

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 451
Committee Substitute Favorable 4/4/05
Senate Judiciary II Committee Substitute Adopted 6/21/05

Short Title: Adoptive Families/DHHS/Crim. Checks.

(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, TO EXPAND THE PERSONS WHO ARE SUBJECT TO CRIMINAL RECORD CHECKS BY DEPARTMENT OF HEALTH AND HUMAN SERVICES, 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.

1 (b) A county department of social services ~~may~~ shall issue an unfavorable
2 preplacement assessment to a prospective adoptive parent if the county department of
3 social services ~~determines~~ determines, pursuant to ~~G.S. 48-3-303(e)~~ G.S. 48-3-303(e),
4 ~~that the individual is unfit to have responsibility for the safety and well-being of~~
5 ~~children based on the criminal history.~~ that, based on the criminal histories, the
6 prospective adoptive parent is unfit to have responsibility for the safety and well-being
7 of children or other individuals required to be checked are unfit for an adoptive child to
8 reside with them in the home.

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

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

27 **"NOTICE**

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

35 "Criminal history" means a county, state, or federal criminal history of conviction or
36 a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon
37 a prospective adoptive parent's fitness to have responsibility for the safety and well-
38 being of children and whether other individuals required to be checked are fit for an
39 adoptive child to reside with them in the home, ~~an individual's fitness to have~~
40 ~~responsibility for the safety and well-being of children,~~ including the following
41 North Carolina crimes contained in any of the following Articles of Chapter 14 of
42 the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses;
43 Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious
44 Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26,

1 Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39,
2 Protection of Minors; Article 40, Protection of the Family; and Article 59, Public
3 Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of
4 Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to
5 underage persons in violation of G.S. 18B-302 or driving while impaired in violation
6 of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or
7 under the laws of other states. Your fingerprints will be used to check the criminal
8 history records of the State Bureau of Investigation (SBI) and the Federal Bureau of
9 Investigation (FBI).

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

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

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

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

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

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

42 (f) All the information that the Department receives through the checking of the
43 criminal history is privileged information and is not a public record but is for the
44 exclusive use of the Department and those persons authorized under this section to

1 receive the information. The Department may destroy the information after it is used for
2 the purposes authorized by this section after one calendar year.

3 (g) There is no liability for negligence on the part of a State or local agency, or
4 the employees of a State or local agency, arising from any action taken or omission by
5 any of them in carrying out the provisions of this section. The immunity established by
6 this subsection shall not extend to gross negligence, wanton conduct, or intentional
7 wrongdoing that would otherwise be actionable. The immunity established by this
8 subsection shall be deemed to have been waived to the extent of indemnification by
9 insurance, indemnification under Article 31A of Chapter 143 of the General Statutes,
10 and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth
11 in Article 31 of Chapter 143 of the General Statutes.

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

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

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

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

34 "**§ 114-19.7. Criminal record checks required prior to placement of ~~prospective~~**
35 **~~adoptive parents seeking to adopt for adoption of~~ a minor who is in the**
36 **custody or placement responsibility of a county department of social**
37 **services.**

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

1 Justice, and a form consenting to the check of the criminal record and to the use of
2 fingerprints and other identifying information required by the State or National
3 Repositories signed by the individual to be checked. The fingerprints of the ~~prospective~~
4 ~~adoptive parent~~individual shall be forwarded to the State Bureau of Investigation for a
5 search of the State's criminal history record file, and the State Bureau of Investigation
6 shall forward a set of fingerprints to the Federal Bureau of Investigation for a national
7 criminal history record check. The Division shall keep all information pursuant to this
8 section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall
9 charge a reasonable fee only for conducting the checks of the national criminal history
10 records authorized by this section."

11 **SECTION 4.** G.S. 114-19.6(a)(1) reads as rewritten:

12 "(a) Definitions. – As used in this section, the term:

13 (1) "Covered person" ~~means;~~means any of the following:

- 14 a. An applicant for employment or a current employee in a
15 position in ~~the Department of Health and Human Services or~~
16 the Department of Juvenile Justice and Delinquency Prevention
17 who provides direct care for a client, patient, student, resident
18 or ward of the ~~Department;~~ or Department.
- 19 b. ~~Supervises—~~A person who supervises positions in the
20 Department of Juvenile Justice and Delinquency Prevention
21 providing direct care as outlined in sub-subdivision a. of this
22 subdivision for a client, patient, student, resident or ward of the
23 Department.
- 24 c. An applicant for employment or a current employee in a
25 position in the Department of Health and Human Services.
- 26 d. An independent contractor or an employee of an independent
27 contractor that has contracted to provide services to the
28 Department of Health and Human Services.
- 29 e. A person who has been approved to perform volunteer services
30 for the Department of Health and Human Services."

31 **SECTION 5.** This act becomes effective June 24, 2005.