

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 186

Short Title: Foster Care Criminal Check Correction.

(Public)

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Sponsors: Representatives Mitchell, Allred, Creech, Mercer, Nichols, Redwine (Cosponsors), Shubert and Morris.

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Referred to: Human Resources, if favorable, Judiciary II.

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February 17, 1997

A BILL TO BE ENTITLED

1 AN ACT TO MAKE CLARIFYING AMENDMENTS TO THE STATUTES  
2 PROVIDING FOR CRIMINAL HISTORY RECORD CHECKS OF INDIVIDUALS  
3 INVOLVED IN PROVIDING CHILD FOSTER CARE AS RECOMMENDED BY  
4 THE JOINT LEGISLATIVE ADMINISTRATIVE PROCEDURE OVERSIGHT  
5 COMMITTEE.  
6

7 The General Assembly of North Carolina enacts:

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

9 **"§ 131D-10.2. Definitions.**

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

- 11 (1) 'Adoption' means the act of creating a legal relationship between parent  
12 and child where it did not exist genetically.  
13 (2) 'Adoptive Home' means a family home approved by a child placing  
14 agency to accept a child for adoption.  
15 (3) 'Child' means an individual less than 18 years of age, who has not been  
16 emancipated under the provisions of Article 56 of Chapter 7A of the  
17 General Statutes.

- 1 (4) 'Child Placing Agency' means a person authorized by statute or license  
2 under this Article to receive children for purposes of placement in  
3 residential group care, family foster homes or adoptive homes.
- 4 (5) 'Children's Camp' means a residential child-care facility which provides  
5 foster care at either a permanent camp site or in a wilderness setting.
- 6 (6) 'Commission' means the Social Services Commission.
- 7 (6a) 'Criminal History' means a county, state, or federal criminal history of  
8 conviction or a pending indictment of a crime, whether a misdemeanor  
9 or a felony, that bears upon an individual's fitness to have responsibility  
10 for the safety and well-being of children, including the following North  
11 Carolina crimes contained in any of the following Articles of Chapter 14  
12 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 Explosive  
15 or Incendiary Device or Material; Article 26, Offenses Against Public  
16 Morality and Decency; Article 27, Prostitution; Article 39, Protection of  
17 Minors; Article 40, Protection of the Family; and Article 59, Public  
18 Intoxication. Such crimes also include possession or sale of drugs in  
19 violation of the North Carolina Controlled Substances Act, Article 5 of  
20 Chapter 90 of the General Statutes, and alcohol-related offenses such as  
21 sale to underage persons in violation of G.S. 18B-302 or driving while  
22 impaired in violation of G.S. 20-138.1 through G.S. 20-138.5. In  
23 addition to the North Carolina crimes listed in this subdivision, such  
24 crimes also include similar crimes under federal law or under the laws  
25 of other states.
- 26 (7) 'Department' means the Department of Human Resources.
- 27 (8) 'Family Foster Home' means the private residence of one or more  
28 individuals who permanently reside as members of the household and  
29 who provide continuing full-time foster care for a child or children who  
30 are placed there by a child placing agency or who provide continuing  
31 full-time foster care for two or more children who are unrelated to the  
32 adult members of the household by blood, marriage, guardianship or  
33 adoption.
- 34 (9) 'Foster Care' means the continuing provision of the essentials of daily  
35 living on a 24-hour basis for dependent, neglected, abused, abandoned,  
36 destitute, orphaned, undisciplined or delinquent children or other  
37 children who, due to similar problems of behavior or family conditions,  
38 are living apart from their parents, relatives, or guardians in a family  
39 foster home or residential child-care facility. The essentials of daily  
40 living include but are not limited to shelter, meals, clothing, education,  
41 recreation, and individual attention and supervision.
- 42 (9a) 'Foster Parent' means any individual who is 18 years of age or older who  
43 ~~permanently resides in a family foster home licensed by the State and~~

1           ~~any such individual applying to provide family foster care.~~ is licensed  
2           by the State to provide foster care.

3           (10) 'Person' means an individual, partnership, joint-stock company, trust,  
4           voluntary association, corporation, agency, or other organization or  
5           enterprise doing business in this State, whether or not for profit.

6           (11) 'Primarily Educational Institution' means any institution which operates  
7           one or more scholastic or vocational and technical education programs  
8           that can be offered in satisfaction of compulsory school attendance laws,  
9           in which the primary purpose of the housing and care of children is to  
10          meet their educational needs, provided such institution has complied  
11          with Article 39 of Chapter 115C of the General Statutes.

12          (12) 'Provisional License' means a type of license granted by the Department  
13          to a person who is temporarily unable to comply with a rule or rules  
14          adopted under this Article.

15          (13) 'Residential Child-Care Facility' means a staffed premise with paid or  
16          volunteer staff where children receive continuing full-time foster care.  
17          Residential child-care facility includes child-caring institutions, group  
18          homes, and children's camps which provide foster care."

19          Section 2. G.S. 131D-10.3A reads as rewritten:

20       **"§ 131D-10.3A. Mandatory criminal ~~checks of foster parents.~~ checks.**

21          (a)    Effective January 1, 1996, in order to ensure the safety and well-being of any  
22          child placed for foster care in a home, the Department shall ensure that the criminal  
23          histories of all foster ~~parents~~ parents, individuals applying for licensure as foster parents,  
24          and individuals 18 years of age or older who reside in a family foster home, are checked  
25          ~~and a determination of the foster parent's fitness to have responsibility for the safety and well-~~  
26          ~~being of children based on the criminal history is made.~~ and, based on the criminal history  
27          check, a determination is made as to whether the foster parents, and other individuals  
28          required to be checked, are fit for a foster child to reside with them in the home. The  
29          Department shall ensure that, as of the effective date of this act, all ~~foster parents~~  
30          individuals required to be checked are checked for county, state, and federal criminal  
31          histories.

32          (b)    The Department shall ensure that all ~~foster parents~~ individuals who ~~have been~~  
33          are required to be checked pursuant to subsection (a) of this section are checked annually  
34          upon relicensure for county and State criminal histories.

35          (c)    The Department may prohibit a ~~foster parent~~ an individual from providing foster  
36          care by denying or revoking the license to provide foster care if the Department  
37          determines that ~~the foster parent is unfit to have responsibility for the safety and well-being of~~  
38          ~~children based on the criminal history.~~ the safety and well-being of a child placed in the  
39          home for foster care would be at risk based on the criminal history of the individuals  
40          required to be checked pursuant to subsection (a) of this section.

41          (d)    The Department of Justice shall provide to the Department of Human  
42          Resources the criminal history of the ~~foster parent~~ individuals specified in subsection (a)  
43          of this section obtained from the State and National Repositories of Criminal Histories as

1 requested by the Department. The Department shall provide to the Department of Justice,  
2 along with the request, the fingerprints of the ~~foster parent individual~~ to be checked, any  
3 additional information required by the Department of Justice, and a form consenting to  
4 the check of the criminal record and to the use of fingerprints and other identifying  
5 information required by the State or National Repositories signed by the ~~foster parent~~  
6 individual to be checked. The fingerprints of the ~~foster parent individual~~ to be checked  
7 shall be forwarded to the State Bureau of Investigation for a search of the State's criminal  
8 history record file, and the State Bureau of Investigation shall forward a set of  
9 fingerprints to the Federal Bureau of Investigation for a national criminal history record  
10 check.

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

### 13 'NOTICE

#### 14 **FOSTER PARENT** 15 **MANDATORY CRIMINAL HISTORY CHECK**

16 NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY  
17 CHECK BE CONDUCTED ON ALL PERSONS 18 YEARS OF AGE OR OLDER  
18 WHO ~~PROVIDE FOSTER CARE-RESIDE~~ IN A LICENSED FAMILY FOSTER HOME.

19 "Criminal history" includes any county, state, and federal convictions or  
20 pending indictments of any crime, of any of the following crimes: the following Articles  
21 of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred  
22 Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13,  
23 Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material;  
24 Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution;  
25 Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59,  
26 Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5  
27 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to  
28 underage persons in violation of G.S. 18B-302 or driving while impaired in violation of  
29 G.S. 20-138.1 through G.S. 20-138.5; or similar crimes under federal law or under the  
30 laws of other states. Your fingerprints will be used to check the criminal history records  
31 of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

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

36 If ~~you are denied licensure is denied or your the~~ foster home license is revoked  
37 by the Department of Human Resources as a result of the criminal history check, if you  
38 are a foster parent, or are applying to become a foster parent, you may request a hearing  
39 pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative  
40 Procedure Act.  
41  
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1 Any ~~foster parent person~~ who intentionally falsifies any information required to  
2 be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

3 Refusal to consent to a criminal history check is grounds for the Department to  
4 ~~prohibit the foster parent from providing deny~~ or revoke a license to ~~provide~~ foster care.  
5 Any ~~foster parent person~~ who intentionally falsifies any information required to be  
6 furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

7 (f) The Department shall notify in writing the foster parent and any person  
8 applying to be licensed as a foster parent, and that individual's supervising agency of the  
9 determination by the Department of whether the foster parent is qualified to provide  
10 foster care based on the ~~foster parent's criminal history~~. history of all individuals required  
11 to be checked. In accordance with the law regulating the dissemination of the contents of  
12 the criminal history file furnished by the Federal Bureau of Investigation, the Department  
13 shall not release nor disclose any portion of ~~the foster parent's an individual's~~ criminal  
14 history to the foster ~~parent~~. parent or any other individual required to be checked. The  
15 Department shall also notify the ~~foster parent individual~~ of the ~~foster parent's individual's~~  
16 right to review the criminal history information, the procedure for completing or  
17 challenging the accuracy of the criminal history, and the foster parent's right to contest  
18 the Department's determination.

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

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

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

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

41 Section 3. G.S. 114-19.4 reads as rewritten:

42 "**§ 114-19.4. Criminal record checks of ~~foster parents~~. for foster care.**

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

16 Section 4. This act is effective when it becomes law.