

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2005

SESSION LAW 2005-114

HOUSE BILL 451

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.

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

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

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

"NOTICE

MANDATORY CRIMINAL HISTORY CHECK: NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED PRIOR TO PLACEMENT ON 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 ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN THE PROSPECTIVE ADOPTIVE HOME.

"Criminal history" means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon a 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, ~~an individual's fitness to have responsibility for the safety and well-being of children,~~ including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious

Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

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

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

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

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

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

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

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

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

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

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

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

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

"§ **114-19.7. Criminal record checks required prior to placement of prospective adoptive parents seeking to adopt for adoption of a**

minor who is in the custody or placement responsibility of a county department of social services.

The Department of Justice may provide to the Division of Social Services, Department of Health and Human Services, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 48-1-101(5a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of ~~the prospective adoptive parent seeking to adopt a minor who is in the custody or placement responsibility of a county department of social services,~~any individual to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the ~~prospective adoptive parent~~individual shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 48-3-309(f). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

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

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

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

- a. An applicant for employment or a current employee in a position in ~~the Department of Health and Human Services or the Department of Juvenile Justice and Delinquency Prevention~~ who provides direct care for a client, patient, student, resident or ward of the ~~Department;~~ Department.
- b. ~~Supervises~~A person who supervises positions in the Department of Juvenile Justice and Delinquency Prevention providing direct care as outlined in sub-subdivision a. of this subdivision.for a client, patient, student, resident or ward of the Department.
- c. An applicant for employment or a current employee in a position in the Department of Health and Human Services.
- d. An independent contractor or an employee of an independent contractor that has contracted to provide services to the Department of Health and Human Services.
- e. A person who has been approved to perform volunteer services for the Department of Health and Human Services."

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

In the General Assembly read three times and ratified this the 23rd day of June, 2005.

s/ Marc Basnight
President Pro Tempore of the Senate

Representatives

s/ James B. Black
Speaker of the House of

s/ Michael F. Easley
Governor

Approved 3:39 p.m. this 27th day of June, 2005