

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-276
HOUSE BILL 698**

**AN ACT TO AMEND EXISTING CHILD WELFARE LAWS TO COMPLY WITH
FEDERAL LAW AND REGULATIONS.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 7B-506(b) reads as rewritten:

"(b) At a hearing to determine the need for continued custody, the court shall receive testimony and shall allow the guardian ad litem, or juvenile, and the juvenile's parent, guardian, custodian, or caretaker ~~an opportunity~~ the right to introduce evidence, to be heard in the person's own behalf, and to examine witnesses. The State shall bear the burden at every stage of the proceedings to provide clear and convincing evidence that the juvenile's placement in custody is necessary. The court shall not be bound by the usual rules of evidence at such hearings."

SECTION 2. G.S. 7B-901 reads as rewritten:

"§ 7B-901. Dispositional hearing.

The dispositional hearing shall take place immediately following the adjudicatory hearing and shall be concluded within 30 days of the conclusion of the adjudicatory hearing. The dispositional hearing may be informal and the court may consider written reports or other evidence concerning the needs of the juvenile. The juvenile and the juvenile's parent, guardian, or custodian shall have ~~an opportunity~~ the right to present evidence, and they may advise the court concerning the disposition they believe to be in the best interests of the juvenile. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition. The court may exclude the public from the hearing unless the juvenile moves that the hearing be open, which motion shall be granted."

SECTION 3. G.S. 7B-906(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker the court shall conduct a review hearing within 90 days from the date of the dispositional hearing and shall conduct a review hearing within six months thereafter. The director of social services shall make a timely request to the clerk to calendar each review at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the review and its purpose to the parent, the juvenile, if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this subsection shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~ the right to be heard."

SECTION 4. G.S. 7B-907(a) reads as rewritten:

"(a) In any case where custody is removed from a parent, guardian, custodian, or caretaker, the judge shall conduct a review hearing designated as a permanency planning hearing within 12 months after the date of the initial order removing custody, and the hearing may be combined, if appropriate, with a review hearing required by G.S. 7B-906. The purpose of the permanency planning hearing shall be to develop a plan to achieve a safe, permanent home for the juvenile within a reasonable period of

time. Subsequent permanency planning hearings shall be held at least every six months thereafter, or earlier as set by the court, to review the progress made in finalizing the permanent plan for the juvenile, or if necessary, to make a new permanent plan for the juvenile. The Director of Social Services shall make a timely request to the clerk to calendar each permanency planning hearing at a session of court scheduled for the hearing of juvenile matters. The clerk shall give 15 days' notice of the hearing and its purpose to the parent, the juvenile if 12 years of age or more, the guardian, any foster parent, relative, or preadoptive parent providing care for the child, the custodian or agency with custody, the guardian ad litem, and any other person or agency the court may specify, indicating the court's impending review. Nothing in this provision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~ the right to be heard."

SECTION 5. G.S. 7B-908 reads as rewritten:

"§ 7B-908. Post termination of parental rights' placement court review.

(a) The purpose of each placement review is to ensure that every reasonable effort is being made to provide for a permanent placement plan for the juvenile who has been placed in the custody of a county director or licensed child-placing agency, which is consistent with the juvenile's best interests. At each review hearing the court may consider information from the department of social services, the licensed child-placing agency, the guardian ad litem, the child, any foster parent, relative, or preadoptive parent providing care for the child, and any other person or agency the court determines is likely to aid in the review. The court may consider any evidence, including hearsay evidence as defined in G.S. 8C-1, Rule 801, that the court finds to be relevant, reliable, and necessary to determine the needs of the juvenile and the most appropriate disposition.

(b) The court shall conduct a placement review not later than six months from the date of the termination hearing when parental rights have been terminated by a petition brought by any person or agency designated in G.S. 7B-1103(2) through (5) and a county director or licensed child-placing agency has custody of the juvenile. The court shall conduct reviews every six months thereafter until the juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive parents;~~ the subject of a decree of adoption:

(1) No more than 30 days and no less than 15 days prior to each review, the clerk shall give notice of the review to the juvenile if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, the guardian ad litem, if any, and any other person or agency the court may specify. Only the juvenile, if the juvenile is at least 12 years of age, the legal custodian of the juvenile, any foster parent, relative, or preadoptive parent providing care for the juvenile, and the guardian ad litem shall attend the review hearings, except as otherwise directed by the court. Nothing in this subdivision shall be construed to make any foster parent, relative, or preadoptive parent a party to the proceeding solely based on receiving notice and ~~an opportunity~~ the right to be heard. Any individual whose parental rights have been terminated shall not be considered a party to the proceeding unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal.

(2) If a guardian ad litem for the juvenile has not been appointed previously by the court in the termination proceeding, the court, at the initial six-month review hearing, may appoint a guardian ad litem to represent the juvenile. The court may continue the case for such time as is necessary for the guardian ad litem to become familiar with the facts of the case.

(c) The court shall consider at least the following in its review:

- (1) The adequacy of the plan developed by the county department of social services or a licensed child-placing agency for a permanent placement relative to the juvenile's best interests and the efforts of the department or agency to implement such plan;
- (2) Whether the juvenile has been listed for adoptive placement with the North Carolina Adoption Resource Exchange, the North Carolina Photo Adoption Listing Service (PALS), or any other specialized adoption agency; and
- (3) The efforts previously made by the department or agency to find a permanent home for the juvenile.

(d) The court, after making findings of fact, shall affirm the county department's or child-placing agency's plans or require specific additional steps which are necessary to accomplish a permanent placement which is in the best interests of the juvenile.

(e) ~~If the juvenile has been placed for~~ the subject of a decree of adoption prior to the date scheduled for the review, written notice of said placement ~~the issuance of the decree of adoption~~ shall be given to the clerk to be placed in the court file, and the review hearing shall be cancelled with notice of said cancellation given by the clerk to all persons previously notified."

SECTION 6. G.S. 7B-909 reads as rewritten:

"§ 7B-909. Review of agency's plan for placement.

(a) The director of social services or the director of the licensed private child-placing agency shall promptly notify the clerk to calendar the case for review of the department's or agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters in any case where:

- (1) One parent has surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and the termination of parental rights proceedings have not been instituted against the nonsurrendering parent within six months of the surrender by the other parent, or
- (2) Both parents have surrendered a juvenile for adoption under the provisions of Part 7 of Article 3 of Chapter 48 of the General Statutes and that juvenile has not been placed for adoption within six months from the date of the more recent parental surrender.

~~(b) In any case where an adoption is dismissed or withdrawn and the juvenile returns to foster care with a department of social services or a licensed private child placing agency, then the department of social services or licensed child placing agency shall notify the clerk, within 30 days from the date the juvenile returns to care, to calendar the case for review of the agency's plan for the juvenile at a session of court scheduled for the hearing of juvenile matters.~~

(c) Notification of the court ~~required under subsection (a) or (b) of this section~~ shall be by a petition for review. The petition shall set forth the circumstances necessitating the review under subsection (a) ~~or (b) of this section~~. The review shall be conducted within 30 days following the filing of the petition for review unless the court shall otherwise direct. The court shall conduct reviews every six months until the juvenile is ~~placed for adoption and the adoption petition is filed by the adoptive parents~~ the subject of a decree of adoption. The initial review and all subsequent reviews shall be conducted pursuant to G.S. 7B-908. Any individual whose parental rights have been terminated shall not be considered a party to the review unless an appeal of the order terminating parental rights is pending, and a court has stayed the order pending the appeal."

SECTION 7. G.S. 48-1-101(5a) reads as rewritten:

"In this Chapter, the following definitions apply:

- (5a) "Criminal history" means a county, State, or federal ~~criminal history of~~ conviction of a felony by a court of competent jurisdiction or a

~~pending felony indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B 302 or driving while impaired in violation of G.S. 20 138.1 through G.S. 20 138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include 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."~~

SECTION 8. G.S. 48-3-303(d) reads as rewritten:

"(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 ~~based on the criminal history, 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."

SECTION 9. G.S. 48-3-309(b) reads as rewritten:

"(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 criminal~~ 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."

SECTION 10. G.S. 48-3-309(d) reads as rewritten:

"(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,~~State, or federal ~~criminal history of conviction of a felony by a court of competent jurisdiction or a pending felony indictment of a crime, whether a misdemeanor or a felony, that bears upon a 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, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol related offenses such as sale to underage persons in violation of G.S. 18B 302 or driving while impaired in violation of G.S. 20 138.1 through G.S. 20 138.5; 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."

SECTION 11. G.S. 131D-10.2(6a) reads as rewritten:

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

(6a) "~~Criminal History~~" means a county, ~~state,~~State, or federal ~~criminal history of conviction of a felony by a court of competent jurisdiction or a pending felony indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well being of children, including the following North~~

~~Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol related offenses such as sale to underage persons in violation of G.S. 18B 302 or driving while impaired in violation of G.S. 20 138.1 through G.S. 20 138.5. In addition to the North Carolina crimes listed in this subdivision, such crimes also include 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.~~

....
SECTION 12. G.S. 131D-10.3A(c) reads as rewritten:

"(c) The Department shall prohibit an individual from providing foster care by denying or revoking the license to provide foster care if an individual required to submit to a criminal history check pursuant to subsection (a) of this section has a criminal history. The Department may prohibit an individual from providing foster care by denying or revoking the license to provide foster care if the Department determines that the safety and well-being of a child placed in the home for foster care would be at risk based on other criminal convictions, whether felony or misdemeanor. ~~the criminal history of the individuals required to be checked pursuant to subsection (a) of this section.~~"

SECTION 13. G.S. 131D-10.3A(e) reads as rewritten:

"(e) At the time of application, the 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 ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, ~~state,~~State, and federal ~~convictions~~ conviction of a felony by a court of competent jurisdiction or pending indictments of any crime, of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the

~~Family; and Article 59, Public Intoxication; violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5;~~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 a foster 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 licensure is denied or the foster home license is revoked by the Department of Health and Human Services as a result of the criminal history check, if you are a foster parent, or are applying to become a foster parent, you may request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

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 is grounds for the Department to deny or revoke a license to provide foster care. Any person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor."

SECTION 14. This act becomes effective October 1, 2007.

In the General Assembly read three times and ratified this the 16th day of July, 2007.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 2:10 p.m. this 27th day of July, 2007