

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 402*
Committee Substitute Favorable 7/10/95
Committee Substitute #2 Favorable 7/12/95

Short Title: Foster Parent Criminal Checks/AB.

(Public)

Sponsors:

Referred to:

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.

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

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

3 **"§ 131D-10.3A. Mandatory criminal checks of foster parents.**

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

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

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

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

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

30
31 **'NOTICE**

32
33 **FOSTER PARENT**

34 **MANDATORY CRIMINAL HISTORY CHECK**

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

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

42 **If it is determined, based on your criminal history, that you are unfit to**
43 **have responsibility for the safety and well-being of children, you shall have**

1 the opportunity to complete, or challenge the accuracy of, the information
2 contained in the SBI or FBI identification records.

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

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

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

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

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

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

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

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

3 **"§ 114-19.4. Criminal record checks of foster parents and residential child care**
4 **providers.**

5 (a) The Department of Justice shall provide to the Division of Social Services,
6 Department of Human Resources, the criminal history from the State and National
7 Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall
8 provide to the Department of Justice, along with the request, the fingerprints of the foster
9 parent to be checked, any additional information required by the Department of Justice,
10 and a form consenting to the check of the criminal record and to the use of fingerprints
11 and other identifying information required by the State or National Repositories signed
12 by the foster parent to be checked. The fingerprints of the foster parent shall be
13 forwarded to the State Bureau of Investigation for a search of the State's criminal history
14 record file, and the State Bureau of Investigation shall forward a set of fingerprints to the
15 Federal Bureau of Investigation for a national criminal history record check. The
16 Division shall keep all information pursuant to this section privileged, as provided in G.S.
17 131D-10.3A(g). The Department of Justice shall charge a reasonable fee for conducting
18 the checks of the criminal records authorized by this subsection.

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

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

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

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