

STATE OF NEW YORK

7449

IN SENATE

April 4, 2008

Introduced by Sen. KRUGER -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the social services law and the domestic relations law, in relation to certification and approval of foster and adoptive parents who have been convicted of certain crimes; and to repeal section 20 of chapter 145 of the laws of 2000 amending the social services law, domestic relations law and chapter 7 of the laws of 1999 amending the social services law, the family court act and the domestic relations law relating to foster care placements, relating to the certification and approval of foster parents and adoptive parents who have been convicted of certain crimes, relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Paragraph (e) of subdivision 2 of section 378-a of the
2 social services law, as amended by chapter 145 of the laws of 2000, is
3 amended to read as follows:
4 (e) After reviewing any criminal history record information provided
5 by the division of criminal justice services, the office of children and
6 family services shall promptly notify the authorized agency or other
7 state agency that:
8 (1) Notwithstanding any other provision of law to the contrary, an
9 application for certification or approval of a prospective foster parent
10 or prospective adoptive parent shall be denied where a criminal history
11 record of the prospective foster parent or prospective adoptive parent
12 reveals a conviction for:
13 (A) a felony conviction at any time involving: (i) child abuse or
14 neglect; (ii) spousal abuse; (iii) a crime against a child, including
15 child pornography; or (iv) a crime involving violence, including rape,
16 sexual assault, or homicide, other than a crime involving physical
17 assault or battery; [~~unless the prospective foster parent or the~~
18 ~~prospective adoptive parent demonstrates that: (i) such denial will~~
19 ~~create an unreasonable risk of harm to the physical or mental health of~~

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD15322-01-8

1 ~~the child; and (ii) approval of the application will not place the~~
2 ~~child's safety in jeopardy and will be in the best interests of the~~
3 ~~child;] or~~
4 (B) a felony conviction within the past five years for physical
5 assault, battery, or a drug-related offense; [~~unless the prospective~~
6 ~~foster parent or the prospective adoptive parent demonstrates that: (i)~~
7 ~~such denial will create an unreasonable risk of harm to the physical or~~
8 ~~mental health of the child; and (ii) approval of the application will~~
9 ~~not place the child's safety in jeopardy and will be in the best inter-~~
10 ~~ests of the child;] or~~
11 (2) Notwithstanding any other provision of law to the contrary, a
12 final determination of an application for certification or approval of a
13 prospective foster parent or prospective adoptive parent shall be held
14 in abeyance whenever the criminal history record of the prospective
15 foster parent or prospective adoptive parent reveals:
16 (A) a charge for a crime set forth in subparagraph one of this para-
17 graph which has not been finally resolved; or
18 (B) a felony conviction that may be for a crime set forth in subpara-
19 graph one of this paragraph. An authorized agency may proceed with a
20 determination of such application, in a manner consistent with this
21 subdivision, only upon receiving subsequent notification from the office
22 of children and family services regarding the status of such charge or
23 the nature of such conviction; or
24 (3) an application for certification or approval of a prospective
25 foster parent or prospective adoptive parent may, consistent with the
26 provisions of article twenty-three-A of the correction law, be denied
27 where:
28 (A) a criminal history record of the prospective foster parent or
29 prospective adoptive parent reveals a charge or a conviction of a crime
30 other than one set forth in subparagraph one of this paragraph; or
31 (B) a criminal history record of any other person over the age of
32 eighteen who resides in the home of the prospective foster parent or
33 prospective adoptive parent reveals a charge or a conviction of any
34 crime; or
35 (4) Notwithstanding any other provision of law to the contrary, an
36 application for renewal of the certification or approval of a foster
37 parent submitted on or after October first, two thousand eight shall be
38 denied based on the conviction of the foster parent of a crime set forth
39 in subparagraph one of this paragraph[, ~~unless the foster parent demon-~~
40 ~~strates that: (A) such denial will create an unreasonable risk of harm~~
41 ~~to the physical or mental health of the child; and (B) renewal of the~~
42 ~~application will not place the child's safety in jeopardy and will be in~~
43 ~~the best interests of the child] where such conviction occurred on or
44 after October first, two thousand eight; or
45 (5) Notwithstanding any other provision of law to the contrary, the
46 certification or approval of a foster parent, or the approval of an
47 adoptive parent who has not completed the adoption process, shall be
48 revoked based on the conviction of the foster parent or the adoptive
49 parent of a crime set forth in subparagraph one of this paragraph[~~7~~
50 ~~unless the foster parent or the adoptive parent demonstrates that: (A)~~
51 ~~such revocation will create an unreasonable risk of harm to the physical~~
52 ~~or mental health of the child; and (B) continued certification or~~
53 ~~approval will not place the child's safety in jeopardy and will be in~~
54 ~~the best interests of the child]; or
55 (6) the prospective foster parent or prospective adoptive parent and
56 any person over the age of eighteen who is residing in the home of the~~~~

1 prospective foster parent or prospective adoptive parent has no criminal
2 history record.

3 § 2. Paragraph (b) of subdivision 3-a of section 115-d of the domestic
4 relations law, as amended by chapter 145 of the laws of 2000, is amended
5 to read as follows:

6 (b) Notwithstanding any other provision of law to the contrary, a
7 petition for certification as a qualified adoptive parent shall be
8 denied where a criminal history record of the applicant reveals a
9 conviction for (i) a felony conviction at any time involving: (1) child
10 abuse or neglect; (2) spousal abuse; (3) a crime against a child,
11 including child pornography; or (4) a crime involving violence, includ-
12 ing rape, sexual assault, or homicide, other than a crime involving
13 physical assault or battery; or (ii) a felony conviction within the past
14 five years for physical assault, battery, or a drug-related offense[
15 ~~unless the applicant demonstrates that: (A) such denial will create an~~
16 ~~unreasonable risk of harm to the physical or mental health of the child;~~
17 ~~and (B) certification of the applicant will not place the child's safety~~
18 ~~in jeopardy and will be in the best interests of the child].~~

19 § 3. Section 20 of chapter 145 of the laws of 2000 amending the social
20 services law, domestic relations law and chapter 7 of the laws of 1999
21 amending the social services law, the family court act and the domestic
22 relations law relating to foster care placements, relating to the
23 certification and approval of foster parents and adoptive parents who
24 have been convicted of certain crimes is REPEALED.

25 § 4. By enactment of this act, the legislature brings this state into
26 compliance with the provisions of section 471(a)(20)(A) of the federal
27 social security act, as amended by public law 109-248 which eliminated
28 the ability of the states to opt-out of criminal history record reviews
29 for prospective foster and adoptive parents effective October 1, 2008.

30 § 5. This act shall take effect on October 1, 2008. The provisions of
31 this act shall apply to any person with an application for certification
32 or approval as a foster parent or an adoptive parent that is pending on
33 October 1, 2008, and to any person who applies for certification or
34 approval as a foster parent or adoptive parent on or after October 1,
35 2008. The provisions of this act shall not apply to any person certified
36 or approved as a foster parent or adoptive parent prior to October 1,
37 2008, except with respect to any conviction or arrest of such certified
38 foster parent occurring on or after October 1, 2008. It is further
39 provided that effective immediately the office of children and family
40 services and the division of criminal justice services are hereby
41 authorized to promulgate rules and regulations on an emergency basis for
42 the purpose of implementing the provisions of this act.

**NEW YORK STATE SENATE
INTRODUCER'S MEMORANDUM IN SUPPORT
submitted in accordance with Senate Rule VI. Sec 1**

BILL NUMBER: S7449

SPONSOR: KRUGER

TITLE OF BILL: An act to amend the social services law and the domestic relations law, in relation to certification and approval of foster and adoptive parents who have been convicted of certain crimes; and to

repeal section 20 of chapter 145 of the laws of 2000 amending the social services law, domestic relations law and chapter 7 of the laws of 1999 amending the social services law, the family court act and the domestic relations law relating to foster care placements, relating to the certification and approval of foster parents and adoptive parents who have been convicted of certain crimes, relating thereto

PURPOSE: This bill would ensure compliance with federal requirements that states review the criminal history background of prospective foster and adoptive parents as a prerequisite for continuation of federal funding under Title IV-E of the federal Social Security Act after October 1, 2008.

SUMMARY OF PROVISIONS: Section 1 of the bill amends Social Services Law (SSL) § 378-a(2) pertaining to criminal history records checks to eliminate provisions enacted by Chapter 145 of the Laws of 2000 enabling a prospective foster or adoptive parent convicted of an enumerated felony offense to demonstrate that the denial of his or her application creates an unreasonable risk of harm to the physical or mental health of the subject child and that approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child.

Section 2 of the bill amends Domestic Relations Law § 115-d(3-a) pertaining to private adoptions to eliminate provisions enabling a prospective adoptive parent with a conviction for an enumerated felony offense to demonstrate that the denial of his or her application creates an unreasonable risk of harm to the physical or mental health of the subject child and that approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child.

Section 3 of the bill repeals section 20 of Chapter 145 of the Laws of 2000 which expressed the intent of New York State to make the federal criminal history record review requirement set forth in Title IV-E of the Social Security Act inapplicable to New York State as of July 1, 2000.

Section 4 of the bill expresses the intent of New York State to comply with Social Security Act (SSA) § 471(a)(20)(A) which eliminates the ability of a state to approve a prospective foster or adoptive parent convicted of an enumerated offense effective October 1, 2008.

Section 5 of the bill provides for an effective date of October 1, 2008, however enactment of the new criminal history record review requirements does not affect the certification, recertification or approval of any person as a foster or adoptive parent prior to October 1, 2008 or the status of any other person over the age of eighteen residing in the home prior to that date. However, a conviction or arrest for an enumerated felony by a current foster parent subsequent to the October 2008 effective date would be addressed in accordance with the provisions of the bill. In addition, section 5 provides emergency regulation authority as necessary to implement the statutory revisions

EXISTING LAW:

SSL § 378-a(2) provides for criminal history review of prospective

foster and adoptive parents and permits approval of the application of a prospective foster or adoptive parent convicted of a listed felony offense where the applicant demonstrates that the denial of his or her application creates an unreasonable risk of harm to the physical or mental health of the subject child and that approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child.

Public Law 109-248, also known as the Adam Walsh Child Protection and Safety Act of 2006, eliminated effective October 1, 2008, the ability of the states to receive federal Title IV-E payments while opting-out of criminal history reviews required by SSA § 471(a)(20)(A). SSA § 471(a)(20)(A)(i) prohibits final approval of a prospective foster or adoptive parent who has a felony conviction at any time for child abuse or neglect, for spousal abuse, for a crime against a child (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery. SSA § 471(a)(20)(A)(ii) prohibits final approval of a prospective foster or adoptive parent convicted of a felony within the past five years for physical assault, battery, or a drug-related offense.

LEGISLATIVE HISTORY: None.

STATEMENT IN SUPPORT: Public Law 109-248, known as the federal Adam Walsh Child Protection and Safety Act of 2006, ends the ability of states to opt-out of conducting the type of criminal history reviews for prospective foster and adoptive parents required by SSA § 471(a)(20)(A). In 2000, New York State exercised the then allowable option not to participate in that federal requirement for criminal history reviews. Although New York State conducts criminal history reviews of applicants to become foster or adoptive parents, New York currently permits approval of an applicant with an otherwise disqualifying criminal conviction where the applicant demonstrates that denial of the application would create an unreasonable risk of harm to the physical or mental health of the child and approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child. New York State no longer has the option to continue in this manner as compliance with SSA § 471(a)(20)(A) is a prerequisite for a state to receive federal Title IV-E funding as of October 1, 2008. This bill will eliminate the statutory provision that permits an applicant convicted of one of the crimes set forth in SSL § 378-a(2)(e)(1) to be approved as a foster or adoptive parent under the above-referenced circumstances.

New York must conform its laws with federally mandated provisions of Public Law 109-248 by October 1, 2008 in order to continue to be eligible for Title IV-E funding. By enacting this proposal, New York is discontinuing as of October 1, 2008, those provisions of Chapter 145 of the Laws of 2000 electing to opt-out of the federal criminal history review requirement as set forth in Title IV-E of the SSA. The federal requirement is not retroactive. Therefore, adoptions finalized prior to October 1, 2008 and adoptive parents approved prior to October 1, 2008 are not affected by the fact that New York is no longer able to opt-out of the criminal history review requirement. Similarly, foster parents with a potentially disqualifying criminal conviction who were certified or approved prior to October 1, 2008 are not affected by this legislation. However, if a certified or approved foster parent is convicted of a disqualifying felony on or after October 1, 2008, he or she may not continue as a foster parent.

BUDGET IMPLICATIONS: If New York State fails to enact the provisions set forth in this legislation by October 1, 2008, the State will likely face significant losses of the approximately 5600 million the State receives in federal Title IV-E funding.

EFFECTIVE DATE: This act takes effect on October 1, 2008.
