

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 451  
Committee Substitute Favorable 4/4/05

Short Title: Adoption/Crim. Checks/Prospective Families.

(Public)

Sponsors:

Referred to:

March 3, 2005

A BILL TO BE ENTITLED

AN ACT TO REQUIRE CRIMINAL BACKGROUND CHECKS FOR ANY  
INDIVIDUAL EIGHTEEN YEARS OF AGE OR OLDER WHO RESIDES IN  
THE HOUSEHOLD OF A PROSPECTIVE ADOPTIVE PARENT, AND TO  
MAKE OTHER CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 48-3-309 reads as rewritten:

**"§ 48-3-309. Mandatory preplacement criminal checks of prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services, services and mandatory preplacement criminal checks of all individuals 18 years of age or older who reside in the prospective adoptive home.**

(a) The Department shall ensure that the criminal histories of all prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services and the criminal histories of all individuals 18 years of age or older who reside in the prospective adoptive home are checked prior to placement and, based on the criminal history, a determination is made as to ~~the individual's fitness to have responsibility for the safety and well-being of children.~~ the prospective adoptive parent's fitness to have responsibility for the safety and well-being of children and whether other individuals required to be checked are fit for an adoptive child to reside with them in the home. The Department shall ensure that all ~~prospective adoptive parents seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services~~ individuals required to be checked are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services ~~may~~ shall issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services ~~determines~~ determines, pursuant to ~~G.S. 48-3-303(e)~~ G.S. 48-3-303(e), ~~that the individual is unfit to have responsibility for the safety and well-being of~~

1 ~~children based on the criminal history.~~ that, based on the criminal histories, the  
2 prospective adoptive parent is unfit to have responsibility for the safety and well-being  
3 of children or other individuals required to be checked are unfit for an adoptive child to  
4 reside with them in the home.

5 (c) The Department of Justice shall provide to the Department of Health and  
6 Human Services the criminal history of ~~such a prospective adoptive parent~~any  
7 individual required to be checked under subsection (a) of this section as requested by  
8 the Department and obtained from the State and National Repositories of Criminal  
9 ~~Histories as requested by the Department.~~Histories. The Department shall provide to the  
10 Department of Justice, along with the request, the fingerprints of ~~the prospective~~  
11 adoptive parentany individual to be checked, any additional information required by the  
12 Department of Justice, and a form consenting to the check of the criminal record and to  
13 the use of fingerprints and other identifying information required by the State or  
14 National Repositories signed by the individual to be checked. The fingerprints of ~~the~~  
15 prospective adoptive parentany individual to be checked shall be forwarded to the State  
16 Bureau of Investigation for a search of the State's criminal history record file, and the  
17 State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of  
18 Investigation for a national criminal history record check.

19 (d) At the time of the request for a preplacement assessment or at a subsequent  
20 time prior to placement, ~~a prospective adoptive parent~~any individual whose criminal  
21 history is to be checked shall be furnished with a statement substantially similar to the  
22 following:

23 **"NOTICE**

24 MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW  
25 REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR  
26 TO PLACEMENT ON PROSPECTIVE ADOPTIVE PARENTS SEEKING TO  
27 ADOPT A MINOR WHO IS IN THE CUSTODY OR PLACEMENT  
28 RESPONSIBILITY OF A COUNTY DEPARTMENT OF SOCIAL  
29 ~~SERVICES.~~SERVICES AND ON ALL PERSONS 18 YEARS OF AGE OR  
30 OLDER WHO RESIDE IN THE PROSPECTIVE ADOPTIVE HOME.

31 "Criminal history" means a county, state, or federal criminal history of conviction or  
32 a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon  
33 a prospective adoptive parent's fitness to have responsibility for the safety and well-  
34 being of children and whether other individuals required to be checked are fit for an  
35 adoptive child to reside with them in the home, ~~an individual's fitness to have~~  
36 ~~responsibility for the safety and well-being of children,~~ including the following  
37 North Carolina crimes contained in any of the following Articles of Chapter 14 of  
38 the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses;  
39 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious  
40 Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26,  
41 Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39,  
42 Protection of Minors; Article 40, Protection of the Family; and Article 59, Public  
43 Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of  
44 Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to

1 underage persons in violation of G.S. 18B-302 or driving while impaired in violation  
2 of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or  
3 under the laws of other states. Your fingerprints will be used to check the criminal  
4 history records of the State Bureau of Investigation (SBI) and the Federal Bureau of  
5 Investigation (FBI).

6 If it is determined, based on your criminal history, that you are unfit to have  
7 responsibility for the safety and well being of ~~children,~~children or have an adoptive  
8 child reside with you, you shall have the opportunity to complete, or challenge the  
9 accuracy of, the information contained in the SBI or FBI identification records.

10 If ~~you are~~the prospective adoptive parent is denied a favorable preplacement  
11 assessment by a county department of social services as a result of ~~the a~~ criminal  
12 history ~~check,~~check as required under G.S. 48-3-309(a), ~~you the~~ prospective  
13 adoptive parent may request a review of the assessment pursuant to  
14 G.S. 48-3-308(a).

15 Any ~~prospective adoptive parent~~person who intentionally falsifies any information  
16 required to be furnished to conduct the criminal history is guilty of a Class 2  
17 misdemeanor."

18 Refusal to consent to a criminal history check by any individual required to be  
19 checked under G.S. 48-3-309(a) is grounds for the issuance by a county department of  
20 social services of an unfavorable preplacement assessment. Any ~~prospective adoptive~~  
21 ~~parent~~person who intentionally falsifies any information required to be furnished to  
22 conduct the criminal history is guilty of a Class 2 misdemeanor.

23 (e) The Department shall notify the prospective adoptive parent's supervising  
24 county department of social services of the results of the criminal history ~~check in~~check.  
25 In accordance with the federal and State law regulating the dissemination of the  
26 contents of the criminal history ~~file.~~The file, the Department shall not release ~~nor~~ or  
27 disclose any portion of ~~the prospective adoptive parent's~~an individual's criminal history  
28 to the ~~prospective adoptive parent,~~prospective adoptive parent or any other individual  
29 required to be checked. The ~~Department~~ Department, however, shall ~~also~~ ensure that the  
30 ~~prospective adoptive parent~~prospective adoptive parent or any other individual required  
31 to be checked is notified of the ~~prospective adoptive parent's~~individual's right to review  
32 the criminal history information, the procedure for completing or challenging the  
33 accuracy of the criminal history, and the prospective adoptive parent's right to contest  
34 the preplacement assessment of the county department of social services.

35 A prospective adoptive parent who disagrees with the preplacement assessment of  
36 the county department of social services may request a review of the assessment  
37 pursuant to G.S. 48-3-308(a).

38 (f) All the information that the Department receives through the checking of the  
39 criminal history is privileged information and is not a public record but is for the  
40 exclusive use of the Department and those persons authorized under this section to  
41 receive the information. The Department may destroy the information after it is used for  
42 the purposes authorized by this section after one calendar year.

43 (g) There is no liability for negligence on the part of a State or local agency, or  
44 the employees of a State or local agency, arising from any action taken or omission by

1 any of them in carrying out the provisions of this section. The immunity established by  
2 this subsection shall not extend to gross negligence, wanton conduct, or intentional  
3 wrongdoing that would otherwise be actionable. The immunity established by this  
4 subsection shall be deemed to have been waived to the extent of indemnification by  
5 insurance, indemnification under Article 31A of Chapter 143 of the General Statutes,  
6 and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth  
7 in Article 31 of Chapter 143 of the General Statutes.

8 (h) The Department of Justice shall perform the State and national criminal  
9 history checks on prospective adoptive parents seeking to adopt a minor in the custody  
10 or placement responsibility of a county department of social services and all individuals  
11 18 years of age or older who reside in the prospective adoptive home and shall charge  
12 the Department of Health and Human Services a reasonable fee only for conducting the  
13 checks of the national criminal history records authorized by this section. The Division  
14 of Social Services, Department of Health and Human Services, shall bear the costs of  
15 implementing this section."

16 **SECTION 2.** G.S. 48-3-303(d) reads as rewritten:

17 "(d) The agency shall conduct an investigation for any criminal record as  
18 permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in  
19 the custody or placement responsibility of a county department of social services, a  
20 county department of social services shall have the ~~individual's prospective adoptive~~  
21 ~~parent's criminal history~~ and the criminal histories of all individuals 18 years of age or  
22 older who reside in the prospective adoptive home investigated pursuant to  
23 G.S. 48-3-309, and based on the criminal history, make a determination ~~pursuant to~~  
24 ~~subsection (e) of this section as to the individual's fitness to have responsibility for the~~  
25 ~~safety and well-being of children.~~ as to the prospective adoptive parent's fitness to have  
26 responsibility for the safety and well-being of children and as to whether other  
27 individuals required to be checked are fit for an adoptive child to reside with them in the  
28 home."

29 **SECTION 3.** G.S. 114-19.7 reads as rewritten:

30 "**§ 114-19.7. Criminal record checks required prior to placement of ~~prospective~~**  
31 **~~adoptive parents seeking to adopt for adoption of a minor who is in the~~**  
32 **~~custody or placement responsibility of a county department of social~~**  
33 **~~services.~~**

34 The Department of Justice may provide to the Division of Social Services,  
35 Department of Health and Human Services, the criminal history from the State and  
36 National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The  
37 Division shall provide to the Department of Justice, along with the request, the  
38 fingerprints of ~~the prospective adoptive parent seeking to adopt a minor who is in the~~  
39 ~~custody or placement responsibility of a county department of social services,~~any  
40 individual to be checked, any additional information required by the Department of  
41 Justice, and a form consenting to the check of the criminal record and to the use of  
42 fingerprints and other identifying information required by the State or National  
43 Repositories signed by the individual to be checked. The fingerprints of the ~~prospective~~  
44 ~~adoptive parent~~individual shall be forwarded to the State Bureau of Investigation for a

1 search of the State's criminal history record file, and the State Bureau of Investigation  
2 shall forward a set of fingerprints to the Federal Bureau of Investigation for a national  
3 criminal history record check. The Division shall keep all information pursuant to this  
4 section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall  
5 charge a reasonable fee only for conducting the checks of the national criminal history  
6 records authorized by this section."

7 **SECTION 4.** This act becomes effective June 24, 2005.