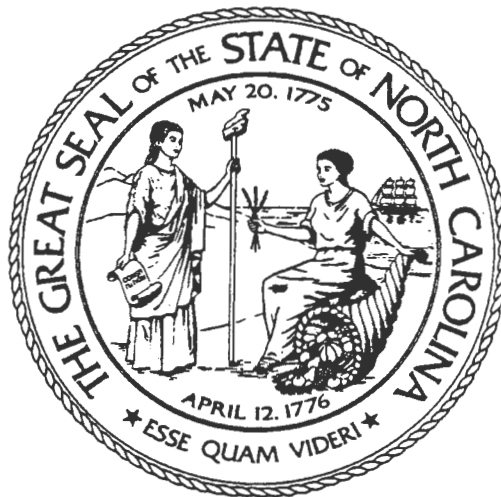


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**LEGISLATIVE
RESEARCH COMMISSION**

CHILD CARE COMMITTEE



**REPORT TO THE
1993 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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1994 SESSION

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FOR
ALL NORTH CAROLINA'S CHILDREN IN NEED OF CARE
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STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



May 23, 1994

TO THE MEMBERS OF THE 1993 GENERAL ASSEMBLY (REGULAR SESSION 1994):

The Legislative Research Commission herewith submits to you for your consideration its interim report on CHILD CARE. The report was prepared by the Legislative Research Commission's Committee on CHILD CARE pursuant to G.S. 120-30.17(1).

Respectfully submitted.

A large, stylized handwritten signature of Daniel T. Blue, Jr. in black ink, written over a horizontal line.

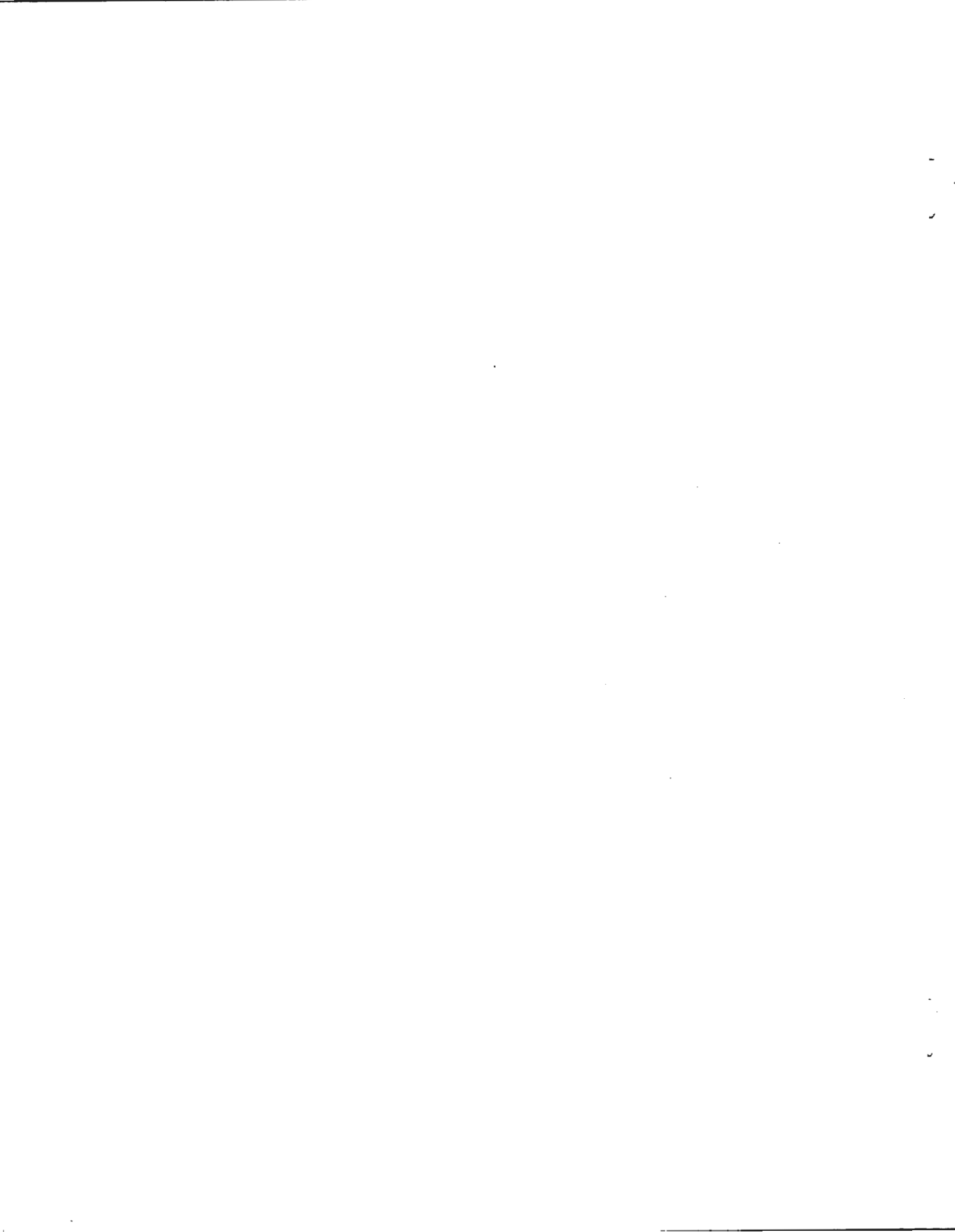
Daniel T. Blue, Jr.
Speaker of the House

A handwritten signature of Marc Basnight in black ink, written over a horizontal line.

Marc Basnight
President Pro Tempore

Cochair
Legislative Research Commission





1993-1994

LEGISLATIVE RESEARCH COMMISSION

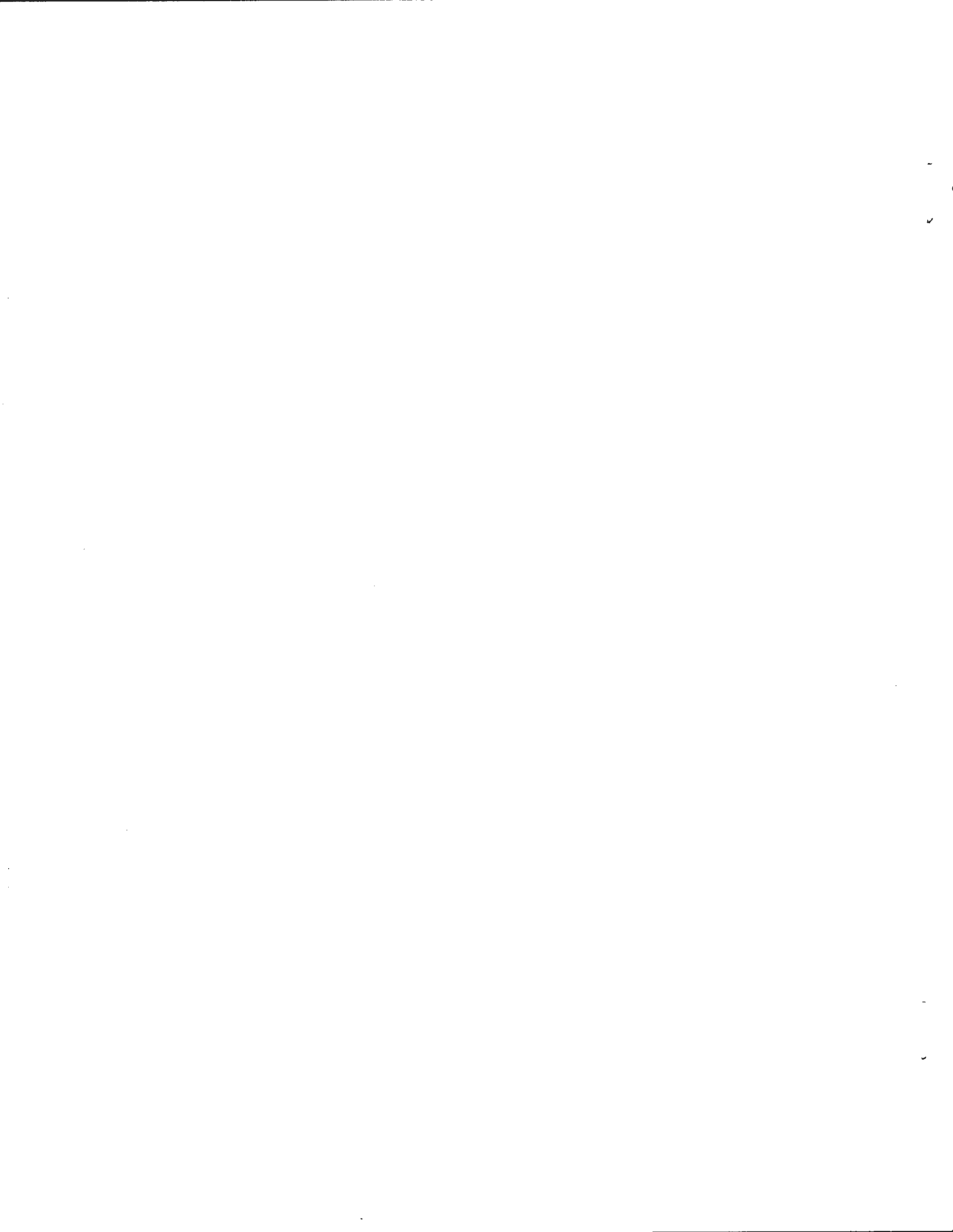
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PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1993 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of CHILD CARE would have been authorized by Subdivision (15) of Section 2.1 of Part II of of House Bill 1319 (2nd edition) which passed both chambers but inadvertently was among the bills not ratified at the end of the 1993 Session. Part II of House Bill 1319 would allow studies authorized by that Part for the Legislative Research Commission to consider House Bill 213/Senate Bill 89 in determining the nature, scope, and aspects of the study. The pertinent part of Section 1 of House Bill 213/Senate Bill 89 reads:

"The Commission shall study State government policy and programs affecting child care issues, specifically addressing child care issues from the point of existing laws, governmental programs needed or already functioning, and current child care issues. The Commission shall work in close collaboration with all agencies and programs dealing with child care. Among the issues the Commission may consider studying are:

(1) Prior recommendations of other study commissions that have reviewed child day care and other child care services since 1980 and an assessment of compliance with these recommendations;

(2) The advantages and costs associated with measures to improve the quality of child care, including lowering staff/child ratios, enhancing child care teaching credentialing, improving training of child care teachers, and improving salaries of all child care workers;

(3) Ways to maximize the positive impact on North Carolina of the federal block grant;

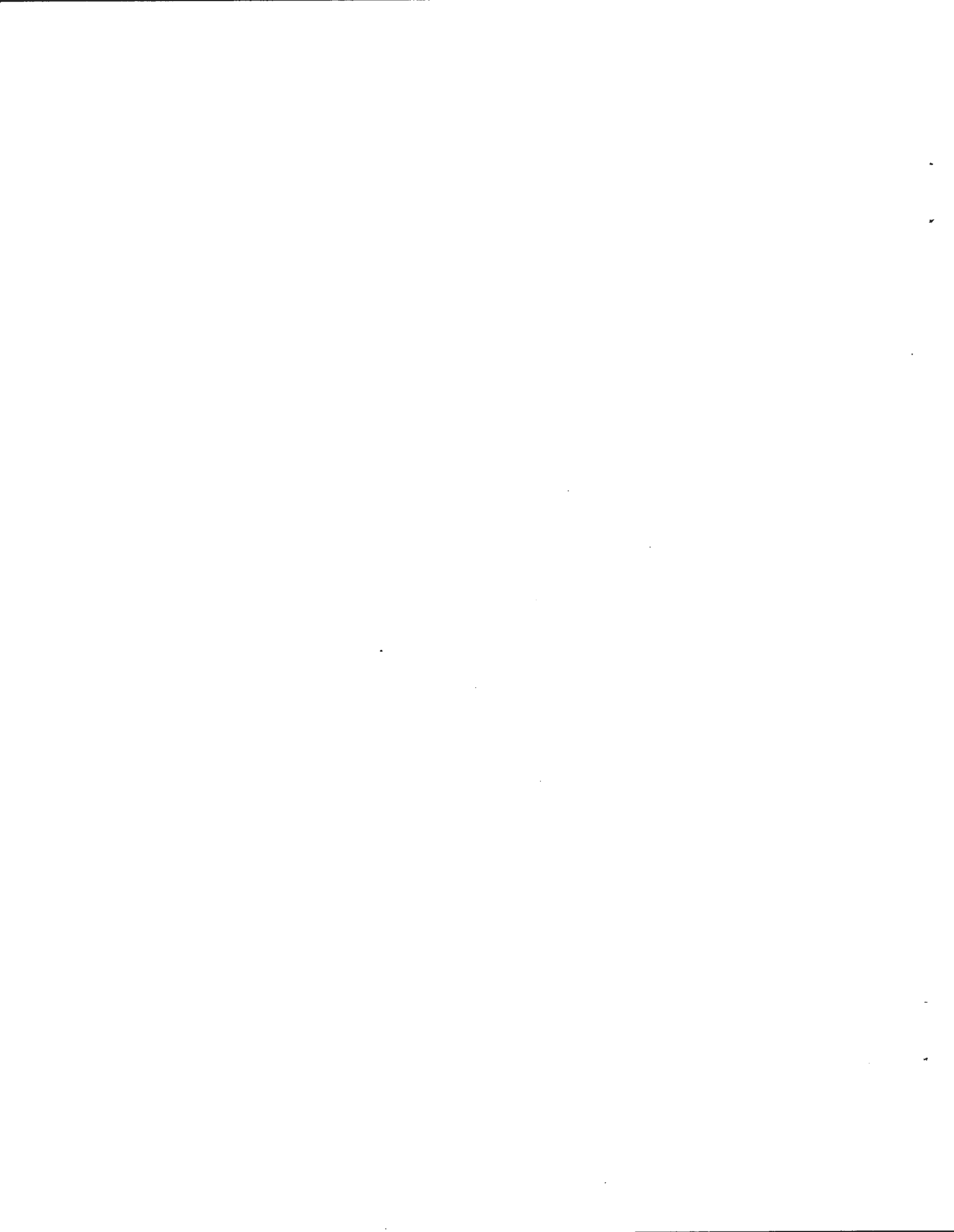
(4) Ongoing examination of the current statutory regulation of child care and the procedures used to develop policies and rules in order to ensure that all North Carolina's children in child care can receive quality care that is both enriching and safe;

(5) The relationship between child care services offered by for-profit and nonprofit, public and private, child care providers, including the public schools, to ensure that parents have full choice of safe, quality child care;

(6) Ways to continue towards the development of a unified State policy for funding and delivery of all child care services; and

(7) Any additional issues the Commission may consider necessary to study."

The relevant portions of House Bill 1319 and House Bill 213 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its FAMILY AND JUVENILE GROUPING area under the direction of Frank W. Ballance, Jr. The Committee was chaired by Senator Russell G. Walker and Representative Howard J. Hunter, Jr. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee is filed in the Legislative Library.



COMMITTEE PROCEEDINGS

The Legislative Research Commission Study Committee met three times prior to the 1994 Regular Session of the 1993 General Assembly, on February 1, April 16, and May 10. The Committee minutes are on file in the Committee Notebook in the Legislative Library. The first meeting presented the Committee with an overview of the 1993 General Assembly's actions that affected child care and of the outstanding issues that had been addressed by the 1991 Legislative Research Commission Study Committee on Child Day Care Issues but not acted upon by the 1993 General Assembly. In particular, attention was given to House Bill 200, mandating criminal record checks and Senate Bill 229, increasing eligibility for subsidized child day care. The Committee felt strongly that these issues needed to be addressed and acted upon by the 1994 Regular Session.

At the April 26 meeting the Committee addressed the two issues identified at the February meeting as needing attention in an interim report to the 1994 Regular Session of the 1993 General Assembly.

Rather than work with House Bill 200, which although still "alive" may not be eligible, as it directly affects the budget but primarily affects broad State policy far beyond the budget, the Committee reviewed a draft bill prepared by the Attorney General's Office, reflecting combined work of staff from the Legislative Drafting Office, the Attorney General's Office, and the Division of Child Development. The draft legislation had a much simpler procedural scheme, leaving for rule-making the spelling out of the particulars. The Committee gave much input and directed staff to revise the draft for inclusion in the draft report. The Committee understood that a concept that the General Assembly had been working on since 1985 would need to be carefully drafted and that the time constraints placed on all study committees' work by

the time spent in the special legislative session on crime cut well into the time needed to develop a proper bill. But it felt that it was essential to present the best piece of draft legislation possible to the 1994 Regular Session.

The Committee endorsed Senate Bill 229, which is "alive, in Senate Appropriations and eligible for consideration in the 1994 Regular Session. Its companion, House Bill 202, is also alive in House Appropriations. The Committee also requested that a "skeleton" draft bill be prepared for inclusion in the draft report to require criminal history checks of foster care parents.

The May 10 meeting was devoted to refining the draft legislation presented in the draft report and to approving the report for submittal to the Legislative Research Committee for transmittal to the 1994 Regular Session of the 1993 General Assembly.

The Committee amended the draft report to include a recommendation endorsing Senate Bill 230 (House Bill 201), another of the bills recommended by the 1991 Study Committee and alive in the General Assembly. This bill seeks to establish a statewide market rate for subsidized day care as a "floor" rate, to provide incentives for low-walth counties with county market rates too low to attract child day care.

The Committee also moved to amend the bill establishing record history checks for day care providers to remove coverage of volunteers and certain other people with unsupervised access to children and to specify that the cost of the fingerprinting and local checks (\$10.00) would be borne by the provider-employee or the provider-owner if being licensed or registered. No other charges would be collected unless State and federal checks are required, in which case the provider-employee or the provider-owner would bear these further costs.

The Committee considered adding drug testing to this bill, to provide further assurance of the safety and well-being of children in child day care but decided that it needed to study this issue further. It placed this issue on its Fall study agenda.

FINDINGS AND RECOMMENDATIONS

RECOMMENDATION 1. The Legislative Research Commission recommends the enactment of Senate Bill 229/House Bill 202, entitled "AN ACT TO AID PARENTS OF LOW-INCOME CHILDREN NEEDING DAY CARE TO BECOME SELF-SUFFICIENT WITHOUT JEOPARDIZING THE VERY CHILD CARE THAT IS ESSENTIAL TO THIS SELF-SUFFICIENCY AND TO APPROPRIATE FUNDS".

(See APPENDIX D: Endorsement - Legislative Proposal 1.)

The Committee, while acknowledging the benefits of Smart Start, reiterated the findings of the 1991 Legislative Research Commission Study Committee on Child Day Care Issues in its final report to the 1993 General Assembly that other initiatives were essential, in particular, that increasing the eligibility rates for low-income parents was imperative, regardless of the cost, to enable parents to find and keep gainful employment. To this end it found that a two-part increase was essential, the first part of which would increase eligibility limits for families already receiving subsidies to seventy-five percent of median income to help parents find jobs, and the second part of which would increase the entrance eligibility level for those families initially qualifying for subsidies one "notch" above the present limit. A notch is an amount between one thousand and fifteen hundred dollars, a substantial amount for families working at low wages who are trying to remain employed. Families cannot remain at work if they lose their subsidized child care that enable them to work and rise out of poverty.

The cost estimate of this two-fold increase is two million dollars for 1994-95, but it is merely an estimate.

RECOMMENDATION 2. The Legislative Research Commission recommends the enactment of "AN ACT TO MANDATE CRIMINAL HISTORY AND CENTRAL REGISTRY HISTORY CHECKS OF ALL CHILD DAY CARE PROVIDERS". (See APPENDIX D: Legislative Proposal 2.)

The Committee found that it was imperative that the 1994 Regular Session of the 1993 General Assembly continue to examine the issue of mandating criminal history checks of child day care providers to ensure the safety of all children in child care. More than thirty states perform some checks and the federal government has recently enacted legislation that inform states of what procedures are necessary if they seek to perform checks of the federal criminal record. (See APPENDIX C for background information on the federal legislation and on other states' efforts in this area.) Because of the new federal law, and because of the joint work by the Division of Child Development, the Attorney General's Office, and staff of the Legislative Drafting Division, the Committee found that it was better to recommend the introduction of a new bill that to reconsider House Bill 200, introduced upon the recommendation of the 1991 Legislative Research Commission Study Committee on Child Day Care Issues. It found that, although the General Assembly has considered but not acted on bills addressing this issue since 1985, the new bill had a much simplified procedure and a much better scope than any of the previous bills. Although the Committee examined a draft that incorporated volunteers and certain extra people with unsupervised access to children, the final draft excluded these individuals from coverage.

The Committee recommends also that the General Assembly pay close attention to the rules adopted by the North Carolina Child Day Care Commission, in consultation with the Division of Child Development and the Division of Criminal Information of the Department of Justice, to ensure that they reflect the wishes of the legislature to

ensure both that children in child day care are made safe from people who have a history that demonstrates them to be unfit to have responsibility for the safety and well-being of children and that child day care providers, including employees, owners, licensees, volunteers, and other people with unsupervised access to children, are guaranteed full due process and full fairness.

Unlike the other bills on this issue considered by other General Assemblies, this new draft places the cost burden for the checks on the provider-employee seeking employment and on the provider-operator seeking licensing, registration, or whatever approval is appropriate for operation. It also specifies that the initial charge is for fingerprinting and a local check (\$10.00) be borne by the providers seeking to be employed or to own or operate child day care. Further charges, for the State and federal checks, will be charged these people only if the Department considers the further checks necessary.

The draft appropriated eighty thousand dollars to the Department of Human Resources for 1994-95 to administer the new law.

RECOMMENDATION 3. The Legislative Research Commission recommends the enactment of "AN ACT TO MANDATE CRIMINAL HISTORY AND CENTRAL REGISTRY HISTORY CHECKS OF ALL FOSTER CARE PARENTS". (See APPENDIX D: Legislative Proposal 3.)

The Committee made this recommendation based on the general finding of need to ensure foster children's safety from people who have a history that demonstrates them to be unfit to have responsibility for the safety and well-being of children. The Committee had not examined the particular issue but wanted to be sure that the issue was presented to the 1994 Regular Session of the 1993 General

Assembly. Staff used the same basic pattern as for the new bill mandating criminal history checks for child day care providers (Legislative Proposal 2.)

The projected cost for checking all foster care parents in all licensed foster care homes, including those operated by private child-caring agencies, is five hundred thirty-six thousand three hundred seventy dollars for 1994-95.

RECOMMENDATION 4. The Legislative Research Commission recommends the enactment of Senate Bill 230/House Bill 201, "AN ACT TO CHANGE THE DAY CARE RATE PAYMENT STRUCTURE TO ENCOURAGE THE PROVISION OF QUALITY DAY CARE FOR ALL NORTH CAROLINA'S CHILDREN IN NEED OF CARE AND TO APPROPRIATE FUNDS. (See APPENDIX D - Endorsement, Legislative Proposal 4.)

At its last meeting, the Committee moved to add an endorsement for Senate Bill 230 (House Bill 201), as recommended by the 1991 Legislative Research Commission Study Committee on Child Day Care Issues. The Committee endorsed the findings of the 1991 Committee, that it was essential to revise the child day care payment rate structure to ensure that rural as well as urban counties can use all the resources, including allocations, available to them, in providing much-needed child care. The 1991 Committee found, after considerable testimony from providers of and advocates for child day care in rural and urban counties, that the best way to provide this insurance was to establish a statewide market rate representing the 75th percentile of all day care rates by type of provider for all ages of children from every county as a floor rate. Providers in counties whose county market rate was higher than this statewide rate could receive that higher rate. The Committee found that this provision would enable rural counties to provide quality care that was otherwise unavailable because the

prevailing market rate was so low that subsidized child care would not afford to offer care. These counties would keep an increasing amount of their initial allocations and revert increasingly less. Therefore, a part of this piece, the committee found, should be a requirement that the Social Services Commission give consideration to ensuring that the counties now relying on reallocated funds be helped to continue to provide that high level of care that these reverted funds have made available in the past.

The 1991 Committee found that, in addition to revision of the basic rate structure, a differential among several similar kinds of care that provide different levels of quality of care should be established to provide incentives for providers to provide higher levels of care. The federal regulations would seem to permit such a ten percent differential to allow such incentives, and the Committee found that providing unregistered homes ten percent less than registered and 'AA' centers ten percent more than 'registered' would, in the Committee's proposal, provide these incentives. Registered homes and 'A' centers would, in the Committee's proposal, receive the basic rate, which would be the higher of the statewide or their county market rate. The Committee also found that, in the near future, additional differential treatment should be given to accredited centers, which provide care of a higher quality than 'AA' centers and that, also in the near future, rates above either the statewide or county market rate should be available to providers who can justify receiving reimbursement for the actual cost of care; however, the Committee did not recommend implementing these pieces at this time.

The cost of these changes was estimated as approximately thirteen million dollars per year. There is disagreement over this amount. (See the following sheets.)

POTENTIAL EFFECT OF USING STATEWIDE MARKET RATE AS MINIMUM RATE FOR SUBSIDIZED CHILD DAY CARE SERVICES

1992 STATEWIDE MARKET RATES

If statewide market rates were used as the minimum payment rates in all counties, the minimum payment rate for children in facility-type care (day care centers and large day care homes) in SFY 1992-93 would be \$281 per month. The statewide minimum rate for children in home-based care (registered day care homes) would be \$260 per month. The statewide market rates cited above represent the 75th percentile of all day care rates by type of provider for all ages of children from every county.

DISTRIBUTION OF RATES BY COUNTIES

The county market rates used as the basis for payment for subsidized day care are promulgated by age group. Rates for facility-based and home-based care are established for 4 age groups: infants/toddlers, 2 year olds, 3 year olds, and children age 4 and older.

The market rates for each age group vary from county to county, therefore, it is difficult to say which counties would be affected by the use of a statewide market rate. Specifically, some counties have rates for some age groups which are above the statewide market rates while rates for other groups fall below the statewide rate.

METHOD USED TO ESTIMATE COST OF STATEWIDE MARKET RATE

Twenty-five percent (25%) of the 120,000 preschool-age children in state-regulated day care in North Carolina are age 3. It is assumed that the age distribution of children whose day care is publicly subsidized is the same as for the general population of children in state regulated day care. The county market rates for three year olds were selected as the basis for this analysis. The county rates for 3 year olds were used in two ways: (1) to determine whether the county's rates were above, equal to, or lower than the statewide rate for children of all ages, and (2) to compare the county's current average payment rate with its market rate.

NOTE: The county-by-county analysis described here reflects payments for non-FSA child care only. Statewide predictions for FSA child care costs are included at the end of this document.

Number of Counties Affected

89 counties have market rates for 3 year olds in facility care which are lower than \$281. 93 counties have home-based rates for 3 year olds lower than \$260. Each of these two sets of counties were analyzed as described below:

The county's average payment rate for subsidized care was expressed as a percent of the county's market rate for three year olds. That same percent, when applied to the statewide rate (either \$281 or \$260), indicates the potential for increase in the amount of the county's average payment rate for subsidized care if the statewide market rate became the minimum rate.

Counties with Average Payments above the County Market Rate

In some counties, the current average payment rate exceeds the county market rate, and in a few, exceeds the statewide market rate. This may indicate one or more of the following situations: (1) the county purchases from more Category A-type centers (centers serving less than 50% subsidized children and eligible for the rate they charge for unsubsidized care) than B-type centers (centers serving 50% or more subsidized children and restricted to the county market rate), (2) the Category A centers in the county generally charge more than the county market rate, (3) the county pays a higher rate for a larger number of special needs children, and/or (4) there may be some centers in the county still using their 1986 payment rates. For the purpose of this analysis, these counties were treated two ways: Method #1 assumes no

increase in cost in these counties; Method #2 assumes the county's average payment rate would increase at the respective county's current percent above the county market rate. (For example, in Method #2, if the county's current average payment rate is 112% of the county's market rate, the county's average payment would become 112% of the statewide market rate.)

ESTIMATED COSTS OF USING STATEWIDE MARKET RATE

METHOD # 1. (No increase for counties now paying more than county market rate)

	MONTH	ANNUAL
CURRENT COST		
Counties below Statewide Rate:		
Facilities	\$ 2,221,191	\$26,654,292
Homes	<u>106,386</u>	<u>1,276,632</u>
Total	2,327,577	27,930,829
All Counties	4,307,831	49,372,829

ESTIMATED INCREASE

Counties below Statewide Rate:		
Facilities	468,002	5,616,018
Homes	<u>31,165</u>	<u>373,983</u>
Total	499,167	5,990,001

TOTAL COST W/INCREASE: NON-FSA 4,806,998 55,362,830

METHOD # 2. (Increase for all counties whose market rate is less than statewide rate.)

	MONTH	ANNUAL
CURRENT COST		
Counties below Statewide Rate:		
Facilities	\$ 2,221,191	\$26,654,292
Homes	<u>106,386</u>	<u>1,276,632</u>
Total	2,327,577	27,930,829
All Counties	4,307,831	49,372,829

ESTIMATED INCREASE

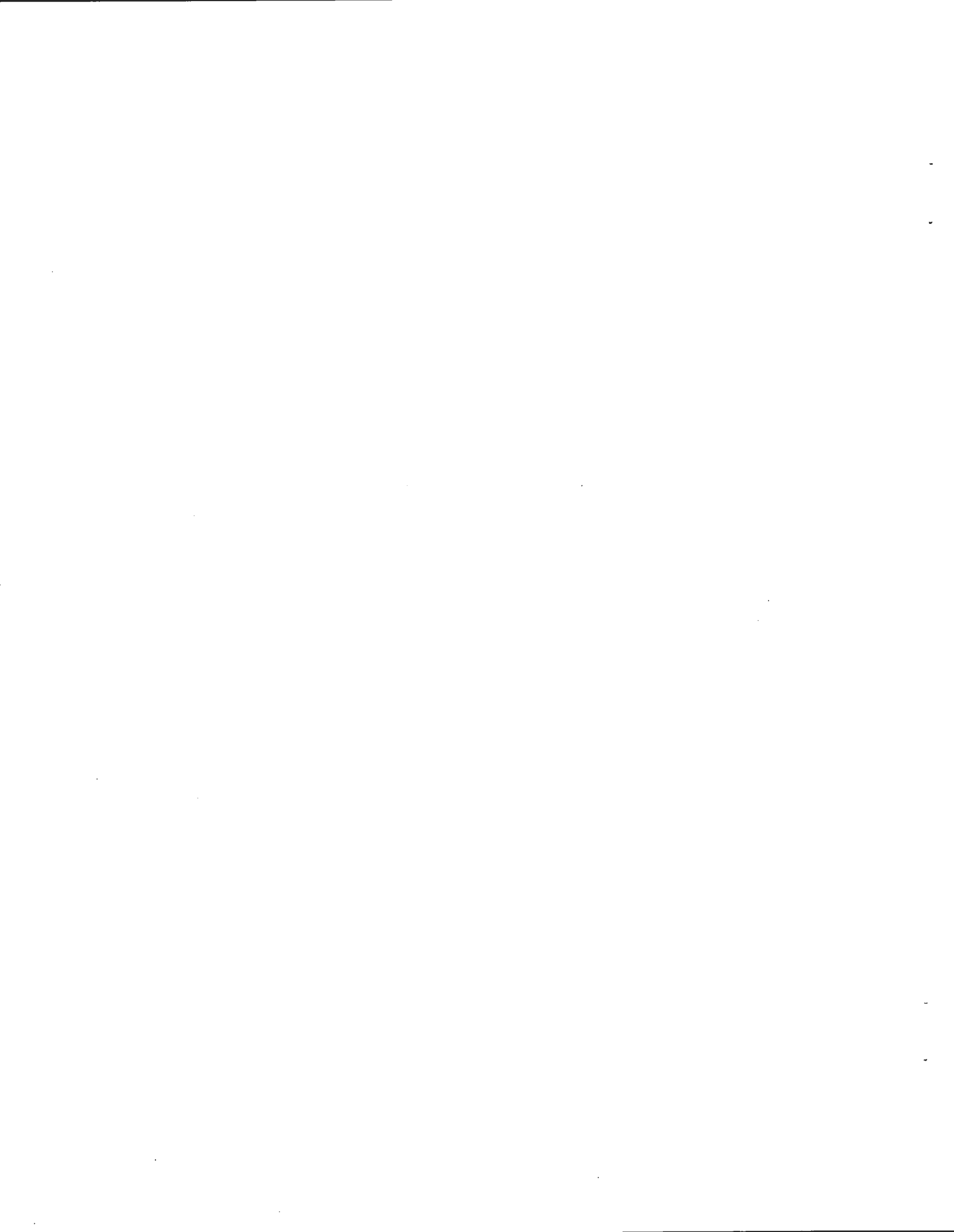
Counties below Statewide Rate:		
Facilities	525,206	6,302,478
Homes	<u>31,987</u>	<u>383,838</u>
Total	557,193	6,686,316

COST W/INCREASE: NON-FSA 4,865,024 56,059,145

ESTIMATED COST OF INCREASE TO FSA CHILD CARE:

Based on the current average payment rates for FSA-eligible children in day care centers and in home-based care, the potential effect of using the statewide market rate is shown below:

	MONTH	ANNUAL
CURRENT ESTIMATED COST (SFY 1992-93)	4,018,679	53,009,320
ESTIMATED INCREASE W/STATEWIDE RATE	609,533	7,314,396
TOTAL ESTIMATED COST W/INCREASE:	4,628,212	60,323,716



APPENDIX A

HOUSE BILL 1319, 2ND EDITION

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMITTEES AND COMMISSIONS, AND TO DIRECT VARIOUS STATE AGENCIES TO STUDY SPECIFIED ISSUES.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1993".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. Listed with each topic is the 1993 bill or resolution that originally proposed the issue or study and the name of the sponsor. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

 (15) Child Care Issues (H.B. 213 - Rogers, S.B. 89 - Walker),



APPENDIX B

MEMBERSHIP OF LRC COMMITTEE ON CHILD CARE ISSUES

**CHILD CARE COMMITTEE
MEMBERSHIP
1993 - 1994**

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APPENDIX C
INFORMATION ON CRIMINAL RECORD
CHECKS OF CHILD DAY CARE PROVIDERS

V. Jean Hall

A PROGRAM OF THE YOUNG LAWYERS DIVISION

AMERICAN BAR ASSOCIATION

Center on Children and the Law

1800 M Street, NW Washington, DC 20036 (202) 331-2250 ABA Fax (202) 331-2220



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- Deborah Johnson-Baskin
- Marlene Jones

TO: State Criminal Record Repositories, Child Care/Youth Service Organizations, Child Protection Advocates and other Interested Parties

FROM: Noy S. Davis, Esq. American Bar Association Center on Children and the Law

DATE: January 6, 1994

RE: The National Child Protection Act of 1993 (aka "the Oprah bill"), Public Law 103-209.

On December 20, 1993, President Clinton signed the National Child Protection Act into law. The ABA Center on Children and the Law has received a number of inquiries about the Act. In particular, individuals have asked whether the Act requires or permits all child care and youth service organizations to conduct national criminal record checks on their workers. Because the Center has undertaken a two-year project, *Effective Screening of Child Care and Youth Service Workers*,¹ in which various methods used to identify potentially abusive persons working with children are being examined, we have followed the development of the federal legislation closely. This memorandum answers some basic questions about the Act and summarizes its provisions. Should you have any further questions, I can be reached at (202) 331-2244.

Does the Act require or permit child care or youth service organizations to conduct criminal record checks on their current or prospective workers?

The Act does not itself either require or permit any organizations to conduct state or federal criminal record checks on their workers. The Act doesn't address access to state criminal records at all; the right of access to state criminal records remains a matter of state law. With respect to national criminal background checks on persons working with children, the Act maintains the framework set forth in 1972 appropriations legislation which requires that there be a state statute (approved by the U.S. Attorney General) that authorizes a national criminal background check through a

¹The study, *Effective Screening of Child Care and Youth Service Workers*, will be completed and a final report issued in July 1994.

*designated state agency before any such check can be made.*² Thus, for child care or youth service organizations to be able to obtain any information based on national criminal background checks on their workers, they still must: (1) be required or permitted to do so under an existing state statute (one that has also been approved by the Attorney General); and (2) request the check through a designated state agency, NOT directly through the FBI.

Every state has a criminal record repository, which may be operated through the state police, public safety, or law enforcement department or the state bureau of investigation. Generally, this state agency handles the requests for any state and federal criminal record checks on persons working with children. (In addition, a state regulatory agency, such as the state department of human services/resources, frequently is involved as a result of licensing, certification or registration provisions requiring criminal record checks on certain persons working with children. This agency *may* be the agency to whom the child care organization applies for the check.)

What does the Act do?

The Act enhances, and focuses attention on, the existing national background check system to which child care placement and broadly-defined child care³ organizations may, depending upon state law and through a state agency, be required to obtain information as to whether an individual (a current or prospective operator, owner, employee, volunteer or person who may have unsupervised access to a child to whom the organization provides services) has been convicted of, or is under pending indictment for, a crime that bears upon the individual's fitness to have responsibility for the safety and well-being of children.

The Act builds upon the FBI's criminal record system and encourages states to authorize the use of criminal record checks on persons who work with children through three main components: (1) provisions that augment the scope and accuracy of state records that, along with federal records, comprise the existing national criminal background check system maintained by the FBI (hereinafter FBI Checks); (2) requirements and guidelines for any state procedures that may require FBI Checks on current or prospective

²See Pub. L. 92-544, Title II, §201, 1972 U.S.C.A.N. (86 Stat.) 1307 (relevant language also set forth in note, entitled *Funds for Exchange of Identification Records*, following 28 U.S.C.A. §534 (West 1993)). Duty enacted state statutes have generally been approved by the Attorney General. States seeking to enact legislation authorizing national criminal background checks may wish contact the Control Terminal Agency for the National Crime Information Center (NCIC) in their state or NCIC in Washington, D.C.

³ The Act defines "child care" to include the provision of care, treatment, education, training, instruction, supervision, or recreation to children by persons having unsupervised access to a child (hereinafter Child Care and Service refers to these types of activities as well as child care placement services). The Act §5(c). What constitutes "unsupervised access" is not set forth in the Act. If the term refers to situations where a person is not under line-of-sight supervision, then most child care and youth service organizations would probably fall within the Act's definition of child care. If the term refers to a lack of any oversight of child or youth service workers, then most organizations would probably not fall within the Act's definition of child care. The legislative history indicates that Congress intends the Act to potentially encompass a broad spectrum of child care and youth service workers, so "unsupervised access" is likely to be interpreted so as to include most organizations.

owners, operators, employees, and volunteers of Child Care and Service organizations as well as persons who have or seek to have unsupervised access to a child to whom the organization provides services; and (3) funding provisions which may make monies available to assist states in reporting state child abuse crimes and that, beginning in December 1994, may reduce other monies if states are not in compliance with the Act.

A more detailed discussion of the Act's provisions follows. (Copies of the Act and the Report of the House Committee on the Judiciary are attached.)

SUMMARY OF THE ACT'S PROVISIONS

I. STATE CHILD ABUSE CRIMES: STATES MUST REPORT OR INDEX CRIMES IN THE FBI SYSTEM

The Act requires State⁴ criminal justice agencies to report or index State child abuse crime information in the FBI's criminal record system and sets up a framework for the U.S. Attorney General to oversee this effort. Currently, the FBI maintains 24 million criminal history records voluntarily submitted by the States. An enhanced national criminal history record system is being developed in which state criminal records would be available through the FBI by means of an interstate indexing system (known as the Interstate Identification Index or III). Ultimately, it is contemplated that state criminal records will be available on-line for employment screening purposes through this indexing system and a computerized national fingerprint file (known as the Integrated Automated Fingerprint Identification System or IAFIS). As the House Committee Report on the Act makes clear, the Act does not require States or the FBI to create any new databases; rather it is "intended to give impetus to efforts currently underway to implement the IAFIS and the [III]."⁵

A. Scope of Crimes and Information to be Reported or Indexed by States to the FBI. "Child abuse crime" is defined as a crime committed under any State law that "involves the physical or mental injury, sexual abuse or exploitation, negligent treatment or maltreatment of a child by any person." (The Act does not require States to report information about crimes that do not involve children.) The word "involves" is key here. A charge or conviction for assault, kidnapping, rape, etc. where the child was the purported victim will need to be reported even though the offense is not specifically labeled as a child abuse or child sexual abuse crime. Specifically, the information that must be reported includes identifying information about the person who has been arrested for or convicted of the crime (e.g., full name, race, sex, date of birth, height, weight, fingerprints), a description of the charges and any other information that the Attorney General determines to be useful in identification.

⁴A "State" is broadly defined under the Act to include the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam and the Trust Territories of the Pacific. In this memorandum, "State" has the same broad definition.

⁵H.R. Rep No. 103-393, 103d Cong., 1st Sess. at 7 (1993).

B. Attorney General to Oversee Reporting and Indexing by Establishing State Timetables and Guidelines for Reporting or Indexing. The Act requires the Attorney General (by June 1994 and subject to the availability of appropriations) to: (1) determine a timetable by which each State should be able to provide child abuse crime records on an on-line basis through the FBI; and (2) establish guidelines for the reporting or indexing of child abuse crime information in consultation with State officials.

C. Disposition Data Levels as Part of State Timetables. The Act mandates that each State timetable (determined by the Attorney General for each State to report child abuse crime information) require the State: (1) not later than December 1996 to have in a State computerized criminal history file at least 80 percent of the final dispositions that have been rendered in all identifiable child abuse crime cases in which there has been an event of activity within the last 5 years; (2) continue to maintain a reporting rate of at least 80 percent for final dispositions in all identifiable child abuse crime cases in which there has been an event of activity within the preceding 5 years; and (3) take steps to achieve 100% disposition reporting, including data quality audits and periodic notices to criminal justice agencies identifying records that lack final dispositions and requesting those dispositions.

D. Additional Duties of the Attorney General: Annual Summary of Child Abuse Crimes and Annual Report of Each State's Progress in Reporting or Indexing Child Abuse Crimes. The Act imposes two additional obligations on the Attorney General, subject to the availability of appropriations. The Attorney General must publish an annual statistical summary of the nation's child abuse crimes (which is not to contain any information that may reveal the identity of any particular victim or alleged violator). Further, the Attorney General is to publish an annual summary of each State's progress in reporting or indexing child abuse crime information to the FBI.

E. OJJDP Study of Child Abuse Offenders. Not later than June 1994, the Administrator of the Office of Juvenile Justice and Delinquency Prevention is required to begin a study of convicted child abuse offenders and other relevant information to determine: (1) the percentage of convicted child abuse offenders who have more than one conviction for an offense involving child abuse; (2) the percentage of convicted child abuse offenders who have been convicted of an offense involving child abuse in more than one State; and (3) the extent to which and the manner in which instances of child abuse form a basis for convictions for crimes other than child abuse crimes. The OJJDP Administrator is to submit a report with a summary of the study's results to the House and Senate Committees on the Judiciary by December 1994.

II. STATE ACTION ON FBI CHECKS UNDER THE ACT

N.B. As previously noted, the Act does not itself permit or require FBI Checks on Child Care and Service providers nor does it mandate States to enact laws permitting or requiring FBI Checks on Child Care and Service providers. However, if States have (and presently approximately 30 states have some provision authorizing FBI checks on some types of Child Care and Service workers) or later enact similar laws, then the Act: (1) requires States to use reasonable efforts to respond to FBI Check requests within 15 business days; (2) sets forth guidelines for State procedures regarding FBI Checks; (3) authorizes the Attorney

General to issue regulations regarding State procedures for FBI checks; (4) contains provisions limiting liability; and (5) limits fees that may be charged for checks on some volunteers and admonishes States to establish background check fees for non-profit entities that "do not discourage volunteers from participating in child care programs." Each of these provisions is discussed in greater detail below.

Does this need to be in State Statute

A. "Reasonable Efforts" to Respond to Request for FBI Check Within 15 Business Days. If a State has procedures that require qualified entities to conduct FBI Checks, the Act requires the State to "make reasonable efforts" to respond to check requests within 15 business days. Lengthy turnaround time -- the time from a request for a check on someone to the time results are received -- has historically been a problem with criminal background checks. Whether this "reasonable efforts to respond within 15 business days" provision will shorten turnaround time depends largely on what will be construed by the Attorney General as constituting "reasonable efforts" and what enforcement mechanism, if any, may be developed by the Attorney General.

Not necessarily needed in Statute

B. Guidelines for State Procedures Regarding FBI Checks. If a State has procedures that require an FBI Check, the Act mandates that those procedures require: (1) a signed statement and fingerprints from the person who is the subject of the FBI Check; (2) a specified process for challenging information in the resulting FBI Check report; (3) the state agency to conduct research for missing data; (4) the release of only the determination as to conviction or pending indictment of the relevant crime(s), NOT the release of the criminal record itself to the organization; and (5) fee limits for some volunteers and non-profits.

1. *There Must Be a Signed Statement and Fingerprints from Check Subject.* State procedures on FBI Checks must prohibit a business or organization providing Child Care and Service from requesting an FBI Check unless the person about whom the check is sought provides a set of fingerprints and signs a statement that sets forth:

- the person's name, address, date of birth (as appearing on a valid identification document (as defined in the 18 U.S.C. 1028)⁶);
- that the person has not been convicted of any crime or a description (and particulars) of any crime(s) for which the person has been convicted;
- notification that the organization may request a background check and advises the person of his or her right to obtain a copy of and challenge any background check report; and
- notification that prior to the completion of any background check, the organization may choose to deny that person unsupervised access to a child to whom the organization provides care or services.

⁶18 U.S.C.A. §1028 (West Supp. 1993) does not list specific types of valid documents, but defines "identification document" as "a document made or issued under the authority of the United States Government [or state or foreign governments or international governmental or quasi-governmental organizations] which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals."

2. *The Subjects of All Checks Are Entitled to Specified Due Process Rights.* State procedures for FBI Checks must require that each person who is the subject of an FBI Check be entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any information in the report and obtain a prompt determination as to the validity of a challenge before a final determination is made by the state agency.

3. *State Agencies Are Required to Conduct Research for Missing Data.* If an FBI Check is done on an employee or volunteer who works with children (pursuant to a State statute approved by the Attorney General), the FBI will report the results of the federal check to the designated State agency. The State agency will review the report from the FBI and, under the Act, *if the FBI report lacks "disposition data" (i.e., information as to whether a conviction, acquittal, dismissal, etc. resulted) then the State agency must conduct research in "whatever State and local recordkeeping systems are available" in order to complete the record.* One of the problems with criminal record checks has been missing disposition data: if this is the case, the Act requires the State agency to conduct research for the missing information, even across state lines.

4. *The Determination of Conviction/Pending Indictment, NOT the Criminal Record Itself, is to be Provided to the Employer.* Under the Act, the State agency (through which the request for and results from the FBI Check are funnelled) determines whether the individual "has been convicted of, or is under pending indictment for, a crime that bears upon an individual's fitness to have responsibility for the safety and well-being of children." Under the Act, the State agency is permitted to convey such a determination, *but not the full criminal record,* to the entity requesting the check.

5. *State Agencies to Determine Specific Crimes that "Bear Upon an Individual's Fitness to Have Responsibility for the Safety and Well-Being of Children."* The Act does not list the precise crimes that are deemed relevant, but generally refers to crimes that "bear upon an individual's fitness to have responsibility for the safety and well-being of children." This provision appears to permit State agencies to determine the specific crimes which are relevant and *may* allow some differentiation depending upon the type of employment or volunteer position that is sought. For example, a State may find that convictions for some drug offenses do not render a person unsuitable for certain positions (e.g. in Juvenile Substance Abuse Treatment Centers), although they may make that person unsuitable for other types of Child Care and Service positions (e.g. in day care).

6. *Both the Check and Its Results Can Only Be Provided Through a State Agency Pursuant to State Law.* The Act requires that FBI Checks be handled in compliance with Public Law 92-544. For years, this law has been the vehicle allowing certain private organizations access to FBI files for employment and licensing purposes through a designated State agency if a State statute, approved by the Attorney General, authorized nationwide screening of criminal records by fingerprinting the applicant. As previously noted, the Attorney General has generally approved state statutes submitted under Public Law 92-544.

C. Attorney General May Issue Regulations. The Attorney General is authorized to issue regulations that prescribe "such other measures as may be required to carry out the purposes of this Act, including measures relating to the security, confidentiality, accuracy, use, misuse, and dissemination of information, and audits and recordkeeping." In issuing these regulations, the Attorney General is to encourage the use of the best technology in conducting background checks.

D. Limitation on Damages Liability. The Act contains two provisions limiting liability in damages actions: (1) a Child Care and Service business or organization shall not be liable *solely* for failure to conduct a criminal background check on an owner, operator, employee, volunteer or other person having unsupervised access to a child; and (2) a State (or political subdivision, agency, officer or employee thereof) shall not be liable for the failure of any business or organization to take adverse action against a provider who has been the subject of a background check.

The effect of these provisions is unclear. With respect to the first, to the extent liability has been found in cases where children were abused by a child care worker (who had a previous child abuse or other conviction), liability has often been based on a general failure to adequately investigate that child care worker's background and not simply upon the failure to conduct a criminal record check, if one was available. In these situations, the effect of the provision may be limited.

This first provision may also affect a State that makes criminal background checks part of the standard of care that certain employers must follow in hiring workers. In that situation, the question arises as to whether this liability provision would preempt state law. The answer is unclear; neither the Act nor the Report of the House Judiciary Committee explains the reach of the provision. Testimony from the July 1993 hearings reflected a concern on the part of some youth groups that the bill would effectively establish a standard of care. In light of this concern and the lack of an express Congressional intention to preempt State law on this point, the provision may well be interpreted in a limited fashion - simply to reflect that the bill does not establish a standard of care and not to preempt states that may affirmatively establish such checks as part of a standard of care. In any event, given the Act's focus on FBI checks and not single State criminal record checks that may be required or permitted under a given State's law, it appears that any preemption would be limited to any State-required FBI checks rather than State criminal record checks.

The effect of the provision insulating a State from damages actions for the failure of any business or organization to take adverse action against a person who has been the subject of a background check depends upon how broadly it is interpreted. If the failure of the organization to take adverse action against a person who has been the subject of a check is due solely to a decision (or negligence) of the business or organization based upon accurate information received from the State, then it seems that insulating the State from damages actions is appropriate. If the failure of the organization to take adverse action against a person who has been the subject of a check is due to the State's failure to competently process information pursuant to the check request, then it is less clear that the State should be insulated from liability. As this provision in the Act currently reads, the scope of the liability limitation is unclear.

E. Fees for Volunteers and Non-Profits. The Act limits the fees that may be charged for fingerprint-based background checks on some volunteers of businesses or organizations that provide child care placement services or that provide care, treatment, education, training, instruction, supervision or recreation to children by persons having unsupervised access to a child. For States that, after the Act, enact statutes requiring such checks, the fees that may be charged for checks on volunteers may not exceed the actual cost of the background check conducted with fingerprints. In a number of States and the federal government, background check fees include costs of automation (e.g., computer upgrades) as well as costs associated with processing the background check.⁷ This provision would limit the fees that may be charged for volunteers checked under a statute requiring such a check, but again only with laws that were enacted after the Act. For those States that amend current statutes, if the amendment institutes a new requirement that certain Child Care and Service organizations conduct checks, it may well fall within the scope of this provision limiting the fees for checks on some volunteers. In addition, the Act instructs the States to set check fees for non-profit entities that do not discourage volunteers from participating.

III. FUNDING: CARROTS AND STICKS

The Act contains several funding provisions: (1) the improvement of State criminal record systems and the sharing of child abuse crime records with the Attorney General under the Act are added to the list of purposes for which formula grant funds under the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. §3759(b), are to be spent; (2) a total of 20 million dollars is authorized to be appropriated for fiscal years 1994, 1995, 1996, and 1997 through grants by the Attorney General; and (3) beginning in December 1994, the Attorney General *may reduce by up to 10 percent* for a fiscal year, a State's allocation under Title I of the Omnibus Crime Control and Safe Streets Act of 1968 if that State is not in compliance with the Act. As of this date, there has been no money appropriated by Congress for any of the new provisions of this Act, including the specific responsibilities of the Attorney General under the Act.

⁷Pub. L. 101-515, Title II, 1990 U.S.C.A.N.(104 Stat.) 2112, authorized the FBI to establish fees to process fingerprint identification records and name checks for non-criminal justice, non-law enforcement employment and licensing purposes "at a level to include an additional amount to establish a fund to remain available until expended to defray expenses for the automation of fingerprint identification services and associated costs." The relevant portion of this legislation is included as a note, entitled *FBI Fees to Process Fingerprint Identification Records and Name Checks*, following 28 U.S.C.A. §534 (West 1993).

From : National Association for the Education of Young Children

DRAFT ONLY

State Requirements for Records Checks to Screen Child Care Personnel

In response to public concern about potential child sexual abuse, many states have begun to require that criminal records be checked of licensees and persons who care for children. Often the requirement covers family members, for types of care in a residential setting. Some states are also checking abuse registries. Staff with records of relevant crimes or child abuse are not permitted to work in child care settings.

Some aspects of this issue include the following:

- What crimes are relevant? Most states have limited the records checks to crimes of violence, sex-related crimes, and crimes against children. Others include substance abuse and burglary. Illinois covers all crimes except minor traffic violations.

- Are records of convictions checked, or arrest records?

- What records are checked? Some states check state records of crimes, FBI records, and a new national records center, or the search may be limited to state records. Some states check only state records unless a person is new to the state. Records of child abuse may also be checked, either through the state's central registry, or other records of the social service agency.

- Does the procedure protect those who were falsely accused of crimes or abuse? For criminal records, most states only search for records of convictions, but abuse registries include names of persons whose cases have not been adjudicated.

- Are federal records checked as well as state records? Checking Federal records yields records when a person has committed crimes in other states, but it is expensive and time-consuming. Some states check Federal records only of persons who live across the state line, and some check records of those who have lived in the state only a few years.

- Are checks made by name or fingerprinting? Federal checks require fingerprinting; state records can be checked by name or fingerprinting. If only names are checked, then

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Individuals may escape identification by using a new names.

-Who is checked? Some states check records of all staff, volunteers in centers and of family day care providers, their assistants, household members and sometimes sometimes other relatives. Other states limit their checks.

- Are both family day care and centers covered by the requirement? Some states check family day care but not centers.

- Who has access to records? How does the state assure privacy of records?

Even when a state develops policies that deal satisfactorily with these issues, there are still issues of cost and time delays. Since most of the individuals who abuse children have not yet been detected and convicted, the criminal records and abuse registries will reveal only a fraction of potential abusers, at a high cost. States may lose their ability to facilitate new supply of child care by responding in a timely way to applicants for licenses.

Some states are opposed to checking records. Bottlenecks in records-checking may delay a state's ability to respond to applicants for licenses in a timely and helpful way. They fear that pressures to check records may force them to use a disproportionate amount of tax money on a limited method of protecting children. One state commented "Unproductive and a waste of time and money." Other states believe that identifying any potential abusers has to be done if it offers some protection to children.

Table 10 and its notes identify whether checks are made of state records, FBI Records, or child abuse records, and what staff and other individuals are covered by the requirement.

Twenty states do not check abuse registries, and twenty-two states do not check criminal records for staff in centers. For family day care, twenty-three states do not check abuse registries, and twenty states do not check criminal records.

Seven states do not routinely check any records:

- MT
- NC
- NJ
- OH
- TN
- WI
- WY

SENT BY:

11-22-91 : 15:45 :

From : National Association for the Education of Young Children

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DRAFT ON

State Requirements for Records Checks to Screen Child Care Personnel

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- Are checks made by name or fingerprinting? Federal checks require fingerprinting; state records can be checked by name or fingerprinting. If only names are checked, then

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Eleven states check criminal records but not abuse registries:

AL	LA
CT	MD
FL	ME
IN	MS
KY	NM
	VA

Eleven

Twelve states check abuse registries but not criminal records:

AR	IL	NY
MO	MO	SD
DC	ND	UT
DE	NE	VT

Indiana and Wisconsin require a notarized form stating that a person has no record, and then spot check records on a random basis for centers and homes. Montana and Ohio also require affidavits, but Montana does not check them and Ohio did not supply the information about their method. Alaska and Vermont check their abuse registry, but only for center licensees (the owners or directors) and licensed family day care providers.

Only sixteen of the states that check criminal records are routinely checking by fingerprinting. They are:

AL	LA
AZ	MD
CA	MN
FL	NM
GA	NV
HI	PA
ID	RI
KY	WV

Missouri checks by fingerprint only when a positive identification cannot be made otherwise.

Fourteen states check national records, through FBI checks, rather than relying only on state records. They are:

AL	NM
AZ	NV
CA	PA*
GA	RI
HI	TX*

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ID*
MD
MN

WV*

The states that require FBI checks may not check every record. Not enough detail was supplied by the states so that the policies could be fully compiled. Idaho checks only individuals who have been resident in the state for less than three years; West Virginia checks those who have been residents for less than five years. Pennsylvania checks FBI records only for out-of-state new job applicants, those who live in another state and work in Pennsylvania. Texas also limits their FBI checks to out-of-state residents.

Chart 10.1 lists the states that require criminal records checks and/or abuse registry checks for centers or group day care homes. Chart 10.2 lists those that do not.

Twenty-nine states now require criminal records checks for staff or for licensees in centers. Thirty states check abuse registries for centers. The biggest change between 1986 and 1989 is a growth in the abuse registry checks, which were done in very few states in 1986.

Nineteen states check criminal records for group day care homes, and twenty-one check child abuse registries for this type of care.

Twenty-five states check criminal records for family day care, and twenty-eight check their abuse registries.

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TABLE 10. STATE SCREENING OF CHILD CARE PERSONNEL FOR ABUSE RECORDS OR CRIMINAL RECORDS

SENT BY:

11-22-91 : 15:47 :

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STATE	STATE CRIM. RCNDS BY NAME	STATE CRIM. RCNDS BY FPRINTS	FBI	ABUSE RGSJKR	CENTER CARE				GROUP HOMES			FAMILY DAY CARE HOMES	
					Owner Director	Classrm Staff	Other staff; family members	Volts.	Provide	Employees	Other adults; family members	Providers	Other adults; family members
AK	No	No	No	Lcd.	x				n/a			x	
AL	Yes	Yes	Yes	No	x	x	x		x			x	
AR	No	No	No	Yes	x				x	x	x	x	x
AZ	Yes	Yes	Yes	Yes	x	x	x	x	n/a			x	x
CA	Yes	Yes	Yes	Yes	x	*	*	*	x	x	x	x	x
CO	No	No	No	Yes					n/a			x	x
CT	Yes	No	No	No	x	x	x	x	x	x	x	x	x
DC	No	No	No	Yes	x				n/a			x	
DE	No	No	No	Yes	x				x		x	No	No
FL	Yes	Yes	No	No	x	x	All employd		n/a			No	
GA	Yes	Yes	Yes	Yes	Crim. State FBI	Crim. State & abuse	Employees State Crim; abuse		Crim. State FBI	Crim. State ; & abuse	Crim. State & abuse	Crim. State & FBI	Crim. State & abuse
HI	Yes	Yes	Yes	Yes	x	x	x	x	x	x	x	x	x
IA	Yes	No	No	Yes	x	*	*	x	x	x	x	x	x
ID	Yes	Yes	LTD ^a	Yes	x	x	x	x	x	x	x	n/a	
IL	No	No	No	Yes	x	x	Employees		n/a			x	x
IN	Yes	No	No	No	x	x	x	x	n/a			x	x
KS	Yes	No	No	Yes	x	x	x	x	x	x	x	x	x

TABLE 10. STATE SCREENING OF CHILD CARE PERSONNEL FOR ABUSE RECORDS OR CRIMINAL RECORDS

CENTER CARE

GROUP HOMES
Provide Employees Other adults;

FAMILY DAY CARE HOMES
Providers Other adults; family members

TABLE 10. STATE SCREENING OF CHILD CARE PERSONNEL FOR ABUSE RECORDS OR CRIMINAL RECORDS

08:18PM #823 P.07

1992.04-08

AUDIT COMM

FROM : NCSL DENVER

STATE	STATE CRIM. RECORDS BY NAME	STATE CRIM. RECORDS BY PRINTS	FBI	ABUSE HISTORY	Center Director	CENTER CARE		Vol.	GROUP HOMES			FAMILY DAY CARE HOMES	
						Classified Staff	Other staff; family members		Providers	Employees	Other adults; family members	Providers	Other adults; family members
KY	Yes	Yes	No	No		*	*	*	*	*	*	*	*
LA	Yes	Yes	No	No	X	*	*	*	N/a			X	*
MA	Yes	No	No	Yes	X	*	*	*	N/a			X	*
MD	Yes	Yes	Yes	No	X	X	X	X	X	X	X	X	X
ME	Yes	No	No	No	X	X	X	X	X	X	X	X	X
MI	Yes	No	No	Yes	Abuse & Crim.				abuse	abuse	abuse	abuse	abuse
MO	Yes	Yes	Yes	Yes	X	X	X	X	X	X	X	X	X
MS	No	No	No	Yes	X also Board Chair				N/a			X	
MT	Yes	No	No	No		X	X		X			N/a	
NC	No	No	No	No									
ND	No	No	No	Yes	X	X	X	X	X			X	
NE	No	No	No	Yes	X	X	X	X	X	X	X	X	X
NH	Yes	No	No	Yes	X	X	X	X	X	X	X	X	X
NJ	No	No	No	No									
NM	Yes	Yes	Yes	No	X	X	X	*	X	X	X	X	X

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TABLE 10. STATE SCREENING OF CHILD CARE PERSONNEL FOR ABUSE RECORDS OR CRIMINAL RECORDS

ID	STATE CRIM. RCRDS BY NAME	STATE CRIM. RCRDS BY PRINTS	FBI	ABUSE REGISTRY	CENTER CARE			Avols.	GROUP HOMES			FAMILY DAY CARE HOMES	
					Owner Director	Classroom Staff	Other staff; family members		Providers	Employees	Other adults; family members	Providers	Other adults; family members
V	Yes	Yes	Yes	Yes	x	x	x	x	x	x	x	x	x
W	No	No	No	Yes	x	x	x		x	x		x	
VI	No	No	No	No									
VII	No	No	No	No									
VIII	Yes	No	No	FDC	x Crim	x Crim	x Crim		x Crim.			x abuse & x Crim.	
IX	Yes	Yes	Ltd*	Yes	x	x	employees* if paid	x	x	x	x	x	x
X	No	No	Yes	Yes	x Crim	x Crim	x Crim	x Crim	x Crim & abuse	x Crim & abuse	x Crim abuse	x abuse	x abuse
XI	Yes	No	No	Yes	x	x	x	x	No			No	
XII	No	No	No	Yes	x	x	x	x	x	x	x	x	x
XIII	No*	No	No	No									
XIV	Yes	No	Ltd*	Yes	Crim & Abuse	Crim	Crim	x	Crim & abuse	Crim	x	Crim & abuse	x
XV	No	No	No	Yes	x	x	x	x	x	x	x	No	
XVI	No	No	No	Ltd.*	x				N/a			x Licensee (Not regtd)	
XVII	Yes	No	No	No	x	x	employees		N/a			x	x

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TABLE 10. STATE SCREENING OF CHILD CARE PERSONNEL FOR ABUSE RECORDS OR CRIMINAL RECORDS

CENTER CARE			GROUP HOMES			FAMILY DAY CARE HOMES	
Owner Director	Classroom Staff	Other staff; family members	Providers	Employees	Other adults; family members	Providers	Other adults; family members

TABLE 10. STATE SCREENING OF CHILD CARE PERSONNEL FOR ABUSE RECORDS OR CRIMINAL RECORDS

STATE	STATE CRIM. RCRDS BY NAME	STATE CRIM. RCRDS BY FPRINTS	FBI	ABUSE RGSTRY	Owner Directr	CENTER CARE CLASSIC Staff	Other staff; family members	Vols.	GROUP HOMES Provider	Employees	Other adults; family members	FAMILY DAY CARE HOMES Providers	Other adults; family members
NY	Yes	Yes	Ltd ⁴	In area	x	x	x	x	n/a			x	x
NY	No	No	No	No									

1992.04-08

TO : GOV PER AUDIT COMM

FROM : NCSL DENVER

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Chart 9.5. States that do not Check Criminal Records and/or Abuse Registry

Don't Check Criminal Records			Don't Check Abuse Registry		
Centers	Group Homes	Family Day Care Homes	Centers	Group Homes	Family Day Care Homes
AK	AR	AK	AL	AL	AL
AR	DE	AR	CT	CT	CT
CA	MI	CA	FL	MD	DE
DE	MT	DC	IN	ME	FL
DC	ND	FL	KY	MT	IN
IL	NE	IL	LA	NM	KY
MO	NY	MI	MD	OH	LA
MT	OH	MO	ME	OR	MD
NC	SC	MT	MS	SC	ME
ND	SD	NC	MT	TN	MS
NE	TN	ND	NC	WI	MT
NJ	UT	NE	NJ	WY	NC
NY	WI	NJ	NM		NJ
OH	WY	NY	OH		NM
OK		OH	OK		OH
SD		OK	OR		OK
TN		RI	TN		SC
UT		SC	VA		TN
VT		SD	WI		UT
WI		TN	WY		VA
WY		UT			VT (REG*)
		VT			WI
		WI			WY
		WY			
(21)	(14)	²³ (24)	(20)	(12)	(23)

NOTES:

VT does not check abuse records for registered homes; only licensed family child day care are checked.

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Chart 10.1 STATES THAT CHECK CRIMINAL AND ABUSE RECORDS FOR CENTERS AND HOMES

Check criminal records

<u>Centers</u>	<u>GHS</u>	<u>FDCs</u>
30	20	25
AL	AL	AL
AZ	CA	AZ
CA	CT	CA
CT	GA	CT
FL	HI	GA
CA	IA	HI
HI	ID	IA
IA	KS	IN
ID	KY	KS
IN	MD	KY
KS	ME	LA
KY	MN	MA
LA	NH	MD
MA	NM	ME
MD	NV	MN
ME	OR	MS
MI	PA	NH
MN	RI	NM
MS	TX	NV
NH	WA	OR
NM	CO	PA
NV		TX
OR		VA
PA		WA
RI		WV*
SC		CO
TX		
VA		
WA		
WV*		
CO		

Check abuse records

<u>Centers</u>	<u>GHS</u>	<u>FDCs</u>
30	21	29
AK*	AR	
AR	CA	AK*
AZ	DE	AR
CA	GA	AZ
DC*	HI	CA
DE	IA	CO
GA	ID	DC
HI	KS	GA
IA	MI	HI
ID	MN	IA
IL	ND	IL
KS	NE	KS
MA	NH	MA
MI	NV	MI
MN	NY	MN
MO	PA	MO
ND	RI	NE
NE	SD	ND
NH	TX	NH
NV	UT	NV
NY	WA	NY
PA	CO	OR
RI		PA
SC		RI
SD		SD
TX		TX
UT		VT (LIC*)
VT*		WA
WA		WV*
WV*		
CO		

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*NOTES: ~~Table 10.1 and Table 10.2~~

AK DC HI MO VT check abuse registry only for the licensee; i.e. the administrator or family day care provider, but not employees.

CA IA MA KY LA check records depending on child contact. MA, persons who have unmonitored access to children; KY, LA anyone having disciplinary authority over a child.

KY does not check records of the director; other states do.

ID checks FBI records only when a person has not been a resident of the state for 3 years; WV for those who have been residents for less than 3 years. PA and TX only for out-of-state workers.

IN OH MT and WI requires affidavit from individuals stating that they have no records. IN and WI make spot checks of records on a random basis; MT does not check.

MI checks the abuse registry and criminal records for the center licensee only, not employees, checks criminal records for home providers, other adults and family members. KY reports they check employees but not the administrator in centers.

KY and MS report that they check only employees in centers and homes. The states may not mandate these checks, since the licensees are not checked.

MO checks by fingerprint only when a positive identification cannot be made otherwise.

OR checks abuse registry only for family day care.

VT checks abuse records for licensees (owners/directors) in centers, and providers only in licensed family day care. Registered family day care providers are not checked.

WV only checks abuse records in the immediate geographic area.

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CHART 10-2. STATES THAT DO NOT CHECK CRIMINAL RECORDS AND/OR ABUSE REGISTRY

<u>DON'T CHECK CRIMINAL RECORDS</u>			<u>DON'T CHECK ABUSE REGISTRY</u>		
<u>CENTERS</u>	<u>GHS</u>	<u>FDCs</u>	<u>CENTERS</u>	<u>GHS</u>	<u>FDCs</u>
22	14	24	20	13	23
AK	AR	AK	AL	AL	AL
AR	DE	AR	CT	CT	CT
CO	MI	CO	FL	MD	DE
DE	MT	DC	IN	ME	FL
DC	ND	FL	KY	MT	IN
IL	NE	IL	LA	NM	KY
MO	NY	MI	MD	OH	LA
MT	OH	MO	ME	OR	MD
NC	SC	MT	MS	SC	ME
ND	SD	NC	MT	TN	MS
NE	TN	ND	NC	WI	MT
NJ	UT	NE	NJ	WY	NC
NY	WI	NJ	NM		NJ
OH	WY	NY	OH		NM
OK		OH	OK		OH
RI		OK	OR		OK
SD		RI	TN		SC
TN		SC	VA		TN
UT		SD	WI		UT
VT		TN	WY		VA
WI		UT			VT (REG)*
WY		VT			WI
		WI			WY
		WY			

*NOTES: TABLE 10.2
VT does not check records for registered homes; only licensed homes are checked.

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CRIMINAL BACKGROUND CHECKS FOR CHILD CARE PROVIDERS

State Approaches

Virginia

Doris Jenkins, Dept. of Social Services, Division of Licensing Programs, (804) 662-6164

Background checks have been run on center and family day care personnel since 1988, including staff, board members, volunteers, and caretakers in family day care homes. They are screened by name through the state police for convictions of crimes related to children and sexual offenses and murder. Individual applicants pay for the check about 80% of the time and facilities pay about 20% of the time. The cost of the check is \$5. It takes five to seven days to process a check and the license is issued only after clearance is given. Applicants cannot appeal.

Jenkins feels that the background check deters people who have committed crimes against children from applying, as the system has found 7 convictions out of 15,000 clearances. She is concerned that Virginia is only checking convictions within the state and for limited crimes. She recommends giving the facility the discretion to screen for more crimes.

Colorado

Dennis Draper, Dept. of Social Services, Office of Child Care Services, (303) 866-5944

Background screens are run on employees of centers, family homes, adoptive homes, or foster care facilities since October, 1990, including adult residents of family day care homes. The state checks the arrest sheet and sends it to the provider (or county) for further investigation. Only state records are checked for people who have lived in-state for at least two years. If not, FBI records are also checked. A conviction of violent or sexual offenses, drug sale, or an offense which has an "adverse reflection" on the individual prohibits child care employment. The individual or the facility pays for the checks, which cost \$17 for a state check and \$40 for state and FBI check. It takes about three days for a name criminal check. If the name matches a qualifying crime, a week is needed for a fingerprint check. Appeals are granted and the individual is not given a license until after his or her appeal succeeds. Only the facility operator and the state and county Social Services Depts see the records.

Draper is concerned about the slowness, as the Colorado Bureau of Investigation was not prepared for the system. He also said there were problems finding out the result of the arrest. He was especially concerned that, because the child care industry is transient, it is difficult to transfer information from one facility to another. Around 5% of the checks show an arrest record.

Georgia

Asa Bearse, Department of Social Services, Office of Regulatory Services, (404) 894-4719

Informal Survey - NCSL Child Care Staff, April, 1991

Since 1985, all employees of centers, family day care, or group homes are screened. A person frequently around a family day care home is defined by state law as an employee. State records are checked by name on computer for employees, and fingerprints are checked for facility directors. If a match is found on a relevant crime, the state Office of Regulatory Services traces the case to the courts for the information on the crime and disposition. Convictions or arrests for any felony, or any drug offense (except simple marijuana possession), or any sexual offense prohibits child care employment, unless the person was acquitted. The cost is \$3 for a computer check and \$20 for a fingerprint check. It takes two days after the receipt of the application to complete the check. However, if there is a crime, it takes 30-45 days to get the court information and around 45 days for an FBI fingerprint check. Georgia will issue a temporary license based on the preliminary check.

The process allows for appeals. A hearing officer can overturn a decision based on mitigating circumstances and a person appealing can be employed until a determination has been made against him or her by the hearing officer. The Criminal Records Unit and the Legal Unit of the Office of Regulatory Services see the records. Barse feels that while the system has deterred criminals, the state is spending too much for not catching many criminals. He thinks that word has spread that the state is checking criminal backgrounds and so those with such background are not applying for child care employment. He is also disturbed by the long wait for court records and by certain errors in the records, such as listing the wrong crime. He also thinks there are too many non-pertinent crimes under "any felony," such as food stamp fraud, credit card fraud, or livestock theft.

Iowa

Barbara Bosch, Dept. of Human Services, Division of Adult, Children, and Families, Day Care Unit, (515) 281-6074

Iowa has been checking child care applicant names who have been convicted of certain crimes or have been the subject of a "founded child abuse report" for about five years. The state uses the checks to register group and family care homes and to license child care centers. After obtaining an applicant's criminal record showing a convicted crime from the state Department of Criminal Investigation, an "evaluation process" begins in the Day Care Unit's District Office. The process includes a committee, usually comprised of the licensing consultant, the district service administrator, and a social worker. This committee decides if the applicant should be licensed or registered. A regular Human Services Department appeals process is used. The licensing consultant and the owner of the facility are the only people who see the criminal records when licensing a center. The District Office of the Day Care Unit and the provider are the only ones who see the records when registering group or family care homes. The check takes three to six weeks, and longer in the fall because of new school openings. Registrations are issued only after clearance of the check, but a license will sometimes be issued during the check with an understanding that it is pending.

Bosch thinks the evaluation process is much fairer than using the administrative code of the state to make a determination. Iowa previously did it that way. She thinks a state should have some kind of screening of criminal history. She is concerned that Iowa's checks are only limited to within the state boundaries and that it takes too long to process. Her ideal goal is 24 hour turnaround.

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Informal Phone Survey - NCSL Child Care Staff, April, 1991

Maryland

Nancy Lantz Child Care Administration, Department of Human Resources, (301) 554-0415

Maryland started running criminal record checks on child care center providers in July, 1986. Because it was unclear whether family day care providers were covered by the law then, they were added in July, 1989. Maryland law does not prohibit applicants from working as a child care provider if they have been criminally involved. It gives authority to the Department of Human Resources (D.H.R.) the discretion to prohibit employment.

If the checks reveals a previous conviction or charge, D.H.R. investigates the case and conducts discussions with the applicant to reach a decision. Lantz said the group within the D.H.R. that decides is usually comprised of the Assistant Director for Licensing, the Assistant Director for Standards, and the Director of Child Care Administration. Maryland checks both the state central registry and FBI fingerprints for family day care applicants. It checks only FBI fingerprints for child care center applicants. When running the state check for family day care applicants, any previous criminal history is screened for, whether the person was convicted or just charged with an offense. The FBI fingerprint check is limited to commit or attempted to commit murder, child abuse, rape, child pornography, child abduction, kidnapping, or a sexual offense.

The FBI check is \$23, with a \$2 administrative fee going to the state. The state check charge of \$18 began only this week (April 15 1991). The state had not previously charged providers any fee for it. All child care applicants, whether family day care or centers must pay \$41 because the FBI check includes Maryland. Lantz said that there have been serious problems getting checks processed. She mentioned one case that has not come back after a year and a half. She said that part of this problem is how unprepared the state repository was for the system. Out of 1226 record checks for family day care cases, 70% were within 50 business days and the other 30% averaged 72 business days to process the application.

The law requires every person wishing to work in day care apply for a criminal history check and sign a disclosure statement about his or her criminal history. For centers, a person can begin employment as soon as the application for the check is made. Maryland procedures/regulations specify that for family day care, a person cannot be registered until either the state or federal records have been checked. The applicant is given a "provisional registration" until the other record check is reviewed. It takes approximately 3 days for the state record repository to acknowledge receipt of the application. Once the employer and the licensing authority receive this information, the center applicant is registered.

Because the Maryland Department of Public Safety and Corrections (D.P.S.C.) does not specify the crime to D.H.R., D.P.S.C. is the only agency that sees the criminal records.

While Lantz definitely feels a background criminal check should be mandated, she identified several problems with Maryland's system that she considers serious: 1) the timeliness problems 2) frequent inability of the FBI to get legible fingerprints. Often times, people cannot produce legible prints, especially if their previous job(s) were labor-intensive with hands. Maryland has no language in the law about situations where no legible fingerprints are available, even though fingerprint checks are required. She sees this as a problem and cautions other states about it. 3) Because state law prohibits the D.P.S.C. from sharing the criminal records with the D.H.R., the D.H.R. often relies on the applicant for specifics. She also recommends that a state repository inform the licensing agency if a new charge is filed against a registered or licensed child care provider.

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At the request of the Maryland legislature, the D.H.R. ran a study of their program last year. Lantz will send me a copy next week.

California

Kathy Schledegger, Policy Analyst, Department of Social Services, Community Care Licensing, (916) 324-4178

California has been checking prior convictions of any crime since either 1974 or 1978. Only state records are checked unless the applicant just moved to the state within two years or DSS has reason to believe he or she has an out of state record. Fingerprints are checked at the state's Department of Justice and at the FBI if needed. Either the provider or the applicant pays the screening fee, which is \$27 for the state and \$23 for the FBI, if needed. An additional \$3-\$25 fee is charged for fingerprint rolling, except for child care with fewer than 7 children, which is a good portion of the family day care homes. DSS is the only agency that can see the criminal records. It takes 45-90 days for the criminal record check to be processed.

The state also checks the central registry of suspected child abusers as a separate indicator, since 1985. The state cannot deny a license on this basis, but DSS investigates the circumstances, determines whether there was abuse, and can deny the license based on the applicant's conduct being inimitable. This method denies less than 1% of applicants a license.

The state has recourses for the applicant if he or she disagrees with the decision to deny a license. The first recourse is the "exemption process." In order for the exemption process to begin, the provider must request it. The DSS allows applicants in the exemption process to remain employed during this appeal, unless he or she has been convicted of a sex offense against a minor, sexual battery, child abuse or neglect, or any felony. If this is the case, the DSS orders an end to employment until the applicant is successful in the exemption process. The exemption process consists of the applicant giving his or her side to the conviction to DSS, an opportunity for the individual to provide references, and an evaluation by the DSS of the case. Most felonies or abuse convictions cannot be exempted. If the person was convicted with a sentence enhancer, such as violence, an exemption cannot be granted.

The second recourse is the Employee Name Clearing Hearing before an Administrative Law Judge. If the applicant can show a preponderance of evidence to support his or her contention, the ALJ approves the appeal.

Schiedegger thinks that a criminal history check is a necessity. Even though California identifies 1% of child care applicants with applicable criminal histories, she thinks it is significant if one person is stopped from harming a child. She also noted the comfort level of consumers with the system. She pointed out that occasionally errors are made during the check. Another major problem is the timeliness. Scheidegger recommends that a state law provides for an interim type of license, so that an applicant can begin work before the 45-90 days when the check is completed. Originally, California did not allow for this. The state amended its law by permitting people to begin employment in an already licensed facility while the check is underway, as long as they submitted their fingerprints and signed a conviction statement.

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Journal Phone Survey - NCSL Child Care Staff - April, 1991

Kentucky

Jean Cole, Department of Licensing and Regulation. (502) 564-2800

Kentucky has been checking previous child abuse and neglect convictions of any adult having contact with a child since around 1986. The law requires such individuals clear this process before beginning employment. The process usually takes from four to six weeks. The provider pays the \$4 for the state records check, which includes fingerprints and only the Licensing and Regulation Dept. sees the records.

She thinks it is not very effective because the state only checks convictions of child abuse. She favors including screens for those charged with child abuse, but who were convicted on a lesser or different charge. She says this happens frequently, but the Department lawyers say that using a charge of one offense but resulting in a conviction of another offense to screen for child abusers has legal problems. She says this needs to be resolved or the system will continue to be hampered. To date, no applicant has been denied a license based on a previous child abuse conviction.

Nebraska

Becky Bear, Lancaster County Department of Health, Food, Water, and Child Care Section. (402) 471-8025

The state does central registry checks for employees of family day care homes with 4 or more children. Lancaster County and the city of Lincoln check any charges or convictions with the local police. There, a city license is required for family day care homes with more than one family. There is no cost in the local check and information can be given over the phone at the time of the request or a week later by writing. The city and county will not allow employment until after clearance. The state automatically licenses an applicant and revokes it later if a check is positive. The state's appeals process is through the Nebraska Dept. of Social Services and the local appeals process is done through district court.

Bear thinks that the county is doing an "excellent job" of preventing child abusers in family day care homes. She says that it is difficult to enforce the license law, as unlicensed care is provided. She referred me to Gail Flannery, whose thesis is on the legality and practicality of central registry checks.

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CRIMINAL BACKGROUND CHECKS FOR CHILD CARE PROVIDERS

State Approaches

Connecticut

Centers and family day care homes are regulated by two different departments. Health Services conducts background checks for centers. The Department of Human Resources conducts checks for family day care homes.

Wesley Bell, Department of Health Services, (203) 566-1139

Connecticut has run background checks for center-based child care for five years. Only state records, running back five years, are checked. Federal records are not checked because of the \$25 fee. No fee is charged for state records checks. The process takes 30-45 days.

Staff feel that the process provides "a false sense of security" because Connecticut only looks at records over the last five years, does not consider nullified reports or pending matters. Currently, only new employees are screened, updated screens are not provided for long-standing employees.

When the procedure was implemented, the Department volunteered to carry it out without additional staff. In the words of the interviewee, "This was a big mistake". Lack of staff and resources compromise the effectiveness of the process.

Louisiana

Steve Phillips, Division of Licensing and Certification, (504) 342-4131

Background screens have been run on center-based personnel since 1989. Both state and federal check are made using fingerprints. The child care center, as employer, covers the \$13 fee. The state police are taking from six months to a year to conduct the screen. Once the employee's fingerprints have been taken, the state police submit a "receipt" to the center which documents that the screen is being conducted and relieves the center from liability during the waiting period. The licensing chief has the discretion to look at the record and use a case-by-case approach to determining if an applicant should be approved. He cautions that appropriate levels of manpower and resources must be allocated to make this an effective procedure. One violation per 1000 checks is the average.

IDAHO

Perry Ackerman, Department of Health and Welfare, (208) 334-5702

Idaho has conducted child care personnel background checks since August 1987. Providers who meet a three-year residency requirement are exempt but must sign a "self-declaration" stating that they have no record. State and federal records are checked. The charge is \$33, only \$20 is paid by the applicant because of a glitch in the state law. Staff see the process as a tool, not an end to itself. Other factors are

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considered in determining whether the provider is allowed to operate. A three-member exemption review committee at the regional level determines whether an applicant whose record reflects an infraction may be allowed to operate. The process takes 30 to 45 days. Problems exist regarding failures of counties to report to the state and states reporting to the FBI. If there has been an arrest but no disposition, staff must rely on police personnel to obtain information from another law enforcement bodies. Idaho is in the process of computerizing the system and expects an easier to handle process. An initial backlog strained personnel and resources when the system was first put in place.

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LIST OF OFFENSES

KENTUCKY

capital offense
class A felony
class B felony involving the death of the victim
rape in the first degree
sodomy in the first degree
conviction or plea of guilty to a sex crime

VIRGINIA

felony related to abuse, neglect, or exploitation of children or adults
misdemeanor related to abuse, neglect, or exploitation of children or adults

RHODE ISLAND

murder
voluntary manslaughter
involuntary manslaughter
kidnapping
kidnapping with intent to extort
first degree sexual assault
second degree sexual assault
third degree sexual assault
assault by spouse
assault with intent to commit specified felonies
felony assault
domestic assault
first degree child abuse
second degree child abuse
incest
child snatching
exploitation for commercial or immoral purposes
transportation for indecent purposes:
 harboring, prostitution
pandering
deriving support or maintenance from prostitution
circulation of obscene publications and shows
sale or exhibition to minors of indecent publications, pictures or articles
child nudity in publication
any offense constituting a felony which is enumerated in Rhode Island General Law 21-28-1.01 et seq. the Uniform Controlled Substances Act

SOUTH CAROLINA

offenses against the person
offenses against morality and decency

SOUTH CAROLINA (CONTINUED)

contributing to the delinquency of a minor

LOUISIANA

first degree murder

second degree murder

manslaughter

rape

aggravated rape

forcible rape

simple rape

sexual battery

aggravated sexual battery

aggravated kidnapping

simple kidnapping

oral sexual battery

aggravated oral sexual battery

criminal neglect of family

incest

carnal knowledge of a juvenile

indecent behavior with juveniles

pornography involving juveniles

molestation of a juvenile

prostitution

prostitution; persons under 17

soliciting for prostitutes

inciting prostitution

promoting prostitution

prostitution by massage

massage; sexual conduct prohibited

pandering

letting premises for prostitution

letting premises for obscenity

enticing minors into prostitution

crime against nature

aggravated crime against nature

cruelty to juveniles

distribution or possession with intent to distribute marijuana or narcotic drugs listed in
schedules I to V

ARIZONA

sexual abuse of a minor

incest

first degree murder

second degree murder

ARIZONA (CONTINUED)

kidnapping
arson
sexual assault
sexual exploitation of a minor
contributing to the delinquency of a minor
commercial sexual exploitation of a minor
felony offenses involving distribution of marijuana or dangerous or narcotic drugs
burglary
robbery
a dangerous crime against children as defined in state statute 13-604.01
child abuse
sexual conduct with a minor
molestation of a child
manslaughter
aggravated assault

MICHIGAN

bribery
fraud
filing of false claims
aiding or abetting the filing of false claims
allowing an establishment to be used for illegal purposes
homicide
murder
manslaughter
mayhem
negligent homicide
attempts to commit homicide or murder
felony assault
misdemeanor assault
felony battery
misdemeanor battery
criminal sexual conduct in any degree
activity for profit involving any of the following:
 child abuse, neglect, or exploitation
 kidnapping
 adoption schemes
 prostitution or related crimes
cruelty toward, or torture of any person
attempts to commit any criminal sexual conduct or cruelty toward, or torture of any
 person
robbery
armed robbery
burglary

MICHIGAN (CONTINUED)

receiving stolen property
concealing stolen property
extortion
obtaining property by false pretenses
larceny by trick
larceny by conversion
embezzlement
arson
offenses involving narcotics, alcohol, or controlled substances that result in a felony conviction
offenses involving any of the following
 -adulterating drugs, controlled substances, or preparations
 -poisoning
 -unlawful manufacture or delivery of drugs or possession with intent to manufacture or deliver drugs
attempts to commit robbery, armed robbery, and burglary

COLORADO

any crime of incest, child abuse, child sexual abuse, kidnapping of a child, unlawful sexual behavior, or murder
any crime which involved child prostitution or the sale or possession of sexually explicit materials harmful to children
any crime which adversely reflects upon the character and suitability of the applicant or licensee
a crime which might indicate that the individual may pose a threat to the health, welfare and safety of the children

NEVADA

murder
voluntary manslaughter
mayhem
any other felony involving the use of a firearm or other deadly weapon
assault with intent to kill or to commit sexual assault or mayhem
sexual assault
statutory sexual seduction
incest
lewdness
indecent exposure
any other sexually related crime
abuse or neglect of a child or contributory delinquency
a violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS

CONNECTICUT

a felony as defined in Section 53a- 25 of the Connecticut Genera Statutes
cruelty to persons under Section 53-20
injury or risk to or impairing morals of children under section 53-21
abandonment of children under the age of six years under Section 53-23
sexual assault in the fourth degree under Section 53a-73a, as same may be amended
illegal manufacture, distribution, sale, prescription, dispensing or administration under
Section 21a-277 or 21a-278 of controlled substances
illegal possession thereof under Section 21a-279, as same may be amended

TEXAS

a felony or misdemeanor classified as an offense against the person or family
a felony or misdemeanor classified as public indecency
a felony violation of any law intended to control the possession or distribution of any
substance included as a controlled substance in the Texas Controlled
Substances Act

GEORGIA

any felony
simple battery when the victim is a minor
contributing to the delinquency of a minor
sexual offenses (excluding bigamy or marrying a bigamist)
criminal attempt of any of the above listed crimes

ALASKA

felony
assault
reckless endangerment
contributing to the delinquency of a minor
misconduct involving a controlled substance

MAINE

convictions for sexual or violent crimes involving adults or activities which could have
resulted in convictions for such crimes if prosecuted
any crimes involving children or activities which could have resulted in convictions for
such crimes if prosecuted
conviction within past five years of OUI or any other activity which involves substance
abuse

FLORIDA

murder
manslaughter
vehicular homicide
killing of an unborn child by injury to mother
aggravated assault

FLORIDA (CONTINUED)

aggravated battery

kidnapping

false imprisonment

removing minors from the state or concealing minors contrary to court order

sexual battery

prohibited acts of persons in familial or custodial authority

prostitution

lewd and lascivious behavior

lewdness and indecent exposure

arson

robbery

incest

aggravated child abuse

negligent treatment of children

sexual performance by a child

abuse, neglect, or exploitation of aged or disabled persons

obscene literature

assault if victim was a minor

offense relating to drug abuse prevention and control, only if the offense was a felony or if
any other person involved in the offense was a minor

fraudulent sale of controlled substances, only if the offense was a felony

abuse or neglect against a child

domestic violence

APPEALS AND EXEMPTIONS

FLORIDA

"In order to grant an exemption to a person, the department must have clear and convincing evidence to support a reasonable belief that the person is of good character so as to justify an exemption. The person shall bear the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the incident, the time period that has elapsed since the incident, the nature of the harm occasioned to the victim, and the history of the person since the incident, or such other circumstances that shall by the aforementioned standards indicate that the person will not present a danger to the safety or well being of children. The decision of the department regarding an exemption may be contested through the hearing procedures set forth in Chapter 120. The decision of the local licensing board may be contested through the hearing procedures in s:402.3055."

"The disqualification from employment provided in paragraph (a) shall not be removed from any person found guilty of, regardless of adjudication, or having entered a plea of nolo contendere by reason of any pardon, executive clemency, or restoration of civil rights."

RHODE ISLAND

"Within five (5) working days of receipt of written notification of disqualifying information, the applicant or employee shall put the Department and the center administrator on notice as to the intent to appeal by filing a Request For Hearing. The applicant shall attach a copy of his/her report of disqualifying information which identifies the specific disqualifying information. A copy of this material shall also be sent to the center director.

Within ten (10) working days of submitting the Request For Hearing, the applicant shall provide written references attesting to excellence in child care sufficient to warrant disregard of the otherwise disqualifying information. Such references shall be from individuals who are qualified by virtue of education and/or experience to testify as to the abilities of the applicant. Such individuals include:

- Licensed child care providers
- Current or previous child care professionals
- Other professionals with credentials which would enable them to effectively judge the applicant's qualifications in providing child care.

The administrative Hearing Officer shall review the materials submitted and rule on the appeal within seventy-two (72) hours of receipt of all materials.

-If the applicant has not demonstrated a record of excellence in child care sufficient to warrant disregard of the otherwise disqualifying information, the Administrative Hearing Officer shall uphold the denial and notify the applicant of the reason for the decision. The center shall only be notified that the applicant has not demonstrated a record of excellence sufficient to warrant disregard of the disqualifying information.

-If the applicant has demonstrated a record of excellence in child care sufficient to warrant disregard of the otherwise disqualifying information, the

Administrative Hearing Officer shall overturn the disqualification and shall notify the applicant and the center in writing."

NEW JERSEY

"(a) Authorized.-In conformity with the following procedures, an individual may contest the finding of a criminal conviction or pending charge reported in a printed statement.

(b) Procedure.-In contesting the finding of a conviction or a pending charge, the individual shall contact the office of the Secretary, or a designee of the Secretary, and a hearing shall be convened within 20 working days, unless subsequently waived by the individual. The Secretary, or a designee of the Secretary, shall render a decision regarding the appeal within 5 workdays of the hearing.

(c) Evidence of conviction of crime.- For purposes of this part VI of this subtitle, the record of a conviction for a crime identified in State Statute 5-564 of this subtitle, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. In a case where a pending charge is recorded, documentation provided by a court to the Secretary, or a designee of the Secretary, that a pending charge for a crime identified in State Statute 5-564 of this subtitle which has not been finally adjudicated shall be conclusive evidence of the pending charge.

(d) Failure to appear.- Failure of the individual to appear at the scheduled hearing shall be considered grounds for dismissal of the appeal."

See also New Jersey Appeals pages 9-12.

GEORGIA

See Georgia Appeals "49-5-73. Applicability of "Georgia Administrative Procedure Act"; consideration of matters in mitigation of conviction."

SOUTH CAROLINA

See South Carolina Appeals "20-7-2760. Appeals; private centers and homes."

South Carolina Appeals "20-7-2880. Appeals; family day care homes."

MINNESOTA

See Minnesota Appeals "Subd. 3b. Reconsideration of disqualification."

MICHIGAN

See Michigan Appeals "B. Licensing Consultant Responsibilities if there is a substantiated protective services report of abuse/neglect"

SUMMARY

Many states have some sort of appeal process when a criminal record check shows some sort of crime committed. The majority of appeals processes include a hearing where the subject of the check can show either that the findings were incorrect or that they have been rehabilitated. I believe that Florida has a good appeals process because the hearing officer can take into account the circumstances surrounding the finding. Rhode Island also has a good process because they decide on the appeal quickly, thus not keeping their hearing officers tied up with cases nor keeping the subject of the check in limbo for long periods of time. Lastly, the speediness of the Rhode Island process ensures that the children will not be cared for by convicted criminals who do not warrant an appeal for extended periods of time and that centers have the adequate number of caregivers.

CONFIDENTIALITY

VIRGINIA

"Criminal record reports shall be maintained in locked files. These files shall be accessible only to the following facility related staff: the licensee, administrator, provider, board president, or their designee."

NORTH CAROLINA

1993 Session, Chapter 403, Senate Bill 549

"State Statute 114-19.3 Criminal record checks of personnel of hospitals ... The information shall be kept confidential by the hospital, nursing home, area authority, or contract agency that received the information. Upon disclosure of confidential information under this section by a hospital, ... the Department may refuse to provide further criminal record checks to the hospital,..."

*"the Department" refers to the Department of Justice

MAINE

"All personnel records shall be confidential but shall be provided to the Department upon request according to Maine Statute (22 M.R.S.A. State Statute 7703)."

*"the Department" refers to the Department of Human Resources

ARIZONA

"The notarized forms and fingerprint checks are confidential."

NEW JERSEY

"(1) Except in the case where a person who is the subject of an outstanding arrest warrant or criminal summons has been identified, all information obtained by the Department regarding any criminal charges and their disposition may not be transmitted outside the Department, except as expressly authorized under this Part VI of this subtitle"

"(2) Information obtained by the employer from the department under this Part VI of this subtitle shall be confidential."

MICHIGAN

"The central licensing file is to be updated to include the appropriate criminal history and protective services information. This information is to be considered confidential and is to be marked, "exempt from public disclosure."

COLORADO

"Any information obtained about an applicant or employee shall be confidential pursuant to 19-3-313(10), C.R.S. The director or operator may inform an applicant or employee that the director's or operator's decision with regard to the applicant's or employee's employment was, in whole or in part, the result of the report from the Registry."

CONNECTICUT

"In keeping with the confidentiality provisions of Section 17-38a of the Connecticut General Statutes, the Department will hold confidential all information obtained for day care regulatory purposes which regards child abuse and neglect allegations, investigations and findings."

TEXAS

"All criminal history information records received by the department are privileged information and are for the exclusive use of the department and those persons authorized under this section to receive the information. Except on court order or with the consent of the person being investigated, the records may not be released to any other person or agency. The department may destroy the criminal history information records after the records are used for the purposes authorized by this section."

GEORGIA

"(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this chapter, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both."

ALASKA

"Access to certain crime information. (a) An interested person may request from the Department of Public Safety records of all felony convictions, convictions involving contributing to the delinquency of a minor, and convictions involving any sex crimes of a person who holds or applies for a position of employment in which the person has or would have supervisory or disciplinary power over a minor or dependent adult. The Department of Public Safety shall disclose the information to the requesting interested person and shall provide a copy of the information to the person who is the subject of the request.

(b) A request for records under (a) of this section must include within it the fingerprints of the person who is subject of the request and any other data specified in regulations adopted by the commission. ... The commission shall destroy an application within six months after the requested information is sent to the requesting interested person and the person who is the subject of the request. ...

(3) "interested person" means a corporation, company, partnership, firm, association, business trust, or society, as well as a natural person, that employs or solicits the employment of a person to serve with or without compensation in a position in which the person has or would have supervisory or disciplinary power over a minor or dependent adult."

SUMMARY

The majority of states that I have examined either have confidentiality clauses which refer back to general confidentiality clause or which make criminal records confidential in that only the "interested parties" may have access to them. A couple of states mention destroying the request for record checks after a period of six months. I believe that Texas has a good confidentiality clause because it specifically states who may see the records, how they can be released, and destroying the records after they have been used.

LIABILITY

ALASKA

"If an individual is denied employment as a result of the disclosure of inaccurate or incomplete records under this section, an action may be brought against the state. No other action may be brought against the state, or an agency or employee of the state, as a result of disclosing or failing to disclose criminal justice information."

NEW JERSEY

"The following persons or agencies shall have the immunity from civil or criminal liability described under State Statute 5-361 of the Courts and Judicial Proceedings Article in connection with a criminal background investigation under this Part VI of this subtitle:

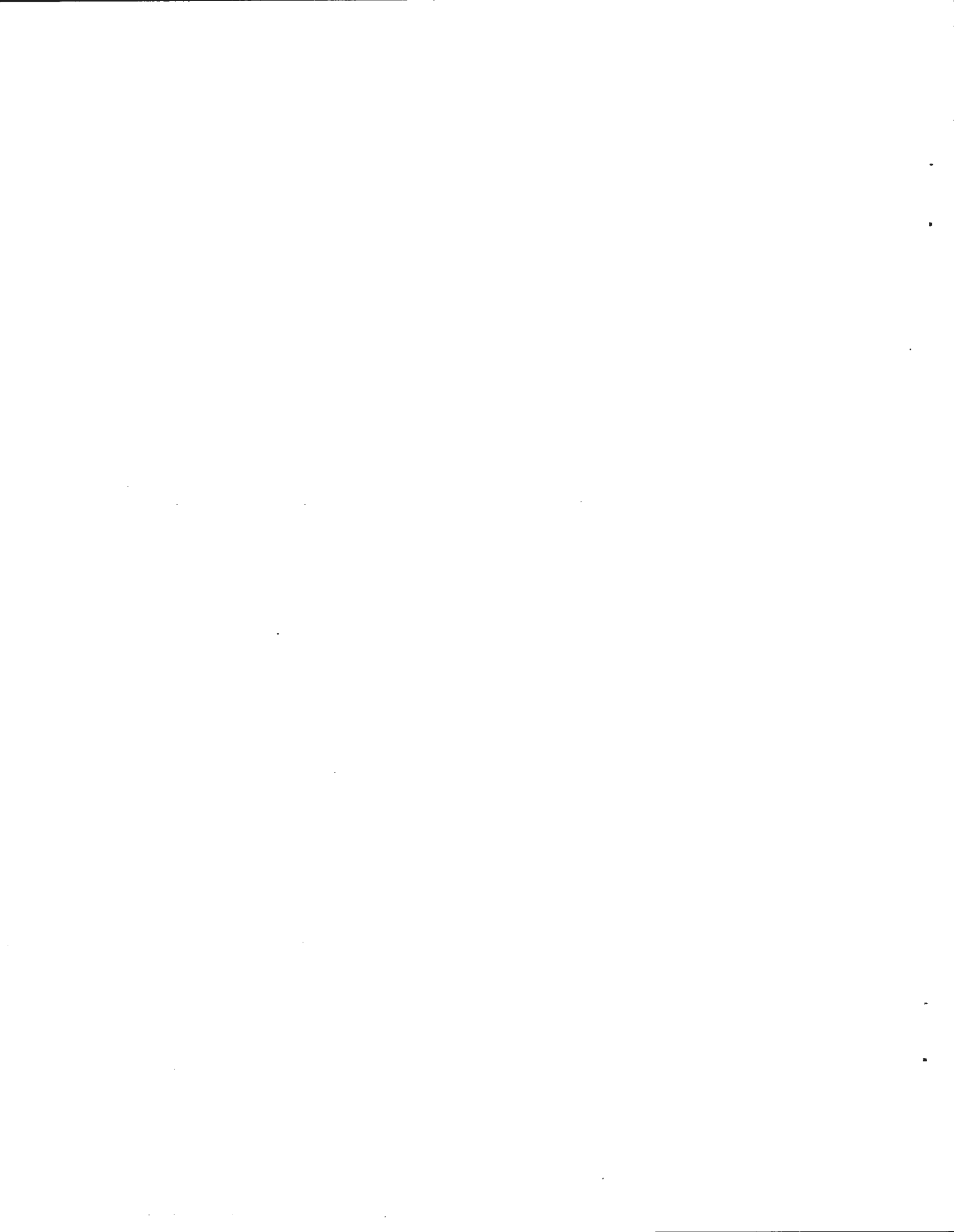
- (1) an employer;
- (2) a State or local agency
- (3) a local department of social services; and
- (4) a State or local agency. (1986, ch. 110; 1989, ch. 5, State Statute 1: ch. 324: 1990, ch.546, State Statute 3.)

GEORGIA

"(a) Neither GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.
(b) A center, its directors, and its employees shall have no liability for defamation of character, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article."

SUMMARY

A few states have included liability clause to protect employers, employees, and agencies; it might be good to look into including this into the North Carolina bill.



APPENDIX D

LEGISLATIVE PROPOSALS

LEGISLATIVE PROPOSAL
(ENDORSEMENT)
GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1993

S

1

SENATE BILL 229*

Short Title: Day Care Eligibility Increase/Funds.

(Public)

Sponsors: Senators Richardson, Forrester, Plexico, and Walker.

Referred to: Children and Human Resources.

February 8, 1993

- 1 A BILL TO BE ENTITLED
2 AN ACT TO AID PARENTS OF LOW INCOME CHILDREN NEEDING DAY
3 CARE TO BECOME SELF-SUFFICIENT WITHOUT JEOPARDIZING THE
4 VERY CHILD CARE THAT IS ESSENTIAL TO THIS SELF-SUFFICIENCY
5 AND TO APPROPRIATE FUNDS.
6 The General Assembly of North Carolina enacts:
7 Section 1. Effective July 1, 1993, eligibility limits for State and federal
8 child day care subsidies are increased as follows:
9 (1) For families already receiving subsidies, to seventy-five percent
10 (75%) of median income; and
11 (2) For families initially needing subsidies on or after this date, one
12 economic "notch" above their current eligibility level.
13 Sec. 2. There is appropriated from the General Fund to the Department
14 of Human Resources, Division of Facility Services, Day Care Section the sum of two
15 million dollars (\$2,000,000) for the 1993-94 fiscal year and the sum of two million
16 dollars (\$2,000,000) for the 1994-95 fiscal year to implement this act.
17 Sec. 3. This act becomes effective July 1, (1993) 1994.

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LEGISLATIVE PROPOSAL 1 SUMMARY
A BILL TO BE ENTITLED

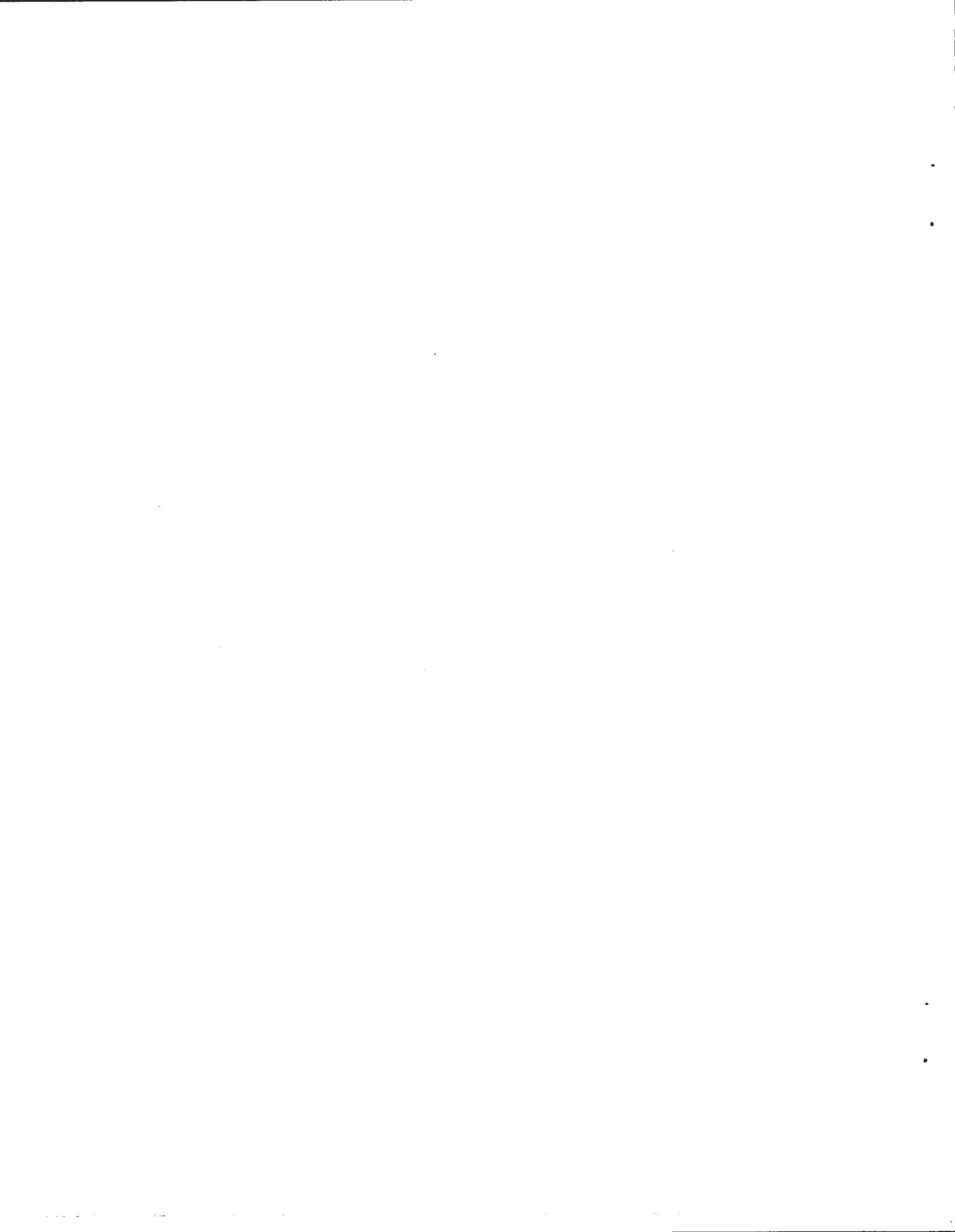
AN ACT TO AID PARENTS OF LOW-INCOME CHILDREN NEEDING DAY CARE
TO BECOME SELF-SUFFICIENT WITHOUT JEOPARDIZING THE VERY CHILD
CARE THAT IS ESSENTIAL TO THIS SELF-SUFFICIENCY

Section 1 increases eligibility for State and federal child day care subsidies as follows:

- (1) For families already receiving subsidies. to 75% of median income;
and
- (2) For families initially needing subsidies on or after this date. one
economic notch above their current eligibility level.

Section 2 appropriates two million dollars each fiscal year of the biennium to the
Child Day Care Section. Division of Facility Services. Department of Human
Resources. to implement this act.

Section 3 makes this act effective July 1, 1994.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

DRAFT
FOR REVIEW ONLY 93-LFZ-466A(3.17)

D

Short Title: Day Care Provider Records.

(Public)

Sponsors: Representatives H. Hunter, Diamont *Senator Russell Walker

Referred to: .

1 A BILL TO BE ENTITLED
2 AN ACT TO MANDATE CRIMINAL HISTORY AND CENTRAL REGISTRY HISTORY
3 CHECKS OF CHILD DAY CARE PROVIDERS.
4 The General Assembly of North Carolina enacts:
5 Section 1. Article 7 of Chapter 110 of the General
6 Statutes is amended by adding a new section to read:
7 "§ 110-90.2. Mandatory day care providers' criminal history and
8 Central Registry checks.
9 (a) For purposes of this section:
10 [(1) 'Central Registry history' means a history in the
11 Central Registry on Child Abuse and Neglect of a
12 substantiated claim of child abuse or child neglect
13 as defined by G.S. 7A-517.
14 (2) 'Child day care', notwithstanding the definition in
15 G.S. 110-86, means any child day care provided in
16 child day care facilities and child day care homes,
17 including child day care facilities and child day
18 care homes required to be licensed or registered
19 pursuant to this Article, religious sponsored child
20 day care facilities and child day care homes
21 regulated pursuant to G.S. 110-106 and G.S. 110-
22 106.1, and nonregistered child day care homes

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1 approved to receive or receiving State or federal
2 funds for providing child day care.

3 (3) 'Child day care provider' means a person who;

4 a. Is employed by or seeks to be employed by a
5 child day care facility or child day care home
6 providing child day care as defined in
7 subdivision (2) of this subsection and by G.S.
8 110-86; or

9 b. Owns or operates or seeks to own or operate a
10 child day care facility or child day care home
11 providing child day care as defined in
12 subdivision (2) of this subsection and by G.S.
13 110-86.

14 (4) 'Criminal history' means a county, State, or
15 federal criminal history of conviction of a crime,
16 whether a misdemeanor or a felony, that bears upon
17 an individual's fitness to have responsibility for
18 the safety and well-being of children, including
19 homicide, rape and other sex offenses, assaults,
20 kidnapping and abduction, malicious injury or
21 damage by the use of incendiary device or material,
22 offenses against public morality and decency,
23 prostitution, a crime against children, and a crime
24 against the family, as prescribed respectively in
25 Articles 6, 7A, 8, 10, 13, 26, 27, 39, and 40 of
26 Chapter 14 of the General Statutes, a violation of
27 the North Carolina Controlled Substances Act, as
28 prescribed in Article 5 of Chapter 90 of the
29 General Statutes, a violation of the law
30 prohibiting driving while impaired, as prescribed
31 in G.S. 20-138.1 through G.S. 138.5, a violation of
32 the law forbidding sales of alcohol to, or
33 purchases of alcohol by, minors, as prescribed in
34 G.S. 18B-302(c), and a violation of the law
35 prohibiting public intoxication, as prescribed in
36 G.S. 14-444(b), or similar federal crimes.

37 (b) Effective January 1, 1995, the Department shall ensure that
38 child day care providers are checked for both any criminal
39 history and any Central Registry history and may prohibit a child
40 day care provider from providing child day care:

41 (1) Who has a criminal record; or

42 [(2) Who has a Central Registry history if the
43 Department determines that the substantiated claim
44 bears upon an individual's fitness to have

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responsibility for the safety and well-being of children.

2
3 (c)The Department of Justice may provide to the Division of
4 Child Development, Department of Human Resources, the criminal
5 history from the State and National Repositories of criminal
6 histories of any child day care provider. The Division shall
7 provide to the Department of Justice along with the request the
8 fingerprints of the provider to be checked, any additional
9 information required by the Department of Justice, and a form
10 consenting to the check of the criminal record and to the use of
11 fingerprints and other identifying information required by the
12 repositories signed by the child day care provider to be checked.
13 Refusal to consent is grounds for the Department to prohibit the
14 child day care provider from providing child day care.

15 (d) The Division of Social Services may provide to the Division
16 of Child Development, Department of Human Resources, the Central
17 Registry history of a child day care provider if this child day
18 care provider signs a form consenting to this record check.
19 Refusal to consent is grounds for the Department to prohibit the
20 child day care provider from providing child day care.

21 (e) The Department shall notify in writing the child day care
22 provider and that child day care provider's employer, if any, of
23 any disqualifying information resulting from the check of the
24 criminal history or of the Central Registry history, together
25 with the Department's action pursuant to subsection (b) of this
26 section.

27 A child day care provider who disagrees with the decision of
28 the Department may commence a contested case by filing a petition
29 under G.S. 150B-23 within 30 days after the Department's
30 notification. If the child day care provider does not file a
31 petition within the required time, the Department's decision is
32 final and not subject to review.

33 (f) All the information received by the Department through the
34 checking of the criminal history and of the Central Registry
35 history is privileged information and for the exclusive use of
36 the Department and those persons authorized under this section to
37 receive the information. The Department may destroy the
38 information after it is used for the purposes authorized by this
39 section after one calendar year.

40 (g) No action for civil or criminal liability shall be brought
41 against an employer of a child day care provider, a child day
42 care, or a State or local agency as a result of the check of the
43 criminal or Central Registry history, if the employer, child day
44 care provider, or State or local agency was acting in good faith

FOR REVIEW ONLY

1 and in accordance with this section and the rules established
2 pursuant to it.

3 (h) The Department of Justice shall charge a reasonable fee for
4 conducting the checks of the criminal records authorized by this
5 section. The child day care provider who seeks to be employed in
6 child day care and the provider who seeks to own or operate child
7 day care shall pay the cost of the fingerprinting and the local
8 check at the time the child day care provider seeks to provide
9 child day care and shall pay the further cost of the State and
10 federal checks if the Department considers that either or both of
11 these additional checks are necessary."

12 Sec. 2. G.S. 114-19 reads as rewritten:

13 "§ 114-19. Criminal statistics.

14 (a) It shall be the duty of the State Bureau of Investigation
15 to receive and collect police information, to assist in locating,
16 identifying, and keeping records of criminals in this State, and
17 from other states, and to compare, classify, compile, publish,
18 make available and disseminate any and all such information to
19 the sheriffs, constables, police authorities, courts or any other
20 officials of the State requiring such criminal identification,
21 crime statistics and other information respecting crimes local
22 and national, and to conduct surveys and studies for the purpose
23 of determining so far as is possible the source of any criminal
24 conspiracy, crime wave, movement or cooperative action on the
25 part of the criminals, reporting such conditions, and to
26 cooperate with all officials in detecting and preventing.

27 (b) The State Bureau of Investigation shall, on a daily
28 basis, notify the Department of Revenue of all reports it
29 receives pursuant to G.S. 114-18.1 of arrests and seizures
30 involving non-tax-paid controlled substances and counterfeit
31 controlled substances. The Bureau shall also, as soon as
32 practicable, provide the Department with any additional
33 information it receives regarding such arrests and seizures.

34 (c) The Department of Justice may provide to the Division of
35 Child Development, Department of Human Resources, the criminal
36 history from the State and National Repositories of criminal
37 histories of any child day care provider. The Division shall
38 provide to the Department of Justice along with the request the
39 fingerprints of the provider to be checked, any additional
40 information required by the Department of Justice, and a form
41 consenting to the check of the criminal record and to the use of
42 fingerprints and other identifying information required by the
43 repositories signed by the child day care provider to be checked.

1 Refusal to consent is grounds for the Department to prohibit the
2 child day care provider from providing child day care.

3 (d) The Department of Justice shall charge a reasonable fee for
4 conducting the checks of the criminal records authorized by this
5 section. The child day care provider who seeks to be employed in
6 child day care and the child day care provider who seeks to own
7 or operate child day care shall pay the cost of the
8 fingerprinting and the local check at the time they seek to
9 provide child day care and shall pay the further cost of the
10 State and federal checks if the Department considers that either
11 or both additional checks are necessary."

12 Sec. 3. (a) The North Carolina Child Day Care
13 Commission shall adopt rules to implement this act, in
14 consultation with the Divisions of Child Development and Social
15 Services of the Department of Human Resources, and the Division
16 of Criminal Information of the Department of Justice.

17 (b) The Department of Human Resources shall adopt rules
18 regarding access to the Central Registry on Child Abuse and
19 Neglect needed to implement this act.

20 Sec. 4. There is appropriated from the General Fund to
21 the Department of Human Resources the sum of eighty thousand
22 dollars (\$80,000) for the 1994-95 fiscal year to implement this
23 act.

24 Sec. 5. This act becomes effective January 1, 1995.
25 This act applies to child day care providers newly hired in child
26 day care employment and to child day care providers newly owning
27 or operating child day care on or after that date.

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FOR REVIEW ONLY

DRAFT FOR REVIEW ONLY

LEGISLATIVE PROPOSAL 2

A BILL TO BE ENTITLED

AN ACT TO MANDATE CRIMINAL HISTORY AND CENTRAL REGISTRY HISTORY CHECKS OF ALL CHILD DAY CARE PROVIDERS

This bill is similar in concept to initiatives considered but not passed by several past sessions of the General Assembly. This bill simplifies the procedures involved and leaves to rule-making many of the details, but acts as did the other bills, to ensure that children in child day care are cared for by child day care employees and owner-operators who have no history that would make them unfit to care for children. The checks are to begin January 1, 1995.

The first section of the bill amends the Child Day Care Article of Chapter 110 of the General Statutes to add a section that mandates mandatory day care providers criminal history and Central Registry on Abuse and Neglect checks. It defines the scope of checks that will be used to determine whether an individual child day care provider-employee or owner-operator has a history, either criminal or substantiated in the Central Registry on Abuse and Neglect, that would bear negatively upon that individual's fitness to have responsibility for the safety and well-being of children.

This section mandates that the Department of Human Resources ensure that child day care providers are checked. It gives authority to the Department of Justice to provide the checks, and the criminal history that results, to the Department, to enable the Department to determine the individual's fitness. All Departmental determinations are, of course, subject to full appeal rights granted by Chapter 150B of the General Statutes. See subsection (e). The checks will be run on new providers, whether employees or owner-operators rather than on all providers currently offering care. Eventually, because of the historically great turnover in child day care, all providers will have been checked.

The first section also mandates that the provider being checked provide the fingerprints to the Department and also that this provider consent in writing both to the checks and to the use of fingerprints. The section makes clear that failure to consent is grounds for a departmental determination of unfitness, but this determination, like all others, is subject to appeal.

This section also provides for confidentiality of information, destruction of records, and "good faith" immunity from liability. It also specifies that the costs will be borne by the provider-employee or the provider-owner-operator.

Section 2 contains conforming changes in the statutes relating to the Department of Justice.

Section 3 grants the appropriate rule-making authority.

Section 4 appropriates \$80,000 to the Department of Human Resources to administer this act.

Section 5 makes the act effective January 1, 1995 and makes clear that it applies only to provider-employees and to provider-owner-operators newly seeking to provide care on or after that date.

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FOR REVIEW ONLY**

LEGISLATIVE PROPOSAL 3
(CONCEPT RECOMMENDATION)

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

H

D

93-LFZ-470(5.2)

Short Title: Foster Parent Records.

(Public)

Sponsors: Representative H. Hunter *Senator Russell Walker

Referred to: .

1 A BILL TO BE ENTITLED
2 AN ACT TO MANDATE CRIMINAL HISTORY AND CENTRAL REGISTRY HISTORY
3 CHECKS OF ALL FOSTER CARE PARENTS IN LICENSED FOSTER HOMES.
4 The General Assembly of North Carolina enacts:
5 Section 1. Chapter 131D of the General Statutes is
6 amended by adding a new Article to read:
7
8 ARTICLE 1B:
9 "Mandatory Criminal and Central Registry Checks of Foster Care
10 Parents.
11
12 "§ 131D-10.15. Mandatory foster care parents' criminal history
13 and Central Registry checks.
14 (a) For purposes of this section:
15 [(1) 'Central Registry history' means a history in the
16 Central Registry on Child Abuse and Neglect of a
17 substantiated claim of child abuse or child neglect
18 as defined by G.S. 7A-517.
19 (2) 'Criminal history' means a county, State, or
20 federal criminal history of conviction of a crime,
21 whether a misdemeanor or a felony, that bears upon
22 an individual's fitness to have responsibility for
23 the safety and well-being of children, including
24 homicide, rape and other sex offenses, assaults,

1 kidnapping and abduction, malicious injury or
2 damage by the use of incendiary device or material,
3 offenses against public morality and decency,
4 prostitution, a crime against children, and a crime
5 against the family, as prescribed respectively in
6 Articles 6, 7A, 8, 10, 13, 26, 27, 39, and 40 of
7 Chapter 14 of the General Statutes, a violation of
8 the North Carolina Controlled Substances Act, as
9 prescribed in Article 5 of Chapter 90 of the
10 General Statutes, a violation of the law
11 prohibiting driving while impaired, as prescribed
12 in G.S. 20-138.1 through G.S. 138.5, a violation of
13 the law forbidding sales of alcohol to, or
14 purchases of alcohol by, minors, as prescribed in
15 G.S. 18B-302(c), and a violation of the law
16 prohibiting public intoxication, as prescribed in
17 G.S. 14-444(b), or similar federal crimes.

18 (3) Foster care parent' means any person providing
19 foster care in a foster care home licensed by the
20 State.

21 (b) Effective January 1, 1995, the Department of Human
22 Resources shall ensure that all current and potential foster care
23 parents are checked for both any criminal history and any Central
24 Registry history and may, by denying or revoking, a license to
25 provide foster care, prohibit a current or potential foster care
26 parent from providing foster care:

27 (1) Who has a criminal record; or

28 [(2) Who has a Central Registry history if the
29 Department determines that the substantiated claim
30 bears upon an individual's fitness to have
31 responsibility for the safety and well-being of
32 children.

33 (c) The Department of Justice may provide to the Division of
34 Social Services, Department of Human Resources, the criminal
35 history of any current or potential foster care parent. The
36 Division shall provide to the Department of Justice along with
37 the request and any additional information required by the
38 Department of Justice a form consenting to the check of the
39 criminal record signed by the current or potential foster care
40 parent to be checked.

41 (d) The Division of Social Services may provide to the
42 Department of Human Resources the Central Registry history of a
43 current or potential foster care parent if this person signs a
44 form consenting to this record check.

1 (e) The Department of Human Resources shall notify in writing
2 the current or potential foster care parent and that person's
3 employer, if any, of any disqualifying information resulting from
4 the check of the criminal history or of the Central Registry
5 history, together with the Department's action pursuant to
6 subsection (b) of this section.

7 A current or potential foster care parent who disagrees with
8 the decision of the Department may commence a contested case by
9 filing a petition under G.S. 150B-23 within 30 days after the
10 Department's notification. If the person does not file a
11 petition within the required time, the Department's decision is
12 final and not subject to review.

13 (e) All the information received by the Department through the
14 checking of the criminal history and of the Central Registry
15 history is privileged information and for the exclusive use of
16 the Department and those persons authorized under this section to
17 receive the information. The Department may destroy the
18 information after it is used for the purposes authorized by this
19 section after one calendar year.

20 (f) No action for civil or criminal liability shall be brought
21 against an employer of a foster care parent or a State or local
22 agency as a result of the check of the criminal or Central
23 Registry history if the employer, provider, or State or local
24 agency was acting in good faith and in accordance with this
25 section and the rules established pursuant to this section.

26 (g) The Department of Justice shall charge a reasonable fee for
27 conducting the checks of the criminal records authorized by this
28 section.

29 Sec. 2. G.S. 114-19 reads as rewritten:

30 "§ 114-19. Criminal statistics.

31 (a) It shall be the duty of the State Bureau of Investigation
32 to receive and collect police information, to assist in locating,
33 identifying, and keeping records of criminals in this State, and
34 from other states, and to compare, classify, compile, publish,
35 make available and disseminate any and all such information to
36 the sheriffs, constables, police authorities, courts or any other
37 officials of the State requiring such criminal identification,
38 crime statistics and other information respecting crimes local
39 and national, and to conduct surveys and studies for the purpose
40 of determining so far as is possible the source of any criminal
41 conspiracy, crime wave, movement or cooperative action on the
42 part of the criminals, reporting such conditions, and to
43 cooperate with all officials in detecting and preventing.

1 (b) The State Bureau of Investigation shall, on a daily
2 basis, notify the Department of Revenue of all reports it
3 receives pursuant to G.S. 114-18.1 of arrests and seizures
4 involving non-tax-paid controlled substances and counterfeit
5 controlled substances. The Bureau shall also, as soon as
6 practicable, provide the Department with any additional
7 information it receives regarding such arrests and seizures. (c) T
8 he Department of Justice may provide to the Division of Social
9 Services, Department of Human Resources, the criminal history of
10 any current or potential foster care parent. The Division shall
11 provide to the Department of Justice along with the request and
12 any additional information required by the Department of Justice
13 a form consenting to the check of the criminal record signed by
14 the person or potential provider to be checked.

15 (d) The Department of Justice shall charge the Division of
16 Social Services a reasonable fee for conducting the checks of the
17 criminal records authorized by this section."

18 Sec. 3. (a) The Department of Human Resources shall
19 adopt rules to implement this act, in consultation with the
20 Division of Social Services, the Social Services Commission, and
21 the Division of Criminal Information of the Department of
22 Justice.

23 Sec. 4. There is appropriated from the General Fund to
24 the Department of Human Resources the sum of five hundred thirty-
25 six thousand three hundred seventy dollars for the 1994-95 fiscal
26 year to implement this act.

27 Sec. 5. This act becomes effective January 1, 1995.
28 This act applies to current and potential foster care parents
29 providing foster care on or after that date.

NOTE: There is no section-by-
section summary of this bill.
It was intended by the Committee
to be a "skeleton" vehicle to enable
the Short Session to consider the issue.
Once it is introduced, a Committee
Substitute will be developed with
the help of the Division of Social
Services.

**DRAFT
FOR REVIEW ONLY**

1

SENATE BILL 230*

Short Title: Day Care Rate Change/Funds.

(Public)

Sponsors: Senators Richardson, Forrester, Plexico, and Walker.

Referred to: Children and Human Resources.

February 18, 1993

A BILL TO BE ENTITLED

1 AN ACT TO CHANGE THE DAY CARE RATE PAYMENT STRUCTURE TO
2 ENCOURAGE THE PROVISION OF QUALITY DAY CARE FOR ALL
3 NORTH CAROLINA'S CHILDREN IN NEED OF CARE AND TO
4 APPROPRIATE FUNDS.
5

6 The General Assembly of North Carolina enacts:

7 Section 1. (a) Rules for the monthly schedule of payments for the
8 purchase of day care services for low-income children shall be established by the
9 Social Services Commission pursuant to G.S. 143B-153(8)a. Requirements for the
10 adoption of these rules include:

- 11 (1) Establishment of a statewide market payment rate calculated as a
12 statewide market rate representing the 75th percentile of all day
13 care rates by type of provider for all ages of children from every
14 county;
- 15 (2) Provision for market rate establishment and payment for counties
16 whose individual market rates are higher than the State market
17 rate; and
- 18 (3) Provision of incentives to provide quality day care by providing
19 payment differentials among day care providers as follows:
- 20 a. Registered homes and "A" centers - the statewide market
21 rate or the county market rate, whichever is higher;
- 22 b. Unregistered homes - ten percent (10%) less than the rate
23 for registered homes; and

1 c. "AA" centers - ten percent (10%) more than the rate for
2 "A" centers.

3 (b) In addition to the requirements set by subsection (a) of this section,
4 the Social Services Commission shall, in establishing rules for the monthly schedule
5 of payments, give consideration to the need to maintain the level of care, and the
6 higher cost of this care, that has been established by those providers who have been
7 the recipients of reallocated funds in addition to initial allocations.

8 (c) In order to further the goal of providing quality day care to all of
9 North Carolina's children in need of care, the General Assembly finds that, in the
10 near future, the payment rate structure should consider:

11 (1) Provision of increased rates for "accredited" day care; and

12 (2) Rates for day care providers "at cost", if the providers have their
13 budgets approved by their county day care administrator.

14 Sec. 2. There is appropriated from the General Fund to the Department
15 of Human Resources, Division of Facility Services, Day Care Section, the sum of
16 thirteen million dollars (\$13,000,000) for the 1993-94 fiscal year and the sum of
17 thirteen million dollars (\$13,000,000) for the 1994-95 fiscal year to implement this act.

18 Sec. 3. This act becomes effective July 1, (1993.) 1994.

**DRAFT
FOR REVIEW ONLY**

LEGISLATIVE PROPOSAL SUMMARY
A BILL TO BE ENTITLED

AN ACT TO CHANGE THE DAY CARE RATE PAYMENT STRUCTURE TO
ENCOURAGE THE PROVISION OF QUALITY DAY CARE FOR ALL NORTH
CAROLINA'S CHILDREN

Section 1 requires the Social Services Commission adopt rules for the monthly schedule of payments for the purchase of day care services for low-income children pursuant to G.S. 143B-153(8)a. that include:

- (1) Establishment of a statewide market payment rate calculated as a statewide market rate representing the 75th percentile of all day care rates by type of provider for all ages of children from every county;
- (2) Provision for market rate establishment and payment for counties whose individual market rates are higher than the State market rate:
and
- (3) Provision of incentives to provide quality day care by providing payment differentials among day care providers as follows:
 - a. Registered homes and 'A' centers - the statewide market rate or the county market rate, whichever is higher;
 - b. Unregistered homes - ten percent (10%) less than the rate for registered homes; and
 - c. 'AA' centers - ten percent (10%) more than the rate for 'A' centers.

Section 1 (b) requires that the Social Services Commission, in establishing rules for the monthly schedule of payments, give consideration to the need to maintain the level of care, and the higher cost of this care, that has been established by those providers who have been the recipients of reallocated funds in addition to initial allocations.

Section 1 (c) suggests that, in order to further the goal of providing quality day care to all of North Carolina's children in need of care, in the near future, the payment rate structure should consider:

- (1) Provision of increased rates for "accredited" day care; and
- (2) Rates for day care providers "at cost", if the providers have their budgets approved by their county day care administrator.

Section 2 appropriates thirteen million dollars for each fiscal year of the biennium to the Day Care Section, Division of Facility Services, Department of Human Resources, to implement this act. This figure is a very rough guess at the cost. By the appropriations process, there will be much more data that will enable a proper cost assessment.

Section 3 makes the act effective July 1, 1994.

FOR REVIEW ONLY

