U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Criminal Justice Information
Services Division
Clarksburg, WV 26306
October 31, 2006

TO: ALL CJIS SYSTEMS OFFICERS AND STATE IDENTIFICATION BUREAU REPRESENTATIVES

RE: Adam Walsh Child Protection and Safety Act of 2006

The Adam Walsh Child Protection and Safety Act of 2006 (the act), Public Law (Pub. L.) 109-248, was enacted into law on July 27, 2006. Sections 151 and 153 of the act (enclosed) require the Attorney General (AG) to ensure access to FBI criminal history record information (CHRI) by (1) governmental social service agencies with child protection responsibilities, (2) child welfare agencies, and (3) public and private elementary and secondary schools and state and local educational agencies.

Criminal Justice Information Services (CJIS) Systems Officers (CSOs) and State Identification Bureau (SIB) representatives have the primary responsibility and provide or specify the supporting infrastructure that is used for providing access to CHRI to authorized entities within their states. CSOs and/or SIB representatives, as determined by their states, shall also be responsible for implementing the access to CHRI in their states for the authorized entities under Sections 151 and 153. The following provides guidance for states implementing the access made available under this new authority.

Section 151 - Access to National Crime Information Databases

Governmental Social Service Agencies With Child Protection Responsibilities

The AG is required by Section 151 to ensure access to "national crime information databases" (as defined in Title 28 United States Code [U.S.C.] Section 534) by qualifying governmental social service agencies with child protection responsibilities. Title 28 U.S.C. § 534 defines "national crime information databases" as "the National Crime Information Center and its incorporated criminal history databases, including the Interstate Identification Index." Section 151 provides that access by governmental social service agencies with child protection responsibilities is to be used only in investigating or responding to reports of child abuse, neglect, or exploitation.

States are therefore authorized, under Section 151 of the act, to provide governmental social service agencies access to the National Crime Information Center (NCIC) and the Interstate Identification Index (III). The CSO will be responsible for providing system access to such agencies in a way that complies with the applicable requirements of the CJIS Systems User Agreement, as discussed below.

ALL CJIS SYSTEM OFFICERS AND STATE IDENTIFICATION BUREAU REPRESENTATIVES

Conditions of Access

Section 151 requires the AG to establish conditions of access and associated rules of dissemination to ensure all personnel who have such access meet training, certification, and background screening requirements. The FBI has determined that these requirements can be satisfied through compliance with the provisions in the CJIS Systems User Agreement that relate to access and dissemination of CHRI by agencies authorized terminal access to NCIC and the III. The User Agreement is executed by each state's CSO and the provisions relevant to access under Section 151 include:

- CSOs are ultimately responsible for planning necessary hardware, software, funding, and training for access to all CJIS systems.
- The CJIS Systems Agency (CSA) agrees to adhere to all applicable CJIS policies including, but not limited to, the following:
- Appropriate and reasonable quality assurance procedures, e.g., "hit" notification and confirmation requirements.
    - Security - Each agency is responsible for appropriate security measures as applicable to physical security of terminals and telecommunication lines; personnel security to include background screening requirements; technical security to protect against unauthorized use; data security to include III use, dissemination, and logging; and security of criminal history records. Additionally, each CSO must ensure that all agencies establish an information security structure that provides for an Information Security Officer and complies with the CJIS Security Policy.
    - Audit - Each agency shall be responsible for complying with all audit requirements for use of CJIS systems. Each CSO is responsible for completing a triennial audit of all agencies with access to CJIS systems through the CSO's lines.
    - Training - Each agency shall be responsible for training requirements, including compliance with operator training mandates.
    - Integrity of the Systems - Each agency shall be responsible for maintaining the integrity of the system in accordance with applicable FBI CJIS Division, state, federal, and tribal policies to ensure only authorized terminal access; only authorized transaction submission; and proper handling and dissemination of CJIS data. Each agency shall also be responsible for computer security incident reporting as required by the CJIS Security Policy.

Pursuant to the CJIS Systems User Agreement and the CJIS Security Policy, users of NCIC and III are also subject to audit by the CJIS Audit Unit and sanctions may be imposed for unauthorized access, use, or dissemination of CJIS information. Such sanctions may include cancellation of the agency's access to the system.

Means of Access

State CSOs may submit written requests for full-access NCIC Originating Agency Identifier (ORI) assignments to the CJIS Division. Each request must include a certification by the CSO that all training, certification, and background screening of terminal operators at the applicable governmental social service agency have been completed as required by the CJIS Systems User Agreement. Upon receipt of such requests, the CJIS Division will assign ORIs ending with a "F" in the ninth position. Purpose code "C" must be used when making III queries authorized by Section 151.

Some states may determine that a particular governmental social service agency will not be provided terminal access but will be authorized to request another agency with an existing terminal to conduct NCIC and III inquiries on its behalf. In such instances, the terminal agency must use the "F" ORI assigned to the non-terminal governmental social service agency requesting the NCIC or III inquiry. This procedure will enable the identification of NCIC and III transactions conducted pursuant to Section 151 and will facilitate state and federal compliance audits.

Section 153 - Schools SAFE Act

Section 153 of the act is titled the "Schools Safely Acquiring Faculty Excellence Act of 2006." Section 153(b) provides that the AG shall, upon request of a state's chief executive officer, conduct fingerprint-based checks of national crime information databases (as defined in 28 U.S.C. § 534) pursuant to requests submitted by child welfare agencies or by private or public elementary or secondary schools or local or state educational agencies.

Qualified Child Welfare Agencies

Section 152(a) of the act amended Section 471(a)(20) of the Social Security Act to require fingerprint-based checks of national crime information databases before approval of any foster or adoptive placement. To facilitate the implementation of this amendment to the Social Security Act, Section 153(b)(1) allows the chief executive officer of a state to request fingerprint-based checks submitted by child welfare agencies of CHRI on prospective foster or adoptive parents. In addition, Section 153(b)(1) allows fingerprint-based checks by child welfare agencies for the purpose of an investigation relating to an incident of abuse or neglect of a minor.

The term "child welfare agency" is defined at Section 153(g) as "(1) 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 (2) 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." We note that, in addition to covering governmental agencies, this definition covers private agencies that are responsible, under a contract with state or local agencies, for licensing or approval of foster or adoptive parents. Therefore, private agencies that qualify under Section 153 criteria, in addition to responsible governmental agencies, are authorized to receive CHRI.

Qualified Schools or Educational Agencies

Section 153(b)(2) allows the chief executive officer of a state to request fingerprint-based checks submitted by private or public elementary schools, private or public secondary schools, local educational agencies, or State educational agencies in his or her state, on individuals employed by, under consideration for employment by, or otherwise in positions in which the individuals would work with or around children in the school or agency. Section 153(h) provides that "the terms 'elementary school,' 'local educational agency,' 'secondary school,' and 'State educational agency' have the meanings given to those terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)."

We note that the inclusion of private elementary and secondary schools in the access authority under Section 153(b)(2) means that qualified private schools, not just governmental agencies, are authorized to receive CHRI. We also note that under Section 153(b)(2), the individuals for whom requests for fingerprint checks can be submitted include not only current and prospective employees of the qualified public or private schools or state or local agencies, but also other individuals, such as volunteers or contractors, who are "otherwise in a position in which the individual would work with or around children in the school or agency."

Request by State Chief Executive Officer

To implement background checks by qualified child welfare agencies and private or public elementary or secondary schools or state or local educational agencies, the state's chief executive officer must request such access. The request should be forwarded to the CJIS Division through the SIB. Upon receipt of the written request from the SIB chief, the CJIS Division will assign appropriate ORIs and advise the SIB that it may begin submitting the fingerprints.

Checks of State Data and the Channeling of Requests through the SIB

Communications between the chief executive officer and the state criminal history record repository chief should include a determination of whether the state can comply with Section 153(c) of the Schools SAFE Act, which provides that, "Where possible, the check shall include a fingerprint-based check of State criminal history databases." A fingerprint-based check of the state's criminal history database should provide a more comprehensive background check because the state repository often contains CHRI not included within the FBI's national database. Regardless of whether the state first performs a check of its own criminal history records system, fingerprint submissions authorized by Section 153 must be channeled to the CJIS Division through the SIB. All fingerprints submitted to the FBI under this new authority must reflect "Adam Walsh Act" as the reason fingerprinted.

Consistent with existing procedures for noncriminal justice background checks, state criminal history record repositories that effect positive identification of a noncriminal justice applicant's fingerprints with a criminal record at the state level may access the III using Purpose Code "I" and the FBI or SID number to retrieve the complete criminal history record. CJIS and III participating states that honor Purpose Code "I" requests will respond by providing their respective CHRI. Positive identifications processed in this manner at the state level obviates the submission of the fingerprints to the FBI for processing. However, states should attempt to track such state identifications for statistical purposes.

Fees

Section 153(d) provides that "The Attorney General and the States may charge any applicable fees for the checks." This means that both a state fee and an FBI fee can be charged for checks made under this authority that involve a check of both state data and FBI data. State fingerprint submissions forwarded to the CJIS Division under this authority should be submitted using the non-federal applicant user fee (NFUF) type of transaction.

Protection of Information

Section 153(e) provides that "An individual having information derived as a result of a check under subsection (b) may release that information only to appropriate officers of child welfare agencies, public or private elementary or secondary schools, or educational agencies or other persons authorized by law to receive that information." Section 153(f) provides that "An individual who knowingly exceeds the authority in subsection (b), or knowingly releases information in violation of subsection (e), shall be imprisoned not more than 10 years or fined under Title 18, United States Code, or both." Therefore, in compliance with the CJIS Systems User Agreement, CSOs and SIB representatives are requested to include in their training programs for the qualified schools and educational agencies seeking criminal history record checks under Section 153, information about the authorized purposes of such checks; the duty to limit dissemination of the information to "appropriate officers" of the organization; the duty to protect the security of the information, and the penalties for unauthorized use or disclosure of the information. Section 153 authorized recipients should also be made aware that their access to and use of such information is subject to audit. In addition to the criminal penalties, sanctions for misuse may include cancellation of the agency's access to FBI-maintained information.

Regulatory Use and Challenge Requirements

CSO and/or SIB representative's training programs should include information about a user's responsibilities under the provisions of Title 28, Code of Federal Regulations, Section 50.12, relating to the exchange of FBI identification records. This regulation, applicable to both governmental and non-governmental authorized recipients of CHRI, in pertinent part, provides:

> Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the

information contained in the FBI identification record. These officials must also advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

Contact Information

Requests for access pursuant to Section 151 and 153 of the Adam Walsh Child Protection and Safety Act of 2006 should be directed to my office at the following address:

David Cuthbertson
Section Chief
Programs Development Section
CJIS Division
Federal Bureau of Investigation
1000 Custer Hollow Road
Clarksburg, West Virginia 26306

Any questions regarding the implementation of sections 151 and 153 should be directed to Mr. Todd C. Commodore at (304) 625-2803 or electronically at tcommodo@leo.gov.

Sincerely yours,

David Cuthbertson

David Cuthbertson
Section Chief

U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

Criminal Justice Information
Services Division
Clarksburg, WV 26306
February 20, 2009

TO: ALL CJIS SYSTEMS OFFICERS, STATE IDENTIFICATION BUREAU CHIEFS, AND STATE COMPACT OFFICERS

SUBJECT: UPDATED INFORMATION REGARDING IMPLEMENTATION OF THE ADAM WALSH CHILD PROTECTION AND SAFETY ACT OF 2006

The Adam Walsh Child Protection and Safety Act of 2006 (the Act), Public Law 109-248, was enacted into law on July 27, 2006. Sections 151 and 153 of the Act require the Attorney General to ensure access to FBI criminal history record information by (1) governmental social service agencies with child protection responsibilities, (2) child welfare agencies, and (3) public and private elementary and secondary schools and state and local educational agencies. In correspondence dated October 31, 2006, the FBI's CJIS Division provided guidance to Criminal Justice Information Services (CJIS) Systems Officers (CSOs) and State Identification Bureau (SIB) representatives to implement the access made available under the Act. A copy of this correspondence is enclosed.

Pursuant to a request by a state's chief executive officer, Section 153(b)(2) of the Act permits fingerprint-based checks of the national crime information databases (as defined in section 534[f][3][A] of title 28 United States Code) by a private or public elementary school, a private or public secondary school, a local educational agency, or a state educational agency in that state, on individuals employed by, under consideration for employment by, or otherwise in a position in which the individual would work with or around children in the school or agency. Based on this language, volunteers and contractors in public and private elementary and secondary schools and local and state educational agencies who work with or around children also qualify for fingerprint-based background checks.

Currently, the FBI charges a fee of $15.25 for volunteer fingerprint submissions. For volunteer submissions pursuant to the Act, the Reason Fingerprinted Field must be populated with "Adam Walsh Act Volunteer." As applicant fingerprint submissions of current and prospective employees and contractors are also authorized by the Act, it is incumbent upon the SIB to ensure the submitting agency includes the "Volunteer" designation in the Reason Fingerprinted Field, when applicable, or the nonfederal user fee rate will be charged. The

nonfederal user fee rates range from $19.25 to $30.25 (dependent upon the submission method) for processing nonvolunteer fingerprints. States may also elect to transmit volunteer fingerprint submissions pursuant to the National Child Protection Act of 1993, as amended by the Volunteers for Children Act, or an FBI-approved state statute under Public Law 92-544 and receive the reduced user fee rate when the "Volunteer" designation is included in the Reason Fingerprinted Field.

In addition, Section 153(b) of the Act authorizes nongovernmental entities (private elementary and secondary schools and in some cases private agencies responsible for foster and adoptive placement) to conduct fingerprint-based criminal history record checks and receive the results. To facilitate access and receipt of the criminal history record check results by these authorized nongovernmental entities, and upon request from an SIB approved to submit fingerprint-based background checks under Section 153, the CJIS Division will assign "Z" Originating Agency Identifiers (ORIs) to qualifying private nongovernmental entities. Prior to this policy change, the only nongovernmental entities assigned "Z" ORIs were federally chartered or insured banks.

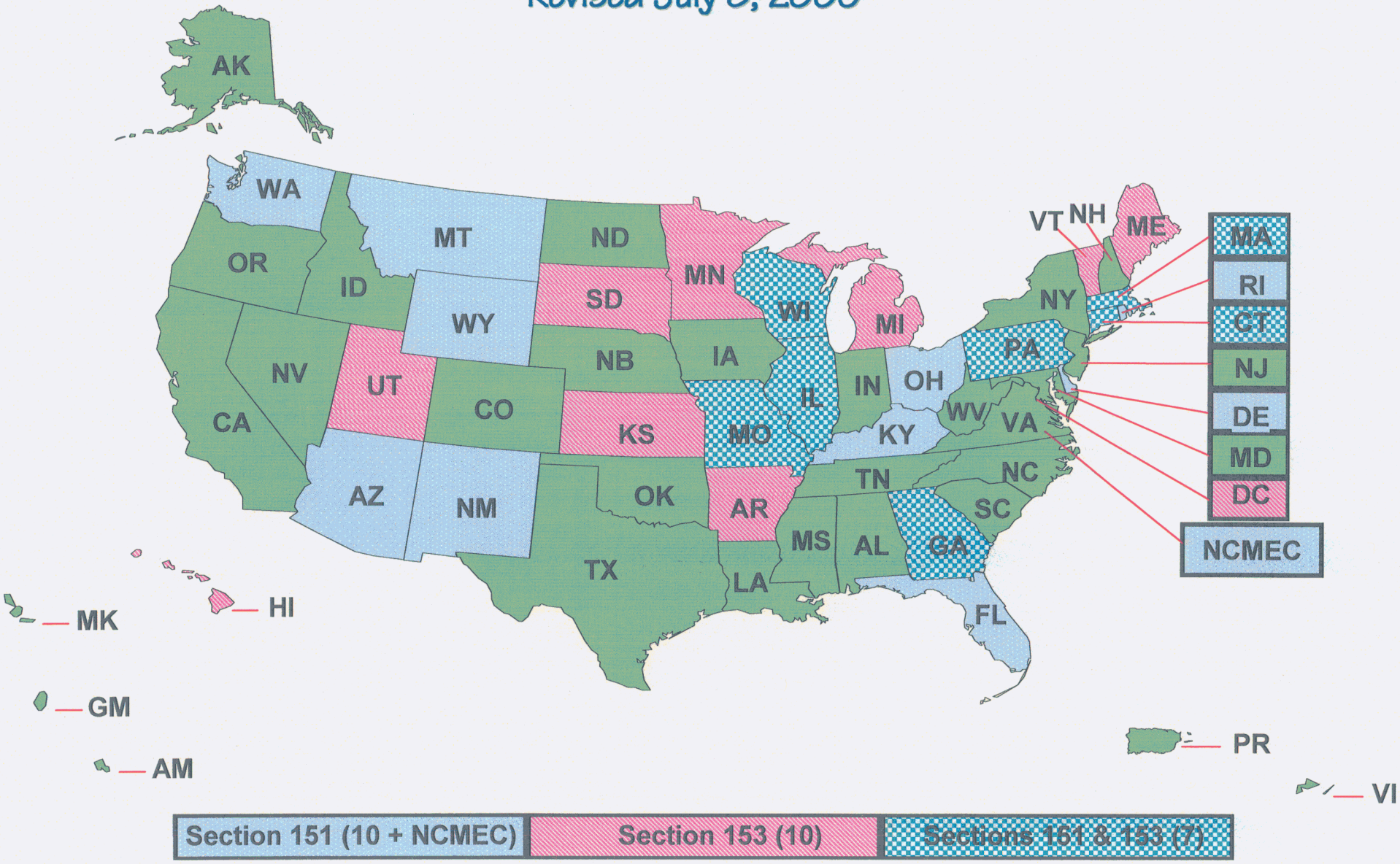
The FBI appreciates your cooperation with implementation of the Act. If you require assistance regarding the Act or its implementation, or have additional questions regarding these policy changes, please contact Mrs. Paula A. Barron at (304) 625-2749 or <pbarron@leo.gov>.

Sincerely yours,

Robert J. Casey
Section Chief
Liaison, Advisory, Training
and Statistics Section

Enclosure

Adam Walsh Child Protection and Safety Act of 2006

Participating States

Revised July 8, 2009