

**HOUSE BILL NO. 1102**

Introduced by

Human Services Committee

(At the request of the Department of Human Services)

1 A BILL for an Act to create and enact a new section to chapter 50-11 of the North Dakota  
2 Century Code, relating to criminal history record investigation on identified relatives; to amend  
3 and reenact subdivision f of subsection 2 of section 12-60-24, section 25-03.2-03.1,  
4 subsection 9 of section 43-12.1-04, subsection 21 of section 50-06-05.1, subsection 1 of section  
5 50-11-00.1, and sections 50-11-00.1, 50-11-01, 50-11-02.3, and 50-11-06.8 of the North Dakota  
6 Century Code, relating to criminal history record checks on identified relatives, residential child  
7 care facilities, qualified residential treatment program, supervised independent living program,  
8 approved foster care facilities, moratorium, and criminal history records investigation; and to  
9 provide an effective date.

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

11 **SECTION 1. AMENDMENT.** Subdivision f of subsection 2 of section 12-60-24 of the North  
12 Dakota Century Code is amended and reenacted as follows:

13 f. The department of human services for foster care licenses ~~and~~ approvals, and  
14 identified relatives under chapter 50-11, appointments of legal guardians under  
15 chapter 50-11.3, and petitions for adoptions under chapter 50-12, except that the  
16 criminal history record investigation must be conducted in accordance with those  
17 chapters. A criminal history record investigation completed under chapter 50-11,  
18 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history  
19 record investigation under either of the other two chapters.

20 **SECTION 2. AMENDMENT.** Section 25-03.2-03.1 of the North Dakota Century Code is  
21 amended and reenacted as follows:

1           **25-03.2-03.1. Moratorium on expansion of psychiatric residential treatment facility for**  
2 **children bed capacity - Exchange of bed capacity.**

- 3           1. Notwithstanding sections 25-03.2-03 and 25-03.2-08, unless a needs assessment  
4           conducted by the department indicates a need for the licensing of additional bed  
5           capacity, the department may not issue a license under this chapter for any additional  
6           bed capacity for a psychiatric residential treatment facility for children above the  
7           state's gross number of beds licensed as of June 30, 2003. This subsection does not  
8           apply to nor prohibit the department from licensing additional bed capacity for a new  
9           psychiatric residential treatment facility for children if the additional beds are  
10          designated for the care of children and adolescents who are residents of other states.  
11          2. Notwithstanding subsection 1, the department may develop a policy to:  
12          a. Exchange ~~residential-child care facility~~qualified residential treatment program bed  
13          capacity licensed under chapter 50-11 with psychiatric residential treatment  
14          facility bed capacity; or  
15          b. Exchange psychiatric residential treatment facility bed capacity with ~~residential-~~  
16          ~~child care facility~~qualified residential treatment program bed capacity licensed  
17          under chapter 50-11.

18           **SECTION 3. AMENDMENT.** Subsection 9 of section 43-12.1-04 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20          9. A person that provides medications, other than by the parenteral route:  
21          a. Within a correctional facility, in compliance with section 12-44.1-29;  
22          b. Within a psychiatric residential treatment facility for children licensed under  
23          chapter 25-03.2 and North Dakota Administrative Code chapter 75-03-17;  
24          c. Within a treatment or care center for individuals with developmental disabilities  
25          licensed under chapter 25-16;  
26          d. Within a group home, a ~~residential-child care facility~~qualified residential treatment  
27          program, or an adult foster care facility licensed under section 50-11-01 ~~of North-~~  
28          ~~Dakota Administrative Code chapter 75-03-16~~;  
29          e. Within the life skills and transition center, to the extent the individual who  
30          provides medications is a direct training technician or a vocational training  
31          technician as approved by the department of human services;

- 1           f.    Within a human service center licensed under chapter 50-06; or
- 2           g.    Within a primary or secondary school under a program established under section
- 3                15.1-19-23 if the individual has received education and training in medication
- 4                administration and has received written consent of the student's parent or
- 5                guardian.

6           **SECTION 4. AMENDMENT.** Subsection 21 of section 50-06-05.1 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8           21.   To administer, allocate, and distribute any funds made available for the payment of  
9                ~~transitional~~supervised independent living services, to develop standards ~~and conduct~~  
10               ~~needs assessments~~ regarding ~~transitional~~a supervised independent living services, ~~to~~  
11               ~~develop or approve and to evaluate demonstration projects offering transitional living~~  
12               ~~programs~~program, to approve ~~transitional~~supervised independent living  
13               ~~facilities~~services for the purpose of providing foster care placement, and to apply for  
14               and administer federal and other funds that may be made available to undertake any  
15               of the activities described in this subsection. ~~For purposes of this subsection:~~

- 16           a.    ~~"Transitional living facility" means a specific site, which is identified by a licensed~~  
17               ~~child-placing agency or residential child care facility and which is approved by the~~  
18               ~~department, for the provision of transitional living services.~~
- 19           b.    ~~"Transitional living program" means a program that provides transitional living~~  
20               ~~services and may include an identified program operations location approved by~~  
21               ~~the department.~~
- 22           c.    ~~"Transitional living services" may include housing, supervision, and supportive~~  
23               ~~services intended and designed to assist persons who have received foster care~~  
24               ~~services and who have reached age seventeen, but who have not reached age~~  
25               ~~twenty-one, to achieve independence and self-sufficiency.~~

26           **SECTION 5. AMENDMENT.** Subsection 1 of section 50-11-00.1 of the North Dakota  
27 Century Code is amended and reenacted as follows:

- 28           1.    "Approval" means the approval by the department, upon submission of tribal licensing  
29               standards or in the absence of tribal licensing standards compliance with state  
30               standards, of a ~~home of a Native American family~~facility located on or near, as defined  
31               by the tribe, a recognized Indian reservation in North Dakota ~~or of a facility owned by~~

1           the tribe or a tribal member and located on a recognized Indian reservation in North-  
2           Dakota, not subject to the jurisdiction of the state of North Dakota for licensing  
3           purposes, to allow the home or facility to receive title IV-E funding.

4           **SECTION 6. AMENDMENT.** Section 50-11-00.1 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **50-11-00.1. Definitions.**

7           As used in this chapter:

- 8           1. "Approval" means the approval by the department, upon submission of tribal licensing  
9           standards or in the absence of tribal licensing standards compliance with state  
10           standards, of a facility located on or near, as defined by the tribe, a recognized Indian  
11           reservation in North Dakota, not subject to the jurisdiction of the state of North Dakota  
12           for licensing purposes, to allow the facility to receive title IV-E funding.
- 13           2. "Authorized agent" means the county social service board, unless another entity is  
14           designated by the department.
- 15           3. "Department" means the department of human services.
- 16           4. "Facility" means a foster home for adults, family foster home for children, ~~group-~~  
17           ~~homesupervised independent living program~~, or ~~residential child care facility~~qualified  
18           residential treatment program for children.
- 19           5. "Family foster home for children" means an occupied private residence in which foster  
20           care for children is regularly provided by the owner or lessee ~~thereof~~of the residence  
21           to no more than ~~four~~six children, ~~unless all the children in foster care are related to~~  
22           ~~each other by blood or marriage or unless the department approves otherwise for the~~  
23           ~~placement of siblings, in which case the limitation in this subsection does not apply.~~
- 24           6. "Foster care for adults" means the provision of food, shelter, security and safety,  
25           guidance, and comfort on a twenty-four-hour per day basis, in the home of a caregiver,  
26           to a ~~person~~an individual age eighteen or older, who is unable, neglects, or refuses to  
27           provide for the ~~person's~~individual's own care.
- 28           7. "Foster care for children" means the provision of substitute parental child care for  
29           those children who are in need of care for which the child's parent, guardian, or  
30           custodian is unable, neglects, or refuses to provide, and includes the provision of food,  
31           shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one

1 or more children under twenty-one years of age to safeguard the child's growth and  
2 development and to minimize and counteract hazards to the child's emotional health  
3 inherent in the separation from the child's family. Foster care may be provided in a  
4 family foster home, ~~group homes~~supervised independent living program, or qualified  
5 ~~residential child care facility~~treatment program.

6 8. "Foster home for adults" means an occupied private residence in which foster care for  
7 adults is regularly provided by the owner or lessee of the residence, to four or fewer  
8 adults who are not related by blood or marriage to the owner or lessee, for hire or  
9 compensation.

10 9. "~~Group home~~" means a licensed or approved residence in which foster care is  
11 regularly provided to at least four, but fewer than thirteen, unrelated children.

12 10. "~~Residential child care facility~~" means a licensed or approved facility other than an  
13 occupied private residence providing foster care to thirteen or more unrelated children,  
14 except as may be otherwise provided by rule or regulation "Identified relative" means:

15 a. The child's grandparent, great-grandparent, sibling, half-sibling, aunt, great-aunt,  
16 uncle, great-uncle, nephew, niece, or first cousin;

17 b. An individual with a relationship to the child, derived through a current or former  
18 spouse of the child's parent, similar to a relationship described in subdivision a;

19 c. An individual recognized in the child's community as having a relationship with  
20 the child similar to a relationship described in subdivision a; or

21 d. The child's stepparent.

22 10. "Qualified residential treatment program" means a licensed or approved residence  
23 providing an out-of-home treatment placement for children.

24 11. "Supervised independent living program" means a licensed or approved setting  
25 providing supervision and service delivery to youth transitioning into adulthood.

26 **SECTION 7. AMENDMENT.** Section 50-11-01 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **50-11-01. Foster care for children - License or approval required.**

29 ~~No person~~

30 1. A person may not furnish foster care for children for more than thirty days during a  
31 calendar year without first procuring a license or approval to do so from the

1 department. The mandatory provisions of this section requiring licensure or approval  
2 do not apply when the care is provided in:

3 1. a. The home of a ~~person related to the child by blood or marriage~~ identified  
4 relative.

5 2. b. A home or institution under the management and control of the state or a political  
6 subdivision.

7 3. c. A home or facility furnishing room and board primarily to accommodate the child's  
8 educational or career and technical education needs.

9 A person

10 2. An individual providing care under subdivision a of subsection 1 shall submit to a  
11 criminal history record investigation as required under section 50-11-06.8.

12 **SECTION 8. AMENDMENT.** Section 50-11-02.3 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **50-11-02.3. ~~Moratorium on expansion of~~ Maximum qualified residential child care**  
15 **~~facility or group home~~ treatment program bed capacity.**

16 Notwithstanding sections 50-11-02 and 50-11-09, ~~unless a needs assessment conducted by~~  
17 ~~the department indicates a need for the licensing of additional bed capacity,~~ the department  
18 ~~may not issue a license under this chapter for any additional bed capacity for a residential child~~  
19 ~~care facility or a group home above the state's gross number of beds licensed as of June 30,~~  
20 ~~2003~~ shall determine the maximum number of licensed qualified residential treatment program  
21 bed capacity for children based upon a needs assessment conducted by the department.

22 **SECTION 9. AMENDMENT.** Section 50-11-06.8 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **50-11-06.8. Criminal history record investigation - Fingerprinting required.**

25 1. Each facility providing foster care for children shall secure, from a law enforcement  
26 agency or any other agency authorized to take fingerprints, two sets of fingerprints and  
27 shall provide all other information necessary to secure state criminal history record  
28 information and a nationwide background check under federal law from:

29 a. Any individual employed by, or providing care in, the facility; and

30 b. Any adult living in the facility, but not being provided care in the facility.

- 1       2. Each identified relative, at the request by the department, shall secure, from a law  
2       enforcement agency or any other agency authorized to take fingerprints, two sets of  
3       fingerprints and shall provide all other information necessary to secure state criminal  
4       history record information and a nationwide background check under federal law from  
5       any adult living in the home of the identified relative.
- 6       3. The facility or identified relative shall assure that information obtained under  
7       ~~subsection 1~~subsections 1 and 2 is provided to the department.
- 8       ~~3.4.~~ Upon receipt of all fingerprints and necessary information relating to a license-  
9       ~~request~~criminal history record investigation, the department shall submit the  
10       information and fingerprints to the bureau of criminal investigation. The department  
11       shall provide a copy of ~~any~~the state criminal history record information response  
12       received from the bureau of criminal investigation to the facility, public agency, or  
13       authorized agent making the request.
- 14       ~~4.5.~~ The bureau of criminal investigation shall request a nationwide background check from  
15       the federal bureau of investigation and, upon receipt of a response, provide the  
16       response of the federal bureau of investigation to the department. The bureau of  
17       criminal investigation also shall ~~also~~ provide any criminal history record information  
18       that may lawfully be made available under chapter 12-60 to the department.
- 19       ~~5.6.~~ Upon request by the operators of a facility, employees of a facility, or identified relative,  
20       a law enforcement agency shall take fingerprints of ~~persons~~individuals described in  
21       this section if the request is made for purposes of this section.
- 22       ~~6.7.~~ The department shall pay the cost of securing fingerprints, any criminal history record  
23       information made available under chapter 12-60, and a nationwide background check.
- 24       ~~7.8.~~ An agency that takes fingerprints as provided under this section may charge a  
25       reasonable fee to offset the costs of the fingerprinting.
- 26       ~~8.9.~~ Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall  
27       secure from a law enforcement agency or any other agency authorized to take  
28       fingerprints two sets of fingerprints and all other information necessary to secure state  
29       criminal history record information and a nationwide background check under federal  
30       law from:

- 1           a. Any individual employed by, or providing care in, an adult family foster care  
2           facility; and  
3           b. Any adult living in an adult family foster care facility, but not being provided care  
4           in the facility.
- 5    ~~9-10.~~ A criminal history record investigation completed under this section may be used to  
6           satisfy the criminal history record investigation requirements of sections 50-11.3-01  
7           and 50-12-03.2.

8           **SECTION 10.** A new section to chapter 50-11 of the North Dakota Century Code is created  
9 and enacted as follows:

10           **Identified relative - Criminal history record investigation.**

- 11           1. The department may require an identified relative and any adult living in the home of  
12           the identified relative to go through a criminal history record investigation pursuant to  
13           section 50-11-06.8.
- 14           2. If the department requires a criminal history record investigation pursuant to  
15           subsection 1, the department shall consider an identified relative and any adult living  
16           in the home of the identified relative as a family foster home for children applicant,  
17           family foster home for children provider, or members of the family foster home for  
18           children for the purpose of determining the impact of the individual's criminal history  
19           record investigation on the individual's ability to provide foster care for children.

20           **SECTION 11. EFFECTIVE DATE.** Section 5 of this Act becomes effective August 1, 2019.  
21 The remainder of this Act becomes effective on October 1, 2019.