welfare Information Gateway Internet site).
33. APHSA, "Understanding Criminal Records Checks" (Oct. 2002, downloaded from American Public Human Services Association Internet site).
34. "Understanding Criminal Records Checks at pp. 4-6.
35. "Criminal Background Checks for Prospective Foster and Adoptive Parents: State Statute Series."
36. An example is aggravated criminal sexual assault (720 ILCS 5/12-14(d)).
37. Some solicitation or patronizing sex offenses are Class A or B misdemeanors for a first offense unless there is a minor victim (see 720 ILCS 5/11-14, 5/11-14.1, 5/11-15, and 5/11-18).
38. 20 ILCS 505/5(v-1).
39. *In re Adoption of Jonee*, 695 N.Y.S.2d 920 (N.Y. Fam. Ct. 1999); *In re Adoption of Corey*, 707 N.Y.S.2d 767 (N.Y. Fam. Ct. 1999).
40. *Warren County Human Services v. State Civil Service Commission*, 844 A.2d 70 (2004), app. den. 581 Pa. 687, 863 A.2d 1152 (2004).

41. 844 A.2d at 74.
42. Ind. Code, subsecs. 31-27-4-5(c)(1) and (g)(1).
43. Indiana Department of Child Services, "Child Welfare Manual" (May 10, 2007), ch. 10, sec. 13.
44. Iowa Code, sec. 237.8, subd. 2. a. (4).
45. Iowa Code, sec. 600.8.
46. 922 Ky. Adm. Regs. 1:490, subsec. 2(3).
47. Mich. Comp. Laws, subsecs. 710.23f(5)(h) and (i).
48. Mich. Adm. Code, subsec. 400.1902(3).
49. Michigan Department of Human Services, Office of Children and Adult Licensing, "Licensing Rules for Family and Group Care Homes: Technical Assistance and Consultation" (Dec. 27, 2005), p. A-2, discussion of Mich Adm. Code, subsec. 400.1902(3) (downloaded from Department of Human Services Internet site).
50. Mich. Adm. Code, subsec. 400.1151(1).
51. Mich. Adm. Code, subsec. 400.1152(1).
52. Mich. Adm. Code, subsec. 400.1152(1)(d).
53. Mich. Adm. Code, subsec. 400.1152(3).
54. 13 Mo. Code of State Regs., subsec. 40-59.030(1)(B).
55. Wis. Stat., sec. 48.695.
56. Wis. Stat., sec. 48.88.