

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1095

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to amend and reenact sections 50-11.3-02, 50-12-02, 50-12-03, and
2 50-12-03.1 and subsection 1 of section 50-12-03.2 of the North Dakota Century Code, relating
3 to criminal history record investigations for foster care licensure or licensure as a child-placing
4 agency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 50-11.3-02 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **50-11.3-02. Criminal history record investigation - Effect of results.**

9 1. An individual may not be licensed or approved as a foster parent or treated as
10 having a home suitable for the adoption of any child other than the individual's
11 stepchild and a foster care facility that employs or houses an individual may not be
12 licensed or approved, if the individual is the subject of a criminal history record
13 investigation that reveals:

14 ~~4.~~ a. A felony conviction by a court of competent jurisdiction for criminal conduct
15 involving:

16 ~~a.~~ (1) Child abuse or neglect;

17 ~~b.~~ (2) Domestic violence, as that term is used in chapter 14-07.1;

18 ~~c.~~ (3) A crime in which a child was a victim, including the creation or
19 distribution of child pornography; or

20 ~~d.~~ (4) A crime involving violence, including rape, sexual assault, or murder,
21 but not including other physical assault or battery;

22 ~~2.~~ b. A felony conviction entered within the past five years by a court of competent
23 jurisdiction for criminal conduct involving:

24 ~~a.~~ (1) A crime involving violence not described in ~~subsection 4 subdivision a;~~

- 1 ~~b-~~ (2) Any drug-related offense; or
- 2 ~~e-~~ (3) An attempt, facilitation, solicitation, or conspiracy to commit criminal
- 3 conduct described in ~~subsection 1~~ subdivision a;
- 4 ~~3-~~ c. A felony conviction entered by a court of competent jurisdiction for criminal
- 5 conduct described in ~~subsection 2~~ subdivision b if five years have not elapsed
- 6 after final discharge or release from any term of probation, parole, or other
- 7 form of community corrections, without subsequent conviction, unless the
- 8 individual demonstrates sufficient rehabilitation; or
- 9 ~~4-~~ d. A felony conviction entered by a court of competent jurisdiction for criminal
- 10 conduct described in ~~subsection 2~~ subdivision b or a misdemeanor conviction
- 11 by a court of competent jurisdiction for a crime in which a child was the victim
- 12 or a crime of violence if the individual is not sufficiently rehabilitated.
- 13 2. The department, in accordance with section 50-11-02, may adopt rules, using this
- 14 section as a minimum requirement, to determine whether to deny or revoke a
- 15 foster care facility's license, in accordance with section 50-11-07, if that facility
- 16 houses or employs an individual who has a criminal record.
- 17 3. The department, in accordance with chapter 50-12, may adopt rules, using this
- 18 section as a minimum requirement, to determine whether an individual or an
- 19 individual's home is suitable for the adoption of any child through a child-placing
- 20 agency.

21 **SECTION 2. AMENDMENT.** Section 50-12-02 of the North Dakota Century Code is

22 amended and reenacted as follows:

23 **50-12-02. Child-placing agency licensed - Rules.** Every child-placing agency shall

24 secure a license from the department of human services. The department shall adopt rules

25 establishing the requirements for licensure as a child-placing agency.

26 **SECTION 3. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is

27 amended and reenacted as follows:

28 **50-12-03. Requirements for license licensure and employment - Term - Moral or**

29 **religious conviction not bar to licensure or employment.** The department of human

30 services shall issue licenses for the conduct of child-placing agencies upon application. A

31 child-placing agency shall require a criminal history record investigation on the owner and each

1 employee of a child-placing agency who has direct contact with families, with children, or with
2 both. The department of human services shall consider any criminal history record information
3 available about the owner at the time a licensing decision is made and about an employee prior
4 to the owner or the employee having direct contact with families, with children, or with both.

5 Licenses must be granted for a period not exceeding two years. Licenses must be issued to
6 reputable and responsible applicants upon a showing that they, and their agents, are equipped
7 properly by training and experience to find and select suitable temporary or permanent homes
8 for children and to supervise the homes when children are placed in them, to the end that the
9 health, morality, and general well-being of children placed by them will be properly
10 safeguarded. The department of human services may not deny a license because of the
11 applicant's objection to performing, assisting, counseling, recommending, facilitating, referring,
12 or participating in a placement that violates the applicant's written religious or moral convictions
13 or policies.

14 **SECTION 4. AMENDMENT.** Section 50-12-03.1 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **50-12-03.1. Conviction not bar to licensure or employment - Exceptions.**

17 Conviction of an offense does not disqualify a person from licensure or employment under this
18 chapter unless the department of human services determines that the offense has a direct
19 bearing upon a person's ability to serve the public as the owner or ~~proprietor~~ employee of a
20 child-placing agency, or that, following the person's conviction of any offense, the person is not
21 sufficiently rehabilitated under section 12.1-33-02.1.

22 **SECTION 5. AMENDMENT.** Subsection 1 of section 50-12-03.2 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 1. A child-placing agency shall include, in any adoptive home study report, the results
25 of a criminal history record investigation made under this section. If the results
26 reveal a conviction of a crime described in chapter 50-11.3 or determined by the
27 department to have a direct bearing upon the person's ability to provide a suitable
28 home for placement of any child, or the department determines, following
29 conviction of any other offense, the person is not sufficiently rehabilitated under
30 section 12.1-33-02.1, the home study report must include a determination that a
31 home provided by the prospective adoptive parent is not a suitable home for the

- 1 placement of any child and a recommendation that the petition for adoption be
- 2 denied. A child-placing agency shall consider any criminal history record
- 3 information available when making a recommendation in a home study report.