

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 402\*  
Committee Substitute Favorable 7/10/95

Short Title: Foster Parent Criminal Checks/AB.

(Public)

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Sponsors:

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Referred to:

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March 9, 1995

1 A BILL TO BE ENTITLED  
2 AN ACT TO MANDATE CRIMINAL HISTORY CHECKS OF ALL PERSONS WHO  
3 PROVIDE FOSTER CARE.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 131D-10.2 reads as rewritten:

6 **"§ 131D-10.2. Definitions.**

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

8 (1) 'Adoption' means the act of creating a legal relationship between parent  
9 and child where it did not exist genetically.

10 (2) 'Adoptive Home' means a family home approved by a child placing  
11 agency to accept a child for adoption.

12 (3) 'Child' means an individual less than 18 years of age, who has not been  
13 emancipated under the provisions of Article 56 of Chapter 7A of the  
14 General Statutes.

15 (4) 'Child Placing Agency' means a person authorized by statute or license  
16 under this Article to receive children for purposes of placement in  
17 residential group care, family foster homes or adoptive homes.

18 (5) 'Children's Camp' means a residential child-care facility which provides  
19 foster care at either a permanent camp site or in a wilderness setting.

- 1 (6) 'Commission' means the ~~Commission for Social Services.~~ Social  
2 Services Commission.
- 3 (6a) 'Criminal History' means a county, state, or federal criminal history of  
4 conviction or a pending indictment of a crime, whether a misdemeanor  
5 or a felony.
- 6 (7) 'Department' means the Department of Human Resources.
- 7 (8) 'Family Foster Home' means the private residence of one or more  
8 individuals who permanently reside as members of the household and  
9 who provide continuing full-time foster care for a child or children who  
10 are placed there by a child placing agency or who provide continuing  
11 full-time foster care for two or more children who are unrelated to the  
12 adult members of the household by blood, marriage, guardianship or  
13 adoption.
- 14 (9) 'Foster Care' means the continuing provision of the essentials of daily  
15 living on a 24-hour basis for dependent, neglected, abused, abandoned,  
16 destitute, orphaned, undisciplined or delinquent children or other  
17 children who, due to similar problems of behavior or family conditions,  
18 are living apart from their parents, relatives, or guardians in a family  
19 foster home or residential child-care facility. The essentials of daily  
20 living include but are not limited to shelter, meals, clothing, education,  
21 recreation, and individual attention and supervision.
- 22 (9a) 'Foster Parent' means any individual who is 18 years of age or older who  
23 permanently resides in a family foster home licensed by the State and  
24 any such individual applying to provide family foster care.
- 25 (10) 'Person' means an individual, partnership, joint-stock company, trust,  
26 voluntary association, corporation, agency, or other organization or  
27 enterprise doing business in this State, whether or not for profit.
- 28 (11) 'Primarily Educational Institution' means any institution which operates  
29 one or more scholastic or vocational and technical education programs  
30 that can be offered in satisfaction of compulsory school attendance laws,  
31 in which the primary purpose of the housing and care of children is to  
32 meet their educational needs, provided such institution has complied  
33 with Article 39 of Chapter 115C of the General Statutes.
- 34 (12) 'Provisional License' means a type of license granted by the Department  
35 to a person who is temporarily unable to comply with a rule or rules  
36 adopted under this Article.
- 37 (13) 'Residential Child-Care Facility' means a staffed premise with paid or  
38 volunteer staff where children receive continuing full-time foster care.  
39 Residential child-care facility includes child-caring institutions, group  
40 homes, and children's camps which provide foster care."

41 Sec. 2. Article 1A of Chapter 131D of the General Statutes is amended by  
42 adding a new section to read:

43 **"§ 131D-10.3A. Mandatory criminal checks of foster parents.**

1 (a) Effective January 1, 1996, the Department shall ensure that the criminal  
2 histories of all foster parents are checked and a determination of the foster parent's fitness  
3 to have responsibility for the safety and well-being of children based on the criminal  
4 history is made. The Department shall ensure that, as of the effective date of this act, all  
5 foster parents are checked for county, State, and national criminal histories.

6 (b) The Department shall ensure that all foster parents who have been checked  
7 pursuant to subsection (a) of this section are checked annually upon relicensure for  
8 county and State criminal histories.

9 (c) The Department may prohibit a foster parent from providing foster care by  
10 denying or revoking the license to provide foster care if the Department determines that  
11 the foster parent is unfit to have responsibility for the safety and well-being of children  
12 based on the criminal history.

13 (d) The Department of Justice shall provide to the Department of Human  
14 Resources the criminal history of the foster parent obtained from the State and National  
15 Repositories of Criminal Histories as requested by the Department. The Department  
16 shall provide to the Department of Justice, along with the request, the fingerprints of the  
17 foster parent to be checked, any additional information required by the Department of  
18 Justice, and a form consenting to the check of the criminal record and to the use of  
19 fingerprints and other identifying information required by the State or National  
20 Repositories signed by the foster parent to be checked. The fingerprints of the parent  
21 shall be forwarded to the State Bureau of Investigation for a search of the State's criminal  
22 history record file, and the State Bureau of Investigation shall forward a set of  
23 fingerprints to the Federal Bureau of Investigation for a national criminal history record  
24 check.

25 (e) At the time of application, the foster parent whose criminal history is to be  
26 checked shall be furnished with a statement substantially similar to the following:

27  
28 **'NOTICE**

29  
30 **FOSTER PARENT**  
31 **MANDATORY CRIMINAL HISTORY CHECK**

32 **NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL**  
33 **HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO**  
34 **PROVIDE FOSTER CARE IN A LICENSED FAMILY FOSTER HOME.**

35 "Criminal history" includes any county, state, and federal convictions or  
36 pending indictments of any crime, whether felony or misdemeanor. Your  
37 fingerprints will be used to check the criminal history records of the State Bureau  
38 of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

39 **If it is determined, based on your criminal history, that you are unfit to**  
40 **have responsibility for the safety and well-being of children, you shall have**  
41 **the opportunity to complete, or challenge the accuracy of, the information**  
42 **contained in the SBI or FBI identification records.**

1           **If you are denied licensure or your foster home license is revoked by**  
2           **the Department of Human Resources as a result of the criminal history check,**  
3           **you may request a hearing pursuant to Article 3 of Chapter 150B of the**  
4           **General Statutes, the Administrative Procedure Act.**

5           Any foster parent who intentionally falsifies any information required to be  
6           furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

7           Refusal to consent to a criminal history check is grounds for the Department to  
8           prohibit the foster parent from providing foster care. Any foster parent who intentionally  
9           falsifies any information required to be furnished to conduct the criminal history is guilty  
10          of a Class 2 misdemeanor.

11          (f) The Department shall notify in writing the foster parent and that individual's  
12          supervising agency of the determination by the Department of whether the foster parent is  
13          qualified to provide foster care based on the foster parent's criminal history. In  
14          accordance with the law regulating the dissemination of the contents of the criminal  
15          history file furnished by the Federal Bureau of Investigation, the Department shall not  
16          release nor disclose any portion of the foster parent's criminal history to the foster parent.  
17          The Department shall also notify the foster parent of the foster parent's right to review the  
18          criminal history information, the procedure for completing or challenging the accuracy of  
19          the criminal history, and the foster parent's right to contest the Department's  
20          determination.

21          A foster parent who disagrees with the Department's decision may request a hearing  
22          pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

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

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

37          (i) The Department of Justice shall perform the State and national criminal history  
38          checks on foster parents and shall charge the Department of Human Resources a  
39          reasonable fee for conducting the checks of the criminal records authorized by this  
40          section. The Division of Social Services, Department of Human Resources, shall bear the  
41          costs of implementing this section."

42                 Sec. 3. Article 4 of Chapter 114 of the General Statutes is amended by adding  
43                 a new section to read:

1 **"§ 114-19.4. Criminal record checks of foster parents and residential child care**  
2 **providers.**

3 (a) The Department of Justice shall provide to the Division of Social Services,  
4 Department of Human Resources, the criminal history from the State and National  
5 Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall  
6 provide to the Department of Justice, along with the request, the fingerprints of the foster  
7 parent to be checked, any additional information required by the Department of Justice,  
8 and a form consenting to the check of the criminal record and to the use of fingerprints  
9 and other identifying information required by the State or National Repositories signed  
10 by the foster parent to be checked. The fingerprints of the foster parent shall be  
11 forwarded to the State Bureau of Investigation for a search of the State's criminal history  
12 record file, and the State Bureau of Investigation shall forward a set of fingerprints to the  
13 Federal Bureau of Investigation for a national criminal history record check. The  
14 Division shall keep all information pursuant to this section privileged, as provided in G.S.  
15 131D-10.3A(d). The Department of Justice shall charge a reasonable fee for conducting  
16 the checks of the criminal records authorized by this subsection.

17 (b) Upon request, the Department of Justice shall provide to residential child care  
18 facilities the criminal history from the State Repository of Criminal Histories as defined  
19 in G.S. 131D-10.2(6a) of any individual providing residential child care in a residential  
20 child care facility. The residential child care facility shall provide to the Department of  
21 Justice, along with the request, the fingerprints of the individual provider to be checked,  
22 any additional information required by the Department of Justice, and a form consenting  
23 to the check of the criminal record and to the use of fingerprints and other identifying  
24 information required by the State Repository of Criminal Histories, signed by the  
25 individual provider to be checked. The fingerprints of the individual provider shall be  
26 forwarded to the State Bureau of Investigation for a search of the State's criminal history  
27 record file. The Department of Justice shall charge a reasonable fee for conducting the  
28 checks of the criminal records authorized by this subsection. The residential child care  
29 facility shall bear the costs of implementing this subsection."

30 Sec. 4. The Department of Human Resources and the Social Services  
31 Commission, upon consultation with the Division of Social Services of the Department of  
32 Human Resources and the Division of Criminal Information of the Department of Justice,  
33 shall adopt rules to implement this act.

34 Sec. 5. The Department of Human Resources may designate an agent to  
35 conduct the criminal history checks.

36 Sec. 6. Sections 1, 2, and 3 of this act become effective January 1, 1996, and  
37 apply to foster parents and employees of residential child care facilities providing care on  
38 or after that date, to applicants for foster parent licenses or employment in a residential  
39 child care facility on or after that date, and to foster parents whose licenses are being  
40 considered for renewal on or after that date. The remainder of this act is effective upon  
41 ratification.