

2009 HOUSE HUMAN SERVICES

HB 1095

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1095

House Human Services Committee

Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6828 9 min. 43 sec. 6829 2 min. 36 sec.

Committee Clerk Signature

*Vicky Crabtree*

Minutes:

**Chairman Weisz:** Committee called to order on HB 1095. Anyone in support of bill?

**Julie Hoffman , Administrator of the ND Department of Human Services Adoption**

**Services:** Testified in support of bill. **See attached Testimony.**

**Chairman Weisz:** Any questions from the committee?

**Representative Potter:** Is there a possibility of something we are looking at as far as (inaudible)?

**Julie Hoffman:** It's always been a difficult (inaudible) to decide where some individuals could be (inaudible) foster care, but (inaudible) adoption by not for foster care because we have so many different statutes and rules. And it has been very difficult for those who interpret the criminal history results to determine which statute (inaudible) applies to which individual. We are looking for authority (inaudible) consistency to (inaudible) for all of the (inaudible).

**Representative Kilichowski:** Is there additional costs to the counties or did you (inaudible)?

**Julie Hoffman:** Currently (inaudible) costs for criminal background checks (inaudible) foster care providers and (inaudible) guardians (inaudible) custodians criminal background checks.

Adoption (inaudible) background checks are actually (inaudible) and still there will be additional costs (inaudible).

**Chairman Weisz:** Thank you. Anymore support here for HB 1095? Anyone here in opposition of HB 1095?

**Kathy Roll from Attorney General's Office:** Only here to provide information. This fiscal impact in our office will be about \$345,000, and you will get that information

**Chairman Weisz:** Thank you. Are there any questions?

**Representative Hofstad:** Are we going to get bogged down into a time issue here that there will be a lull between time of application or, is that going to be an issue?

**Kathy Roll:** The reason for the fiscal note is because we will need additional staff to provide the background checks.

**Chairman Weisz:** Thank you. Any further questions? Any in opposition on 1095? If not, we will close the hearing on HB 1095.

**Chairman Weisz:** Let's take up HB 1095.

**Representative Potter:** Brought up the amount of the fiscal note. She thought it was comparable to (inaudible).

**Chairman Weisz:** Wasn't sure it was comparable. Stated they will wait for fiscal note. We will recess until 9:55 a.m.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1095

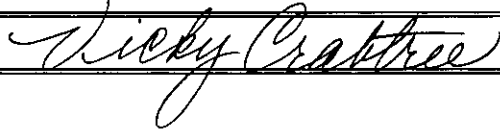
House Human Services Committee

Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6943 4 min. 33 sec.

Committee Clerk Signature



Minutes:

**Chairman Weisz:** Let's take up HB 1095. If you can recall the testimony on the bill, it was indicated that it might have a roughly a \$40 million fiscal note. Your fiscal notes in front of you will show zero. I called her about it and she is comfortable with the bill that basically there will be no more background checks than the department is currently doing. Even though the bill does seem to expand, the department has pretty much already been doing that. The AG office talked with the Human Services and she said they are comfortable with that fiscal note. That it will not add additional costs. We could take a look at 1095.

**Representative Hofstad: Motion to adopt 1095.**

**Representative Conrad: Second**

**Committee Roll Call was taken with 13 yeas 0 no and 0 absent to pass HB 1095.**

**Representative Kilichowski: Bill Carrier**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/12/2009

Bill/Resolution No.: HB 1095

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill provides consistency in interpretation of criminal history results between the foster care and adoption programs.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill will require fingerprint-based criminal history background checks for approximately 2,400 entities per year. After further discussion with the Department of Human Service it was discovered the 2,400 entities per year are current, rather than new, background checks. As a result, there is no anticipated fiscal impact from this bill.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A

<b>Name:</b>	Kathy Roll	<b>Agency:</b>	Office of Attorney General
<b>Phone Number:</b>	328-3622	<b>Date Prepared:</b>	01/12/2009

Date: 1-13-09

Roll Call Vote #:

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1095**

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Rep. Hofstad Seconded By Rep. Conrad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN ROBIN WEISZ	✓		REP. TOM CONKLIN	✓	
VICE-CHAIR VONNIE PIETSCH	✓		REP. KARI L CONRAD	✓	
REP. CHUCK DAMSCHEN	✓		REP. RICHARD HOLMAN	✓	
REP. ROBERT FRANTSVOG	✓		REP. ROBERT KILICHOWSKI	✓	
REP. CURT HOFSTAD	✓		REP. LOUISE POTTER	✓	
REP. MICHAEL R. NATHE	✓				
REP. TODD PORTER	✓				
REP. GERRY UGLEM	✓				

Total (Yes) 13 No 0

Absent 0

Bill Carrier Rep. Kilichowski

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
January 13, 2009 4:24 p.m.

**Module No: HR-06-0260**  
**Carrier: Kilichowski**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1095: Human Services Committee (Rep. Weisz, Chairman) recommends DO PASS**  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1095 was placed on the  
Eleventh order on the calendar.

2009 SENATE JUDICIARY

HB 1095



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1095

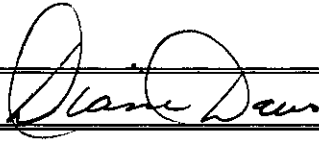
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/18/09

Recorder Job Number: 9652

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

**Relating to criminal history record investigations for foster care licensure or licensure as a child-placing agency.**

**Julie Hoffman** – Administrator of Adoption Services for ND Dept. of Human Services

See written testimony.

**Senator Nething** – He mentions in the fiscal note there is no impact so obviously they are not dealing with a lot of new people.

**Hoffman** – Replies no, less than 50 individuals on a one time occurrence that would be offset by the less criminal background checks done in foster care currently because the Adam Walsh bubble has past.

**Senator Nething** – States, in a nutshell there is not a whole lot changed here.

**Hoffman** – No, they would just like the consistency between foster care and adoption.

**Senator Fiebiger** – In terms of this process what is the cost of these background checks and who pays this.

**Hoffman** – Says it is currently \$47.25 per individual for the cost, paid for by the department if it is a foster care provider, if it's an adoption family they pay for their own background check, it is a child placing agency that is paid for by the applicant.

**Hoffman** – Says they believe the real change here is to add that direct bearing language to the adoption statute so they can be consistent between foster care and adoption.

**Senator Lyson** – Asks to hear what criminal history wouldn't have a direct bearing on the person's ability to serve as a foster care person.

**Hoffman** – Gives examples, such as driving infractions, or writing bad checks.

Close the hearing on 1095

**Senator Lyson** motions do pas

**Senator Schneider** seconds

Vote – 6-0

**Senator Nething** will carry

Date: 2/18/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

1095

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  Do Pass  Do Not Pass  Amended

Motion Made By Senators Lyson Seconded By Senator Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment Senator Nething

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1095: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1095 was placed on the  
Fourteenth order on the calendar.

2009 TESTIMONY

HB 1095

**HB 1095 – Department of Human Services**  
**House Human Services Committee**  
**January 12, 2009**

Chairman Weisz and members of the House Human Services Committee, I am Julie Hoffman, Administrator of Adoption Services for the ND Department of Human Services. Thank you for the opportunity to provide testimony for HB 1095. The Department supports a do pass on HB 1095.

The Department has introduced this bill regarding criminal background checks in order to provide consistency in the interpretation of criminal history results between the foster care and adoption programs. This bill will also require fingerprint criminal background checks for employees of licensed child placing agencies who have direct contact with children and families and require the Department to consider such results when licensing the agency.

As background for our discussion today, there are a number of statutes and rules that govern the criminal background check process for foster care and adoption. The process for these criminal background checks are laid out in NDCC 50-11 for foster care, and 50-12 for adoption. NDCC 50-11.3 speaks to such background checks for guardianship purposes and to the effect of the results of the background check (the interpretation). These sections were implemented after the passage of the Adoption and Safe Families Act of 1997, a federal law which implemented fingerprint based checks for prospective foster and adoptive parents. The Adam Walsh Act (2006) made fingerprint based criminal background checks and multi-state CPS registry checks a requirement for all states. In addition to statute, there is administrative code which provides additional guidance for criminal background checks as they relate to foster care,

residential child care facilities and psychiatric residential treatment facilities. Having these various statutes and rules has provided a challenge to the Department in consistently interpreting criminal history results across foster care, guardianship and adoption programs. This bill seeks to provide the authority to further clarify these issues in administrative rule, and to bring some helpful interpretive language into the adoption statute.

Section One of the bill provides two new paragraphs that would allow the Department to adopt rules under NDCC 50-11.3 related to criminal background checks for foster care and adoption using this section as a minimum requirement for determinations to deny or revoke a foster care license or determining suitability for adoption.

Section Two of the bill provides authority for the Department to adopt rules establishing the requirements for licensure for child-placing agencies. Currently, there are no administrative rules related to licensure for child placing agencies.

Section Three requires child placing agencies to request criminal background checks for all employees who have direct contact with children and families. It additionally requires the Department to consider any criminal history record information available regarding the owner, prior to licensing an agency and prior to an employee having direct contact with families and children. Most of the child placing agencies currently licensed in North Dakota do conduct some type of criminal background check for their employees on a voluntary basis. This provision would require that they do so, and would require the Department to consider the criminal history information in licensing.

Section Four provides that a criminal history does not disqualify a person from employment in a child placing agency unless the Department determines that the criminal history has a direct bearing on the person's ability to serve or the person is not sufficiently rehabilitated.

Section Five introduces language currently found in foster care regulation regarding "direct bearing offenses". This provision directly relates to the consistent interpretation of criminal history results between foster care and adoption programs. Both foster care and adoption look to NDCC 50-11.3 to interpret the results of a criminal history background check. This section outlines a number of violent and child-related crimes which preclude individuals from being licensed for foster care or approved to adopt. In addition, administrative code instructs the Department in listing additional offenses which are considered to have a "direct bearing" on individuals' ability to serve as a foster care provider. Adoption does not have such an administrative code. Therefore, it is not uncommon for an individual with certain criminal history (assault, numerous DUI, etc) to be precluded from being licensed for foster care but not precluded for adoption purposes. It is these inconsistencies that we are attempting to deal with in this section by adding the "direct bearing" language to licensed child placing agency (adoption agency) statute.

The Department supports a do pass on HB 1095. Thank you for your time today and I would be happy to answer any questions you might have.



Attachment 1  
HB 1095

**HB 1095 – Department of Human Services  
Senate Judiciary Committee  
January 18, 2009**

Chairman Nething and members of the Senate Judiciary Committee, I am Julie Hoffman, Administrator of Adoption Services for the ND Department of Human Services. Thank you for the opportunity to provide testimony for HB 1095. The Department supports a do pass on HB 1095.

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As background for our discussion today, there are a number of statutes and rules that govern the criminal background check process for foster care and adoption. The process for these criminal background checks are laid out in N.D.C.C. chapter 50-11 for foster care, and chapter 50-12 for adoption. N.D.C.C. chapter 50-11.3 speaks to such background checks for guardianship purposes and to the effect of the results of the background check (the interpretation). These sections were implemented after the passage of the Adoption and Safe Families Act of 1997, a federal law which implemented fingerprint-based checks for prospective foster and adoptive parents. The Adam Walsh Act (2006) made fingerprint based criminal background checks and multi-state Child Protection Services (CPS) registry checks a requirement for all states. In addition to statute, there are rules that provide additional guidance for

criminal background checks as they relate to foster care, residential child care facilities, and psychiatric residential treatment facilities. Having these various statutes and rules has provided a challenge to the Department in consistently interpreting criminal history results across foster care, guardianship, and adoption programs. This bill seeks to provide the authority to further clarify these issues in administrative rule, and to bring some helpful interpretive language into the adoption statute.

Section One of the bill provides two new paragraphs that would allow the Department to adopt rules under N.D.C.C. chapter 50-11.3 relating to criminal background checks for foster care and adoption, using this section as a minimum requirement for determinations to deny or revoke a foster care license or determining suitability for adoption.

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Section Five introduces language currently found in foster care regulation regarding "direct bearing offenses". This provision directly relates to the consistent interpretation of criminal history results between foster care and adoption programs. Both foster care and adoption look to N.D.C.C. chapter 50-11.3 to interpret the results of a criminal history background check. This section outlines a number of violent and child-related crimes that preclude individuals from being licensed for foster care or approved to adopt. In addition, administrative rule instructs the Department in listing additional offenses considered to have a "direct bearing" on an individual's ability to serve as a foster care provider. Adoption does not have such an administrative rule. Therefore, it is not uncommon for an individual with certain criminal history (assault, numerous DUI, etc.) to be precluded from being licensed for foster care, but not precluded for adoption purposes. It is these inconsistencies that we are attempting to deal with in this section by adding the "direct bearing" language to the licensed child-placing agency (adoption agency) statute.

The Department supports a do pass on HB 1095. Thank you for your time today and I would be happy to answer any questions you might have.