



North Carolina Department of Health and Human Services
Division of Social Services

325 North Salisbury Street • Raleigh, North Carolina 27699
Courier # 56-20-25 MSC 2409

Michael F. Easley, Governor
Dempsey Benton, Secretary

Sherry S. Bradsher, Director
(919) 733-3055

December 19, 2007

Dear County Director of Social Services

ATTENTION: Child Welfare Supervisors and Program Administrators

SUBJECT: Criminal Record Checks for Foster and Adoptive Parents

This letter provides clarification to the August 24, 2007 Administrative Letter by highlighting the Criminal Record Checks requirement of the Adam Walsh Child Protection & Safety Act of 2006 (P.L. 109-248).

The Adam Walsh Child Protection & Safety Act of 2006 (P.L. 109-248) was signed into law on July 27, 2006 and amended section 471 (a)(30) of Title IV-E of the Social Security Act. Specifically, Adam Walsh mandates that states must complete a fingerprint-based background check of the national crime information databases (NCID) before licensing or approving a prospective foster or adoptive parent regardless of whether Title IV-E foster care or adoption assistance payments are made on behalf of the child.

Also, this legislation eliminated the ability of states to opt-out of certain aspects of the federal requirements for fingerprint-based criminal background checks. In 1999, North Carolina implemented fingerprint-based criminal background checks, but maintained the ability to exercise some flexibility under state law that was not allowed under federal law. With the passage of the Adam Walsh legislation, North Carolina no longer has the ability to exercise any flexibility in granting a license or approving a placement if the criminal histories of individuals required to be checked reveal certain criminal offenses.

To comply with the new legislation, the definition of "criminal history" and the procedures for licensing foster homes and approving adoptive placements were rewritten within [N.C.G.S. §48-1-101](#), [N.C.G.S. §48-3-309](#), [N.C.G.S. §131D-10.2](#), and [N.C.G.S. §131D-10.3A](#). Effective October 1, 2007 an applicant can not be licensed as a foster home, or approved as a prospective adoptive parent for a child in the custody or placement responsibility of a county department of social services, if the applicant, or any member of the applicant's household 18 years of age or older:

- (a) Refuses to consent to a criminal history check required by G.S. 131D, Article 1A, or
- (b) Has been convicted of a felony involving or there is a pending felony indictment involving:
 - (1) child abuse or neglect;
 - (2) spouse abuse;
 - (3) a crime against a child or children (including child pornography); or

- (4) a crime involving violence, including rape, sexual assault, or homicide but not including other physical assault or battery, or

(c) Has within the last five years been convicted of a felony involving or there is a pending felony indictment involving:

- (1) physical assault;
- (2) battery; or
- (3) a drug-related offense.

For criminal convictions other than those listed above, a determination must still be made as to that individual's fitness to have responsibility for the safety and well-being of children based on the following factors:

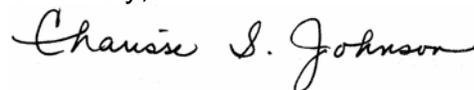
- (1) nature of the crime;
- (2) length of time since the conviction;
- (3) circumstances surrounding the commission of the offense or offenses;
- (4) number and type of prior offenses;
- (5) evidence of rehabilitation;
- (6) age of the individual at the time of the commission of the offense or offenses;
- and
- (7) letter of support for licensure from the executive director of the agency.

Once the prospective foster or adoptive parent is licensed or approved, subsequent fingerprint-based criminal background checks are not required as long as the home remains continuously licensed or approved. However, all individuals required to be checked prior to issuing a foster home license must be checked upon relicensure for county and State criminal histories.

Note: Not only can a State not license a prospective foster parent or approve an adoptive parent with a criminal history, as now defined, it can not claim FFP for any foster care maintenance payments or adoption assistance made on behalf of a child placed in the home of a foster parent or adoptive parent with such a criminal history.

If you have questions or need any clarification, please contact your Children's Program Representative (CPR) or the Adoption and Foster Care Policy Team at (919) 733-9465.

Sincerely,



Charisse S. Johnson, Chief
Family Support & Child Welfare Section

cc: Sherry Bradshaw
JoAnn Lamm
Sarah Barham
Local Business Liaisons
FSCWS Team Leaders
Children's Services Programs Representatives