



STATE STATUTES

CURRENT THROUGH SEPTEMBER 2018

Background Checks for Prospective Foster, Adoptive, and Kinship Caregivers

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All States, the District of Columbia, Guam, the Northern Mariana Islands, and Puerto Rico have statutes or regulations requiring background investigations of prospective foster and adoptive parents and kinship caregivers. Many of these statutes also require background checks on any adult residing in the household of prospective foster and adoptive parents.

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State statutes requiring background checks are supported by Federal law in title IV-E of the Social Security Act.¹ Under Federal law, States are required to include in their title IV-E State plan provisions for completing all of the following:

- Criminal records checks, including fingerprint-based checks of national crime information databases, for any prospective foster or adoptive parent prior to approving the placement of a child, regardless of whether foster care maintenance payments or adoption assistance payments are to be made on behalf of the child
- Checks of any child abuse and neglect registry maintained by the State for information on any prospective foster or adoptive parent and on any other adult living in the home
- Checks of the child abuse and neglect registry of any other State in which a prospective parent or other adult has resided in the preceding 5 years
- Criminal records checks, including fingerprint-based checks of national crime information databases, on any relative guardian and any other adult living in the home of a relative guardian before the relative guardian may receive kinship guardianship assistance payments on behalf of the child

WHO NEEDS BACKGROUND CHECKS

In all States, the District of Columbia, Guam, and Puerto Rico, State laws require background checks be completed for all prospective foster and adoptive parents prior to the placement of a child in their home. Additional background checks also may periodically be required, such as, for example, when a foster parent renews his or her licensure.² Kinship caregivers typically must meet most of the same requirements for approval that nonrelative caregivers do, including background checks.³ However, laws in approximately 36 States and the District of Columbia specifically require background checks for prospective kinship caregivers.⁴ In addition, all adults residing in the home of a prospective foster or adoptive parent or kinship caregiver also are subject to background checks.

In addition, all States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands require background checks for owners, operators, and employees of child care facilities prior to assuming responsibility for the care of children and periodically thereafter for the duration of the person's employment. The entities that are included in the term "child care facilities" vary somewhat across the States, but the term can include family child care homes or child care centers;

¹ See 42 U.S.C. 671(a)(20) (2018).

² For adoptive parents, the requirement for repeat background checks ends when the adoption is finalized.

³ States are allowed to waive nonsafety-related requirements, such as the size of bedrooms, when approving the placement of a child with a kin caregiver.

⁴ The word "approximately" is used to stress the fact that States frequently amend their laws. The information in this publication is current as of September 2018. The States that require background checks for kin caregivers include Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington.

residential child care facilities or treatment centers; juvenile detention, correction, or treatment facilities; school-aged child care programs, nursery schools, and parent cooperative preschools; and youth recreation programs, including camps, 'Big Brother/Sister' programs, and scouting programs. Laws in 33 States, the District of Columbia, and Puerto Rico, also require checks for volunteers who will have direct contact with children at any of these facilities.⁵

Other persons who must complete background checks include the following:

- Any person residing with youth in a supervised independent living arrangement (in Indiana)
- Persons serving as mentors to transitioning youth (in Mississippi)
- Staff providing supervision and training for youth aged 16–20 who are in an independent living preparation program (in South Dakota)
- All adults residing in a child's home before the child can be reunited with his or her family (in Washington)

TYPES OF RECORDS THAT MUST BE CHECKED

A criminal records check refers specifically to a check of the individual's name in State, local, or Federal law enforcement agencies' records, including databases of records, for any history of criminal convictions. All States, the District of Columbia, and Guam require checks of State criminal records as part of the background investigation of prospective foster and adoptive parents and other caregivers. Nearly all States also require checks of national criminal records.⁶ In addition, eight States, the District of Columbia, and Guam require checks of conviction data from other States in which the applicant may have resided.⁷

All States, the District of Columbia, Guam, the Northern Mariana Islands, and Puerto Rico also require checks of the child abuse and neglect registries that are maintained by the State.⁸ In 35 States and the District of Columbia, checks of the child abuse and neglect registries of other States in which the applicant has resided during the previous 5 years also are required.⁹

⁵ In Alabama, Alaska, Arizona, Arkansas, California, Delaware, Florida, Georgia, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, and West Virginia.

⁶ Arkansas and Ohio require a national records check only when the applicant has resided in the State for less than 5 years. Vermont will require a national records check only when the State records check reveals no record of a conviction. West Virginia prescreens all applicants through all available criminal and civil databases and registries. If the prescreening reveals no disqualifying history, the applicant then must undergo a fingerprint-based State and national criminal records check.

⁷ Florida, Indiana, Louisiana, Montana, New York, Oregon, Vermont, and Wisconsin.

⁸ Alabama requires child abuse and neglect registry checks for prospective foster parents only.

⁹ Alaska, Arkansas, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

OTHER REQUIRED CHECKS

Some States require that checks of other types of records be included in the background investigation, including the following:

- State sex offender registries¹⁰
- The national sex offender registry¹¹
- Adult protective services records¹²
- Juvenile court records¹³
- Records of incidents of domestic violence¹⁴

In addition, Oklahoma and the District of Columbia may require checks of the child abuse registries maintained by any unit of the U.S. Armed Forces, Oklahoma and Utah require criminal records checks of appropriate sources for any person who has recently resided outside of the United States, and South Dakota requires a check of the child abuse investigation records of any Tribal program.

PROCESS FOR OBTAINING BACKGROUND CHECKS

Any person who is seeking approval to become a foster, adoptive, or kinship caregiver must submit an application for a criminal records check. The application may be submitted to the licensing agency or a local law enforcement agency. The application form will include the following:

- Information identifying the person, including the person's complete name, date of birth, race, sex, and Social Security number
- Photo identification that verifies the above information
- Two sets of properly executed fingerprints
- A statement of all of the person's criminal convictions other than minor traffic violations
- A signed statement permitting the release of the person's records

The completed application is forwarded to the State police. The State police will conduct the search of the State criminal records and coordinate the submission to the Federal Bureau of Investigation of fingerprints and other information needed for a search of national criminal records databases.

¹⁰ In 17 States (Alaska, Colorado, Connecticut, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, New Hampshire, Oklahoma, South Carolina, Tennessee, and Wyoming) and Puerto Rico.

¹¹ In 11 States (Alaska, Colorado, Connecticut, Illinois, Indiana, Kansas, Minnesota, Missouri, New Hampshire, South Carolina, and Wyoming) and the Northern Mariana Islands.

¹² In six States: Minnesota, Montana, Nebraska, Tennessee, Utah, and West Virginia.

¹³ In seven States: Idaho, Iowa, Minnesota, Montana, Tennessee, Utah, and Washington.

¹⁴ In Montana and New Jersey.

GROUND S FOR DISQUALIFICATION

If a State is placing a child in a foster, adoptive, or relative guardianship home under title IV-E, approval of the home may not be granted if a criminal records check reveals any of the following:

- 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 types of 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.¹⁵

All States, the District of Columbia, and Puerto Rico will disqualify an applicant if he or she or any household member has ever been convicted of any crime that raises concerns that the person poses a risk to the safety and well-being of a child. In all States, the District of Columbia, and Puerto Rico, an applicant may be disqualified if he or she has a child abuse registry record of substantiated or founded child abuse or neglect. In 21 States

and Puerto Rico, an applicant will not be approved if he or she or any person living in the home is listed on a sex offender registry.¹⁶

In addition, most States list in their statutes specific crimes that will lead to disqualification. For example, all States, the District of Columbia, and Puerto Rico will disqualify an applicant who has ever been convicted of felony child abuse or neglect; a crime against children, including child pornography; or a crime of violence, including rape, sexual assault, or homicide. A person who has ever been convicted of domestic violence will be disqualified in 42 States.¹⁷

In 26 States and the District of Columbia, an applicant will be disqualified if he or she has been convicted of physical assault or battery within the past 5 years.¹⁸ Illinois will not consider an applicant for approval until 10 years have elapsed since the date of conviction. In 13 States and Puerto Rico, a person who has ever been convicted of assault or battery will not be approved.¹⁹ In 36 States and the District of Columbia, an applicant will be disqualified if he or she has been convicted of drug-related crime within the past 5 years.²⁰ In nine States and Puerto Rico, a person who has ever been convicted of a drug-related crime will not be approved.²¹

¹⁵ See 42 U.S.C. 671(a)(20) (2018).

¹⁶ Alabama, Alaska, Arizona, California, Colorado, Delaware, Illinois, Iowa, Kansas, Kentucky, Michigan, Minnesota, Missouri, New Hampshire, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Vermont, and Virginia.

¹⁷ Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

¹⁸ Alabama, Alaska, Arkansas, California, Colorado, Florida, Hawaii, Indiana, Kentucky, Maine, Maryland, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

¹⁹ Arizona, Connecticut, Delaware, Georgia, Louisiana, Massachusetts, Mississippi, Missouri, New Hampshire, Ohio, Pennsylvania, Rhode Island, and South Carolina.

²⁰ Alabama, Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan (for a conviction within the past 7 years), Minnesota, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Dakota, Texas, Utah, Vermont, Virginia (for a conviction within the past 10 years), Washington, and Wisconsin.

²¹ Arizona, Illinois, Massachusetts, Mississippi, Ohio, Rhode Island, South Carolina, West Virginia, and Wyoming.

In 15 States, a person convicted of human, labor, or sex trafficking will not be approved.²² Louisiana, Texas, and Wisconsin will disqualify any person who has been convicted of committing an unregulated custody transfer of a child (which is also known as "rehoming"). In most States, other crimes—including any crime of violence, arson, kidnapping, illegal use of weapons or explosives, fraud, or forgery—or property crimes such as burglary and robbery may lead to disqualification.

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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.

²² Alaska, Arizona, Arkansas, Idaho, Indiana, Louisiana, Maryland, Michigan, New Hampshire, North Dakota, South Carolina, Texas, Utah, Virginia, and Wisconsin.



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