



Criminal Background Checks for Prospective Foster and Adoptive Parents

All States, the District of Columbia, Guam, and Puerto Rico have statutes or regulations requiring background investigations of prospective foster and adoptive parents and all adults residing in their households. In most States, the background investigation includes a check of Federal and State criminal records.¹ Many States also require checks of child abuse and neglect registries. States may deny approval of a foster care license or adoption application if any adult in the household has been convicted of certain crimes, such as sexual abuse of a minor.

¹ A background investigation refers to information collected by the child-placing agency to determine the suitability of the prospective foster or adoptive family. A criminal record check refers specifically to a check of the individual's name in State, local, or Federal law enforcement records for any history of criminal convictions.

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Federal Requirements

State statutes requiring criminal background checks are supported by Federal legislation, in title IV-E of the Social Security Act. The Adoption and Safe Families Act (ASFA) of 1997 amended title IV-E (42 U.S.C. 671(a)(20)) to require criminal record checks for any prospective foster or adoptive parent when foster care maintenance payments or adoption assistance payments are to be made under title IV-E. The Adam Walsh Child Protection and Safety Act of 2006 (P.L. 109-248) further amended title IV-E to require a fingerprint-based check of a national crime information database before any prospective foster or adoptive parent may be approved for placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child.²

Under title IV-E, approval of the foster or adoptive home may not be granted if either of the following is found:

- The applicant has ever been convicted of felony child abuse or neglect; spousal abuse; a crime against children (including child pornography); or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery.
- The applicant has been convicted of a felony for physical assault, battery, or a drug-related offense within the past 5 years.³

The Child Abuse Prevention and Treatment Act (CAPTA), as amended in June 2003, extends the requirement for criminal background checks to all adults residing in prospective foster or adoptive family households.⁴ The Adam Walsh Act (P.L. 109-248) also requires a check of the State child abuse and neglect

² For more information on the provisions of these acts, see Information Gateway's *Major Federal Legislation Concerning Child Protection, Child Welfare, and Adoption* at www.childwelfare.gov/pubs/otherpubs/majorfedlegis.cfm.

³ See 42 U.S.C. 671(a)(20). States had the option to opt out of these requirements if the Governor of a State notified the U.S. Secretary of Health and Human Services in writing that the State elected to make the title IV-E requirements inapplicable to the State, or if the State legislature, by law, elected to make the requirements inapplicable to the State (42 USC 671(a)(20)(B)). Using this option, Arizona, California, Idaho, Massachusetts, Nebraska, New York, Ohio, Oklahoma, and Oregon opted out. However, the Adam Walsh Child Protection and Safety Act of 2006 removes the opt-out provision and requires those States that previously opted out to comply with the criminal background check provisions as of October 1, 2008.

⁴ See 42 U.S.C. 5106a(b)(2)(A)(xxii).

State Requirements for Prospective Foster Parents

registry(s) for all adults living in prospective foster and adoptive homes. These checks must be conducted in every State where each individual lived during the previous 5 years.

All States require a criminal record check as part of the background investigation that is conducted when an individual has applied for licensure as a foster parent. Requirements for the types of background checks and the individuals who must be included in the checks may be found in statute or regulation.⁵ As of April 2008:

- State or local criminal record checks of the foster parent applicant are required in all States, the District of Columbia, and Puerto Rico.
- Federal criminal record checks also are required in approximately 38 States.⁶
- Fingerprinting, in addition to name-based checks, is required as part of the criminal record check in 38 States.⁷
- Child abuse and neglect record checks are required in 40 States, the District of Columbia, Guam, and Puerto Rico.⁸

⁵ Regulations (administrative law, rules, or policy) are issued by State agencies. Statutes are laws enacted by State legislatures.

⁶ The word *approximately* is used to stress the fact that States frequently amend their laws. This information is current through April 2008. Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio (if the applicant has been a resident for less than 5 years), Oklahoma, Rhode Island, South Carolina, Utah, Vermont, Washington (if the applicant has been a resident for less than 3 years), and West Virginia require national criminal records checks.

⁷ Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, and West Virginia.

⁸ Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. California, Colorado, Delaware, Georgia, Minnesota, Montana, New Hampshire, and Utah require checks of the central registries of any other State in which the applicant may have resided during the previous 5 years.

- Checks of the State sex offender registries are required in Illinois, Iowa, Nebraska, Oklahoma, South Carolina, and Puerto Rico.
- Criminal record checks are required for all adult members of the prospective foster parents' household in 42 States and the District of Columbia.⁹
- Criminal record checks are required for all adults and older children in the prospective foster parents' household in 10 States.¹⁰
- Criminal records checks are required for all members of the prospective foster parents' household, regardless of age, in 5 States.¹¹

An application for foster parent licensure may be rejected when a check reveals that the prospective foster parent or other household member has been convicted of a crime that would raise concerns about the family's ability to provide a safe and stable home environment for the child.

Disqualifying Crimes

Approximately 15 States and the District of Columbia will disqualify an applicant if he or she or any household member has ever been convicted of felony child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime of violence, including rape, sexual assault, or homicide; or has been convicted of physical assault or battery or a drug-related offense within the last 5 years.¹² In most States, other crimes, including any crime of violence, arson, kidnapping, illegal use of weapons or explosives, fraud, forgery, or property crimes such as burglary and robbery may lead to disqualification. In 22 States, an applicant may be disqualified if

⁹ Only foster care applicants (and not other adults) are required to be investigated in Delaware, Florida, Minnesota, New Mexico, Oklahoma, Rhode Island, Wisconsin, and Wyoming.

¹⁰ Missouri and New Hampshire require checks of all persons over age 17. Alaska, Arkansas, Connecticut, and Washington require checks of all persons over age 16. Indiana, Iowa, Massachusetts, and Texas require checks of all persons over age 14.

¹¹ California, Kansas, Maryland, North Dakota, and Vermont.

¹² Alabama, Alaska, Arkansas, Colorado, Delaware, Florida, Iowa, Kentucky, Maryland, Nevada, New Hampshire, New York, North Carolina, Utah, and Washington.

State Requirements for Prospective Adoptive Parents

he or she has a registry record of substantiated or founded child abuse or neglect.¹³

Nearly all States require a criminal record check as part of the background investigation for approving an adoptive placement. In most States, the requirements for adoptive parents are similar to those for foster parents, although the specifics may vary. An example of this is the requirement to check the State's sex offender registry: Alaska requires checks for adoptive parents, but not foster parents, while Iowa and Nebraska require checks for foster parents but not adoptive parents. All three States examine conviction records for sex offenses for both foster and adoptive parents.

Requirements for the types of background checks and the individuals who must be included in the checks may be found in statute or regulation. These include the following:

- State or local criminal record checks of the adoptive parent applicant are required in approximately 48 States, the District of Columbia, Guam, and Puerto Rico.¹⁴
- Federal criminal record checks also are required in 31 States.¹⁵
- Fingerprinting and name-based checks are required as part of the criminal record check in 31 States.¹⁶

¹³ Arkansas, California, Connecticut, Iowa, Maine, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, Pennsylvania, South Carolina, South Dakota, Utah, Virginia, Washington, Wisconsin, and Wyoming.

¹⁴ Tennessee does not currently require criminal background checks as part of an adoption home study. In Wyoming, a criminal background check is performed only when ordered by the court. The Adam Walsh Act (P.L. 109-248) requires all States to be in compliance with the requirements for criminal background checks by October 1, 2008.

¹⁵ Alabama, Alaska, Arizona, Arkansas (if the applicant has been a resident for less than 6 years), California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Maine, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio (if the applicant has been a resident for less than 5 years), Oklahoma, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Washington, and Wisconsin.

¹⁶ Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Rhode Island, South Dakota, Texas, Utah, Vermont, Washington, West Virginia, and Wisconsin.

- Child abuse and neglect record checks are required in 37 States, the District of Columbia, Guam, and Puerto Rico.¹⁷
- Checks of the State sex offender registries are required in Alaska, Illinois, Oklahoma, South Carolina, and Puerto Rico.
- Criminal record checks are required for all adult members of the prospective adoptive parents' household in approximately 31 States and the District of Columbia.¹⁸
- Criminal record checks are required for all adults and older children in the prospective adoptive parents' household in 7 States.¹⁹
- Criminal record checks are required for all household members, regardless of age, in Idaho and Montana.

The information contained in criminal background histories and child abuse reports is incorporated into the adoption home study that is used to help determine whether the adoptive parents' home will be safe and appropriate for placement of a child. An unfavorable home study may be issued, and the adoption petition may be denied, when a check reveals that the prospective adoptive parent or other household member has been convicted of a crime that would raise concerns about that family's ability to provide a safe home for a child.

Disqualifying Crimes

Approximately 14 States and the District of Columbia will disqualify a prospective adoptive parent if he or she or any household member has ever been convicted of felony child abuse or neglect, spousal abuse, a crime against children

¹⁷ Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York (for agency adoptions), North Carolina, Oklahoma, Pennsylvania, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin. In Wyoming, the court may order a central registry check as part of the home study. Arkansas, California, Colorado, Florida, Georgia, Indiana, Louisiana, Minnesota, Oklahoma, Utah, Washington, and Wisconsin require check of the central registry of any other State in which an applicant has resided during the previous 5 years.

¹⁸ Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Utah, Virginia, and West Virginia.

¹⁹ Arkansas and Connecticut require checks of all persons over age 16. Alaska, Indiana, Massachusetts, and Texas require checks of all persons over age 14. Minnesota requires checks for all persons over age 13.

(including child pornography), or a crime of violence, including rape, sexual assault, or homicide; or has been convicted of physical assault or battery or a drug-related offense within the past 5 years.²⁰ In some States, other crimes, including any crime of violence, arson, kidnapping, illegal use of weapons or explosives, fraud, forgery, or property crimes such as burglary and robbery may lead to disqualification. In approximately 21 States and Puerto Rico, a prospective adoptive parent may not be approved if he or she has a registry record of substantiated or founded child abuse or neglect.²¹

This publication is a product of the State Statutes Series prepared by Child Welfare Information Gateway. While every attempt has been made to be as complete as possible, additional information on these topics may be in other sections of a State's code as well as agency regulations, case law, and informal practices and procedures.

²⁰ Alabama, Alaska, Colorado, Delaware, Iowa, Kansas, Kentucky, Maryland, Minnesota, Nevada, New York, North Carolina, Oklahoma, and Utah.

²¹ Alaska, Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii, Indiana, Louisiana, Maryland, Montana, New Hampshire, New Mexico, New York, Oklahoma, Pennsylvania, South Carolina, Texas, Utah, Virginia, and Wisconsin.