

# UNDERSTANDING CRIMINAL RECORDS CHECKS

Ensuring the Safety of Children Placed with  
Foster and Adoptive Parents



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# UNDERSTANDING CRIMINAL RECORDS CHECKS

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## SECTION I: BACKGROUND

### **The Adoption and Safe Families Act (ASFA)**


In November 1997, the Adoption and Safe Families Act (ASFA) was signed into law. ASFA provisions were developed to increase the safety of children placed in foster or adoptive homes and to shorten the amount of time children stay in foster care. One of ASFA's mandates (see Appendix A) is that a criminal records check must be conducted before approving a prospective foster or adoptive parent for a child who is eligible to receive federal foster care maintenance or adoption assistance payments (Title IV-E children).<sup>1</sup> Federal ASFA criminal records check mandates do not apply to applicants who are not eligible for Title IV-E payments.

States determine the type of criminal records checks needed and the procedures required to complete a criminal records check. Congress, however, included minimum provisions in ASFA that define when a prospective foster or adoptive parent is not qualified to foster or adopt a child. It states that:

*'In any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a state finds that a court of competent jurisdiction has determined that the felony was committed at any time, such final approval shall not be granted.'*<sup>2</sup>

ASFA also provides that if, within the past five years, a person has been convicted of physical assault, battery, a drug-related offense, or felony not previously listed, the person shall be denied the placement.<sup>3</sup>

Under ASFA, states may choose to elect-out of the criminal records check mandates (see Appendix C). If a state chooses to elect-out of the criminal records check mandates, the state must either



enact a law or the state's governor must provide written notification to the secretary of the U.S. Department of Health and Human Services that stipulates the state's decision to elect-out of the criminal records check requirements.<sup>4</sup> If the state elects-out of the criminal records check requirements, it must provide for an alternative plan that ensures the child's safety as intended in ASFA.<sup>5</sup>

### **A Major Cause of Delay**

There has been a growing focus to decrease the time children spend in foster care and to find children a permanent family more quickly. Anecdotal information recently confirmed by a study to identify delays in the interstate home study process conducted by the American Public Human Services Association (APHSA) indicates criminal records checks as a major delay to the timely completion of approving foster and adoptive parents.<sup>6</sup> In fact, 18 states identified the completion of criminal records checks as one of the three leading causes of delay. Several states reported that the criminal records check process can take two to four months from the time it is requested to the time the criminal records check report is returned to the proper authority in the public child welfare agency.

*Understanding Criminal Records Checks: Ensuring the Safety of Children Placed with Foster and Adoptive Parents* (hereinafter the Report) provides basic information on the types of criminal records checks states mandatorily conduct, the processes states use in completing criminal records checks, and the causes of delay in completing criminal records checks. The Report also provides insight into the complexities and issues surrounding criminal records checks. In addition, the report provides a brief overview of federal statutes and regulations as they apply to tribes and examines a few cases that challenged states' requirements for criminal records checks.

## **SECTION II: DATA COLLECTION & METHODOLOGY**


### **Methodology**

In July 2001, Association of Administrators for the Interstate Compact on Adoption and Medical Assistance (AAICAMA) designed the *Survey of Criminal Records Checks Conducted for Home Studies on Prospective Foster and Adoptive Parents* (see Appendix B). Data were collected between August and December 2001 through telephone interviews with state representatives. Information on the states' and the District of Columbia's statutes regarding criminal records checks was collected through Internet research. Finally, information pertaining to criminal records checks and tribes was collected by interviewing a representative from the National Indian Child Welfare Association (NICWA).<sup>7</sup>

The survey results presented here are based on responses from all 50 states and the District of Columbia. For this report, the District of Columbia is included as a state, for a total survey sample of 51 states.

### **Data Collection**

Multiple people were interviewed in several states to complete the survey. Persons interviewed



included directors, program managers, program coordinators, program officers, program supervisors, program specialists, and caseworkers. The persons interviewed also worked in a variety of areas within public child welfare agencies, including licensing, adoption, foster care, policy, background check, permanency planning, and the Interstate Compact for the Placement of Children (ICPC) units. A representative from the Federal Bureau of Investigation (FBI) and two state-level law enforcement representatives were also interviewed.

States were asked:

- What types of criminal records checks are required (FBI, state, local)?
- How does the public child welfare agency process criminal records checks?
- What does the state’s criminal records statutes say in regard to the eligibility of an applicant based on criminal records check results?
- What are the significant practice and policy barriers to completing timely criminal records checks?

## **Response Rates and Limitations**

The topic of criminal records checks is very broad. Thus, readers need to keep in mind that the data and information provided in this report falls within specific parameters. Among these, this report was written to determine practices and policies regarding standard criminal records checks, and not those conducted for emergency placements.

In addition, the average processing times reported in the section “Approximate Time to Process Criminal Records Checks” does not take into consideration extenuating circumstances that can prolong the completion of criminal records checks. Extenuating circumstances may include cases where an applicant must resubmit a criminal records check because his or her fingerprints were smudged or the paper work necessary for processing the criminal records check was lost.

The level of response completeness varied by question. Responses to two questions are not included in the report because they were determined to be invalid. One of the questions eliminated asked the states what type of information is included on a criminal records report. For example, does the criminal records check report include all arrest data or only conviction data? For states with multiple respondents, responses were at times contradictory. States that replied to this question in regard to FBI checks often contradicted the FBI representative’s response. The other question asked respondents if it is common to get a “hit” on a criminal records check. For this paper, a “hit” is defined as information on a criminal records report indicating the applicant has been involved in



criminal activity. The type of information reported on criminal records reports varies by state but usually includes arrest data or a list of criminal convictions. Of the states interviewed, only two states reported they keep statistics on the number of criminal records checks that are returned with a hit. Thus, the remaining respondents were only able to provide opinions and not statistically based facts.

Several states reported that household members, in addition to the prospective foster or adoptive parents, are required to complete criminal records checks. This information was an unanticipated data element that is included in this report. Thus, readers should be aware when reading the “Age Requirements” section that this data element is incomplete and not statistically accurate, although it is informational.

Last, this survey was designed to provide a picture of criminal records checks practices and statutes among the states. In states that have county-run programs and services, there may be variance in practices and policies between counties within a state and some of the data reported reflects those variances.

## SECTION III: EXPLANATION OF SURVEY FINDINGS

### Checks Required

ASFA enables each state to determine the types of criminal records checks required for meeting its criminal records check provisions. The most common types of checks required by the states are:

- FBI Check = Information received from FBI criminal records checks is based on data reported by law enforcement agencies across the United States to the Federal Bureau of Investigation. FBI criminal records checks report arrests for federal and state felonies.<sup>8</sup>
- State Check = State criminal records checks are based on reported information collected by each state’s law enforcement agency.<sup>9</sup> The data collected and reported varies by state. For example, most states report arrest information, including date of arrest and charge or purpose of arrest. Some states also include additional information such as disposition of a case and sentence served. A few states noted that their state check reported only the applicant’s date of conviction and offense. Some state checks include all felonies and misdemeanors, and others only list information pertaining to felonies.



- Local Check = Local criminal record checks are based on reported data collected by a local police or sheriff’s office in a jurisdiction such as a county or city. The data collected and reported varies by jurisdiction.

Although not mandated, many states also conduct various safety checks in addition to the criminal records checks. The two most common safety checks that states reportedly conduct are:

- Child Abuse and Neglect Registry Check = Child abuse and neglect registry checks are based on state databases that maintain information on persons with substantiated abuse and neglect records. Specific information collected and reported from the databases varies by state.
- Sex Offender Registry Check = Sex offender registry checks are based on state databases that maintain information on persons convicted of a sex crime. Specific information collected and reported in the databases varies by state.

Forty-nine states reported on the types of checks they require. Of these 49 states, 35 reported requiring a FBI check. Of the 35 states requiring a FBI check, 20 required all foster and adoptive parent applicants to complete a FBI check. One state required FBI checks only for prospective foster parents and not prospective adoptive parents. Two states require FBI checks for prospective adoptive parents but not prospective foster parents.

<b>Criminal Records Checks Required (n=49)</b>	
<b>FBI</b>	
All applicants required to be checked.....	20
Only foster parent applicants required to be checked.....	1
Only adoptive parent applicants required to be checked.....	2
Applicants not meeting minimum residency conditions required to be checked.....	11
<b>State</b>	
All applicants required to be checked.....	46
<b>Local</b>	
All applicants required to be checked.....	14
<b>Other (all applicants required to be checked)</b>	
Child Abuse and Neglect Registry.....	23
Sex Offender Registry .....	4
Miscellaneous.....	5

Eleven states that require FBI checks noted that only applicants who did not meet minimum residency requirements are mandated to complete a FBI check. In other words, if a prospective foster or adoptive parent has not lived in the state

for at least a specified number of consecutive years, the applicant is required to submit to a FBI check. The specified minimum residency varied among these states, but ranged between 2 to 11 years.

The state criminal records check is the most common required check. Of the 49 reporting states, 46 require a state check of all prospective foster and adoptive parents. Three states reported that state checks are not required for any applicants. Two of the three states which do not require state checks, however, require a FBI check, and the one remaining state requires only a local check.

FBI & State.....	13	FBI, State, CA/NR,Other.....	1
FBI & Local.....	2	FBI, State, CA/NR, SO,Other... 1	
FBI, State, Local.....	5	State Only.....	3
FBI, State, CA/NR*.....	7	State & Local.....	2
FBI, State, SOR**.....	1	State & CA/NR.....	5
FBI, State,Other .....	1	State, CA/NR, SOR.....	1
FBI, State, Local, CA/NR.....	3	State, CA/NR, Other.....	1
FBI, State, CA/NR,SOR.....	1	State, Local, CA/NR, Other... 1	
		Local & CA/NR.....	1

\* CA/NR = Child Abuse and Neglect Registry  
 \*\* SOR = Sex Offender Registry

Many states also mandate various safety checks in addition to criminal records checks. Among these, 23 states noted that child abuse and neglect registry checks are required; four required sex offender registry checks; and five required other checks, such as driving records, juvenile records, employment records, or adult abuse registry checks.

### Method of Processing Criminal Records Checks

To receive a criminal records check report, the public child welfare agency must request that the report be accessed for a specified applicant. There are currently two methods in which a report may be requested:

- Fingerprint check – All FBI checks, some state checks, and sometimes local checks require an applicant be fingerprinted and the prints to be electronically entered into a database to access criminal records.
- Name check – Usually for local checks or state checks, a database search of the applicant’s name and often other identifying information, such as a social security number or date of birth, is used to access criminal records.

### Fingerprinting Requirements

#### FBI Checks

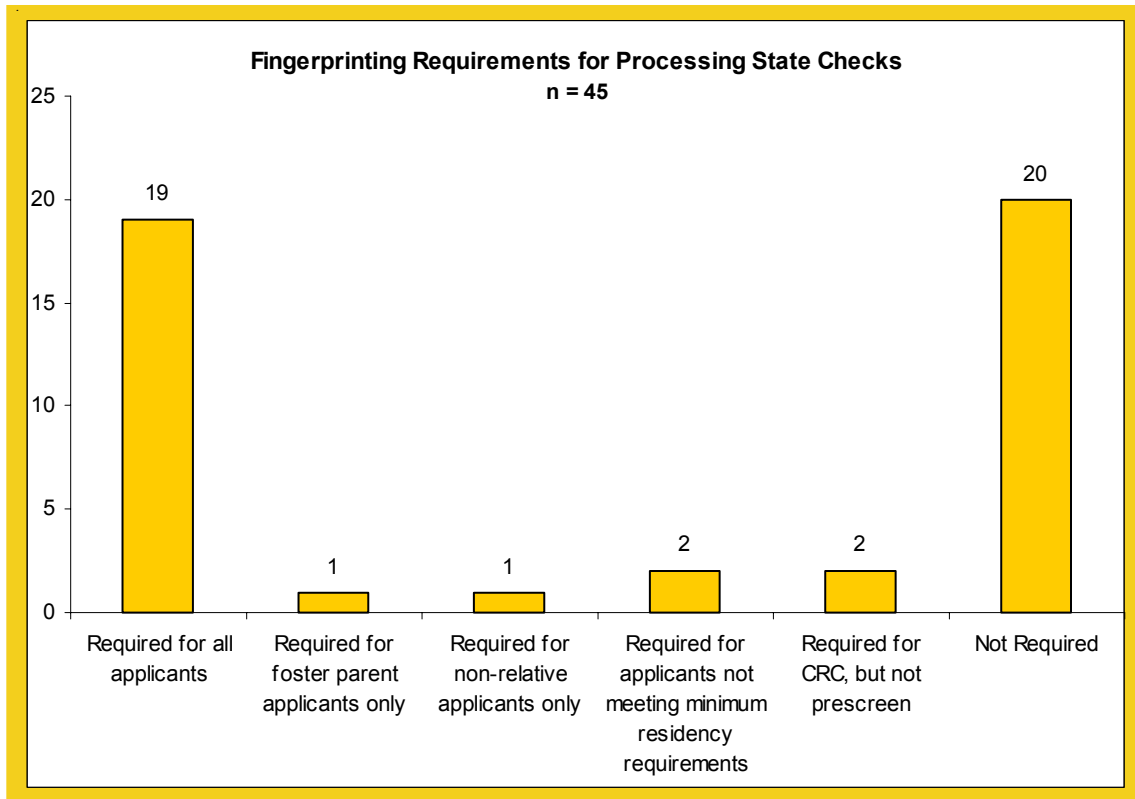
In general, all FBI checks are currently processed using the fingerprint method. In rare cases when the applicant is unable to be successfully fingerprinted, name checks are reportedly permitted by the FBI (see “Delays in Completing Criminal Records” section).

#### State Checks

Forty-five states reported information pertaining to fingerprinting requirements for state criminal records checks. Of the 45 reporting states, 25 states reported that fingerprint checks are required for at least some of the applicants. Of the 25 states that require fingerprint checks, 19 states reported that fingerprinting is required to request the state check for all foster and adoptive parent applicants. However, six states reported fingerprinting requirements applied only to applicants who meet specified conditions. Among these six states, one requires fingerprinting for foster parent applicants but not adoptive parent applicants, and one requires fingerprints for non-relative foster

care placements but not relative placements. Two states required applicants who are not residents of their states for a minimum time period to submit to a fingerprint check. Finally, two states conduct a “prescreen” process. Under this process, all applicants have to complete a non-fingerprinted prescreen and, if indicated, the applicant must then complete a fingerprinted full-screen.

Twenty states reported that they require only name checks; there is no requirement for fingerprinting to process state criminal records checks under any circumstances. Two of these 20 states noted that even though fingerprints are not required to process the state check, foster care and adoption applicants are required to have their fingerprints on file.




### Prescreen Requirements

Two states require a “prescreening” process for state criminal records checks. The prescreen is used to provide preliminary insight into the applicants’ criminal record status before requiring a full criminal records check.

In the first state that reported conducting a prescreen, the prescreen process is used as a method to speed up the collection information from criminal records checks reports. The prescreen is conducted early in the home studies process through a name check, thus providing criminal records information promptly. Based on the name check, the agency determines if the applicant is eliminated from being a foster or adoptive parent based on the name check results, or if continuing the application process is indicated. A fingerprint check is completed on all applicants who are not eliminated by the name check to verify its’ accuracy.

The second state that requires a prescreen uses a name check to see if the applicant has a criminal



record within the state, however, the prescreen does not provide any details of the record such as type of crime or date of arrest. If the prescreen indicates that an applicant has a criminal record, a full state criminal records check is conducted to provide arrest and criminal activity details.

### **Local Checks**

Fourteen states require local checks. Among these states, only two reported requiring fingerprinting to access a local check.

### **Means of Collecting Fingerprints for State Criminal Records Checks**

For states that require fingerprinting to access state criminal records checks, there are two means with which to collect fingerprints—the traditional paper-ink method and the electronic scanning method. Eighteen states identified the fingerprinting method used in their state. The most common reported means of collecting fingerprints, as indicated by 12 of the 18 states reporting, is the paper-ink method. Four states reported using both paper-ink and electronic means to collect fingerprints within their state. Two states reported using electronic fingerprinting throughout the state. At the time of interview for this survey, four states were investigating the use of electronic methods.

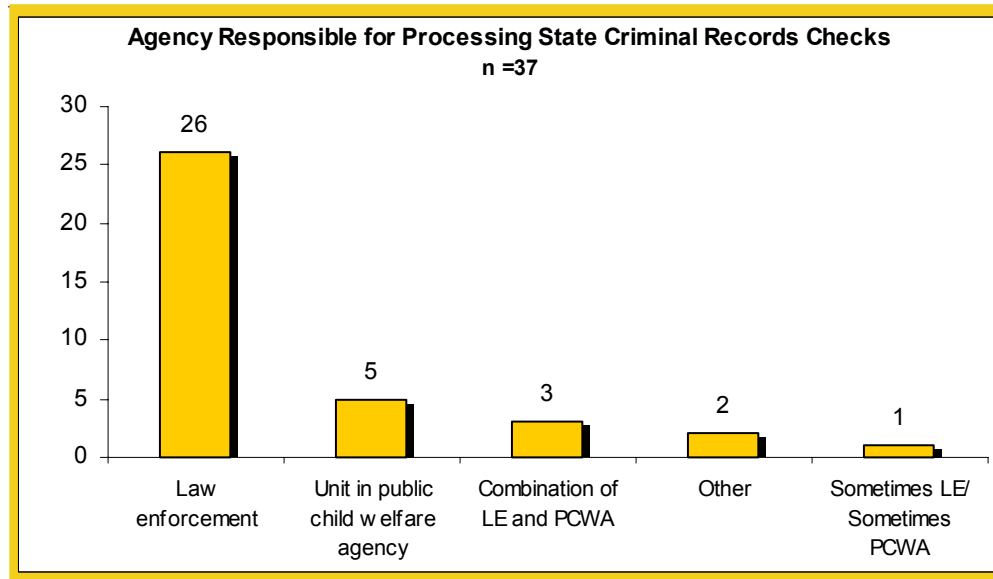
Among states that require fingerprinting for state checks, the agency charged with collecting the fingerprints varied among the states as well as within the states. Of the 20 states that noted the designated agency, nine reported that local or state law enforcement personnel usually collected the fingerprints. Four states, however, reported that the public child welfare agency had trained employees to collect fingerprints, and three states relied on private contractors in at least some jurisdictions. Four states reported that in some jurisdictions law enforcement collected fingerprints, and in some jurisdictions public child welfare employees are charged with collecting fingerprints.

### **Agency Charged with Accessing State Criminal Records Check Reports**

Regardless of whether fingerprinting is required to request state criminal records checks, public child welfare agencies have various arrangements for accessing the criminal records check reports. For this report, accessing criminal records check refers to the actual generating of the report from a criminal records database.

Thirty-seven states provided information about which agency is charged with accessing state criminal records check reports. Of these 37 states, 25 reported that the state law enforcement agency accessed all the state check reports within a unit in their agency. Six states reported that the public child welfare agency is given legal authority and ability to access state check reports within a unit of the public child welfare agency. Three states reported that sometimes state law enforcement accesses state checks and sometimes the state checks are accessed through the public child welfare agency. Two states reported that they receive all criminal records check reports from other sources, and one state reported that checks are sometimes accessed through state law enforcement and sometimes through other sources.

In one of the states that used a prescreen process, the prescreen criminal records check report is processed through the public child welfare agency. If a full-screen check is required, however, the full-screen criminal records check report is accessed through the state law enforcement agency.



In one state that sometimes requires fingerprint checks and sometimes requires name checks, different agencies are charged with accessing the state criminal records check reports. For the fingerprint checks, reports are accessed by state law enforcement but name check reports are accessed through trained personnel within the public child welfare agency.

### Approximate Time to Process Criminal Records Checks

For purposes of this report, processing criminal records check request refers to all the steps involving initiating the criminal records check request, generating the criminal records report, and returning the report to the proper authority in the public child welfare agency. The time to process a criminal records check varied greatly between states. Although respondents provided information using various units of time (i.e., days, weeks, months) for this section, all responses were converted and reported by number of estimated calendar days.

<b>V. Time to Process Criminal Records Checks*</b>			
	<b>FBI</b>	<b>State</b>	<b>Local</b>
	<i>n=18</i>	<i>n=29</i>	<i>n=4</i>
<i>0-10 days</i>	0	8	2
<i>11-20 days</i>	1	4	2
<i>21-30 days</i>	3	12	0
<i>31-40 days</i>	5	3	0
<i>41-50 days</i>	3	1	0
<i>Over 50 days</i>	6	1	0

For purposes of this report, processing criminal records check request refers to all the steps involving initiating the criminal records check request, generating the criminal records report, and returning the report to the proper authority in the public child welfare agency. The time to process a criminal records check varied greatly between states. Although respondents provided information using various units of time (i.e., days, weeks, months) for this section, all responses were converted and reported by number of estimated calendar days.

### FBI Checks

Overall, FBI checks were reported to be the most time-consuming. With 18 states reporting, FBI checks took an average of 44 days to process. Reported processing times ranged from 14 to 84 days. One state reported that FBI checks are usually returned in less than 20 days, three states reported FBI checks are usually returned in 21-30 days, five states reported response time between 31-40 days, three states reported 41-50 days, and six states reported that usually more than 50 days elapse before the FBI check is returned.

## State Checks

The time reported to process state checks varied greatly. On average, state checks reportedly take 18 days to process, with reported processing times ranging from 1 to 60 days. Such factors as which agency is charged with accessing the criminal records check reports and if fingerprinting of applicants is required to process checks affected reported processing times.

### VI. Times to Process State Criminal Records Checks Based on Accessing Agency and Fingerprinting Requirements\*

Assessing Agency	Law Enforcement	Public Child Welfare	Other	Fingerprinting Required	
	n=1	n=4	n=1	Yes n=11	No n=13
Average	23	8	9	22	13
0-10 days	2	3	1	2	6
11-20 days	2	0	0	3	0
21-30 days	8	1	0	4	6
31-40 days	3	0	0	1	1
41-50 days	1	0	0	0	0
Over 50 days	1	0	0	0	0

\* It should be noted, states that reported using multiple means to access criminal records check reports within their state were not included in this table.

The choice of agency responsible for accessing state check reports affected the average time needed to process criminal records checks. Most states forward criminal records check requests to a unit within state law enforcement that is responsible for accessing the state criminal records check report. These states averaged 23 days to process state checks. The four states that reportedly access criminal records check reports through a unit within their public child welfare agency, however, reported an average of eight days to process criminal records checks. Another factor that seemed to affect processing time for state checks is whether fingerprinting is required. States requiring fingerprinting generally take longer to process checks than states conducting name searches. For states that require fingerprinting, processing times averaged 22 days versus 13 days for those states that require name checks.

## Local Checks

Local checks are reportedly less time consuming than FBI or state checks. With four states reporting, local checks take an average of seven days to process.

## Age Requirements

Although respondents were not specifically asked about age requirements, 10 of the 51 states noted that all persons in a prospective foster or adoptive household over the age of 18 are required to have a completed criminal records check. Five states reported requirements for juveniles in the household to also undergo checks. Among these five states, two states require checks to be completed on all persons 16 and over in the household, one state requires checks for all those over age 14, and two require the checks for household members over the age of 13.

Some states noted that criminal records check requirements for household members who are mi-



nors are often different from the requirements for adult applicants and adult household members. For example, in one state, persons age 13-17 are required to complete a state name check but anyone over the age of 18 is required to complete a fingerprint based state check. In another state, any individual in the household age 13 to 25 is required to complete a juvenile records check as well as an adult criminal records check.

### Determining Eligibility of an Applicant Based on Criminal Records Checks

Results of criminal records checks conducted on applicants and household members can provide a basis for denying a foster or adoptive parent a licensure or approval to receive a foster or adoptive child. As mentioned earlier, ASFA mandates states to deny an applicant a placement if the applicant has a conviction for certain listed crimes. Many states, however, have gone beyond the ASFA provisions. For example, some states have included other crimes, such as kidnapping, stalking, arson, and robbery, that render an applicant ineligible to have a child placed with him or her.

Also, some states conduct risk-evaluations of applicants convicted of certain crimes to determine eligibility. Risk-evaluations may examine the circumstances under which the crime was committed, rehabilitative steps taken by the applicant, and how long ago the conviction occurred. A detailed summary of state statutes that address eligibility based on criminal records check results is provided in Appendix D. Please note that Appendix D only summarizes state statutes. Thus, it does not include agency rules, administrative rules, regulations, or policies that may also include eligibility provisions.

### Delays in Completing Criminal Records Checks

The states were asked to identify the top cause for delay in completing criminal records checks in a timely manner. As the table below indicates, states identified the complexity of the criminal records check process, the timeliness of data in the criminal records check reports, and issues surrounding fingerprinting foster and adoptive applicants as the top barriers to completing timely criminal records checks.

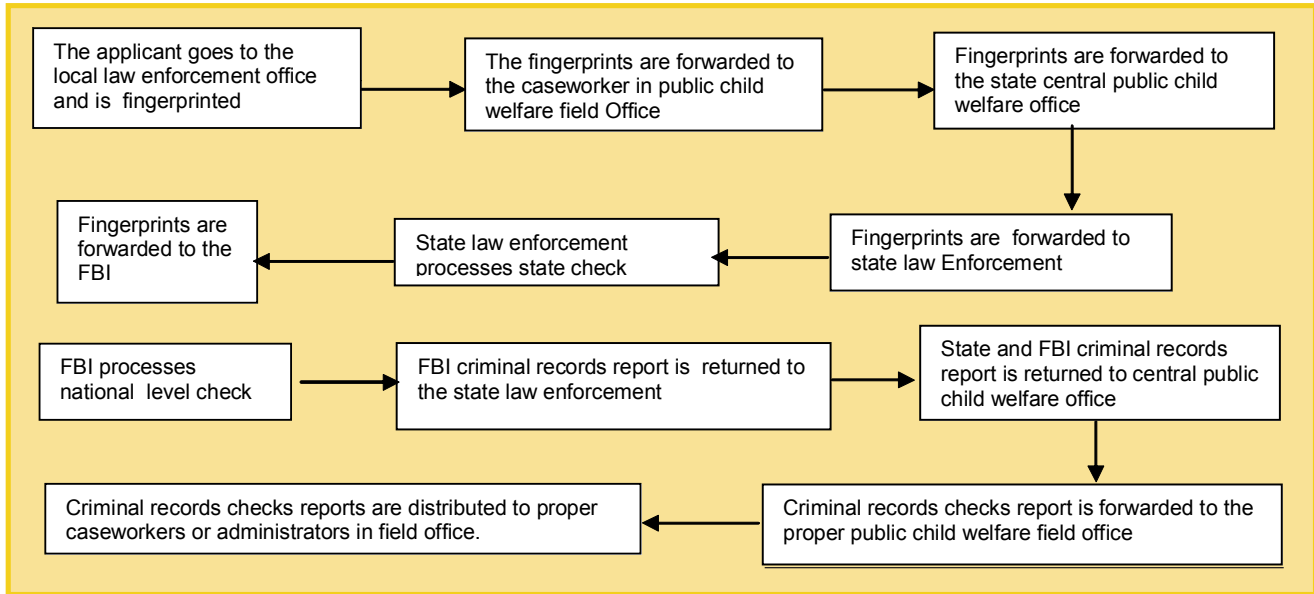
<b>VII. Issues Regarding Criminal Records Checks</b>	
<b>n = 51*</b>	
None.....	3
Process was too complex.....	17
FBI checks process was too complex.....	6
Risk-evaluations conducted on applicants with a hit are complex.....	3
Processing criminal records checks for interstate cases too complex .....	3
Staff overload.....	2
Difficult to fingerprint people/prints being rejected.....	7
Confidentiality Issues.....	2
Tracking the criminal records check process.....	1
Ensuring criminal records reports reflect up to date/precise information.....	8
Budget issues.....	5
No access to other states' criminal records.....	3

\* Note: Totals do not equal 'n' because some states reported multiple causes of delay.

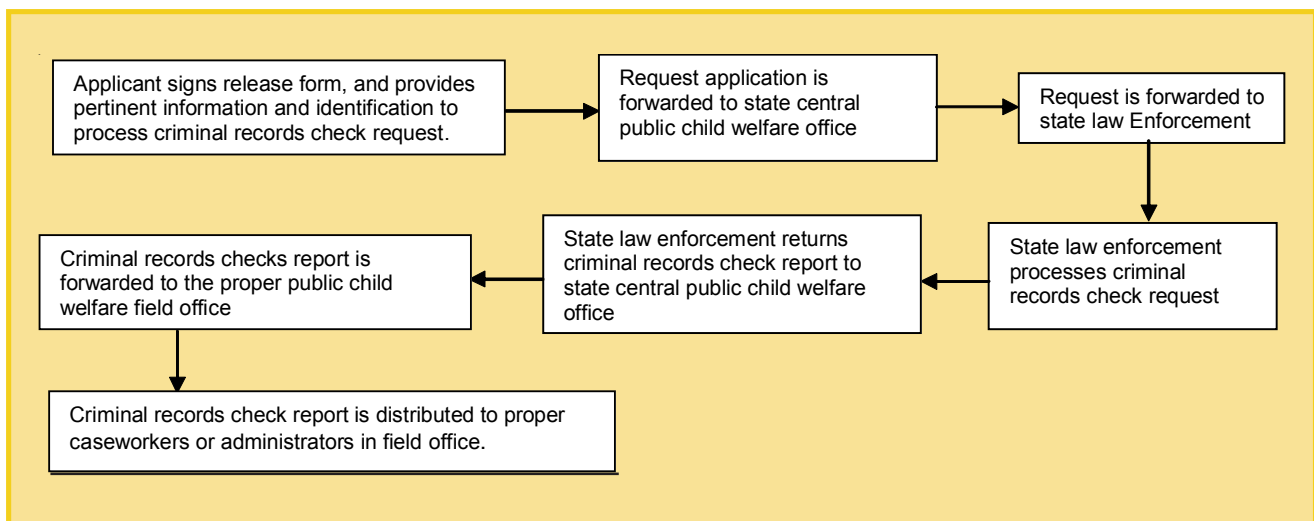
### The Criminal Records Check Process Is Complex

The most common barrier identified by the states, with 17 states reporting, is that the process to complete a criminal records check is too complex. Although processes vary a between states, requests for a criminal records checks and the resulting reports often pass through several individuals and multiple agencies before the criminal records check report is returned to the proper public child welfare person. Two generic examples of the criminal records check processes are as follows:


#### Example 1: Fingerprint checks



#### Example 2: Name Check



Several states suggested that certain components of their criminal records checks process are too complex. Among these states, six states suggested FBI checks require additional time and paperwork and contribute to the complexity of conducting criminal records checks. Three states suggested completing criminal records checks for interstate cases is too complex because the checks must pass through various individuals and agencies in multiple states. Among states that conduct



risk-evaluations on applicants with a hit on their records, three reported that conducting the risk-evaluation created significant delays in the completion of the criminal records checks. Risk-evaluations make the criminal records check process more complex because they require additional investigation and information gathering about the applicant’s criminal history, as well as creating additional paper work .

### **Ensuring Information On Criminal Records Report Is Current**

Eight states indicated that ensuring criminal records checks provided the most current information is an issue. Accurate criminal records reports rely on the fact that the information in the criminal records database is complete and is entered in a timely manner. Unfortunately, public child welfare agencies have no control over how quickly and accurately information is entered into the criminal records database.

### **Fingerprinting Applicants Is Difficult**

For states that require fingerprinting for state or FBI checks, complications surrounding collecting and processing fingerprints often arise. Seven states reported that difficulties surrounding the collection of fingerprints are a major cause of delay. Two states with large rural populations noted that fingerprinting applicants in rural areas is difficult because applicants often have to travel several hours to the nearest fingerprint collection site.


Other states reported difficulties with the actual fingerprinting process itself. For instance, some applicants cannot be successfully fingerprinted because of illnesses such as arthritis and Parkinson’s disease. Other applicants may work with chemicals or other substances that wear down the ridges on the fingers, making the applicant difficult to print. In these cases, the FBI and most states that require fingerprinting will provide a waiver and alternatively conduct a name check after several failed attempts to fingerprint the applicant.

Even if an applicant does not have a special condition or circumstance that causes him or her to be difficult to fingerprint, fingerprints may be imprinted precisely. For example, when a person is fingerprinted using the paper-ink method, all 10 fingers must be inked and carefully rolled onto the fingerprint card. All 10 fingerprints must clearly capture all the fingerprint ridges or the fingerprints will be rejected. If fingerprints are not imprinted accurately or smudged, the applicant must be reprinted and the criminal records check request resubmitted.

## **SECTION IV: APPLICATION OF CRIMINAL RECORDS CHECKS MANDATES AND TRIBES**

### **Federal Requirements**

Both ASFA<sup>10</sup> and the Indian Child Protection and Family Violence Protection Act (P.L. 101-630)<sup>11</sup> have criminal records check requirements regarding the approval of foster and adoptive parents for Native American children. As mentioned earlier, ASFA requires the state to conduct criminal records checks for all prospective foster and adoptive parents of any child who is eligible for Title IV-E payments unless the state has chosen to elect out of the criminal records checks mandates. ASFA also



specifies that a conviction for certain offenses makes applicants ineligible to foster or adopt a child. If a state elects out of the ASFA criminal records check mandates, the state must include in the state plan alternative measures to ensure the child’s safety.

In comparison, P.L. 101-630 applies to all “persons responsible for a child’s welfare,” which includes, by definition, “any person providing out-of-home care, education, or services”<sup>12</sup> to a Native American child. These requirements apply only to tribally licensed or approved foster and adoptive families. Under P.L. 101-630, any foster care or adoptive applicant who has been found guilty or plead *nolo contendere*<sup>13</sup> to any felony or any two or more misdemeanors defined under federal, state, or tribal laws that involve a crime of violence, sexual assault, molestation, exploitation, contact or prostitution, a crime against a person, or an offense against children, is prohibited from receiving a foster or adoptive Native American child in his or her home.<sup>14</sup>

It should be noted, under the Indian Child Welfare Act (ICWA), tribes are authorized to establish and operate an Indian child and family service program which may include a system for licensing and regulating Indian foster and adoptive homes.<sup>15</sup> Licensing standards for foster or adoptive families that are set by tribes “for purposes of qualifying for assistance under a federally assisted program ... shall be deemed equivalent to licensing or approval by a state.”<sup>16</sup>

The Title IV-E eligibility of the child determines if the ASFA criminal records check mandates apply when approving prospective foster and adoptive parents of a Native American child. If a Native American child is Title IV-E eligible and receiving a foster care or adoption subsidy payment, ASFA requirements must be met.<sup>17</sup> If the Native American child is being placed into a tribally approved or licensed home, P.L. 101-630 criminal records check mandates must be met in addition to the ASFA mandates.


For non-Title IV-E Native American children who are in custody of the tribe, criminal records checks for prospective foster and adoptive parents are conducted according to practices and policies set by the tribe and in compliance with P.L. 101-630. For Native American children not eligible for Title IV-E and who are in custody of a state, criminal records checks for prospective foster and adoptive parents are conducted according to practices and policies set by the state.

## SECTION V: CASE LAW

There are several state court cases that have challenged the application of state criminal record checks provisions. In these cases, The New York Family Court and California Appellate court have addressed questions regarding the constitutionality of and the weight of the best interests of the child mandate in comparison to statutes requiring mandatory disqualification from adopting or fostering a child based on particular criminal histories.<sup>18</sup> Below is a summary of these cases.

### 1. *In re Adoption of Jonee*, 695 N.Y.S.2d 920 (Fam. Ct. 1999)

In the case of *In re Adoption of Jonee*, 695 N.Y.S.2d 920 (Fam. Ct. 1999), the petitioner, Ms. Grant, sought to adopt her four nieces and prevent their immediate removal from her home. Ms. Grant had been the certified kinship foster parent for her nieces for eight years. The New York ASFA statute requires the court to deny pending adoption petitions and immediately remove children from a foster or preadoptive home whenever a petitioner had been convicted of speci-



fied felonies, including homicide. Ms. Grant pled guilty to manslaughter 21 years prior to petitioning to adopt her nieces and served three years probation for recklessly killing her abusive paramour.

The court concluded that Ms. Grant and the children have a constitutionally protected interest in the integrity of their family that cannot be taken away without due process. “The petitioner was not just a mere stranger but had a familial relationship with the children.” Furthermore, the United States Supreme Court has “unequivocally recognized a liberty interest in the integrity of an intact biological, extended family.” The statute creates an irrefutable presumption that she was unfit. “It was the inability ever to prove otherwise under (New York’s) ASFA that renders the statute unconstitutional.”

The court also reasoned that the children were denied the opportunity to have their case decided upon individually as to whether their continued residence with, and adoption by, the petitioner was in their best interests. The children “have a constitutionally protected right to be free of arbitrary state decisions that have a significant impact on their custody and welfare.” The court held that “having already suffered the trauma of losing their families, such children were constitutionally entitled to protection from arbitrary state action that could indiscriminately force them to lose yet another family relationship.” The court concluded, “Both the law and the courts owe them more.” Moreover, the law, if applied mechanically, “compels an outcome [that was] obviously damaging to the children’s interest.”


## **2. In re Adoption of Corey, 707 N.Y.S.2d 767 (Fam. Ct. 1999)**

In re Adoption of Corey, 707 N.Y.S.2d 767 (Fam. Ct. 1999), petitioners Alicia and Richard Benson (pseudonyms used for the parties) sought to adopt the three foster children that had been placed in their care and prevent their immediate removal from their home. Richard Benson was convicted of the violent felony of armed robbery in 1985. Since his release from prison in 1989, he had been either gainfully employed or in school. The court stated, “It was absolutely clear to this court that Richard had fully rehabilitated himself from long ago life of crime and was a positive role model for (his foster sons).”

The court found that the foster children “have a constitutionally protected right, as foster children, to procedural due process which protects them from arbitrary state decisions which significantly impact their custody and welfare and which could indiscriminately force them to lose yet another family relationship.” The court found the New York ASFA statute unconstitutional because it did not allow anyone convicted of a felony crime even the opportunity to dispute a presumption that he or she was unfit to raise children in foster care. Nor did the statute allow consideration of whether it would be in the best interest of a foster child to stay in the home of someone convicted of a violent felony when it was the only stable home the child had ever known.

## **3. Los Angeles County Dep’t of Children & Family Servs. v. Superior Court, 105 Cal. Rptr. 2d 254 (Ct. App. 2001)**

In the case of Los Angeles County Dep’t of Children & Family Servs. v. Superior Court, 105 Cal. Rptr. 2d 254 (Ct. App. 2001), Serena A. and Richard A. were removed from their mother because of her long history with drug abuse that led to endangerment of her children. The children



were detained and the court ordered the Los Angeles County Department of Children and Family Services to conduct a prerelease investigation (PRI) of the children's great-uncle, Robert M., and his wife, Delores M., for possible placement. The PRI revealed that Robert had an extensive record of drug-related offenses and several health issues. Because of Robert's history of drug use, criminal history, and health issues, the department did not recommend placing the children in his home. Despite the department's objections, the juvenile court ordered Serena and Richard to be placed with their great-uncle and his wife. Robert was directed to have only monitored contact with the children.

The department objected to the order and filed an application for a rehearing of the case on the grounds that the placement of the children into Robert and Delores's home violated statutes that prohibit placing children into a home with an adult who had a criminal record other than a minor traffic violation. The court sustained the previous order; the children were to remain with Delores, but were to have no unsupervised contact with Robert.

The department then filed for writ of mandate asking the appellate court to order the juvenile court to vacate its order to place the children with Robert and Delores. The appellate court granted the department its request and directed the juvenile court to vacate its order. The appellate court reasoned that the prohibiting directives were mandatory and that the statute did not provide the juvenile court with discretion to avoid a disqualifying criminal conviction. Thus, the juvenile court acted beyond its authority in ordering the challenged placement.


#### **4. In re Jullian B., (2000) 99 Cal.Rptr.2d 241 (Ct. App. 4th 2000)**

In the case of *In re Jullian B.*, 99 Cal.Rptr.2d 241 (Ct. App. 4th 2000), a young child was removed from his mother's home by the California Department of Health and Human Services (DHHS) because of the mother's problems with substance abuse and recent arrest for driving under the influence. The mother and child were both members of North Fork Rancheria of the Mono Indians of California.

At the jurisdictional/dispositional hearing, the tribe requested the child be placed as prescribed under the Indian Child Welfare Act (ICWA).<sup>19</sup> Subsequently, in meeting with the ICWA placement preferences, the tribe identified the child's great-uncle, Mr. S., and his common-law wife, Ms. D., as an appropriate extended family member with whom to place the child. Upon completion of the preplacement study, the state social worker determined that placement with Mr. S. and Ms. D. was not a suitable option due to several factors, including Mr. S.'s two criminal convictions — one for driving under the influence and one for vehicular manslaughter of a child.

The state social worker investigated several other potential placement options and was unable to find one. The social worker asked for a continuance during a permanent plan hearing in October 1999. The court denied the social worker's request and terminated the parental rights of the child's mother. The court also set a new date for a hearing to address placement.

Upon further search for a suitable placement, DHHS was unable to find an appropriate Native American home to take the child. DHHS identified a non-Native American home as a good match, and the father indicated that he was willing to connect the minor with his heritage. The tribe countered DHHS by providing a home study, prepared by a tribal social worker, which



concluded that Mr. S. and Ms. D. were appropriate for an adoptive placement.

At a hearing in 1999, DHHS and the tribe presented their arguments. DHHS argued that Mr. S.'s criminal record and other issues disqualified him to receive the child. The tribe argued that DHHS had to place the child under the placement preferences provision of ICWA unless "good cause" could be established by DHHS, and that DHHS had not established good cause. In the ruling, the hearing referee found that DHHS had met its burden to establish good cause. The court also found that Mr. S. and Ms. D. were unsuitable for the placement. Upon the ruling, the tribe filed for a rehearing and was denied.

The appeals court reversed the lower court's decision, and found that DHHS had not met its burden to establish good cause. On that issue alone, the appellate court remanded the case for further proceedings consistent with its opinion.

## **Conclusion**

Criminal records checks are multifaceted and very complex. As part of the home study process criminal records checks are an important piece to ensure children are placed with appropriate foster and adoptive families. This study provides an important foundation of information about states' current practices and policies regarding criminal records checks. It also provides an overview of some of the issues concerning criminal records check practices and mandates. There is, however, more to learn about criminal records checks policies and practices.

Among areas that merit more attention is the continued need to simplify the criminal records check process. Throughout the survey interviews, several respondents suggested promising practices being used in their state to address barriers to completing timely criminal records checks. Among these promising practices include the use of electronic fingerprinting for fingerprint checks, "in-housing" access to name-based criminal records reports through a unit of the public child welfare agency, and using a prescreen process to conduct checks. To ensure that criminal records checks are being completed in a timely manner, evaluation of these and other innovative and promising practices need to be conducted and best practices established.

For cases involving Native American children, determining which federal mandates child welfare workers should comply with is complex and confusing; thus, indicating a need for more training for social workers who handle cases involving Native American children.

Lastly, an overview of the few court cases addressing the application of criminal records checks raises various issues regarding state mandates that disqualify an applicant from fostering or adopting a child based on their particular criminal histories. Primary among these issues are; the constitutionality of the state criminal records checks mandates as well as the successful resolution of the difficulties of balancing the best interests of the child with the mandate to disqualify some prospective foster and adoptive parents who have a criminal record.



## Endnotes

<sup>1</sup> 42 U.S.C. § 671(20)(A); 45 C.F.R. §1356.30(a).

<sup>2</sup> 42 U.S.C. § 671(20)(A)(i); 45 C.F.R. §1356.30(b).

<sup>3</sup> 42 U.S.C. § 671(20)(A)(ii); 45 C.F.R. §1356.30(c).

<sup>4</sup> 42 U.S.C. § 671(20)(B); 45 C.F.R. §1356.30(d).

<sup>5</sup> 45 C.F.R. §1356.30(e).

<sup>6</sup> APHSA. (in Press). Report on Understanding Delays in the Interstate Home Study Process. 2002.

<sup>7</sup> Interview: David Simmons, NICWA Director of Policy & Research (April 18, 2002).

<sup>8</sup> The FBI defines a felony as any crime that is punishable by one or more years in prison. Specific crimes that are defined as felonies are determined by State and Federal statutes.

<sup>9</sup> For purposes of this report state law enforcement is defined as the law enforcement entity that is responsible for processing criminal records check requests on the state level and/or that coordinates the data included in the state criminal records databases.

<sup>10</sup> Some respondents provided a time range for processing a criminal record check. In these cases, the midpoint between the high and the low range was used for reporting purposes.

<sup>11</sup> 45 C.F.R. §1355.10.

<sup>12</sup> 25 U.S.C. §3201 et seq.

<sup>13</sup> 25 U.S.C. §3202(14).

<sup>14</sup> An answer of 'no contest' by a defendant who does not admit guilt but that subjects him to conviction ([www.dictionary.com](http://www.dictionary.com). *WordNet*®1.6, © 1997 Princeton University).

<sup>15</sup> 25 U.S.C. §3207(b).

<sup>16</sup> 25 U.S.C. §1931(a).

<sup>17</sup> 25 U.S.C. §1931(b).

<sup>18</sup> 65 F.R. 4069. "Tribes may only receive Title IV-E funds pursuant to a Title IV-E agreement with a State. A tribe that enters into such an agreement must comport with section 471(a)(20) of the (Social Security) Act and Sec.1356.30 in accordance with the State plan in order to receive Title IV-E funding on behalf of children placed in the homes it licenses." Tribes cannot elect-out of the criminal records checks requirements separately from the state with whom the tribe has a IV-E agreement.

<sup>19</sup> These cases focus on challenges to state ASFA laws. All these cases present a question regarding state statutes that were enacted to comply with the federal ASFA. These cases do not determine the constitutionality of the mandate of the federal ASFA.

<sup>20</sup> 25 U.S.C. §1915. The Indian Child Welfare Act (ICWA) mandates the following placement preferences, in order of preference, for placing a Native American child into an adoptive home: 1. a member of the child's extended family, 2. other members of the child's tribe, 3. other Native American families, 4. non-Native American families.

<sup>21</sup> [www.ncsl.org](http://www.ncsl.org)

<sup>22</sup> S. Christian (1999). *1998 State Legislative Responses to the Adoption and Safe Families Act of 1997*. State Legislative Report (24)5. (<http://204.131.235.67/programs/cyf/asfaslr.htm>).

<sup>23</sup> *Adoption and Safe Families Act: Criminal Records Checks* (<http://www.ncsl.org/statefed/cf/criminal.cfm?stateselect='ALL'>); and *Master Matrix of Adoption and State Families Act Provisions-By State:* (<http://www.ncsl.org/programs/cyf/master.htm>).



## VII. Appendices



## Appendix A: ASFA Provisions Pertaining to Criminal Records Checks

### 42 U.S.C. § 671(20)

(20) (A) unless an election provided for in subparagraph (B) was made with respect to the State, provides procedures for criminal records checks for any prospective foster or adoptive parent before the foster or adoptive parent may be finally approved for placement of a child on whose behalf foster care maintenance payments or adoption assistance payments were to be made under the State plan under this part, including procedures requiring that - -

- (i) in any case in which a record check reveals a felony conviction for child abuse or neglect, for spousal abuse, for a crime against children (including child pornography), or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery, if a State finds that a court of competent jurisdiction had determined that the felony was committed at any time, such final approval shall not be granted; and
- (ii) in any case in which a record check reveals a felony conviction for physical assault, battery or drug-related offense, if a State finds that a court of competent jurisdiction had determined that the felony was committed within the past 5 years, such final approval shall not be granted; and

(B) subparagraph (A) shall not apply to a State plan if the Governor of the State had notified the Secretary in writing that the State had elected to make subparagraph (A) inapplicable to the State, or if the State legislature, by law, had elected to make subparagraph (A) inapplicable to the State.



## Appendix B: Survey Instrument

### Criminal Background Checks for Prospective Foster and Adoptive Parents \*\*

1. Which of the following does your state require for prospective foster and adoptive parents: a FBI check, state check, local check, other ?
2. How does your public child welfare agency get access to these checks?  
If fingerprinting is required, are prints collected using the paper-ink method or the electronic method?
3. How long does it normally take the public child welfare agency to receive the results from a criminal records check?
4. What information is included on the criminal records check reports?  
Arrests?  
Dispositions of the case?  
Convictions only?  
Other?
5. If there is a hit on the criminal records check, what guidelines does the public child welfare agency follow to determine eligibility to receive a placement?  
Does your state strictly follow ASFA or do the guidelines go above and beyond ASFA?  
Where are these guidelines listed: in state law, agency regulations, administrative rule or other?
6. Is it common to get a hit on a criminal records check?
7. What do you see as the biggest cause of delay in completing criminal records checks? Is this a policy or practice issue?

*\*\*This survey was administered over the phone by AAICAMA staff during the period of July 2001 to December 2001*

## Appendix C: Summary Of States That Have Elected Out Of ASFA Criminal Records Check Mandates

APHSA identified states that have elected-out of the ASFA criminal records check mandates and their alternative plans to ensure children’s safety. The elect-out states were identified by checking with the following two sources;

The Children’s Bureau, which maintains a list of opt-out states that is updated periodically,  
and

The National Conference of State Legislators (NCSL) website<sup>1</sup>,  
which contains a report<sup>2</sup> and two tables<sup>3</sup> that address the states ASFA policies and practices.


<i>Opt-Out State:</i>	<i>CA</i>	<i>CO</i>	<i>FL</i>	<i>ID</i>	<i>MA</i>	<i>NE</i>	<i>NY</i>	<i>OH</i>	<i>OK</i>
<i>Source:</i>									
<i>Children’s Bureau</i>	X	X		X	X	X	X	X	X
<i>NCSL</i>		X	X	X	X				X

**California** Requires foster care and adoptive applicants to have state, FBI, sex offender registry, and child abuse and neglect registry checks. Under California codes if an applicant has a conviction for any felony or misdemeanor other than minor traffic violation, the applicant must be denied licensure or certificate to receive a placement.

**Colorado** Requires all applicants to complete a state check and a child abuse and neglect registry check. Any applicant who has not lived in Colorado for the past two consecutive years is also required to complete a FBI check. Guidelines that determine eligibility to receive a placement have been established in agency rules. Under these agency rules, certain offenses are defined that disqualify a person from receiving a placement. For other crimes, an evaluation is conducted to determine if the applicant qualifies to receive a placement. In July 2001, Colorado enacted legislation that requires that anyone who has been convicted of any felony in the past five years to be disqualified from receiving a placement. Colorado is currently adjusting its rules to comply with the legislation.

**Florida** Requires FBI and state criminal records checks as well as employment history and personal references check. Under Florida policies, certain offenses are defined that disqualify a person from receiving a placement. For adoption placements, if the person has been convicted of a crime other than the disqualifying crimes listed in policy, the applicant’s petition must be taken under review. Under Florida law, adoption is a privilege and, therefore, an applicant taken under review may also be denied a placement based on not having earned the privilege to adopt. For a foster care placement, the applicant has a right to appeal any denial based on results of a criminal records check.

**Idaho** Requires FBI and ID state criminal records check. It also has driving record, child abuse and neglect registry, adult protection registry, sex offender registry, and federal exclusions registry checks. Under Idaho state rules, certain offenses are defined that disqualify a person from receiving a placement.



**Massachusetts** Requires a state check. There is a special unit within the Massachusetts Department of Social Services that has access to the state law enforcement database and accesses the criminal records check reports. Results can be returned within one day. If there is a hit on a criminal record check, Massachusetts categorizes the information returned. Categories are set up in accordance with the type of crime or charge and the person's status within the criminal justice system (probation, parole, prison). In Category I, the applicant is disqualified from ever receiving a placement; Category II applicants are disqualified for 10 years from receiving a placement; Category III applicants must be taken under consideration and be approved or disapproved by a regional director; and Category IV applicants must be taken under consideration and be approved or disapproved by a local director.

**Nebraska** At the time of interview for this report, Nebraska was revising its regulations to make them more consistent across the state. There are no state statutes that specify which checks need to be conducted and no state guidelines that determine if a person is eligible or not to receive a placement. Thus, individual counties determine required checks and eligibility criteria.

**New York** A state check on any person over age 18 in the household is required. State law and regulations require a safety assessment whenever an arrest or conviction is identified on the criminal record check. For certain offenses, the applicant is automatically denied. The applicant may contest the decision. Other crimes not defined as disqualifying offenses are taken under consideration and approval is denied or granted on a discretionary basis.

**Ohio** Any person over age 18 in the household is required to complete a state check. Any person who has lived outside of Ohio within the past five years is required to complete an FBI check. Ohio statute defines several crimes that disqualify a person from receiving a placement if the applicant is convicted of that crime. The law includes a rehabilitation clause, however, that allows for ineligibility to be waived upon meeting certain criteria.

**Oklahoma** Both a state check and FBI check are required. Prospective foster care or adoptive parents convicted of certain crimes defined in statute are deemed ineligible to receive a placement. Regardless of the conviction, however, the court may place a child with a family if a case evaluation finds the child will not be at risk.

## Appendix D: Summary of State Statutes Pertaining to Eligibility of Prospective Foster and Adoptive Parents Based on Criminal Records Checks

State	Summary of State Statutes
<b>ALABAMA</b>	Requires checks on all prospective adoptive and foster parents. Allows denial if applicant has a felony conviction in Alabama or another state, and allows removal from foster home if parent is subsequently convicted of a felony. Provides for the Department of Public Safety to determine procedure for the application of such information (26-1-4).
<b>ALASKA</b>	Requires state to conduct criminal background checks on relatives with whom child is to be placed (47.14.100). Requires background checks of applicants for licensure as a foster home. Prohibits licensure if foster parent has been charged or convicted of offenses against the family and vulnerable adults, perjury, or offenses included in definition of "serious offense" (47.35.023(b)). Prohibits placement if applicant is currently under arrest for, charged with, has been convicted of, or has been found not guilty by reason of insanity of a serious offense (47.35.017(b)).
<b>ARIZONA</b>	Requires the Department of Economic Security to conduct investigations, license foster homes, and establish requirements for licensing (8-509). Requires checks on all prospective adoptive parents. No provisions for crimes requiring denial listed (8-105).
<b>ARKANSAS</b>	Requires checks on prospective adoptive parents and foster parents. (9-9-212; 9-28-409). Adoptive or foster care placement shall be denied if any person in the household required to be checked has pleaded guilty or nolo contendere or has been found guilty of any of the following offenses: murder, manslaughter, negligent homicide, kidnapping, false imprisonment, permanent detention or restraint, battery, aggravated assault, assault, terroristic threatening, a sexual offense, permitting abuse of a child, endangering the welfare of a minor, contributing to the delinquency of a minor, engaging children in sexually explicit conduct, incest, interference with visitation, interference with custody, engaging in conduct with respect to controlled substances, distribution to minors, public display of obscenity, prostitution, promotion of prostitution, criminal attempt, criminal solicitation, criminal conspiracy to commit any of above offenses, felony or misdemeanor involving violence, threatened violence, or moral turpitude (9-28-409(e)(1)). Upon completion of one's confinement or probation or parole supervision, an applicant may choose to refute the denial (9-28-409(B)). A foster child cannot be placed with a family if required checks reveal a felony conviction for physical assault, battery, or a drug-related offense within the past five years (9-28-409(g)(1)).
<b>CALIFORNIA</b>	Requires checks for all foster parents and prohibits granting of license or certificate if conviction of any crime other than minor traffic violation exists(1522). Requires checks on prospective adoptive parents. Requires consideration of previous criminal record in departmental recommendation to court regarding fitness of parent (8712).
<b>COLORADO</b>	In all petitions for adoption, court shall require criminal records checks for any prospective adoptive parent. Court shall not grant adoption if prospective adoptive parent convicted at any time of a felony in one of the following areas: child abuse or neglect, spousal abuse, crime against a child, crime involving violence, rape, sexual assault, or homicide. State shall establish procedures for checks (19-5-207, 19-5-210). Prohibits granting of license or certificate for foster care home if applicant has been convicted of a felony, including child abuse, unlawful sexual abuse, a crime of violence, or any such felony in another state, as <i>(Continued on next page)</i>

## Appendix D: *Continued*

State	Summary of State Statutes
<b>COLORADO</b> <i>(continued)</i>	well as if the court records indicate any felony conviction that involved an act of domestic violence (26-6-104(7)). If within the past 10 years, an applicant has a pattern of misdemeanor convictions as defined by “rule of the state board”, the applicant shall be denied license or certificate for foster care home (26-6-104(8)(b)).
<b>CONNECTICUT</b>	Requires checks, and provides that the commissioner of children and families prescribe standards for issuance of license (Sec. 17a-114).
<b>DELAWARE</b>	Requires checks on prospective adoptive and foster parents. Requires state to promulgate regulations concerning the denial of certification, including denial to anyone convicted of a sexually related offense or any offense against a child or adolescent (31-309).
<b>DISTRICT OF COLUMBIA</b>	Requires criminal records check of all applicants for licensure as adoptive parent, foster parent, or kinship caregiver. Prohibits licensure if check reveals felony conviction for child abuse, child neglect, spousal abuse, a crime against children, including child pornography, or a crime of violence, including rape, sexual assault, homicide, assault or battery. Prohibits licensure if check reveals conviction within past five years for fraud, physical assault, battery, or a drug-related offense. Allows for licensure, notwithstanding a conviction, if licensure would be consistent with health, safety, and welfare of child (6-2130).
<b>FLORIDA</b>	Requires checks for prospective foster and adoptive parents. Approval shall not be granted in any case in which check reveals felony conviction at any time for child abuse, abandonment, or neglect; spousal abuse; crime against children, including child pornography, or for crime of violence, including rape, sexual assault, or homicide but not including other physical assault or battery. Approval shall not be granted in cases where check reveals felony conviction within past five years for physical assault, battery, or a drug-related offense (435.045).
<b>GEORGIA</b>	Requires checks for all foster parents and rejection of any applicant with any criminal record (49-5-69.1). Requires results of check to be included in investigation report to court for prospective adoptive parents (19-8-16).
<b>HAWAII</b>	Requires checks of all prospective foster parents and allows denial of certificate for any conviction other than minor traffic violation (346-19.6). Requires checks for prospective adoptive parents and allows the department to deny an application if either prospective adoptive parent has been convicted of an offense for which incarceration is a sentencing option, and finds by “reason of the nature and circumstances” of the crime that the applicant poses a risk to the health, safety, or overall well-being of the child (346-19.7).
<b>IDAHO</b>	Requires criminal background checks for foster homes and provides that the Board of Health and Welfare has the duty to propagate rules necessary to implement and enforce licensing standards for foster homes (39-1211).
<b>ILLINOIS</b>	Foster care and adoptive applicants must be denied if convicted of one of the specified crimes listed in the statute, which includes crimes against persons or property, sex offenses, crimes affecting public health and decency or drug related crimes (225 ILCS 10/4.2(b,c)). Exceptions may be granted if conviction occurred more than 10 years before application. (225 ILCS 10/4.2(d)).

## Appendix D: *Continued*

State	Summary of State Statutes
<b>INDIANA</b>	Checks required for foster parents (12-17.4-4-3). Requires denial for any felony or misdemeanor conviction related to health or safety of child, and for other felonies listed in the statute. Allows denial for any felony conviction and for the applicant to request an administrative hearing to contest the denial (12-17.4-4-4, 12-17.4-4-11).
<b>IOWA</b>	Conviction of any of following offenses within five-year period preceding application precludes licensure as foster parent or adoptive parent: a drug-related offense; child endangerment or neglect or abandonment of a dependent person; domestic abuse; crime against a child, including but not limited to sexual exploitation of a minor; a forcible felony. If the applicant has a recorded conviction of a crime other than those specified above, an evaluation is required to determine the applicant's eligibility (237.8; 600.8).
<b>KANSAS</b>	State must determine if prospective adoptive parent has committed a felony under statutes defining crimes against persons, sex offenses, or crimes affecting family relationships and children, or within last five years has violated controlled substances law (59-2132). Requires checks of prospective foster parents. Requires denial of license if applicant has a felony conviction for certain defined offenses. If applicant has been adjudicated as a juvenile offender and is convicted of having committed an act, if committed by an adult would constitute the commission of a felony, and is a crime against persons, the applicant shall be denied (65-516 (a)).
<b>KENTUCKY</b>	Checks required for foster parent. No requirements for denial listed (199.462). Requires Cabinet for Human Resources to establish criteria through administrative regulations to be followed for the adoption of children (199.472)
<b>LOUISIANA</b>	Requires checks for prospective foster and adoptive parents, and authorizes the Department of Social Services to promulgate regulations regarding criminal records checks (46:282)
<b>MAINE</b>	Requires Department of Human Services to work with departments of Education and Mental Health and Mental Retardation to formulate common licensing rules that would apply to foster homes (22 MRSA 8104).
<b>MARYLAND</b>	Requires checks for foster and adoptive parents (5-561). Requires Department of Human Resources to adopt rules and regulations regarding crimes for which registration or certification will be denied (5-551).
<b>MASSACHUSETTS</b>	Requires the department to conduct a review of any prospective foster or adoptive parent when a misdemeanor offense is discovered through a criminal offender record information search (Ch. 119, sec. 26A; Ch. 210, sec. 3B).
<b>MICHIGAN</b>	Checks required for prospective adoptive parents. Denial is left to the discretion of child placing agency (710.23f).
<b>MINNESOTA</b>	Provides that if a foster care applicant has been convicted of the following, the applicant shall be denied licensure: (1) if less than 10 years have passed since the discharge of the sentence imposed for the offense, and the individual has been convicted of a violation of manslaughter; criminal vehicular homicide or homicide and injury; aiding suicide or attempted suicide; assault; terroristic threats; various offenses involving illegal substances

*(Continued on next page)*

## Appendix D: *Continued*

State	Summary of State Statutes
<b>MINNESOTA</b> <i>(continued)</i>	and drugs; robbery; kidnapping; false imprisonment; arson; riot; burglary; various weapons offenses; harassment; stalking; various crimes against a vulnerable adult; various crimes involving the mistreatment of other persons; failure to report; abduction; various crimes against an unborn child; disseminating or displaying harmful material to minors; a gross misdemeanor offense of prohibited acts; a gross misdemeanor offense of neglect or endangerment of a child; a gross misdemeanor offense of malicious punishment of a child; (2) regardless of how much time has passed since the discharge of the sentence imposed for the offense, if the individual is convicted of murder; murder of an unborn child; felony malicious punishment of a child; felony neglect or endangerment of a child; crimes related to prostitution; criminal sexual conduct; solicitation and use of minors to engage in sexual conduct; possession of pictorial representations of a minor; incest; felony domestic assault; felony spousal abuse; felony child abuse or neglect; felony crime against children; or an attempt or conspiracy to commit any of the above listed offenses or conviction of any of these offenses or similar offenses in any other state. The disqualification periods provided are the minimum applicable disqualification periods. The commissioner may determine that an individual should continue to be disqualified from licensure because the license holder or applicant poses a risk of harm to a person served by that individual after the minimum disqualification period has passed (245A.04). If a criminal background check reveals that a prospective adoptive parent has been convicted of felony child abuse, 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 will be disqualified. If a criminal background check reveals a felony conviction within the past five years for physical assault, battery, or a drug-related offense, the applicant will be denied the adoption (259.67).
<b>MISSISSIPPI</b>	Includes denying licensure for prospective foster parents if a criminal records check indicates a felony conviction for spousal abuse, child abuse or neglect, crime against children (including pornography), crime involving violence (except physical assault or battery). If committed within past five years, physical assault, battery, or drug-related offense shall disqualify a person from licensure as foster parent (43-15-6).
<b>MISSOURI</b>	Requires background check of prospective adoptive parents to be included in department assessment. Requires department to develop rules and regulations regarding assessment (453.070). Requires department to “investigate” background of prospective foster parents and to develop rules regarding standards for issuing licenses (210.486).
<b>MONTANA</b>	Requires checks for prospective adoptive parents but provides no provisions for evaluating records (42-3-203).
<b>NEBRASKA</b>	Requires Department of Health and Human Services to develop rules and regulations regarding standards for issuance of license (71-1904). Requires background check be part of home study for adoptive parents to determine any history of behavior “which may endanger the health or morals of a child”(43-107 (b)).
<b>NEVADA</b>	Requires checks for prospective adoptive parents and foster parents but provides no further provisions (NRS 127.281; NRS 424.031).

**Appendix D: Continued**

State	Summary of State Statutes
<b>NEW JERSEY</b>	Requires criminal records check for prospective adoptive and foster parents. Disqualifies prospective foster and adoptive parent if that person has ever been convicted of: a crime against a child, including endangering the welfare of a child and child pornography; or child abuse, neglect or abandonment; murder or manslaughter; second or third degree aggravated assault; stalking; kidnapping and related offenses, including criminal restraint, false imprisonment, interference with custody, criminal coercion, or enticing a child into a motor vehicle, structure or isolated area; sexual assault, criminal sexual contact or lewdness; first degree robbery; second degree burglary; domestic violence; endangering the welfare of an incompetent, elderly or disabled person; terrorist threats; arson or causing or risking widespread injury or damage; an attempt or conspiracy to commit one or more of the above offenses. Prospective foster and adoptive parents are disqualified if that person is convicted of one of the following crimes and the date of release from confinement occurred during the preceding five years: simple assault; fourth-degree aggravated assault; a drug-related crime; second degree robbery; third-degree burglary; an attempt or conspiracy to commit one or more of the above crimes (C.30:4C-26.8).
<b>NEW MEXICO</b>	Requires checks for foster parents and does not allow for final approval if a criminal records check reveals that an applicant has been convicted of felony child abuse or neglect, felony spousal abuse, crime against a child (including pornography), or any crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery. If within the past five years the applicant has been convicted of physical assault, battery, or a drug related offense (8.27.2.16 NMAC). Requires checks for prospective adoptive parents but provides no further provisions (8.26.2.16 NMAC).
<b>NEW YORK</b>	Requires criminal records checks for prospective foster and adoptive parents (SSL 378-a 2). An application for certification or approval of a prospective foster or adoptive parent shall be denied where a search reveals: A felony conviction at any time involving child abuse or neglect; spousal abuse; a crime against a child, including child pornography; or a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery. A revealed felony conviction within the past five years for physical assault, battery, or a drug-related offense, shall constitute denial unless the prospective foster parent or adoptive parent demonstrates that such denial will create an unreasonable risk of harm to the physical or mental health of the child; and approval of the application will not place the child's safety in jeopardy and will be in the best interests of the child. A final determination on an application shall be held in abeyance whenever a check reveals a charge for a crime listed above that has not been resolved, or a felony conviction that may be for a crime listed above. An application for approval or certification may be denied where a search on the prospective adoptive or foster parent reveals a charge or conviction for a crime other than one of those listed above (SSL 378-a 2).
<b>NORTH CAROLINA</b>	Requires checks for prospective adoptive parents and foster parents. (131D-10.3A; 48-3-309). Requires the agency to consider all "convictions or pending indictments of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children," including the following crimes listed in the statute: homicide, rape and related offenses, assault, kidnapping and abduction, malicious injury or damage by use of explosive or incendiary device or material, offenses against public morality and decency, prostitution, protection of minors, protection of the family, public intoxication, possession or sale of drugs, alcohol related offenses, driving while impaired (131D-10.2; 48-1-101).

## Appendix D: *Continued*

State	Summary of State Statutes
<b>NORTH DAKOTA</b>	Requires checks for prospective adoptive and foster care parents but does not include any provisions for the application of the criminal records checks (14-15-11; 14-15.1-04; 50-11-06.08).
<b>OHIO</b>	Checks required for both adoptive and foster parents (2151.86). Provisions for required checks are provided in rules and administrative code.
<b>OKLAHOMA</b>	Criminal background check required on prospective adoptive and foster parents (7209; 7505-5.3). Prospective adoptive or foster parents shall not be approved if he or she is convicted of a felony for child abuse or neglect, crime against child, e.g., child pornography, crime involving violence (excluding physical assault or battery) or, within the preceding five-year period, physical assault, domestic abuse, battery or drug-related offense. Regardless of conviction, court may place child if an evaluation shows that child will not be at risk. (7505-5.1, 7003-8.1)
<b>OREGON</b>	Statutes not available on-line at time of publication.
<b>PENNSYLVANIA</b>	Checks required for prospective foster and adoptive parents. Requires denial for listed crimes, including homicide, aggravated assault, harassment and stalking, kidnapping, unlawful restraint, rape and other sex offenses, concealing death of a child, endangering welfare of children, dealing in infant children, prostitution and related offenses, corruption of minors. If the applicant has a founded report of child abuse or neglect within last five years, statute does not allow for approval of applicant (Title 23 Sec. 6344).
<b>RHODE ISLAND</b>	Requires checks for prospective foster care parents and allows the Department of Children, Youth, and Families (DCYF) to consider records in determining suitability of foster parents (14-1-34). Requires checks for prospective adoptive parents and allows for the director of the DCYF to establish rules and regulations that would disqualify an applicant if a criminal records check indicates the applicant “could endanger the health and welfare of a child or children” (15-7-11).
<b>SOUTH CAROLINA</b>	Allows that no child may be placed in foster care with a person who has pled guilty or nolo contendere or has been convicted of an offense covered by the following: “offense against the person”, “offense against morality or decency,” contributing to delinquency of minor, common law offense of aggravated assault and battery against a person 17 or younger, criminal domestic violence, aggravated criminal domestic violence, a felony drug-related offense. These restrictions apply to persons convicted of similar laws in another jurisdiction or under federal law (20-7-1642).
<b>SOUTH DAKOTA</b>	Requires Department of Social Services to issue rules regarding which crimes will cause a foster care or adoptive parent applicant to be denied (26-6-16; 26-4-9.1).
<b>TENNESSEE</b>	Allows department to require foster and adoptive parents to complete application disclosing criminal convictions. Allows Department of Human Services to promulgate rules for the application of criminal records checks (71-3-507(m)).
<b>TEXAS</b>	For prospective adoptive parents, requires adoption report to include any criminal conviction records for a misdemeanor or felony classified as an offense against a person, offense against family, or public indecency offense, as well as any felony related to the control of possession or distribution of a substance (162.007 (9)). Allows for the Department

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## Appendix D: *Continued*

State	Summary of State Statutes
<b>TEXAS</b> <i>(continued)</i>	ment of Protective and Regulatory Services to establish rules that provide for denial of an application or renewal for a licensed foster home based on findings of a criminal history as a result of a background or criminal history check. (42.072).
<b>UTAH</b>	Checks required for prospective foster parents. Requires denial of license for any felony conviction and allows the department to adopt rules defining circumstances under which an applicant who has been convicted of a misdemeanor may provide foster care services (62A-2-120). Provides for required checks for prospective adoptive parents, but does not include any provisions defining eligibility of an applicant (78-30-3.5).
<b>VERMONT</b>	Requires check for all prospective adoptive parents. Refers to disqualifying record but does not list crimes (15A-VSA 1-113). Requires foster parents to be licensed (33 VSA 3501). Does not specify licensure requirements.
<b>VIRGINIA</b>	Prospective foster or adoptive parents shall not be approved if convicted of murder, malicious wounding by mob, abduction offenses, assault and bodily wounding, robbery, car jacking, extortion by threat, any felony stalking violation, sexual assault, arson, burglary, any felony violation relating to possession or distribution of drugs, drive by shooting, various weapon offenses, pandering, crimes against nature involving children, incest, taking indecent liberties with children, abuse and neglect of children, failure to secure medical attention for an injured child, obscenity offenses, possession of child pornography, electronic facilitation of pornography, abuse and neglect of incapacitated adults, employing or permitting a minor to assist in an act constituting an offense, various offenses related to prisoners, or an equivalent offense in another state and if the applicant has been convicted of any other felony in the five years prior to the application date. Above listed offenses apply to convictions received as an adult as well as to juvenile adjudications of delinquency based on an offense which would have been, at the time of conviction, a felony conviction if committed by an adult within or outside the Commonwealth (63.1-198.1).
<b>WASHINGTON</b>	Requires checks of prospective adoptive (26.33.190(3)) and foster parents (74.15.030(2)(b)). Requires Department of Social and Health Services to develop rules for minimum standards for licensure, including results of background checks (74.15.030(2)).
<b>WEST VIRGINIA</b>	Requires checks for certification or licensure of family day care homes, which under statute definitions includes foster homes (49-2B-8). Requires commissioner to develop rules for denying license (49-2B-4). Allows results of criminal background check to be included in court report regarding adoptive parents (48-4-9).
<b>WISCONSIN</b>	Provides that prospective foster parents and adoptive parents submit to a criminal records check. Prohibits granting of license to anyone convicted of or who has charges pending for a serious crime. Serious crimes are defined to include homicide, murder, assisting suicide, battery related offenses, sexual exploitation by the rapist, sexual assault, abuse of vulnerable adults, abuse of residents of penal facilities, various sex crimes against a child, physical abuse of a child, exposing a child to harmful material or harmful descriptions or narrations, possession of child pornography, neglecting a child, abduction of another's child, constructive custody (48.685).
<b>WYOMING</b>	No provisions regarding criminal records checks provided in statutes.

Sources: This table was based on a table produced by the National Conference of State Legislatures in 1999, ([www.ncsl.org/statefed/cf/criminal.cfm?stateselect='ALL'](http://www.ncsl.org/statefed/cf/criminal.cfm?stateselect='ALL')). In order to update and edit the information included in this table, Internet research was conducted through [www.FindLaw.com](http://www.FindLaw.com).  
 Note: This table was edited to only include information pertaining to the statutes regarding the eligibility of prospective adoptive and foster care parents.  
 Note: The information contained in this table includes state statutes enacted prior to December 31, 2001.

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