

GENERAL ASSEMBLY OF NORTH CAROLINA

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HOUSE BILL 1512\*  
Committee Substitute Favorable 6/13/94  
Third Edition Engrossed 7/15/94

Short Title: Day Care Provider Records.

(Public)

Sponsors:

Referred to:

May 25, 1994

A BILL TO BE ENTITLED

AN ACT TO MANDATE CRIMINAL HISTORY CHECKS OF CHILD DAY CARE PROVIDERS AND TO STUDY THE USE OF THE CENTRAL REGISTRY ON CHILD ABUSE AND NEGLECT.

The General Assembly of North Carolina enacts:

Section 1. Article 7 of Chapter 110 of the General Statutes is amended by adding a new section to read:

**"§ 110-90.2. Mandatory day care providers' criminal history checks.**

(a) For purposes of this section:

(1) 'Child day care', notwithstanding the definition in G.S. 110-86, means any child day care provided in child day care facilities and child day care homes, including child day care facilities and child day care homes required to be licensed or registered under this Article, religious-sponsored child day care facilities and child day care homes regulated under G.S. 110-106 and G.S. 110-106.1, and nonregistered child day care homes approved to receive or receiving State or federal funds for providing child day care.

(2) 'Child day care provider' means a person who:

a. Is employed by or seeks to be employed by a child day care facility or child day care home providing child day care as defined in subdivision (1) of this subsection and by G.S. 110-86; or

1           b. Owns or operates or seeks to own or operate a child day care  
2           facility or child day care home providing child day care as  
3           defined in subdivision (1) of this subsection and by G.S. 110-  
4           86.

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

21           (b) Effective April 2, 1995, the Department shall ensure that child day care  
22           providers are checked for any criminal history and may prohibit a child day care  
23           provider from providing child day care if that child day care provider has a criminal  
24           history.

25           (c) The Department of Justice may provide to the Division of Child  
26           Development, Department of Human Resources, the criminal history of any child day  
27           care provider from the State Repository of criminal histories. The Division shall  
28           provide to the Department of Justice along with the request the fingerprints of the  
29           provider to be checked, any additional information required by the Department of  
30           Justice, and a form consenting to the check of the criminal record and to the use of  
31           fingerprints and other identifying information required by the State Repository signed  
32           by the child day care provider to be checked. Refusal to consent is grounds for the  
33           Department to prohibit the child day care provider from providing child day care.

34           (d) The Department shall notify in writing the child day care provider and that  
35           child day care provider's employer, if any, of any disqualifying information resulting  
36           from the check of the criminal history, and of the Department's action under subsection  
37           (b) of this section.

38           A child day care provider who disagrees with the Department's decision may file a  
39           civil action in the district court of the county of residence of the child day care provider.

40           (e) All the information that the Department receives through the checking of the  
41           criminal history is privileged information and for the exclusive use of the Department  
42           and those persons authorized under this section to receive the information. The  
43           Department may destroy the information after it is used for the purposes authorized by  
44           this section after one calendar year.

1 (f) No action for civil or criminal liability shall be brought against an employer  
2 of a child day care provider, a child day care, or a State or local agency as a result of the  
3 check of the criminal history, if the employer, child day care provider, or State or local  
4 agency was acting in good faith and in accordance with this section and the rules  
5 established under this section.

6 (g) The child day care provider who seeks to be employed in child day care and  
7 the child day care provider who seeks to own or operate child day care shall pay the cost  
8 of the fingerprinting and the local check at the time the child day care provider seeks to  
9 provide child day care. The Department of Justice shall perform the State check, using  
10 funds appropriated to it for that purpose, if the Department considers that the additional  
11 check is 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 to receive and collect  
15 police information, to assist in locating, identifying, and keeping records of criminals in  
16 this State, and from other states, and to compare, classify, compile, publish, make  
17 available and disseminate any and all such information to the sheriffs, constables, police  
18 authorities, courts or any other officials of the State requiring such criminal  
19 identification, crime statistics and other information respecting crimes local and  
20 national, and to conduct surveys and studies for the purpose of determining so far as is  
21 possible the source of any criminal conspiracy, crime wave, movement or cooperative  
22 action on the part of the criminals, reporting such conditions, and to cooperate with all  
23 officials in detecting and preventing.

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

29 (c) The Department of Justice may provide to the Division of Child  
30 Development, Department of Human Resources, the criminal history from the State  
31 Repository of criminal histories of any child day care provider. The Division shall  
32 provide to the Department of Justice along with the request the fingerprints of the  
33 provider to be checked, any additional information required by the Department of  
34 Justice, and a form consenting to the check of the criminal record and to the use of  
35 fingerprints and other identifying information required by the State Repository signed  
36 by the child day care provider to be checked. Refusal to consent is grounds for the  
37 Department to prohibit the child day care provider from providing child day care.

38 (d) The child day care provider who seeks to be employed in child day care and  
39 the child day care provider who seeks to own or operate child day care shall pay the cost  
40 of the fingerprinting and the local check at the time the child day care provider seeks to  
41 provide child day care. The Department of Justice shall perform the State check, using  
42 funds appropriated to it for that purpose, if the Department considers that the additional  
43 check is necessary."

1           Sec. 3. The North Carolina Child Day Care Commission shall adopt rules to  
2 implement this act, in consultation with the Divisions of Child Development and Social  
3 Services of the Department of Human Resources, and the Division of Criminal  
4 Information of the Department of Justice.

5           Sec. 5. The Legislative Research Commission's Child Care Study Committee  
6 shall study the issue of using the records in the Central Registry on Child Abuse and  
7 Neglect for the purpose of conducting records checks of child day care providers. In its  
8 study, the Committee shall evaluate current procedures for substantiating claims of child  
9 abuse or neglect and for maintaining records in the Central Registry, and shall  
10 determine what procedures should be implemented to (i) ensure that records are  
11 accurate, (ii) provide appropriate notice to interested parties, (iii) provide for  
12 expungement or correction of information, and (iv) provide for release of information.  
13 The Committee shall report its findings and recommendations to the Legislative  
14 Research Commission before the 1995 Regular Session of the General Assembly.

15           Sec. 7. Section 5 of this act is effective upon ratification. The remainder of  
16 this act becomes effective April 2, 1995, and it applies to child day care providers newly  
17 hired in child day care employment and to child day care providers newly owning or  
18 operating child day care on or after that date.