STATE OF NEW YORK

6681

IN SENATE

February 8, 2006

Introduced by Sens. WRIGHT, FLANAGAN, LEIBELL, MALTESE, MORAHAN, PADAVAN, RATH, SEWARD, SPANO, VOLKER -- 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, in relation to criminal background checks on prospective foster parents or adoptive parents and to limiting the disclosure of such information

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

Section 1. Paragraph (a) of subdivision 2 of section 378-a of the social services law, as added by chapter 7 of the laws of 1999, is amended to read as follows:

(a) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice services, an authorized agency, as defined in subdivision ten of section three hundred seventy-one of this article, shall perform a criminal history record check with the division of criminal justice services regarding any prospective foster parent or prospective adoptive parent and any person over the age of eighteen who is currently residing in the home of such prospective foster parent or prospective adoptive parent before the foster parent or adoptive parent is finally certified or approved for the placement of a child. Persons who are over the age of eighteen residing in the home of a certified or approved foster parent and who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the foster parent applies for renewal of his or her certification or approval as a foster parent. **The division of criminal justice services is authorized to submit fingerprints to the federal bureau of investigation for the purpose of a nationwide criminal history record check pursuant to and consistent with public law 92-544 to determine whether such prospective foster parent, prospective adoptive parent or person over the age of eighteen currently residing in the home of such prospective parent has a criminal history in any state or federal jurisdiction.** The provisions and procedures of

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

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this section, including the criminal history record check of persons over the age of eighteen who are currently residing in the home of the foster parent, also shall apply to prospective foster parents certified by the office of children and family services and to family homes certified by any other state agency where such family homes care for foster children in accordance with a memorandum of understanding with the office of children and family services.

§ 2. Paragraphs (f) and (g) of subdivision 2 of section 378-a of the social services law, as amended by chapter 145 of the laws of 2000, are amended to read as follows:

(f) [~~Any~~] **Except as otherwise set forth in this paragraph, any** notification by the office of children and family services pursuant to paragraph (e) of this subdivision shall include a summary of the criminal history record provided by the division of criminal justice services, including, but not limited to, the specific crime or crimes for which the prospective foster or adoptive parent or parents or any adults over the age of eighteen living in the home have been charged or convicted, as applicable. **When responding to an inquiry from a voluntary authorized agency or other non-public agency with respect to the results of a national criminal history check performed by the federal bureau of investigation, the office of children and family services shall advise the voluntary authorized agency or other non-public agency of the category or categories of crime or crimes and shall not provide the voluntary authorized agency or other non-public agency with the specific crime or crimes absent the written consent of the person for whom the national criminal history check was performed.**

(g) When an authorized agency has denied an application pursuant to paragraph (e) of this subdivision, the authorized agency shall provide to the applicant a written statement setting forth the reasons for such denial, including**, as authorized by paragraph (f) of this subdivision,** the summary of the criminal history record provided to the authorized agency by the office of children and family services. The authorized agency shall also provide a description of the division of criminal justice services' record review process and any remedial processes provided by the office of children and family services to any prospective foster parent or prospective adoptive parent. If the applicant is disqualified under item (ii) of clause (A) of subparagraph one of paragraph (e) of this subdivision, then the applicant may apply for relief from the mandatory disqualification based on the grounds that the offense was not spousal abuse as that term is defined in paragraph (j) of this subdivision.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law, provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.

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

BILL NUMBER: S6681

SPONSOR: WRIGHT

TITLE OF BILL: An act to amend the social services law, in relation to criminal background checks on prospective foster parents or adoptive parents and to limiting the disclosure of such information

PURPOSE:

The bill is to require the Division of Criminal Justice Services to include in the background check a request to the Federal Bureau of Investigation (FBI) for criminal information on all prospective foster parents or adoptive parents.

SUMMARY OF SPECIFIC PROVISIONS:

This bill amends the social services law by amending paragraph (a) of subdivision 2 of section 378-a to require the Division of Criminal Justice Services (DCJS) to include in the background check a request to the Federal Bureau of Investigation (FBI) for criminal information on all prospective foster parents or adoptive parents. This bill would provide authorization to the office of children and family services (OCFS) to provide redisclosure of information on prospective foster and adoptive parents to voluntary authorized agencies or other non-public agencies.

JUSTIFICATION:

County Social Service agencies that oversee certification of prospective foster parents and adoptive parents are required to fingerprint and conduct background checks on individuals seeking foster parent or adoptive parent status. Currently, there is no statutory requirement that DCJS coordinate with the FBI for purposes of a national criminal background check. This legislation corrects that deficiency. This statutory deficiency resulted in the certification of a convicted rapist as a foster parent to some 23 children in Jefferson County. This individual was convicted in the State of Oregon on two counts of third degree rape, which typically applies to statutory rape. New York Law requires that sex offenders register with NYS when the y move here. In this case the sex offender did not register. Therefore when DCJS searched NYS data bases on this individual his sex offender background did not turn up. However, had DCJS coordinated with the FBI the sex offenses would have been discovered. This bill will close this unintended loop hole that permitted a rapist to be certified as a foster parent. It also closes the same loop hole that exists for background checks on prospective adoptive parents.

LEGISLATIVE HISTORY:

Similar Legislation passed Senate in 2005 (S.5524-A and S. 5834). The within bill consolidates those bills into a single bill.

FISCAL IMPLICATIONS:

Approximately $290,000.00 to the State of New York.

EFFECTIVE DATE:
This act shall take effect on the one hundred twentieth day after it shall have become law, provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.