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# Obtaining Record Checks to Reduce Risk

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It is the nightmare of many administrators who work with children, elderly persons, or persons with disabilities: An employee or a volunteer harms a client, and examination of the offender's record reveals a conviction for similar conduct earlier. The administrator wonders whether she might have prevented the harm and whether her agency may be liable for damages.

One way that an agency can help prevent harm is by obtaining criminal record checks of employees, applicants for employment, and volunteers. The checks may identify persons potentially unfit for contact with vulnerable populations, and the fact that records are obtained may deter others. Should the agency obtain such records?

There is no simple answer. Many human services agencies routinely obtain record checks of employees, applicants, and volunteers as part of a risk management plan to control their liability and prevent harm to their clients. But obtaining records takes money, time, and effort, all of which probably are in limited supply in most human services agencies. As a result, the decision to obtain record checks almost always involves an agency in assessing its exposure to risk and in weighing the costs and the benefits of this part of its risk management strategy. This article describes

the various types of records available in North Carolina and the limitations on access to them.

## Types of Records

Generally, criminal record systems are based on either fingerprints or names. Fingerprint-based systems are indexed by assigning a unique number to each set of fingerprints received by the agency maintaining the records. A person may have criminal records under several names, but as long as the fingerprint is attached to the record of conviction, all the records can be matched. Fingerprint-based records are the most dependable because the method of identification itself is very reliable. But they are harder and more expensive to gather and retrieve than records based on names or other identifying information.

Name-based systems use names, dates of birth, Social Security numbers, addresses, and similar information to index criminal histories. Name-based records have the dual problem of aliases (different names used by one person) and duplications (one name used by two or more persons).

## Sources of Criminal Histories

North Carolina agencies may have access in varying degrees to five sources that contain all or part of a person's criminal history: Federal Bureau of Investigation (FBI) records, State Bureau of Investigation (SBI) records, court records, a sex offender registry, and driver records.

## FBI Records

FBI records cover the entire country, so they are especially helpful in searching for records on people who move around. The FBI receives records of criminal activity from federal agencies and crime and criminal history records from each state.<sup>1</sup> Federal law encourages each state to have a central agency responsible for maintaining criminal histories on those who commit crimes in its jurisdiction. In North Carolina that agency is the SBI, specifically the Division of Criminal Information. Because FBI records are largely derived from the states, they are no better than the records of the state agencies providing the data.

Access to FBI records is not available to the public. It is further restricted to certain types of agencies pursuing particular kinds of purposes. FBI records are based on fingerprints. The fee for a record check

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is \$24 for an employee or an applicant, \$18 for a volunteer. (To either figure, an agency should add \$14 because federal law mandates that the SBI conduct a state criminal record check before forwarding a request to the FBI.)

## SBI Records

SBI records, which go back to 1937, cover the activities of North Carolina's law enforcement agencies, correction agencies, and state courts.

The SBI receives its information from the clerks of superior court in the 100 counties of the state. Generally the clerks send records any time a person is fingerprinted, including instances in which a person is fingerprinted after a charge and then the charge is dismissed or the defendant found not guilty. However, there is no uniform state policy on the extent to which charges and convictions must be reported to the SBI. Instead, Article 86 of Chapter 15A of the North Carolina General Statutes (hereinafter G.S.) directs the senior superior court judge in each judicial district to issue a fingerprint policy specifying the kinds of cases for which fingerprints will be collected and sent to the SBI. Each policy must cover all felony charges and related convictions. Whether to include misdemeanor charges and related convictions is left to the judge promulgating the policy. G.S. 15A-502 prohibits the fingerprinting of persons charged with motor vehicle offenses that are Class 2 or 3 misdemeanors. It also prohibits fingerprinting of most juvenile delinquents.<sup>2</sup>

Like FBI records, SBI criminal history records are not public. Access to them is limited to law enforcement officers and other categories of persons specifically authorized by state statute (this is discussed in more detail later). The fee for an SBI search is \$14 for a fingerprint check, \$10 for a name check.

## Court Records

The clerk of superior court in each county maintains court records. The primary purposes of this system are to provide court officials with information to use in processing and disposing of cases and to keep a permanent record of court activities, not to document the criminal histories of particular persons. As a result, the system differs from the FBI and SBI systems in two important ways. The first is that the system is name based. (Often, however, it also includes date of birth, Social Security number, or address. Further, increasingly, as clerks of superior court send their

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Modern technology allows scanning of fingerprints into a computer (left). The old method of fingerprinting, still in widespread use, involves pressing the finger on an ink pad, then on paper (below).



reports on the disposition of cases to the SBI, they are attaching fingerprint-based identification numbers.)

Court records are, with very narrow exceptions,<sup>3</sup> public records, and each county's records are available for inspection in the clerk's office.

That leads to the second difference. The records are meant to aid the court system's work in a particular county. North Carolina has 100 counties, and the extent to which people move around the state to conduct their business, including their criminal business, significantly limits the value of county-based records.

The state's Administrative Office of the Courts maintains a statewide computer system that includes summary information on all kinds of cases, but it is in essence a collection of the 100 counties' records, with each county's data maintained separately. In that system it is technically possible to conduct a statewide name search, which will produce a summary of the activities involving a person matching that name. At present, however, this capability is not available to the public because of a lack of resources to manage the information system adequately. To improve public access to their particular county's court records, many clerk's offices have terminals dedicated to public use. There is no statewide policy on making such terminals available, so an interested person should contact the appropriate clerk's office to determine how to gain access to the records of a particular county.<sup>4</sup>

If no terminals are available to the public or if an agency needs a certified record, the clerk's staff can search the county's records for a specific name. The fee is \$5 per name. For such a search, the record produced will cover only the categories that the requesting agency specifies. For example, an agency may request a person's entire record—that is, convictions and charges. Short of that, it may request convictions

**Table 1**  
Organizations Authorized to Request Record Checks by the SBI

<b>Organization<sup>1</sup></b>	<b>Statutory Authority</b>	<b>People Covered</b>	<b>Authority Mandatory/ Discretionary</b>	<b>State/ National Records<sup>2</sup></b>	<b>Statutory Specification of Crimes to Check for<sup>3</sup></b>
Local boards of education	G.S. 115C-332, 114-19.2, -19.3	Applicants; contractors who do work normally done by employees; employees; and volunteers <sup>4</sup>	Discretionary; for applicants and contractors, school board must adopt policy	State only for employees and volunteers; both for applicants and contractors	Yes
Nonpublic schools	G.S. 114-19.2, 114-3	Employees, applicants, and volunteers	Discretionary	State only	No
Department of Health and Human Services	G.S. 114-19.2	Employees, applicants, and volunteers of schools operated by department	Discretionary	State only	No
State Board of Education	G.S. 115C-238.29.K	Charter school board members, employees, and applicants	Discretionary, but State Board must have policy	Both	Yes
Department of Health and Human Services	G.S. 110-90.2, 114-19.3, 114-19.5	Child care providers' employees and applicants in contact with children, and owners of covered facilities; family members over age 15 who are present in family child or nonlicensed child care home when children are present	Mandatory for employees and applicants, discretionary for volunteers	Both for employees and applicants; <sup>5</sup> state only for volunteers	Yes
Department of Health and Human Services	G.S. 131D-10.3A, 114-19.3, 114-19.4	Foster parents, applicants to be foster parents, and adults residing in foster care homes	Mandatory; annual recheck of state record also required	Both	Yes
Nursing homes and home care agencies licensed under G.S. 131E	G.S. 131E-265, 114-19.3	Nursing home employees who don't have occupational licenses and home health care employees who go into homes; volunteers	Mandatory to be employed; discretionary for volunteers	State only	Yes
Adult care homes licensed under G.S. 131D	G.S. 131D-40, 114-19.3	Employees of home and employees of contract agency dealing with home who don't have occupational licenses; and volunteers	Mandatory to be employed; discretionary for volunteers	State only	Yes
Hospice organizations	G.S. 114-19.3	Employees, applicants, and volunteers	Discretionary	State only	No
Child-placing agencies licensed under G.S. 131D and departments of social services	G.S. 114-19.3	Potential adoptive parents	Discretionary	State only	No
Residential child care facilities licensed under G.S. 131D	G.S. 114-19.3	Employees, applicants, and volunteers	Discretionary	State only	No
Department of Health and Human Services	G.S. 114-19.6	Employees and applicants in direct care giving positions, and their supervisors	Discretionary	Both <sup>6</sup>	Yes
Hospitals licensed under G.S. 131E or 122C	G.S. 114-19.3	Employees, applicants, and volunteers	Discretionary	State only	No
Area mental health authorities	G.S. 114-19.3	Employees, applicants, and volunteers	Discretionary	State only	No
Any other organization, profit or nonprofit, that provides direct care and services to children or to sick, disabled, or elderly persons	G.S. 114-19.3	Employees, applicants, and volunteers	Discretionary	State only	No

alone. Or it may request only criminal records and receive a report excluding infractions (which include most traffic violations).<sup>5</sup>

The court system's database also includes records on child support, financial matters, and civil actions. The portion of the system dealing with criminal records has been in place for the whole state since the late 1980s. Before that, the clerks kept paper records. These records are still available in each clerk's office, but there is no statewide computer index of them.

### Sex Offender Registry

The SBI also maintains a sex offender registry, which is a public record.<sup>6</sup> The law establishing the registry requires that persons released from prison after serving time for certain sex offenses, and persons on probation following conviction of such offenses, register with the sheriff in the county in which they reside (among other obligations). For agencies seeking records, the registry is a readily accessible source of this kind of information. They may check it at no charge in any sheriff's office or on the Internet at [www.sbi.jus.state.nc.us/sor](http://www.sbi.jus.state.nc.us/sor). The records are indexed by name, county, and zip code, and provide names, addresses, photographs, and information about the offenses for which the subjects were convicted.

### Driver Records

Driver records are available from the Division of Motor Vehicles. They contain information about convictions for motor vehicle offenses, driver's license sta-

tus, and accidents on which law enforcement officers have completed reports. Congress recently passed legislation prohibiting state licensing agencies from disclosing personal information about drivers.<sup>7</sup> Before that legislation, all material related to a person's driving history was a public record in North Carolina.<sup>8</sup> The legislation does not affect the ability of an employer to obtain a driver record on an employee, an applicant, or a volunteer if the employer requests the record by name and driver's license number.

There is a fee for each record check, as provided by statute. The amount is \$5 for an extract copy, \$7 for a certified copy.

### Legal Restrictions on Access to Records

As noted, some criminal histories are public. But the records least likely to result in misidentification, those of the FBI and the SBI, are not. Further, federal and state law strictly regulate access to them.

### Access to FBI Records

Access to FBI records is limited to federal and state law enforcement agencies, for criminal investigations; and to specified users, for purposes other than criminal investigations.<sup>9</sup> The rules that authorize access reflect a strong desire to protect the privacy of the subjects and a fear that the information in the records will be misused. To permit entities other than law enforcement agencies to have access to these records, a state must satisfy two separate legal steps:<sup>10</sup>

#### Notes to Table 1

1. In addition, various occupational licensing boards may have access to SBI records for checks of potential licensees. The occupations covered are attorneys, bail bondsmen, private protective services personnel, taxi drivers, and funeral directors. Of those, only the Board of Law Examiners, the entity that licenses attorneys, is authorized to have access to federal records.

2. If access to national criminal history records is authorized, fingerprints must be provided to the SBI because the FBI requires them before it will approve a state's access to federal records for this purpose.

3. In the rows in which this question is answered yes, the statute adopted by the General Assembly lists crimes that are to be considered by the requesting entity in determining if the person's criminal record disqualifies him or her to perform the duties of the position. In the rows in which this question is answered no, the requesting agency is free to determine which criminal offenses are appropriate to consider in assessing a person's fitness for a position.

4. G.S. 115C-332 authorizes record checks of applicants, contractors, and persons hired on a conditional basis pending the receipt of the record check. If a local school board uses this statute, it must adopt a policy uniformly applied for this purpose; it may not make ad hoc determinations. G.S. 114-19.2, however, authorizes the SBI to provide record checks on employees of public schools with the consent of the employee. Only G.S. 115C-332 has received federal approval, so record checks on employees performed under G.S. 114-19.2 are limited to state checks only.

5. For employees and applicants who have lived in North Carolina for the past five years, only a state check is required. For those who have not, a national check is required if the state check does not disqualify the person from serving as a child care provider.

6. For employees and applicants who have not lived in North Carolina continuously for the preceding five years, a national check is required if requested by the department.

1. The legislature must enact a state statute that (a) specifically authorizes the use of FBI records, (b) specifies that only local or state government employees may review the record checks, (c) is not overly broad, (d) identifies the specific category of applicants (that is, the people whose fingerprints agencies will submit to determine whether they have criminal histories) who are covered, and (e) requires that the applicants be fingerprinted.
2. The U.S. Attorney General's Office must review the statute to be sure it meets the criteria just stated. Only when that office grants formal approval of the statute is access authorized.

[After this article was written, Congress passed a law that modifies the preceding requirements.]<sup>11</sup>

In the Child Protection Act of 1993 and the Violent Crime Control and Law Enforcement Act of 1994, Congress mandated that states report certain crimes of which children, elderly persons, and persons with disabilities were victims.<sup>12</sup> It also made clear that states may have access to the federal criminal histories of persons who are employed, who seek employment, or who volunteer to serve those populations. The two acts, and the regulations issued to interpret them, do not change the basic requirements for gaining access to federal records—as noted earlier, the state legislature enacting a statute on the subject and the U.S. Attorney General's Office approving the statute. In North Carolina such a statute is in place for employees of or applicants to child care and certain nursing home agencies but not for volunteers serving in those (or any other) fields.

### Access to SBI Records

As stated earlier, SBI criminal histories are not public records.<sup>13</sup> But the General Assembly, a local government, or the governor—by statute, by ordinance, or by executive order, respectively—may authorize various types of agencies to have access to SBI records of criminal activity in North Carolina only.<sup>14</sup> (For a list of all the kinds of agencies authorized by statute to search state criminal records and the authority granted to each kind of agency, see Table 1. For information on qualifying for access under one of the statutes, see page 39.)

When the General Assembly enacts statutes grant-

ing access to SBI criminal histories, it has a choice: It may authorize access to North Carolina records only, which is a matter completely within its control. Or it also may authorize access to FBI records. (Again, though, the federal government must approve the statutory authorization for it to become effective.) Given that choice, the General Assembly clearly prefers to grant access to state records only. It has passed more than twenty statutes of this kind, only five of which also authorize access to federal records.<sup>15</sup> Most of the statutes permit but do not require a record check. Only two, those covering child care workers and foster parents, require checks of both state and federal records.

Many agencies take advantage of the access that they are granted. In 1992 the SBI conducted about 11,000 fingerprint checks and about 550 name checks (checks in which the requesting party did not provide fingerprints of the person to be checked) for noncriminal purposes. In 1997 it conducted about 80,000 fingerprint checks and about 40,000 name checks.

The increase in requests from 1992 to 1997 was not accompanied by a corresponding increase in staff. Thus it inevitably led to slower checks. As a result, by 1997, noncriminal fingerprint searches conducted by the SBI took almost 120 days, and name searches slightly more than 100 days. If an agency also requested a check of FBI records, that took several additional weeks. In 1998 technological improvements and addition of some staff members enabled the SBI to reduce its backlog significantly and shorten its response time.<sup>16</sup> By August 1998 the turnaround time for fingerprint checks was 22 working days, for name checks, 12 working days.<sup>17</sup>

One of the reasons for the increase in the SBI's workload since 1992 has been the General Assembly's promotion of record checks in one of the most sensitive areas in which records are used—staffing of day care centers. The General Assembly's approach illustrates the policy choices it faces: whether to make a record check mandatory or optional for agencies, how to define the agencies to be covered, whether to include state records only or state and federal records, and whether to specify the kinds of crimes to be checked or leave that to the agencies. The General Assembly's approach also highlights the effect of federal law on its policy choices. The following example focuses on child care workers. (Again, for a list of all kinds of human services agencies authorized to search

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state criminal records and the authority granted to each kind, see Table 1.)

### Day Care: An Illustration

Many parents fear that the facility providing care for their preschool children will not do its job adequately. Responding to that fear, the General Assembly has sought in recent years to do all it can to keep child abusers from working in such a facility. Meanwhile Governor James B. Hunt's emphasis on preschool education and care led to the creation of the state's Partnership for Children (also known as Smart Start). That program provided significant new funding for preschool care in the state, often using nonprofit agencies. So growing concern and rapidly expanding day care services increased the pressure for the General Assembly to improve the record check system for day care workers.

First, the General Assembly had to decide whether to make record checks discretionary or mandatory. It opted for the latter. Then it had to determine what agencies would be covered. It chose a fairly broad definition: all child care facilities that must be licensed by the state and any nonlicensed facilities that are approved for government funding to provide day care.

The next decision the General Assembly faced was whether to require a check of state records only or to require a check of state and federal records. Given the mobility of Americans, the first option might miss a lot of relevant criminal activity, so the legislature opted for the broader database. But that option led to another choice, posed directly by federal requirements. For an agency to have access to federal records, the recipient of the record must be a government employee. Many, if not most, child care workers are employees of nonprofit or private organizations, who cannot be authorized to see federal criminal records. To comply with federal law, the General Assembly would have to designate a government agency to assume responsibility for examination of the records. It chose to do so.<sup>18</sup>

That duty falls to the Division of Child Development of the Department of Health and Human Services. The division uses an internal review panel to determine if the records show a person to be unfit for work in child care. The only statutory guidance given to the division in making its decision is that it should consider certain specified crimes that bear "upon an individual's fitness to have responsibility for the safety

and well-being of children": homicides, sexual offenses, assaults, kidnapping, bombings, offenses against public morality, prostitution, protection of minors offenses, public intoxication, drug possessions, sale of alcohol to minors, and impaired-driving offenses.<sup>19</sup>

The preceding list may not include all the crimes one might think should be considered in that it omits several categories: robbery, larceny, arson, embezzlement, fraud, and most traffic offenses. If crimes in these categories appear in a person's criminal history and are relevant to the Division of Child Development's determination, the legislature will have to address the problem because the legislature listed the crimes that should be considered. For agencies that review records themselves, comprehensiveness is not an issue because the report they receive from the SBI contains all convictions (and possibly some charges that did not result in convictions) in its database for the person checked.

Further, the statutory list may include some offenses that are not always appropriate to consider. Presumably it would keep a person from being declared fit whose conviction was minor, was unrelated to the job sought or held, and occurred many years previously. For example, both of the following persons would have records covered by the list of offenses: (1) a person convicted two years earlier of child molestation while working at a day care center and (2) a person whose job does not include driving a vehicle, who had an impaired driving conviction twenty years earlier at age eighteen. No one would argue that the first person was fit to work in a child care center. But many would contend that the record of the second person did not make him unfit.

That is the kind of assessment the Division of Child Development must make. The solution often is not clear. In statutes covering other kinds of agencies, by contrast, the legislature has provided explicit guidance to the people who make similar determinations. For example, G.S. 114-19.6 allows the Department of Health and Human Services to obtain record checks on employees and applicants. If a check reveals a record, the statute directs the department to consider the following factors in determining whether the conviction is cause to deny an applicant or terminate an employee:

- The level (that is, misdemeanor or felony, and class of felony) and the seriousness of the crime

**Table 2**  
Types and Features of Record Checks

County Court Record Check	AOC Statewide Record Check	SBI Name Check	SBI Fingerprint Check	FBI Fingerprint Check	Private Contractor Check
<p>Description</p> <p>Public record Name-based identification</p> <p>County-by-county search</p> <p>All records not documented by fingerprints</p>	<p>Not available to public at this time</p> <p>Name-based identification</p> <p>All counties, on county-by-county basis</p> <p>County clerks began entering records in mid 1980s</p>	<p>Not public record</p> <p>Name-based identification</p> <p>Fingerprint-supported system</p> <p>N.C. statewide check</p> <p>Access limited by state and federal law</p>	<p>Not public record</p> <p>Fingerprint-based identification</p> <p>N.C. statewide check</p> <p>Access limited by state and federal law</p>	<p>Not public record</p> <p>Fingerprint-based identification</p> <p>State and national check</p> <p>Access limited by state and federal law</p>	<p>Public record</p> <p>Name-based identification</p> <p>Criminal records available through public record search</p> <p>Fee—market price</p>
<p>Information Available</p> <p>Criminal charges in county</p> <p>Criminal convictions in county</p> <p>Some infractions in county</p> <p>Other court activity in county</p> <p>Civil actions in county</p> <p>Final court action in county</p> <p>Certified public records</p>	<p>Only records that have been automated</p> <p>N.C. criminal court files</p> <p>Felonies</p> <p>Misdemeanors</p> <p>Traffic offenses</p> <p>Some infractions</p> <p>Unserved warrants</p> <p>Final court action</p> <p>Defendant and witness court schedule</p>	<p>Records available from 1937 on</p> <p>All felonies since 1982 that were reported by fingerprints</p> <p>Most serious misdemeanors that were reported by fingerprints</p> <p>More than 900,000 people in database</p> <p>Custody information</p> <p>Final court action linked to arrest data</p> <p>Crimes against children, elderly people, and disabled people, and hate crimes since 1997</p> <p>State and National Wanted Person check</p>	<p>Records available from 1937 on</p> <p>Positive fingerprint identification</p> <p>All felonies since 1982 that were reported by fingerprints</p> <p>Most serious misdemeanors that were reported by fingerprints</p> <p>More than 900,000 people in database</p> <p>Custody information</p> <p>Final court action linked to arrest data</p> <p>Crimes against children, elderly people, and disabled people, and hate crimes fingerprinted since 1997</p> <p>State and National Wanted Person check</p>	<p>State and federal criminal records reported by fingerprints</p> <p>Positive fingerprint identification</p> <p>Multimillion-person database</p> <p>Records retained until states purge</p> <p>National Wanted Person check</p>	<p>All public record information located and made available</p>
<p>Information Not Available</p>	<p>Not all court records available</p> <p>No positive identification</p> <p>Certified public records</p> <p>Other states' criminal records</p> <p>Federal criminal records</p> <p>Some records documented by fingerprints</p>	<p>No positive identification unless fingerprints submitted to verify record</p> <p>Criminal records not reported by fingerprints</p> <p>Certified public records</p> <p>Other states' criminal records</p> <p>Federal criminal records</p> <p>Traffic offenses</p> <p>Local records</p> <p>AOC records</p>	<p>Criminal records not reported by fingerprints</p> <p>Certified public records</p> <p>Other states' criminal records</p> <p>Federal criminal records</p> <p>Traffic offenses</p> <p>Local records</p> <p>AOC records</p>	<p>Criminal records not reported by fingerprints</p> <p>Certified public records</p> <p>Other state and federal records not reported by fingerprints</p> <p>Local records</p>	<p>No positive identification</p> <p>Some records may be fingerprint supported</p> <p>Records not verified by fingerprints</p> <p>State and National Wanted Person check</p> <p>Records more than seven years old*</p>

Availability of Check	Available to everyone	Available to most court or justice agencies through terminal access Not available to non-criminal-justice agencies or public at this time	Available to criminal justice agencies with "need to know" and "right to know" for administration of criminal justice (no fee) Available to non-criminal-justice agencies and government agencies if authorized by law Not available to public without statutory approval	Available to criminal justice agencies with "need to know" and "right to know" for administration of criminal justice (no fee) Available to local and state government officials if approved by U.S. Attorney General Not available to public	Available to anyone willing to pay for service
Identifiers	Name, age, or date of birth Race, sex, Social Security number, if available	Name, age, or date of birth Race, sex, Social Security number, if available	Name, race, sex, date of birth, place of birth, Social Security number, driver's license number, alias names, dates of birth, Social Security numbers Descriptors: height, weight, skin tone, hair color, eye color	Name, race, sex, date of birth, place of birth, Social Security number, driver's license number, alias names, dates of birth, Social Security numbers Descriptors: height, weight, skin tone, hair color, eye color	Name, age, date of birth, or Social Security number

AOC = Administrative Office of the Courts; SBI = State Bureau of Investigation; FBI = Federal Bureau of Investigation  
 \*Fair Credit Reporting Act restriction

- The date of the crime
- The age of the person at the time of the offense
- The circumstances surrounding commission of the crime
- The connection between the criminal conduct and job duties
- The prison, probation, rehabilitation, and employment records of the person since the crime was committed
- Any subsequent criminal history

Although none of those factors dictate a particular result, they offer guidance to the decision makers.

A review by the Division of Child Development rarely results in a finding of unfitness. In the division's first two years of reviewing, it processed more than 22,000 records and made fewer than 70 findings of unfitness.<sup>20</sup>

When the division does determine that a person is unfit, it notifies the employer and the employee or the applicant of its decision, but it does not reveal the details of the record to either party. That would violate federal law, which prohibits disclosure of federal criminal records. The division may, however, tell the employer that the record check reveals the person to be unsuitable for employment as a child care worker. The employee or the applicant may challenge the accuracy of the result by contacting the SBI to obtain a copy of the record and then either raising his or her concerns about it with the SBI or filing a civil action to contest the finding of unfitness.

Suppose the record check cannot be returned for several months.<sup>21</sup> Many agencies will not be able to function if they must delay hiring decisions until they receive record checks. As a result, they hire people while waiting for the record checks. To address this issue, Division of Child Development regulations require the employer to obtain a check of the local court's criminal records before seeking the SBI record check. Although the day care statute is silent on hiring people while waiting, G.S. 114-19.6, which deals with record checks involving Department of Health and Human Services employees and applicants, allows the department to make conditional offers of employment pending the results of a criminal record check. Any child care agency might adopt that policy.



## Steps to Qualify for and Obtain Access to SBI Records

1. An agency must provide proof that it qualifies for access under a specific statute. If the agency is licensed by a government agency (for example, as a health care provider), it must submit a copy of the license. If the agency is not licensed, it must provide some documents showing proof of qualification.
2. The administrator of the agency must make a request on official letterhead. The request should identify the statute under which access is sought and specify who should receive invoices for applicable fees. It also should indicate the names, addresses, and telephone numbers of employees authorized to receive criminal history information from the SBI.
3. The administrator must complete, sign, date, and have notarized a copy of SBI's Access Agreement. The agreement contains detailed information about the obligations of the agency seeking access and specifies the procedures to be followed.
4. When access is authorized, to obtain a record check, the agency must submit a release form signed by the employee, the applicant, or the volunteer on whom it wants a check. If the agency is requesting a fingerprint check, it should provide fingerprints for the person, in a format suitable for analysis by the SBI.

For more information, contact the SBI, DCI/Identification Section, P.O. Box 29500, Raleigh, NC 27626-0500, (919) 662-4500.

### Strategies for Managing Risk

An agency required by law to obtain record checks, or one with a policy of using them, should consider pursuing other strategies to reduce its risk while its requests for record checks are being processed. Among those strategies are job assignments that minimize the opportunity for unsupervised contact with vulnerable populations, clear job descriptions and training, reference checks, applications that require specific details about previous job history, and checks of more accessible records.

The most likely source of more accessible records is the local court system. As noted, child care agencies must obtain this kind of record check initially. Other agencies may do so as well. Court records can be very helpful as a component of a risk management system. But knowing their limitations is important. For example, understanding that court records are not fingerprint based, an agency should make a diligent effort to obtain as much other information as possible—address, former addresses, Social Security number, date of birth, and race—to verify that the record it obtains is that of the appropriate person. This approach may minimize the problem of multiple people with the same name. The court records sometimes note aliases used, and that information may help in dealing with people who attempt to hide a record by changing names. For people who have not resided in a particular county for several years, a record check in that county will be of little value. A check of a previous county where the person resided, and its neighboring counties, may be more useful.

Finally, for a fee, some private companies will conduct record checks. Their searches typically draw on

court and other public records, but the time an agency saves by not doing the research itself may make the service worth the cost. In dealing with private companies, an agency should know what it is getting. Questions that may be useful to ask are these:

- What is the source of the records the company searches?
- Does the company's search cover the entire state? Does it include all crimes?
- How does the company deal with aliases or people with the same name?
- What time frame does the report cover?
- If the search covers out-of-state offenses, what is the source of the records?

### Conclusion

Criminal record checks can be an effective part of an agency's risk management program. All the record systems have limitations (for a summary of their limitations and other significant features, see Table 2). SBI and FBI records are not available to all agencies, and when they are, they are more costly than other records, take longer to obtain, and require fingerprinting of the person to be checked. They also do not include some misdemeanor records. Court records are freely available and cost less to obtain but are limited to a county's records and do not have as reliable a means of identification as the fingerprint-based SBI and FBI records. The sex offender registry and the Division of Motor Vehicles driver records are limited to fairly narrow kinds of conduct, but if those are relevant, the records may be an effective alternative source of information.

Given the options available to an agency interested in using criminal record checks, it should make some judgments about the kinds of records it needs. For example, if a person will have lots of unsupervised contact with vulnerable populations, then spending time and money on SBI or FBI record checks makes sense if they are legally available. Consulting other sources of information in the meantime is advisable because there may be a delay in the receipt of the record. On the other hand, if there is little risk that the employee, the applicant, or the volunteer will have such contact, no checks or minimal local checks may be sufficient. The important thing is to make a conscious choice about the level of risk involved and to adopt a record check policy that does not rely unjustifiably on this practice but takes advantage of its value as a deterrent and a screening device.

## Notes

1. Crime records reveal the number of crimes committed or reported, criminal history records the criminal activities of individuals.

2. Effective July 1, 1999, G.S. 7B-2102 authorizes fingerprinting of juveniles ten years of age or older who commit certain serious felonies.

3. Among the records not available for public inspection are juvenile records, G.S. 7A-675; adoption records, G.S. 48A-9-102; and records of involuntary commitment proceedings, G.S. 122C-54.

4. G.S. 7A-109(d) and (e) authorize the Administrative Office of the Courts to contract with other entities to allow third parties to have remote electronic access to court records. The office has not exercised that authority.

5. G.S. 7A-308(a)(20).

6. G.S. 14-208.10.

7. Driver's Privacy Protection Act of 1994, 18 U.S.C.A. § 2721. According to press reports, the legislation was passed to make it more difficult to obtain information about a person's identity and place of residence by using a vehicle registration number.

8. G.S. 20-26.

9. Pub. L. No. 92-544; 28 C.F.R. § 20.33.

10. David Evans, acting assistant director, Criminal Justice Information Services Division, Federal Bureau of Investigation, to All Fingerprint Contributors, letter, July 17, 1995.

11. The Volunteers for Children Act, Pub. L. No. 105-251, codified at 42 U.S.C. §§ 5119(a) and (c), became law on October 9, 1998. It amends the Child Protection Act of 1993 (see note 12) to allow any entity covered by that act (providers responsible for the safety and the well-being of children, elderly persons, and persons with disabilities) to apply for FBI record checks, even if no state statute authorizes the request. The entity must make the request to an "authorized agency of the State" (in North Carolina, the SBI) and follow the other guidelines for requesting national

record checks, including having a government official designated by the state review the result of the check. At press time, state officials had made no decisions on how to implement this new law in North Carolina.

12. Child Protection Act of 1993, Pub. L. No. 103-209, 107 Stat. 2490; Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796. Those laws did not affect the manner in which or the extent to which North Carolina reported criminal records to the FBI because the state already was reporting the crimes specified to the FBI.

13. No state law exempts these records from the state's Public Records Law, G.S. 132-1 through -10, but under federal regulations, disclosure is prohibited, and under the Supremacy Clause of the United States Constitution (art. VI, sec. 2), states are bound by federal law even if a state law would provide a different result.

14. The criteria that a law (a statute, an ordinance, or an executive order) must meet to receive approval for authorizing a particular type of user are that it must specify who is subject to it, require the applicant to provide necessary identification, specify the government agency responsible for implementing it, and identify the criteria that will be used to deny a permit, employment, and so forth. Also, the law should specify its purpose and define in its own body or in another official document any words that are vague or subject to interpretation.

15. Under North Carolina law, the only categories of persons for whom agencies may request an FBI criminal history are public school employees, child care providers, foster parents, direct care givers in Department of Health and Human Services facilities, and charter school board members and employees. See Table 1.

16. The SBI hired temporary workers, authorized large amounts of overtime, and encouraged the use of equipment at the local level to send fingerprints electronically instead of by the traditional fingerprint cards. Stan Lewis, director, Identification Section, Criminal Records Division, SBI, telephone conversation with author, Aug. 28, 1998.

17. Lewis, telephone conversation. Those turnaround times do not include applicants to be child care workers. For more discussion on that issue, see notes 16 and 17 and accompanying text.

18. The applicable provision, G.S. 110-90.2(b), requires federal record checks (in addition to state record checks) for child care providers who have not resided in North Carolina continuously for the last five years.

19. G.S. 110-90.2. Offenses against public morality include incest, crimes against nature, obscenity offenses, indecent exposure, and indecent liberties with children. Protection of minors offenses include child abuse, giving weapons to minors, and unsafe storage of firearms.

20. Anna Carter, Division of Child Development, Department of Health and Human Services, telephone conversation with author, Aug. 7, 1998.

21. In fiscal years 1996-98, the average time for completing record checks for child care workers was more than a year, but in recent months that time has been reduced dramatically. The SBI's goal is to reduce it to no more than two months. Carter, telephone conversation. ☐