

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35236-LU-51* (2/21)

Short Title: Amend Child Welfare Laws/Comply W/Fed Laws.-AB (Public)

Sponsors: Senator Boseman.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO AMEND EXISTING CHILD WELFARE LAWS TO COMPLY WITH
FEDERAL LAW AND REGULATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-506(b) reads as rewritten:

"(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker ~~an opportunity~~ the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings."

SECTION 2. G.S. 7B-901 reads as rewritten:

"§ 7B-901. **Dispositional hearing.**

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have ~~an opportunity~~ the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

SECTION 3. G.S. 7B-906(a) reads as rewritten:

1 "(a) In any case where custody is removed from a parent, guardian, custodian, or
2 caretaker the court shall conduct a review hearing within 90 days from the date of the
3 dispositional hearing and shall conduct a review hearing within six months thereafter.
4 The director of social services shall make a timely request to the clerk to calendar each
5 review at a session of court scheduled for the hearing of juvenile matters. The clerk
6 shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12
7 years of age or more, the guardian, any foster parent, relative, or preadoptive parent
8 providing care for the child, the custodian or agency with custody, the guardian ad
9 litem, and any other person or agency the court may specify, indicating the court's
10 impending review. Nothing in this subsection shall be construed to make any foster
11 parent, relative, or preadoptive parent a party to the proceeding solely based on
12 receiving notice and ~~an opportunity~~the right to be heard."

13 **SECTION 4.** G.S. 7B-907(a) reads as rewritten:

14 "(a) In any case where custody is removed from a parent, guardian, custodian, or
15 caretaker, the judge shall conduct a review hearing designated as a permanency
16 planning hearing within 12 months after the date of the initial order removing custody,
17 and the hearing may be combined, if appropriate, with a review hearing required by
18 G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a
19 plan to achieve a safe, permanent home for the juvenile within a reasonable period of
20 time. Subsequent permanency planning hearings shall be held at least every six months
21 thereafter, or earlier as set by the court, to review the progress made in finalizing the
22 permanent plan for the juvenile, or if necessary, to make a new permanent plan for the
23 juvenile. The Director of Social Services shall make a timely request to the clerk to
24 calendar each permanency planning hearing at a session of court scheduled for the
25 hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its
26 purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster
27 parent, relative, or preadoptive parent providing care for the child, the custodian or
28 agency with custody, the guardian ad litem, and any other person or agency the court
29 may specify, indicating the court's impending review. Nothing in this provision shall be
30 construed to make any foster parent, relative, or preadoptive parent a party to the
31 proceeding solely based on receiving notice and ~~an opportunity~~the right to be heard."

32 **SECTION 5.** G.S. 7B-908 reads as rewritten:

33 **"§ 7B-908. Post termination of parental rights' placement court review.**

34 (a) The purpose of each placement review is to ensure that every reasonable
35 effort is being made to provide for a permanent placement plan for the juvenile who has
36 been placed in the custody of a county director or licensed child-placing agency, which
37 is consistent with the juvenile's best interests. At each review hearing the court may
38 consider information from the department of social services, the licensed child-placing
39 agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive
40 parent providing care for the child, and any other person or agency the court determines
41 is likely to aid in the review. The court may consider any evidence, including hearsay
42 evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable,
43 and necessary to determine the needs of the juvenile and the most appropriate
44 disposition.

1 (b) The court shall conduct a placement review not later than six months from the
2 date of the termination hearing when parental rights have been terminated by a petition
3 brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a
4 county director or licensed child-placing agency has custody of the juvenile. The court
5 shall conduct reviews every six months thereafter until the juvenile is ~~placed for~~
6 ~~adoption and the adoption petition is filed by the adoptive parents;~~the subject of a
7 decree of adoption:

8 (1) No more than 30 days and no less than 15 days prior to each review,
9 the clerk shall give notice of the review to the juvenile if the juvenile is
10 at least 12 years of age, the legal custodian of the juvenile, any foster
11 parent, relative, or preadoptive parent providing care for the juvenile,
12 the guardian ad litem, if any, and any other person or agency the court
13 may specify. Only the juvenile, if the juvenile is at least 12 years of
14 age, the legal custodian of the juvenile, any foster parent, relative, or
15 preadoptive parent providing care for the juvenile, and the guardian ad
16 litem shall attend the review hearings, except as otherwise directed by
17 the court. Nothing in this subdivision shall be construed to make any
18 foster parent, relative, or preadoptive parent a party to the proceeding
19 solely based on receiving notice and ~~an opportunity~~the right to be
20 heard. Any individual whose parental rights have been terminated shall
21 not be considered a party to the proceeding unless an appeal of the
22 order terminating parental rights is pending, and a court has stayed the
23 order pending the appeal.

24 (2) If a guardian ad litem for the juvenile has not been appointed
25 previously by the court in the termination proceeding, the court, at the
26 initial six-month review hearing, may appoint a guardian ad litem to
27 represent the juvenile. The court may continue the case for such time
28 as is necessary for the guardian ad litem to become familiar with the
29 facts of the case.

30 (c) The court shall consider at least the following in its review:

31 (1) The adequacy of the plan developed by the county department of
32 social services or a licensed child-placing agency for a permanent
33 placement relative to the juvenile's best interests and the efforts of the
34 department or agency to implement such plan;

35 (2) Whether the juvenile has been listed for adoptive placement with the
36 North Carolina Adoption Resource Exchange, the North Carolina
37 Photo Adoption Listing Service (PALS), or any other specialized
38 adoption agency; and

39 (3) The efforts previously made by the department or agency to find a
40 permanent home for the juvenile.

41 (d) The court, after making findings of fact, shall affirm the county department's
42 or child-placing agency's plans or require specific additional steps which are necessary
43 to accomplish a permanent placement which is in the best interests of the juvenile.

1 (e) If the juvenile ~~has been placed for~~ is the subject of a decree of adoption prior
2 to the date scheduled for the review, written notice of ~~said placement~~ the issuance of the
3 decree of adoption shall be given to the clerk to be placed in the court file, and the
4 review hearing shall be cancelled with notice of said cancellation given by the clerk to
5 all persons previously notified.

6 (f) ~~The process of selection of specific adoptive parents shall be the~~
7 ~~responsibility of and within the discretion of the county department of social services or~~
8 ~~licensed child placing agency. The guardian ad litem may request information from and~~
9 ~~consult with the county department or child placing agency concerning the selection~~
10 ~~process. If the guardian ad litem requests information about the selection process, the~~
11 ~~county shall provide the information within five days. Any issue of abuse of discretion~~
12 ~~by the county department or child placing agency in the selection process must be~~
13 ~~raised by the guardian ad litem within 10 days following the date the agency notifies the~~
14 ~~court and the guardian ad litem in writing of the filing of the adoption petition."~~

15 **SECTION 6.** G.S. 7B-909 reads as rewritten:

16 **"§ 7B-909. Review of agency's plan for placement.**

17 (a) The director of social services or the director of the licensed private
18 child-placing agency shall promptly notify the clerk to calendar the case for review of
19 the department's or agency's plan for the juvenile at a session of court scheduled for the
20 hearing of juvenile matters in any case where:

21 (1) One parent has surrendered a juvenile for adoption under the
22 provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes
23 and the termination of parental rights proceedings have not been
24 instituted against the nonsurrendering parent within six months of the
25 surrender by the other parent, or

26 (2) Both parents have surrendered a juvenile for adoption under the
27 provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes
28 and that juvenile has not been placed for adoption within six months
29 from the date of the more recent parental surrender.

30 (b) ~~In any case where an adoption is dismissed or withdrawn and the juvenile~~
31 ~~returns to foster care with a department of social services or a licensed private~~
32 ~~child placing agency, then the department of social services or licensed child placing~~
33 ~~agency shall notify the clerk, within 30 days from the date the juvenile returns to care,~~
34 ~~to calendar the case for review of the agency's plan for the juvenile at a session of court~~
35 ~~scheduled for the hearing of juvenile matters.~~

36 (c) Notification of the court ~~required~~ required under subsection (a) ~~or (b)~~ of this section
37 shall be by a petition for review. The petition shall set forth the circumstances
38 necessitating the review under subsection (a) ~~or (b)~~ of this section. The review shall be
39 conducted within 30 days following the filing of the petition for review unless the court
40 shall otherwise direct. The court shall conduct reviews every six months until the
41 juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive~~
42 parents the subject of a decree of adoption. The initial review and all subsequent
43 reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental
44 rights have been terminated shall not be considered a party to the review unless an

1 appeal of the order terminating parental rights is pending, and a court has stayed the
2 order pending the appeal."

3 **SECTION 7.** G.S. 48-1-101(5a) reads as rewritten:

4 "In this Chapter, the following definitions apply:

5 ...

6 (5a) "Criminal history" means a county, State, or federal ~~eriminal history of~~
7 conviction of a felony by a court of competent jurisdiction or a
8 pending felony indictment of a crime, whether a misdemeanor or a
9 felony, that bears upon an individual's fitness to have responsibility for
10 the safety and well-being of children, including the following North
11 Carolina crimes contained in any of the following Articles of Chapter
12 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and
13 Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and
14 Abduction; Article 13, Malicious Injury or Damage by Use of
15 Explosive or Incendiary Device or Material; Article 26, Offenses
16 Against Public Morality and Decency; Article 27, Prostitution; Article
17 39, Protection of Minors; Article 40, Protection of the Family; and
18 Article 59, Public Intoxication. Such crimes also include possession or
19 sale of drugs in violation of the North Carolina Controlled Substances
20 Act, Article 5 of Chapter 90 of the General Statutes, and
21 alcohol-related offenses such as sale to underage persons in violation
22 of G.S. 18B 302 or driving while impaired in violation of
23 G.S. 20 138.1 through G.S. 20 138.5. In addition to the North Carolina
24 erimes listed in this subdivision, such crimes also include
25 crime for child abuse or neglect, spousal abuse, a crime against a child,
26 including child pornography, or for a crime involving violence,
27 including rape, sexual assault, or homicide, other than physical assault
28 or battery; a county, State, or federal conviction of a felony by a court
29 of competent jurisdiction or a pending felony indictment for physical
30 assault, battery, or a drug-related offense, if the offense was committed
31 within the past five years; or similar crimes under federal law or under
32 the laws of other states."

33 **SECTION 8.** G.S. 48-3-203 is amended by adding a new subsection to read:

34 "(b1) The process of selection of specific adoptive parents is the responsibility of
35 and within the discretion of the county department of social services or a licensed
36 child-placing agency. A minor's guardian ad litem may request information from and
37 consult with the county department of social services or the child-placing agency
38 concerning the selection process. If the guardian ad litem requests information about the
39 selection process, the county department of social services or the child-placing agency
40 shall provide the information within five days. Any issue of abuse of discretion by the
41 county department of social services or the child-placing agency in the selection process
42 shall be raised by the minor's guardian ad litem within 10 days following the date the
43 agency notifies the guardian ad litem in writing of the filing of the adoption petition."

44 **SECTION 9.** G.S. 48-3-303(d) reads as rewritten:

1 "(d) The agency shall conduct an investigation for any criminal record as
2 permitted by law. If a prospective adoptive parent is seeking to adopt a minor who is in
3 the custody or placement responsibility of a county department of social services, a
4 county department of social services shall have the prospective adoptive parent's
5 criminal history and the criminal histories of all individuals 18 years of age or older
6 who reside in the prospective adoptive home investigated pursuant to G.S. 48-3-309,
7 and ~~based on the criminal history,~~ in accordance with G.S. 48-3-309(b), make a
8 determination as to the prospective adoptive parent's fitness to have responsibility for
9 the safety and well-being of children and as to whether other individuals required to be
10 checked are fit for an adoptive child to reside with them in the home."

11 **SECTION 10.** G.S. 48-3-309(b) reads as rewritten:

12 "(b) A county department of social services shall issue an unfavorable
13 preplacement assessment to a prospective adoptive parent if an individual required to
14 submit to a criminal history check pursuant to subsection (a) of this section has a
15 criminal history. A county department of social services shall issue an unfavorable
16 preplacement assessment to a prospective adoptive parent if the county department of
17 social services determines, pursuant to G.S. 48-3-303(e), that, based on other criminal
18 convictions, whether felony or misdemeanor, revealed by the criminal histories, histories
19 checked pursuant to subsection (a) of this section, the prospective adoptive parent is
20 unfit to have responsibility for the safety and well-being of children or other individuals
21 required to be checked are unfit for an adoptive child to reside with them in the home."

22 **SECTION 11.** G.S. 48-3-309(d) reads as rewritten:

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

26
27 **"NOTICE**

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

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

1 Malicious Injury or Damage by Use of Explosive or Incendiary Device or
2 Material; Article 26, Offenses Against Public Morality and Decency; Article 27,
3 Prostitution; Article 39, Protection of Minors; Article 40, Protection of the
4 Family; and Article 59, Public Intoxication; violation of the North Carolina
5 Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and
6 alcohol related offenses such as sale to underage persons in violation of
7 G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through
8 G.S. 20-138.5; crime for child abuse or neglect, spousal abuse, a crime against a
9 child, including child pornography, or for a crime involving violence, including
10 rape, sexual assault, or homicide, other than physical assault or battery; a county,
11 State, or federal conviction of a felony by a court of competent jurisdiction or a
12 pending felony indictment for physical assault, battery, or a drug-related offense,
13 if the offense was committed within the past five years; or similar crimes under
14 federal law or under the laws of other states. Your fingerprints will be used to
15 check the criminal history records of the State Bureau of Investigation (SBI) and
16 the Federal Bureau of Investigation (FBI).

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

21 If the prospective adoptive parent is denied a favorable preplacement assessment
22 by a county department of social services as a result of a criminal history check
23 as required under G.S. 48-3-309(a), the prospective adoptive parent may request
24 a review of the assessment pursuant to G.S. 48-3-308(a).

25 Any person who intentionally falsifies any information required to be furnished
26 to conduct the criminal history is guilty of a Class 2 misdemeanor."

27 Refusal to consent to a criminal history check by any individual required to be
28 checked under G.S. 48-3-309(a) is grounds for the issuance by a county department of
29 social services of an unfavorable preplacement assessment. Any person who
30 intentionally falsifies any information required to be furnished to conduct the criminal
31 history is guilty of a Class 2 misdemeanor."

32 **SECTION 12.** G.S. 131D-10.2(6a) reads as rewritten:

33 "For purposes of this Article, unless the context clearly implies otherwise:

34 ...

35 (6a) "Criminal History" means a county, ~~state,~~State, or federal ~~criminal~~
36 ~~history of conviction of a felony by a court of competent jurisdiction~~
37 ~~or a pending felony indictment of a crime, whether a misdemeanor or a~~
38 ~~felony, that bears upon an individual's fitness to have responsibility for~~
39 ~~the safety and well being of children, including the following North~~
40 ~~Carolina crimes contained in any of the following Articles of Chapter~~
41 ~~14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and~~
42 ~~Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and~~
43 ~~Abduction; Article 13, Malicious Injury or Damage by Use of~~
44 ~~Explosive or Incendiary Device or Material; Article 26, Offenses~~

1 ~~Against Public Morality and Decency; Article 27, Prostitution; Article~~
2 ~~39, Protection of Minors; Article 40, Protection of the Family; and~~
3 ~~Article 59, Public Intoxication. Such crimes also include possession or~~
4 ~~sale of drugs in violation of the North Carolina Controlled Substances~~
5 ~~Act, Article 5 of Chapter 90 of the General Statutes, and~~
6 ~~alcohol-related offenses such as sale to underage persons in violation~~
7 ~~of G.S. 18B-302 or driving while impaired in violation of~~
8 ~~G.S. 20-138.1 through G.S. 20-138.5. In addition to the North Carolina~~
9 ~~crimes listed in this subdivision, such crimes also include~~crime for
10 ~~child abuse or neglect, spousal abuse, a crime against a child,~~
11 ~~including child pornography, or for a crime involving violence,~~
12 ~~including rape, sexual assault, or homicide, other than physical assault~~
13 ~~or battery; a county, State, or federal conviction of a felony by a court~~
14 ~~of competent jurisdiction or a pending felony indictment for physical~~
15 ~~assault, battery, or a drug-related offense, if the offense was committed~~
16 ~~within the past five years; or similar crimes under federal law or under~~
17 ~~the laws of other states.~~

18 "

19 **SECTION 13.** G.S. 131D-10.3A(c) reads as rewritten:

20 "(c) The Department shall prohibit an individual from providing foster care by
21 denying or revoking the license to provide foster care if an individual required to submit
22 to a criminal history check pursuant to subsection (a) of this section has a criminal
23 history. The Department may prohibit an individual from providing foster care by
24 denying or revoking the license to provide foster care if the Department determines that
25 the safety and well-being of a child placed in the home for foster care would be at risk
26 based on other criminal convictions, whether felony or misdemeanor, revealed by the
27 criminal history check of the individuals required to be checked pursuant to subsection
28 (a) of this section."

29 **SECTION 14.** G.S. 131D-10.3A(e) reads as rewritten:

30 "(e) At the time of application, the individual whose criminal history is to be
31 checked shall be furnished with a statement substantially similar to the following:

32
33 "NOTICE

34 MANDATORY CRIMINAL HISTORY CHECK

35
36 NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL
37 HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18
38 YEARS OF AGE OR OLDER WHO RESIDE IN A LICENSED
39 FAMILY FOSTER HOME.

40 "Criminal history" includes any county, ~~state,~~State, and federal
41 ~~convictions~~ conviction of a felony by a court of competent
42 jurisdiction or pending indictments of any crime, of any of the
43 ~~following crimes: the following Articles of Chapter 14 of the~~
44 ~~General Statutes: Article 6, Homicide; Article 7A, Rape and~~

1 ~~Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and~~
2 ~~Abduction; Article 13, Malicious Injury or Damage by Use of~~
3 ~~Explosive or Incendiary Device or Material; Article 26, Offenses~~
4 ~~Against Public Morality and Decency; Article 27, Prostitution;~~
5 ~~Article 39, Protection of Minors; Article 40, Protection of the~~
6 ~~Family; and Article 59, Public Intoxication; violation of the North~~
7 ~~Carolina Controlled Substances Act, Article 5 of Chapter 90 of the~~
8 ~~General Statutes, and alcohol-related offenses such as sale to~~
9 ~~underage persons in violation of G.S. 18B-302 or driving while~~
10 ~~impaired in violation of G.S. 20-138.1 through~~
11 ~~G.S. 20-138.5; felony indictment of a crime for child abuse or~~
12 ~~neglect, spousal abuse, a crime against a child, including child~~
13 ~~pornography, or for a crime involving violence, including rape,~~
14 ~~sexual assault, or homicide, other than physical assault or battery; a~~
15 ~~county, State, or federal conviction of a felony by a court of~~
16 ~~competent jurisdiction or a pending felony indictment for physical~~
17 ~~assault, battery, or a drug-related offense, if the offense was~~
18 ~~committed within the past five years; or similar crimes under~~
19 ~~federal law or under the laws of other states. Your fingerprints will~~
20 ~~be used to check the criminal history records of the State Bureau of~~
21 ~~Investigation (SBI) and the Federal Bureau of Investigation (FBI).~~

22 If it is determined, based on your criminal history, that you are
23 unfit to have a foster child reside with you, you shall have the
24 opportunity to complete or challenge the accuracy of the
25 information contained in the SBI or FBI identification records.

26 If licensure is denied or the foster home license is revoked by
27 the Department of Health and Human Services as a result of the
28 criminal history check, if you are a foster parent, or are applying to
29 become a foster parent, you may request a hearing pursuant to
30 Article 3 of Chapter 150B of the General Statutes, the
31 Administrative Procedure Act.

32 Any person who intentionally falsifies any information required
33 to be furnished to conduct the criminal history is guilty of a Class 2
34 misdemeanor."

35 Refusal to consent to a criminal history check is grounds for the Department to deny
36 or revoke a license to provide foster care. Any person who intentionally falsifies any
37 information required to be furnished to conduct the criminal history is guilty of a Class
38 2 misdemeanor."

39 **SECTION 15.** This act is effective when it becomes law.