

§ 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 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 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 individuals required to be checked are checked prior to placement for county, state, and federal criminal histories.

(b) A county department of social services shall issue an unfavorable preplacement assessment to a prospective adoptive parent if an individual required to submit to a criminal history check pursuant to subsection (a) of this section has a criminal history. A county department of social services shall issue an unfavorable preplacement assessment to a prospective adoptive parent if the county department of social services determines, pursuant to G.S. 48-3-303(e), that, based on other criminal convictions, whether felony or misdemeanor, 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.

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(c) The Department of Public Safety shall provide to the Department of Health and Human Services the criminal history of 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. The Department shall provide to the Department of Public Safety, along with the request, the fingerprints of any individual to be checked, any additional information required by the Department of Public Safety, 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 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, 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 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 conviction of a felony by a court of competent jurisdiction or a pending felony indictment of a crime for child

abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; 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 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 the prospective adoptive parent is denied a favorable preplacement assessment by a county department of social services as a result of a criminal history check as required under G.S. 48-3-309(a), the prospective adoptive parent may request a review of the assessment pursuant to G.S. 48-3-308(a).

Any 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 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 accordance with the federal and State law regulating the dissemination of the contents of the criminal history file, the Department shall not release or disclose any portion of an individual's criminal history to the prospective adoptive parent or any other individual required to be checked. The Department, however, shall ensure that the prospective adoptive parent or any other individual required to be checked is notified of the 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 Public Safety 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. (1998-229, s. 15; 2005-114, s. 1; 2007-276, ss. 9, 10; 2014-100, s. 17.1(o).)