

Article 3.

Adoption of Minors.

Part 1. General Provisions.

**§ 48-3-100. Application of Article.**

This Article shall apply to the adoption of minors by adults who are not their stepparents. (1995, c. 457, s. 2.)

Part 2. Placement of Minors for Adoption.

**§ 48-3-201. Who may place minors for adoption.**

(a) Only the following may place the minor for adoption:

- (1) An agency,
- (2) A guardian,
- (3) Both parents acting jointly, if
  - a. Both parents are married to each other and living together, or
  - b. One parent has legal custody of a minor and the other has physical custody but neither has both, or
- (4) A parent with legal and physical custody of a minor, except as provided in subdivision (3) of this subsection.

(b) A parent, guardian, or agency that places a minor directly for adoption shall execute a consent to the minor's adoption pursuant to Part 6 of this Article.

(c) A parent or guardian of a minor who wants an agency to place the minor for adoption must execute a relinquishment to the agency pursuant to Part 7 of this Article before the agency can place the minor.

(d) An agency having legal and physical custody of a minor may place the minor for adoption at any time after a relinquishment is executed by anyone as permitted by G.S. 48-3-701. The agency may place the minor for adoption even if other consents are required before an adoption can be granted, unless an individual whose consent is required notifies the agency in writing of the individual's objections before the placement. The agency shall act promptly after accepting a relinquishment to obtain all other necessary consents, relinquishments, or terminations of any guardian's authority pursuant to Chapter 35A of the General Statutes or parental rights pursuant to Article 11 of Chapter 7B of the General Statutes. (1995, c. 457, s. 2; 1997-215, s. 11(b); 1998-202, s. 13(j).)

**§ 48-3-202. Direct placement for adoption.**

(a) In a direct placement, a parent or guardian must personally select a prospective adoptive parent, but a parent or guardian may obtain assistance from another person or entity, or an adoption facilitator, in locating or evaluating a prospective adoptive parent, subject to the limitations of Article 10 of this Chapter.

(b) Information about a prospective adoptive parent shall be provided to a prospective placing parent or guardian by the prospective adoptive parent, the prospective adoptive parent's attorney, or a person or entity assisting the parent or guardian. Except as otherwise provided in this subsection, this information shall include the preplacement assessment prepared pursuant to Part 3 of this Article, and may include additional information requested by the parent or guardian. The agency preparing the preplacement

assessment may redact from the preplacement assessment the information described in G.S. 48-3-303(c)(12). (1995, c. 457, s. 2; 2001-150, s. 6; 2015-54, s. 6.)

**§ 48-3-203. Agency placement adoption.**

(a) An agency may acquire legal and physical custody of a minor for purposes of adoptive placement only by means of a relinquishment pursuant to Part 7 of this Article or by a court order terminating the rights and duties of a parent or guardian of the minor.

(b) An agency shall give any individual, upon request, a written statement of the services it provides, its procedure for selecting a prospective adoptive parent for a minor, including the role of the minor's parent or guardian in the selection process, and the procedure for an agency identified adoption and the disclosures permitted under G.S. 48-9-109. This statement shall include a schedule of any fee or expenses charged or required to be paid by the agency and a summary of the provisions of this Chapter that pertain to the requirements and consequences of a relinquishment and to the selection of a prospective adoptive parent.

(c) An agency may notify the parent when a placement has occurred and when an adoption decree is issued.

(d) An agency may place a minor for adoption only with an individual for whom a favorable preplacement assessment has been prepared. Placement shall be made as follows:

(1) If the agency has agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the individual selected by the parent or guardian.

(2) If the agency has not agreed to place the minor with the prospective adoptive parent selected by the parent or guardian, the minor shall be placed with the prospective adoptive parent selected by the agency on the basis of the preplacement assessment. The selection may not be delegated, but may be based on criteria requested by a parent who relinquishes the child to the agency.

(d1) A minor who is in the custody or placement responsibility of a county department of social services shall not be placed with a selected prospective adoptive parent prior to the completion of an investigation of the individual's criminal history pursuant to G.S. 48-3-309 or G.S. 131D-10.3A and, based on the criminal history, a determination as to the individual's fitness to have responsibility for the safety and well-being of children.

(e) In addition to the authority granted in G.S. 131D-10.5, the Social Services Commission may adopt rules for placements by agencies consistent with the purposes of this Chapter.

(f) An agency may release identifying information as provided in G.S. 48-9-104. (1949, c. 300; 1953, c. 906; 1961, c. 186; 1969, c. 911, s. 7; c. 982; 1975, c. 702, ss. 1-3; 1977, c. 879, s. 5; 1985, c. 758, ss. 10, 11; 1995, c. 457, s. 2; 1998-229, s. 13; 2001-150, s. 7.)

**§ 48-3-204. Recruitment of adoptive parents.**

(a) The Social Services Commission may adopt rules requiring agencies to adopt and follow appropriate recruitment plans for prospective adoptive parents.

(b) The Division may maintain a statewide photo-listing service for all agencies within this State as a means of recruiting adoptive parents for minors who have been legally freed for adoption.

(c) Agencies and the Division shall cooperate with similar agencies in other states, and with national adoption exchanges in an effort to recruit suitable adoptive parents. (1995, c. 457, s. 2.)

**§ 48-3-205. Disclosure of background information.**

(a) Notwithstanding any other provision of law, before placing a minor for adoption, an individual or agency placing the minor, or the individual's agent, must compile and provide to the prospective adoptive parent a written document containing the following information:

- (1) The date of the birth of the minor and the minor's weight at birth and any other reasonably available nonidentifying information about the minor that is relevant to the adoption decision or to the minor's development and well-being;
- (2) Age of the biological parents in years at the time of the minor's birth;
- (3) Heritage of the biological parents, which shall consist of nationality, ethnic background, and race;
- (4) Education of the biological parents, which shall be the number of years of school completed by the biological parents at the time of the minor's birth; and
- (5) General physical appearance of the biological parents.

In addition, the written document must also include all reasonably available nonidentifying information about the health of the minor, the biological parents, and other members of the biological parents' families that is relevant to the adoption decision or to the minor's health and development. This health-related information shall include each such individual's present state of physical and mental health, health and genetic histories, and information concerning any history of emotional, physical, sexual, or substance abuse. This health-related information shall also include an account of the prenatal and postnatal care received by the minor. The information described in this subsection, if known, shall, upon written request of the minor, be made available to the minor upon the minor reaching age 18 or upon the minor's marriage or emancipation.

(b) Information provided under this section, or any information directly or indirectly derived from such information, may not be used against the provider or against an individual described in subsection (a) of this section who is the subject of the information in any criminal action or any civil action for damages. In addition, information provided under this section may not be admitted in evidence against the provider or against an individual described in subsection (a) of this section who is the subject of the information in any other action or proceeding.

(c) The agency placing the minor shall receive and preserve any additional health-related information obtained after the preparation of the document described in subsection (a) of this section.

(d) The Division shall develop and make available forms designed to collect the information described in subsection (a) of this section. However, forms reasonably equivalent to those provided by the Division may be substituted. (1949, c. 300; 1957, c. 778, s. 7; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1979, c. 739, ss. 1, 2; 1981, c. 924, ss. 2, 3; 1983, c. 454, s. 6; 1993, c. 539, s. 411; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2; 2012-16, s. 4.)

**§ 48-3-206. Affidavit of parentage.**

(a) To assist the court in determining that a direct placement was valid and all necessary consents have been obtained, the parent or guardian who placed the minor shall execute an affidavit setting out names, last known addresses, and marital status of the minor's parents or possible parents. If the placing parent or guardian is unavailable to execute the affidavit, the affidavit may be prepared by a knowledgeable individual who shall sign the affidavit and indicate the source of the individual's knowledge.

(b) In an agency placement, the agency shall obtain from at least one individual who relinquishes a minor to the agency an affidavit setting out the information required in subsection (a) of this section. This affidavit is not necessary when the agency acquires legal and physical custody of a minor for purposes of adoptive placement by a court order terminating the parental rights of a parent or guardian. (1949, c. 300; 1977, c. 879, s. 6; 1983, c. 454, s. 6; 1995, c. 457, s. 2; 2001-208, s. 14; 2001-487, s. 101.)

#### **§ 48-3-207. Interstate placements.**

An interstate placement of a minor for purposes of adoption shall comply with the Interstate Compact on the Placement of Children, Article 38 of Chapter 7B of the General Statutes. (1995, c. 457, s. 2; 1998-202, s. 13(n).)

### Part 3. Preplacement Assessment.

#### **§ 48-3-301. Preplacement assessment required.**

(a) Except as provided in subsection (b) of this section, placement of a minor may occur only if a written preplacement assessment:

- (1) Has been completed or updated within the 18 months immediately preceding the placement; and
- (2) Contains a finding that the individual who is the subject of the assessment is suitable to be an adoptive parent, either in general or for a specific minor.

(b) A preplacement assessment is not required in an independent adoption when a prospective adoptive parent is a grandparent, full or half sibling, first cousin, aunt, uncle, great-aunt, great-uncle, or great-grandparent of the minor.

(c) If a direct placement is made in violation of this section:

- (1) The prospective adoptive parent shall request any preplacement assessment already commenced to be expedited, and if none has been commenced, shall obtain a preplacement assessment from an agency as authorized by G.S. 48-1-109; in either case, the assessment shall include the fact and date of placement;
- (2) The court may not enter a decree of adoption until both a favorable preplacement assessment and a report to the court have been completed and filed, and the court may not order a report to the court for at least 30 days after the preplacement assessment has been completed; and
- (3) If the person who placed the minor executes a consent before receiving a copy of the preplacement assessment, G.S. 48-3-608 shall determine the time within which that person may revoke. (1949, c. 300; 1957, c. 778,

s. 2; 1967, c. 880, s. 2; 1987, c. 716, s. 1; 1993, c. 539, s. 410; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2; 1997-215, s. 19(a); 2015-54, s. 7.)

**§ 48-3-302. Request for preplacement assessment.**

(a) An individual seeking to adopt may request a preplacement assessment at any time by an agency authorized by G.S. 48-1-109 to prepare preplacement assessments.

(b) An individual requesting a preplacement assessment need not have located a prospective adoptee when the request is made.

(c) An individual may have more than one preplacement assessment or may request that an assessment, once initiated, not be completed.

(d) If an individual is seeking to adopt a minor from a particular agency, the agency may require the individual to be assessed by its own employee, even if the individual has already had a favorable preplacement assessment completed by another agency.

(e) If an individual requesting a preplacement assessment has identified a prospective adoptive child and has otherwise been unable to obtain a preplacement assessment, the county department of social services must, upon request, prepare or contract for the preparation of the preplacement assessment. As used in this subsection, "unable to obtain a preplacement assessment" includes the inability to obtain a preplacement assessment at the fee the county department of social services is permitted to charge the individual. Except as provided in this subsection, no agency is required to conduct a preplacement assessment unless it agrees to do so. (1949, c. 300; 1957, c. 778, s. 2; 1967, c. 880, s. 2; 1987, c. 716, s. 1; 1993, c. 539, s. 410; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2; 1997-215, s. 15.)

**§ 48-3-303. Content and timing of preplacement assessment.**

(a) A preplacement assessment shall be completed within 90 days after a request has been accepted.

(b) The preplacement assessment must be based on at least one personal interview with each individual being assessed in the individual's residence and any report received pursuant to subsection (c) of this section.

(c) The preplacement assessment shall, after a reasonable investigation, report on the following about the individual being assessed:

- (1) Age and date of birth, nationality, race, or ethnicity, and any religious preference;
- (2) Marital and family status and history, including the presence of any children born to or adopted by the individual and any other children in the household;
- (3) Physical and mental health, including any addiction to alcohol or drugs;
- (4) Educational and employment history and any special skills;
- (5) Property and income, and current financial information provided by the individual;
- (6) Reason for wanting to adopt;
- (7) Any previous request for an assessment or involvement in an adoptive placement and the outcome of the assessment or placement;

- (8) Whether the individual has ever been a respondent in a domestic violence proceeding or a proceeding concerning a minor who was allegedly abused, dependent, neglected, abandoned, or delinquent, and the outcome of the proceeding;
- (9) Whether the individual has ever been convicted of a crime other than a minor traffic violation;
- (10) Whether the individual has located a parent interested in placing a child with the individual for adoption and a brief, nonidentifying description of the parent and the child; and
- (11) Any other fact or circumstance that may be relevant to a determination of the individual's suitability to be an adoptive parent, including the quality of the environment in the home and the functioning of any children in the household.
- (12) The agency preparing the preplacement assessment may redact from the preplacement assessment provided to a placing parent or guardian detailed information reflecting the prospective adoptive parent's income and financial account balances and social security numbers, and detailed information about the prospective adoptive parent's extended family members, including surnames, names of employers, names of schools attended, social security numbers, telephone numbers and addresses, and other similarly detailed information about extended family members obtained under subsections (b) and (c) of this section.
- (13) The most recent amended or updated preplacement assessment that meets the requirements of this section and G.S. 48-3-301(a), including subsequent amendments or partial updates completed as of the time of delivery, shall constitute the preplacement assessment for the purpose of meeting any requirement of this Chapter that a copy of the preplacement assessment be delivered to a court or a placing parent, guardian, or agency.

When any of the above is not reasonably available, the preplacement assessment shall state why it is unavailable.

(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 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 in accordance with G.S. 48-3-309(b), make a determination 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.

(e) In the preplacement assessment, the agency shall review the information obtained pursuant to subsections (b), (c), and (d) of this section and evaluate the

individual's strengths and weaknesses to be an adoptive parent. The agency shall then determine whether the individual is suitable to be an adoptive parent.

(f) If the agency determines that the individual is suitable to be an adoptive parent, the preplacement assessment shall include specific factors which support that determination.

(g) If the agency determines that the individual is not suitable to be an adoptive parent, the preplacement assessment shall state the specific concerns which support that determination. A specific concern is one that reasonably indicates that placement of any minor, or a particular minor, in the home of the individual would pose a significant risk of harm to the well-being of the minor.

(h) In addition to the information and finding required by subsections (c) through (g) of this section, the preplacement assessment must contain a list of the sources of information on which it is based.

(i) The Social Services Commission shall have authority to establish by rule additional standards for preplacement assessments. (1995, c. 457, s. 2; 1998-229, s. 14; 2001-150, s. 8; 2005-114, s. 2; 2007-276, s. 8; 2012-16, s. 5; 2018-68, ss. 6.1, 6.2; 2018-142, s. 9.)

#### **§ 48-3-304. Fees for preplacement assessment.**

(a) An agency that prepares a preplacement assessment may charge a reasonable fee for doing so, even if the individual being assessed requests that it not be completed. No fee may be charged except pursuant to a written agreement which must be signed by the individual to be charged prior to the beginning of the assessment. The fee agreement may not be based on the outcome of the assessment or any adoption.

(b) An assessment fee is subject to review by the court pursuant to G.S. 48-2-602 and G.S. 48-2-603 if the person who is assessed files a petition to adopt.

(c) The Department shall set the maximum fees, based on the individual's ability to pay and other factors, which may be charged by county departments of social services. The Department shall require waiver of fees for those unable to pay. Fees collected under this section shall be applied to the costs of preparing preplacement assessments and shall be used by the county department of social services to supplement and not to supplant appropriated funds. (1995, c. 457, s. 2.)

#### **§ 48-3-305. Agency disposition of preplacement assessments.**

(a) The agency shall give a copy of any completed or incomplete preplacement assessment to the individual who was the subject of the assessment. If the assessment contains a finding that an individual is not suitable to be an adoptive parent, the agency shall contemporaneously file the original with the Division.

(b) The agency shall retain a copy of a completed or incomplete preplacement assessment for at least five years. (1995, c. 457, s. 2.)

#### **§ 48-3-306. Favorable preplacement assessments.**

An individual who receives a preplacement assessment containing a finding that the individual is suitable to be an adoptive parent shall provide a copy of the assessment to any person or agency

considering the placement of a minor with the individual for adoption and shall also attach a copy of the assessment to any petition to adopt. (1995, c. 457, s. 2.)

**§ 48-3-307. Assessments completed after placement.**

(a) If a placement occurs before a preplacement assessment is completed, the prospective adoptive parent shall deliver a copy of the assessment when completed, whether favorable or unfavorable, to the parent or guardian who placed the minor. A prospective adoptive parent, who cannot after the exercise of due diligence personally locate the parent or guardian who placed the minor, may deposit a copy of the preplacement assessment in the United States mail, return receipt requested, addressed to the address of the parent or guardian given in the consent, and the date of receipt by the parent or guardian for purposes of G.S. 48-3-608 shall be deemed to be the date of delivery or last attempted delivery.

(b) If a petition for adoption is filed before the preplacement assessment is completed, the prospective adoptive parent shall attach to the petition an affidavit explaining why the assessment has not been completed and, upon completion of the assessment, shall file it with the court in which the petition is pending.

(c) A prospective adoptive parent shall file or cause to be filed a certificate indicating that the prospective adoptive parent has delivered a copy of the assessment to the parent or guardian who placed the minor for adoption. (1995, c. 457, s. 2; 2001-150, s. 9.)

**§ 48-3-308. Response to unfavorable preplacement assessment.**

(a) Each agency shall have a procedure for allowing an individual who has received an unfavorable preplacement assessment to have the assessment reviewed by the agency. In addition to the authority in G.S. 131D-10.5, the Social Services Commission shall have authority to adopt rules implementing this section.

(b) An individual who receives an unfavorable preplacement assessment may, after exhausting the agency's procedures for internal review, prepare and file a written response with the Division and the agency. The Division shall attach the response to the unfavorable assessment.

(c) The Division shall acknowledge receipt of the response but shall have no authority to take any action with respect to the response.

(d) If an unfavorable preplacement assessment is completed and filed with the Division and a minor has been placed with a prospective adoptive parent who is the subject of the unfavorable assessment, the Division shall notify the county department of social services, which shall take appropriate action.

(e) An unfavorable preplacement assessment and any response filed with the Division under this section shall not be public records as set forth in Chapter 132 of the General Statutes. (1995, c. 457, s. 2.)

**§ 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).)

Part 4. Transfer of Physical Custody of Minor by Health Care Facility or Attending Practitioner for Purposes of Adoption.

**§ 48-3-401. "Health care facility" and "attending practitioner" defined.**

As used in this Article:

- (1) "Health care facility" includes a hospital and maternity home; and
- (2) "Attending practitioner" includes a physician, licensed nurse, or other licensed professional provider of health care who assists in a birth. (1995, c. 457, s. 2.)

**§ 48-3-402. Authorization required to transfer physical custody.**

(a) A health care facility or attending practitioner who has physical custody may release a minor for the purpose of adoption to a prospective adoptive parent or agency not legally entitled to the custody of the minor if, in the presence of an employee of the health care facility or the attending practitioner:

- (1) A parent, guardian, or other person or entity having legal custody of the minor signs an authorization of the transfer of physical custody; and
- (2) The authorization states that the release is for the purpose of adoption.

(b) The health care facility or attending practitioner shall retain the authorization described in subsection (a) of this section for at least one year. (1995, c. 457, s. 2.)

Part 5. Custody of Minors Pending Final Decree of Adoption.

**§ 48-3-501. Petitioner entitled to custody in direct placement adoptions.**

Unless the court orders otherwise, when a parent or guardian places the adoptee directly with the petitioner, the petitioner acquires that parent's or guardian's right to legal and continuing physical custody of the adoptee and becomes a person responsible for the care and support of the adoptee, after the earliest of:

- (1) The execution of consent by the parent or guardian who placed the adoptee;
- (2) The filing of a petition for adoption by the petitioner; or
- (3) The execution of a document by a parent or guardian having legal and physical custody of a minor temporarily transferring custody to the petitioner, pending the execution of a consent. (1949, c. 300; 1995, c. 457, s. 2.)

**§ 48-3-502. Agency entitled to custody in placement by agency.**

(a) Unless the court orders otherwise, during a proceeding for adoption in which an agency places the adoptee with the petitioner:

- (1) The agency retains legal but not physical custody of the adoptee until the adoption decree becomes final; but
- (2) The agency may delegate to the petitioner responsibility for the care and support of the adoptee.

(b) Before a decree of adoption becomes final, the agency may for cause petition the court to dismiss the adoption proceeding and to restore full legal and physical custody of the minor to the agency; and the court may grant the petition on finding that it is in the best interest of the minor. (1995, c. 457, s. 2.)

#### Part 6. Consent to Adoption.

#### **§ 48-3-601. Persons whose consent to adoption is required.**

Unless consent is not required under G.S. 48-3-603, a petition to adopt a minor may be granted only if consent to the adoption has been executed by:

- (1) The minor to be adopted if 12 or more years of age;
- (2) In a direct placement, by:
  - a. The mother of the minor;
  - b. Any man who may or may not be the biological father of the minor but who:
    1. Is or was married to the mother of the minor if the minor was born during the marriage or within 280 days after the marriage is terminated or the parties have separated pursuant to a written separation agreement or an order of separation entered under Chapters 50 or 50B of the General Statutes or a similar order of separation entered by a court in another jurisdiction;
    2. Attempted to marry the mother of the minor before the minor's birth, by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and the minor is born during the attempted marriage, or within 280 days after the attempted marriage is terminated by annulment, declaration of invalidity, divorce, or, in the absence of a judicial proceeding, by the cessation of cohabitation;
    3. Before the filing of the petition, has legitimated the minor under the law of any state;
    4. Before the earlier of the filing of the petition or the date of a hearing under G.S. 48-2-206, has acknowledged his paternity of the minor and
      - I. Is obligated to support the minor under written agreement or by court order;
      - II. Has provided, in accordance with his financial means, reasonable and consistent payments for the support of the biological mother during or after the term of pregnancy, or the support of the minor, or both, which may include the payment of medical expenses, living expenses, or other tangible means of support, and has regularly visited

or communicated, or attempted to visit or communicate with the biological mother during or after the term of pregnancy, or with the minor, or with both; or

III. After the minor's birth but before the minor's placement for adoption or the mother's relinquishment, has married or attempted to marry the mother of the minor by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid; or

5. Before the filing of the petition, has received the minor into his home and openly held out the minor as his biological child; or

6. Is the adoptive father of the minor; and

c. A guardian of the minor; and

(3) In an agency placement by:

a. The agency that placed the minor for adoption; and

b. Each individual described in subdivision (2) of this section who has not relinquished the minor pursuant to Part 7 of Article 3 of this Chapter. (1949, c. 300; 1953, c. 906; 1957, c. 90; c. 778, ss. 3-5; 1961, c. 186; 1969, c. 534, s.1; c. 911, ss. 6, 7; c. 982; 1971, c. 1093, s. 13; c. 1185, s. 17; 1973, c. 1354, s. 5; 1975, c. 321, s. 1; c. 702, ss. 1-3; c. 714; 1977, c. 879, ss. 2, 3, 5; 1979, c. 107, s. 7; 2nd Sess., c. 1088, s. 1; 1983, cc. 30, 292; c. 454, ss. 2, 6; 1985, c. 758, ss. 5-11; 1987, c. 371, s. 1; 1995, c. 457, s. 2; 1997-215, s. 16.)

#### **§ 48-3-602. Consent of incompetent parents.**

If a parent as described in G.S. 48-3-601 has been adjudicated incompetent, then the court shall appoint a guardian ad litem for that parent and, unless the child already has a guardian, a guardian ad litem for the child to make a full investigation as to whether the adoption should proceed. The investigation shall include an evaluation of the parent's current condition and any reasonable likelihood that the parent will be restored to competency, the relationship between the child and the incompetent parent, alternatives to adoption, and any other relevant fact or circumstance. If the court determines after a hearing on the matter that it will be in the best interest of the child for the adoption to proceed, the court shall order the guardian ad litem of the parent to execute for that parent a consent as provided in this Part or a relinquishment as provided in Part 7 of this Article. (1949, c. 300; 1953, c. 906; 1961, c. 186; 1969, c. 911, s. 7; c. 982; 1975, c. 702, ss. 1-3; 1977, c. 879, s. 5; 1985, c. 758, ss. 10, 11; 1995, c. 457, s. 2; 1997-215, s. 11(d); 2012-16, s. 6.)

#### **§ 48-3-603. Persons whose consent is not required.**

(a) Consent to an adoption of a minor is not required of a person or entity whose consent is not required under G.S. 48-3-601, or any of the following:

(1) An individual whose parental rights and duties have been terminated under Article 11 of Chapter 7B of the General Statutes or by a court of competent jurisdiction in another state.

- (2) A man described in G.S. 48-3-601(2), other than an adoptive father, if (i) the man has been judicially determined not to be the father of the minor to be adopted, or (ii) another man has been judicially determined to be the father of the minor to be adopted.
  - (3) Repealed by Session Laws 1997-215, s. 11(a).
  - (4) An individual who has relinquished parental rights or guardianship powers, including the right to consent to adoption, to an agency pursuant to Part 7 of this Article.
  - (5) A man who is not married to the minor's birth mother and who, after the conception of the minor, has executed a notarized statement denying paternity or disclaiming any interest in the minor.
  - (6) A deceased parent or the personal representative of a deceased parent's estate.
  - (7) An individual listed in G.S. 48-3-601 who has not executed a consent or a relinquishment and who fails to respond to a notice of the adoption proceeding within 30 days after the service of the notice or, if service is by publication, 40 days from the first publication of the notice.
  - (8) An individual notified under G.S. 48-2-206 who does not respond in a timely manner or whose consent is not required as determined by the court.
  - (9) **(See editor's note)** An individual whose actions resulted in a conviction under G.S. 14-27.21, G.S. 14-27.22, G.S. 14-27.23, or G.S. 14-27.24 and the conception of the minor to be adopted.
- (b) The court may issue an order dispensing with the consent of the following:
- (1) A guardian or an agency that placed the minor upon a finding that the consent is being withheld contrary to the best interest of the minor.
  - (2) A minor 12 or more years of age upon a finding that it is not in the best interest of the minor to require the consent. (1949, c. 300; 1957, c. 90; c. 778, ss. 3, 4; 1969, c. 534, s. 1; 1971, c. 1185, s. 17; 1975, c. 321, s. 1; c. 714; 1977, c. 879, ss. 2, 3; 1979, c. 107, s. 7; 2nd Sess., c. 1088, s. 1; 1983, c. 292; 1985, c. 758, ss. 5-9; 1987, c. 371, s. 1; 1995, c. 457, s. 2; 1997-215, ss. 11(a), 17; 1998-202, s. 13(o); 2004-128, s. 9; 2013-236, s. 7; 2015-54, s. 8; 2015-181, s. 34.)

**§ 48-3-604. Execution of consent: timing.**

- (a) A man whose consent is required under G.S. 48-3-601 may execute a consent to adoption either before or after the child is born.
- (b) The mother of a minor child may execute a consent to adoption at any time after the child is born but not sooner.
- (c) A guardian of a minor to be adopted may execute a consent to adoption at any time.
- (d) An agency licensed by the Department or a county department of social services in this State that places a minor for adoption shall execute its consent no later than 30 days after being served with notice of the proceeding for adoption.

(e) A minor to be adopted who is 12 years of age or older may execute a consent at any time. (1995, c. 457, s. 2.)

**§ 48-3-605. Execution of consent: procedures.**

(a) A consent executed by a parent or guardian or by a minor to be adopted who is 12 years of age or older must conform substantially to the requirements in G.S. 48-3-606 and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) A parent who has not reached the age of 18 years shall have legal capacity to give consent to adoption and to release that parent's rights in a child, and shall be as fully bound as if the parent had attained 18 years of age.

(c) An individual before whom a consent is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the consent has met each of the following:

- (1) Read, or had read to him or her, and understood the consent.
- (2) Signed the consent voluntarily.
- (3) Been given an original or a copy of his or her fully executed consent.
- (4) Been advised that counseling services may be available through county departments of social services or licensed child-placing agencies.

(d) A consent by an agency must be executed by the executive head or another authorized employee and must be signed and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments.

(e) A consent signed in another state or in another country in accord with the procedure of that state or country shall not be invalid solely because of failure to comply with the formalities set out in this Chapter.

(f) A consent to the adoption of an Indian child, as that term is defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., must meet the requirements of that Act.

(g) The office of the clerk of superior court, the district court, and the superior court shall each be a court of competent jurisdiction for the purposes of (i) judicial proceedings for accepting voluntary consents to adoption under 25 U.S.C. § 1913, (ii) making determinations as to whether there is good cause to deviate from placement preferences under 25 U.S.C. § 1915(a), or (iii) judicial proceedings for voluntary consent to adoption in conformance with the laws of any state.

(h) In addition to other methods of identification permitted by Chapter 10B of the General Statutes or other applicable law, a parent or adoptee who has not reached the age of 18 years may be identified to an individual authorized to administer oaths or take acknowledgments by an affidavit of an adult relative of the minor, a teacher, a social worker employed by an agency or a county department of social services, a licensed professional social worker, a health service provider, or, if none of the foregoing persons to whom the minor does not object is available, an adult who has known the minor for more than two years. (1949, c. 300; 1971, c. 1231, s. 1; 1995, c. 457, s. 2; 2013-236, s. 8; 2015-54, s. 9; 2015-264, s. 44(a); 2018-68, s. 1.1.)

**§ 48-3-606. Content of consent; mandatory provisions.**

A consent required from a minor to be adopted, a parent, or a guardian under G.S. 48-3-601 must be in writing and state each of the following:

- (1) The date and place of the execution of the consent.
- (2) The name, date of birth, and permanent address, if any, and if none, the current mailing address, of the individual executing the consent.
- (3) The date of birth or the expected delivery date, the sex, and the name of the minor to be adopted, if known. A consent to adoption of a newborn minor may give the minor's name as "Baby [Last Name of Biological Mother]" or a similar designation.
- (4) That the individual executing the document is voluntarily consenting to the transfer of legal and physical custody to, and the adoption of the minor to be adopted by, the identified prospective adoptive parent.
- (5) The name of a person and an address where any notice of revocation may be sent.
- (6) That the individual executing the document understands that after the consent is signed and acknowledged in accord with the procedures set forth in G.S. 48-3-605, it may be revoked in accord with G.S. 48-3-608, but that it is otherwise final and irrevocable and may not be withdrawn or set aside except under a circumstance set forth in G.S. 48-3-609.
- (7) That the consent shall be valid and binding and is not affected by any oral or separate written agreement between the individual executing the consent and the adoptive parent.
- (8) That the individual executing the consent has not received or been promised any money or anything of value for the consent, and has not received or been promised any money or anything of value in relation to the adoption of the child except for lawful payments that are itemized on a schedule attached to the consent.
- (9) That the individual executing the consent understands that when the adoption is final, all rights and obligations of the adoptee's former parents or guardian with respect to the adoptee will be extinguished, and every aspect of the legal relationship between the adoptee and the former parent or guardian will be terminated.
- (10) The name and address of the court, if known, in which the petition for adoption has been or will be filed.
- (11) That the individual executing the consent waives notice of any proceeding for adoption.
- (12) If the individual executing the document is the minor to be adopted or the person placing the minor for adoption, a statement that the adoption shall be by a specific named adoptive parent.
- (13) If the individual executing the document is the person placing the minor for adoption, that the individual executing the consent has provided the



prospective adoptive parent, or the prospective adoptive parent's attorney, with the written document required by G.S. 48-3-205.

- (14) That the person executing the consent has:
- a. Repealed by Session Laws 2013-236, s. 9, effective July 3, 2013.
  - b. Been advised that counseling services may be available through county departments of social services or licensed child-placing agencies; and
  - c. Been advised of the right to employ independent legal counsel. (1995, c. 457, s. 2; 2013-236, s. 9; 2015-54, s. 10; 2018-68, s. 2.1.)

**§ 48-3-607. Consequences of consent.**

(a) A consent executed pursuant to G.S. 48-3-605 and G.S. 48-3-606 may be revoked as provided in G.S. 48-3-608. A consent is otherwise final and irrevocable except under a circumstance set forth in G.S. 48-3-609.

(b) Except as provided in subsection (c) of this section, the consent of a parent, guardian, or agency that placed a minor for adoption pursuant to Part 2 of this Article vests legal and physical custody of the minor in the prospective adoptive parent and empowers this individual to petition the court to adopt the minor.

(c) Any other parental right and duty of a parent who executed a consent is not terminated until either the decree of adoption becomes final or the relationship of parent and child is otherwise terminated, whichever comes first. Until termination, the minor remains the child of a parent who executed a consent for purposes of any inheritance, succession, insurance, arrears of child support, and other benefit or claim that the minor may have from, through, or against the parent.

(d) A prospective adoptive parent with whom a minor has been placed in an independent adoption and who has filed a petition for adoption of the minor may, after the time within which the consenting parent or guardian may revoke the consent has expired, apply ex parte to a clerk of superior court for an order finding that the child has been placed with the petitioner and confirming that the petitioner has legal and physical custody of the minor for the purposes of obtaining a certified copy of the child's birth certificate, a Social Security number, or federal and State benefits for the minor. (1949, c. 300; 1957, c. 778, s. 6; 1961, c. 186; 1969, c. 982; 1983, cc. 83, 688; 1985, c. 758, s. 12; 1987, c. 541, s. 1; 1991, c. 667, s. 1; 1995, c. 457, s. 2; 2018-68, s. 3.1.)

**§ 48-3-608. Revocation of consent.**

(a) A consent to the adoption of any infant who is in utero or any minor may be revoked within seven days following the day on which it is executed, inclusive of weekends and holidays. If the final day of the revocation period falls on a Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day. The individual who gave the consent may revoke by giving written notice to the person specified in the consent. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited

in the United States mail, postage prepaid, addressed to the person to whom consent was given at the address specified in the consent. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the person to whom consent was given at the address specified in the consent.

(b) In a direct placement, if:

- (1) A preplacement assessment is required, and
- (2) Placement occurs before the preplacement assessment is given to the parent or guardian who is placing the minor,

then that individual's time under subsection (a) of this section to revoke any consent previously given shall be either five business days after the date the individual receives the preplacement assessment prepared substantially in conformance with the requirements of G.S. 48-3-303, or the remainder of the time provided in subsection (a) of this section, whichever is longer. The date of receipt is the earlier of the date of actual receipt or the date established pursuant to G.S. 48-3-307.

(c) If a person who has physical custody places the minor with the prospective adoptive parent and thereafter revokes a consent pursuant to this section, the prospective adoptive parent shall, immediately upon request, return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who placed the minor and divests the prospective adoptive parent of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court shall award reasonable attorneys' fees to the person who revoked if the prospective adoptive parent fails upon request to return the minor.

(d) If a person other than a person described in subsection (c) of this section revokes a consent pursuant to this section and this person's consent is required, the adoption cannot proceed until another consent is obtained or the person's parental rights are terminated. The person who revoked consent is not thereby entitled to physical custody of the minor. If the minor whose consent is required revokes consent, the county department of social services shall be notified for appropriate action.

(e) A second consent to adoption by the same adoptive parents is irrevocable. (1949, c. 300; 1957, c. 778, s. 6; 1961, c. 186; 1969, c. 982; 1983, cc. 83, 688; 1985, c. 758, s. 12; 1987, c. 541, s. 1; 1991, c. 667, s. 1; 1995, c. 457, s. 2; 1997-215, s. 8(a); 2001-150, s. 10; 2009-185, s. 5; 2012-16, s. 7.)

#### **§ 48-3-609. Challenges to validity of consent.**

(a) A consent shall be void if:

- (1) Before the entry of the adoption decree, the individual who executed the consent establishes by clear and convincing evidence that it was obtained by fraud or duress;
- (2) The prospective adoptive parent and the individual who executed the consent mutually agree in writing to set it aside;
- (3) The petition to adopt is voluntarily dismissed with prejudice; or
- (4) The court dismisses the petition to adopt and no appeal has been taken, or the dismissal has been affirmed on appeal and all appeals have been exhausted.

(b) If the consent of an individual who previously had legal and physical custody of a minor becomes void under subsection (a) of this section and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court shall order the return of the minor to the custody of that individual and shall dismiss any pending adoption proceeding. If the court has reasonable cause to believe that the return will be detrimental to the minor, the court shall not order the return of the minor but shall notify the county department of social services for appropriate action.

(c) If the consent of an individual who did not previously have physical custody of a minor becomes void under subsection (a) of this section and no ground exists under G.S. 48-3-603 for dispensing with this individual's consent, the court shall dismiss any pending proceeding for adoption. If return of the minor is not ordered under subsection (b) of this section, the court shall notify the county department of social services for appropriate action. (1995, c. 457, s. 2.)

#### **§ 48-3-610. Collateral agreements.**

If a person executing a consent and the prospective adoptive parent or parents enter into an agreement regarding visitation, communication, support, and any other rights and duties with respect to the minor, this agreement shall not be a condition precedent to the consent itself, failure to perform shall not invalidate a consent already given, and the agreement itself shall not be enforceable. (1995, c. 457, s. 2.)

### Part 7. Relinquishment of Minor for Adoption.

#### **§ 48-3-701. Individuals who may relinquish minor; timing.**

(a) A parent or guardian may relinquish all parental rights or guardianship powers, including the right to consent to adoption, to an agency. If both parents are married to each other and living together, both parents must act jointly in relinquishing a child to an agency.

(b) The mother of a minor child may execute a relinquishment at any time after the child is born but not sooner. A man whose consent is required under G.S. 48-3-601 may execute a relinquishment either before or after the child is born.

(c) A guardian may execute a relinquishment at any time. (1949, c. 300; 1953, c. 906; 1961, c. 186; 1969, c. 911, s. 7; c. 982; 1975, c. 702, ss. 1-3; 1977, c. 879, s. 5; 1985, c. 758, ss. 10, 11; 1995, c. 457, s. 2.)

#### **§ 48-3-702. Procedures for relinquishment.**

(a) A relinquishment executed by a parent or guardian must conform substantially to the requirements in this Part and must be signed and acknowledged under oath before an individual authorized to administer oaths or take acknowledgments.

(b) The provisions of G.S. 48-3-605(b), (e), (f), and (g) also apply to a relinquishment executed under this Part.

(b1) An individual before whom a relinquishment is signed and acknowledged under subsection (a) of this section shall certify in writing that to the best of the individual's knowledge or belief, the parent, guardian, or minor to be adopted executing the relinquishment has met each of the following:

- (1) Read, or had read to him or her, and understood the relinquishment.
- (2) Signed the relinquishment voluntarily.
- (3) Been given an original or copy of his or her fully executed relinquishment.

- (4) Been advised that counseling services are available through the agency to which the relinquishment is given.

(c) An agency that accepts a relinquishment shall furnish each parent or guardian who signs the relinquishment a letter or other writing indicating the agency's willingness to accept that person's relinquishment. (1995, c. 457, s. 2; 1997-215, s. 7(a); 2013-236, s. 10; 2015-264, s. 44(b).)

**§ 48-3-703. Content of relinquishment; mandatory provisions.**

(a) A relinquishment executed by a parent or guardian under G.S. 48-3-701 must be in writing and state the following:

- (1) The date and place of the execution of the relinquishment.
- (2) The name, date of birth, and permanent address, if any, and if none, the current mailing address, of the individual executing the relinquishment.
- (3) The date of birth or the expected delivery date, the sex, and the name of the minor, if known. A relinquishment of a newborn minor may give the minor's name as "Baby [Last Name of Biological Mother]" or similar designation.
- (4) The name and address of the agency to which the minor is being relinquished.
- (5) That the individual voluntarily consents to the permanent transfer of legal and physical custody of the minor to the agency for the purposes of adoption, and
  - a. The placement of the minor for adoption with a prospective adoptive parent selected by the agency; or
  - b. The placement of the minor for adoption with a prospective adoptive parent selected by the agency and agreed upon by the individual executing the relinquishment.
- (6) That the individual executing the relinquishment understands that after the relinquishment is signed and acknowledged in the manner provided in G.S. 48-3-702, it may be revoked in accord with G.S. 48-3-706 but that it is otherwise final and irrevocable except under the circumstances set forth in G.S. 48-3-707.
- (7) That the relinquishment shall be valid and binding and shall not be affected by any oral or separate written agreement between the individual executing the consent and the agency.
- (8) That the individual executing the relinquishment understands that when the adoption is final, all rights and duties of the individual executing the relinquishment with respect to the minor will be extinguished and all other aspects of the legal relationship between the minor child and the parent will be terminated.
- (9) That the individual executing the relinquishment has not received or been promised any money or anything of value for the relinquishment of the minor, and has not received or been promised any money or anything of

value in relation to the relinquishment or the adoption of the minor except for lawful payments that are itemized on a schedule attached to the relinquishment.

- (10) That the individual executing the relinquishment waives notice of any proceeding for adoption.
  - (11) That the individual executing the relinquishment has provided the agency with the written document required by G.S. 48-3-205, or that the individual has provided the agency with signed releases that will permit the agency to compile the information required by G.S. 48-3-205.
  - (12) That the individual executing the relinquishment has:
    - a. Repealed by Session Laws 2013-236, s. 9, effective July 3, 2013.
    - b. Been advised that counseling services are available through the agency to which the relinquishment is given; and
    - c. Been advised of the right to employ independent legal counsel.
- (b) Reserved. (1995, c. 457, s. 2; 2013-236, s. 11; 2015-54, s. 11; 2018-68, s. 2.2.)

#### **§ 48-3-704. Content of relinquishment; optional provisions.**

In addition to the mandatory provisions listed in G.S. 48-3-703, a relinquishment may also state that the relinquishment may be revoked upon notice by the agency that an adoption by a specific prospective adoptive parent, named or described in the relinquishment is not completed. In this event the parent's time to revoke a relinquishment is 10 days, inclusive of weekends and holidays, from the date the parent receives such notice from the agency. The revocation shall be in writing and delivered in a manner specified in G.S. 48-3-706(a) for revocation of relinquishments. An agency, which after the exercise of due diligence cannot personally locate the parent entitled to this notice, may deposit a copy of the notice in the United States mail, return receipt requested, addressed to the address of the parent given in the relinquishment, and the date of receipt by the parent is deemed to be the date of delivery or last attempted delivery. If a parent does not revoke the relinquishment in the time and manner provided in this section, the relinquishment is deemed a general relinquishment to the agency, and the agency may place the child for adoption with a prospective adoptive parent selected by the agency. (1995, c. 457, s. 2; 1997-215, s. 19.1(a); 2001-208, s. 15; 2001-487, s. 101.)

#### **§ 48-3-705. Consequences of relinquishment.**

(a) A relinquishment executed pursuant to G.S. 48-3-702 through G.S. 48-3-704 may be revoked as provided in G.S. 48-3-706 and is otherwise final and irrevocable except under a circumstance set forth in G.S. 48-3-707.

(b) Upon execution, a relinquishment by a parent or guardian entitled under G.S. 48-3-201 to place a minor for adoption:

- (1) Vests legal and physical custody of the minor in the agency; and
- (2) Empowers the agency to place the minor for adoption with a prospective adoptive parent selected in the manner specified in the relinquishment.

(c) A relinquishment terminates:

- (1) Any right and duty of the individual who executed the relinquishment with respect to the legal and physical custody of the minor.

- (2) The right to consent to the minor's adoption.
- (3) Repealed by Session Laws 1997-215, s. 19.1(b).

(d) Except as provided in subsection (c) of this section, parental rights and duties of a parent who executed a relinquishment are not terminated until the decree of adoption becomes final or the parental relationship is otherwise legally terminated, whichever occurs first. Until termination the minor remains the child of a parent who executed a relinquishment for purposes of any inheritance, succession, insurance, arrears of child support, and other benefit or claim that the minor may have from, through, or against the parent.

(e) An agency or county department of social services to whom a minor has been relinquished may, after the time within which the relinquishing parent or guardian may revoke the relinquishment has expired, apply ex parte to a clerk of superior court for an order finding that the child has been relinquished to the agency and confirming that the agency or county department of social services has legal custody of the minor for the purposes of obtaining a certified copy of the child's birth certificate, a Social Security number, or federal and State benefits for the minor. (1949, c. 300; 1953, c. 906; 1957, c. 778, s. 6; 1961, c. 186; 1967, c. 926, s. 1; 1969, c. 911, ss. 7, 9; c. 982; 1973, c. 476, s. 138; 1975, c. 702, ss. 1-3; 1977, c. 879, s. 5; 1983, c. 454, ss. 4, 7; cc. 83, 688; 1985, c. 758, ss. 10-12; 1987, c. 541, s. 1; 1991, c. 667, s. 1; 1995, c. 457, s. 2; 1997-215, s. 19.1(b); 2018-68, s. 3.2.)

#### **§ 48-3-706. Revocation of relinquishments.**

(a) A relinquishment of any infant who is in utero or any minor may be revoked within seven days following the day on which it is executed by the infant or minor's parent or guardian, inclusive of weekends and holidays. If the final day of the period falls on a Saturday, Sunday, or a legal holiday when North Carolina courthouses are closed for transactions, then the revocation period extends to the next business day. The individual who gave the relinquishment may revoke by giving written notice to the agency to which the relinquishment was given. Notice may be given by personal delivery, overnight delivery service, or registered or certified mail, return receipt requested. If notice is given by mail, notice is deemed complete when it is deposited in the United States mail, postage prepaid, addressed to the agency at the agency's address as given in the relinquishment. If notice is given by overnight delivery service, notice is deemed complete on the date it is deposited with the service as shown by the receipt from the service, with delivery charges paid by the sender, addressed to the agency at the agency's address as given in the relinquishment.

(b) If a person who has physical custody relinquishes a minor and thereafter revokes a relinquishment pursuant to this section, the agency shall upon request return the minor to that person. The revocation restores the right to physical custody and any right to legal custody to the person who relinquished the minor and divests the agency of any right to legal or physical custody and any further responsibility for the care and support of the minor. In any subsequent proceeding, the court may award the person who revoked reasonable attorneys' fees from a prospective adoptive parent with whom the minor was placed who refuses to return the minor and from the agency if the agency fails to cooperate in securing the minor's return.

(c) If a person other than a person described in subsection (b) of this section revokes a relinquishment pursuant to this section and this person's consent is required, the agency may not give consent for the adoption and the adoption cannot proceed until another relinquishment or a

consent is obtained or parental rights are terminated. The person who revoked the relinquishment is not thereby entitled to physical custody of the minor.

(d) A second relinquishment for placement with the same adoptive parent selected by the agency and agreed upon by the person executing the relinquishment, or a second general relinquishment for placement by the agency with any adoptive parent selected by the agency, is irrevocable. (1949, c. 300; 1957, c. 778, s. 6; 1961, c. 186; 1969, c. 982; 1983, cc. 83, 688; 1985, c. 758, s. 12; 1987, c. 541, s. 1; 1991, c. 667, s. 1; 1995, c. 457, s. 2; 1997-456, s. 56.2(a); 2001-150, s. 11; 2009-185, s. 6.)

### **§ 48-3-707. Challenges to validity of relinquishments.**

(a) A relinquishment shall become void if any of the following occur:

- (1) Before the entry of the adoption decree, the individual who executed the relinquishment establishes by clear and convincing evidence that it was obtained by fraud or duress.
- (2) Before placement with a prospective adoptive parent occurs, the agency and the person relinquishing the minor agree to rescind the relinquishment.
- (3) After placement with a prospective adoptive parent occurs, but before the entry of the adoption decree, the agency, the person relinquishing the minor, and the prospective adoptive parent agree to rescind the relinquishment.
- (4) Upon motion of a county department of social services or licensed child-placing agency under G.S. 7B-909, the court orders that the relinquishment shall be voided based on a finding that another consent or relinquishment necessary for an adoption cannot be obtained and that no further steps are being taken to terminate the parental rights of the parent from whom the consent or relinquishment has not been obtained.

(b) A relinquishment may be revoked upon the happening of a condition expressly provided for in the relinquishment pursuant to G.S. 48-3-704.

(c) If the relinquishment of an individual who previously had legal and physical custody of a minor is set aside under subsection (a) or (b) of this section and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court shall order the return of the minor to the custody of that individual, and shall dismiss any pending proceeding for adoption. If the court has reasonable cause to believe that the return will be detrimental to the minor, the court shall not order the return of the minor but shall notify the county department of social services for appropriate action.

(d) If the relinquishment of an individual who did not previously have physical custody of a minor is set aside under subsection (a) or (b) of this section, and no grounds exist under G.S. 48-3-603 for dispensing with this individual's consent, the court shall dismiss any pending proceeding for adoption. If return of the minor is not ordered under subsection (c) of this section, the court shall notify the county department of social services for appropriate action. (1995, c. 457, s. 2; 1997-215, s. 19.1(c); 2012-16, s. 8; 2013-236, s. 12.)