

Sixty-first  
Legislative Assembly  
of North Dakota

Introduced by

(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, 50-12-03.1,  
2 and 50-12-03.2, of the North Dakota Century Code, relating to criminal history record  
3 investigations for foster care licensure or licensure or licensure as a child-placing agency.

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

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

7 **50-11.3-02. Criminal history record investigation - Effect of results.**

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

12 ~~4-~~ a. A felony conviction by a court of competent jurisdiction for criminal conduct  
13 involving:

14 ~~a-~~ (1) Child abuse or neglect;

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

16 ~~c-~~ (3) A crime in which a child was a victim, including the creation or  
17 distribution of child pornography; or

18 ~~d-~~ (4) A crime involving violence, including rape, sexual assault, or murder,  
19 but not including other physical assault or battery;

20 ~~2-~~ b. A felony conviction entered within the past five years by a court of competent  
21 jurisdiction for criminal conduct involving:

22 ~~a-~~ (1) A crime involving violence not described in subsection 1;

23 ~~b-~~ (2) Any drug-related offense; or

e. (3) An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in subsection 1;

~~3.~~ c. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 if five years have not elapsed after final discharge or release from any term of probation, parole, or other form of community corrections, without subsequent conviction, unless the individual demonstrates sufficient rehabilitation; or

~~4.~~ d. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in subsection 2 or a misdemeanor conviction by a court of competent jurisdiction for a crime in which a child was the victim or a crime of violence if the individual is not sufficiently rehabilitated.

2. The department, in accordance with section 50-11-02, may adopt rules, using this section as a minimum requirement, to determine whether to deny or revoke a foster care facility's license, in accordance with section 50-11-07, if that facility houses or employs an individual who has a criminal record.

3. The department, in accordance with chapter 50-12, may adopt rules, using this section as a minimum requirement, to determine whether an individual or an individual's home is suitable for the adoption of any child through a child placing agency.

**SECTION 2. AMENDMENT.** Section 50-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-02. Child-placing agency licensed.** Every child-placing agency shall secure a license from the department of human services. The department shall adopt rules establishing the requirements for licensure as a child-placing agency.

**SECTION 3. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is amended and reenacted as follows:

**50-12-03. Requirements for ~~license~~ licensure and employment - Term - Moral or religious conviction not bar to licensure.** The department of human services shall issue licenses for the conduct of child-placing agencies upon application. A child placing agency shall require a criminal history record investigation on the owner and each employee of a child placing agency who has direct contact with families, with children, or with both. The department

1 of human services shall consider any criminal history record information available about the  
2 owner at the time a licensing decision is made and about an employee prior to the owner or the  
3 employee having direct contact with families, with children, or with both. Licenses must be  
4 granted for a period not exceeding two years. Licenses must be issued to reputable and  
5 responsible applicants upon a showing that they, and their agents, are equipped properly by  
6 training and experience to find and select suitable temporary or permanent homes for children  
7 and to supervise the homes when children are placed in them, to the end that the health,  
8 morality, and general well-being of children placed by them will be properly safeguarded. The  
9 department of human services may not deny a license because of the applicant's objection to  
10 performing, assisting, counseling, recommending, facilitating, referring, or participating in a  
11 placement that violates the applicant's written religious or moral convictions or policies.

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

14 **50-12-03.1. Conviction not bar to licensure or employment - Exceptions.**

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

20 **SECTION 5. AMENDMENT.** Section 50-12-03.2 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **50-12-03.2. Criminal history record investigation required.**

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

denied. A child-placing agency shall consider any criminal history record information available when making a recommendation in a home study report.

2. A child-placing agency shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any prospective adoptive parent and any adult living in the prospective adoptive parent's household. Upon a request of a child-placing agency, a law enforcement agency shall take fingerprints of any prospective adoptive parent and any adult living in the prospective adoptive parent's household for purposes of this section. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the cost of fingerprinting.

3. The child-placing agency shall assure that information obtained under subsection 2 is provided to the department of human services and shall arrange payment to the bureau of criminal investigation sufficient to defray the cost of securing criminal history record information under this section.

4. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department of human services shall submit those fingerprints and that information to the bureau of criminal investigation.

5. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department of human services. The bureau of criminal investigation shall also provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.

6. The department of human services shall provide the child-placing agency with any information, received under this section from the bureau of criminal investigation, that the department of human services is not prevented by federal law from disclosing to the child-placing agency.

7. The department of human services may adopt emergency rules under this section without the finding otherwise required under section 28-32-02.

- 1           8.   A criminal history record investigation completed under this section may be used to
- 2               satisfy the criminal history record investigation requirements of sections 50-11-06.8
- 3               and 50-11.3-01.