

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1095  
(Human Services Committee)  
(At the request of the Department of Human Services)

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

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

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

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

1. An individual may not be licensed or approved as a foster parent or treated as having a home suitable for the adoption of any child other than the individual's stepchild and a foster care facility that employs or houses an individual may not be licensed or approved, if the individual is the subject of a criminal history record investigation that reveals:
  1. a. A felony conviction by a court of competent jurisdiction for criminal conduct involving:
    - a. (1) Child abuse or neglect;
    - b. (2) Domestic violence, as that term is used in chapter 14-07.1;
    - c. (3) A crime in which a child was a victim, including the creation or distribution of child pornography; or
    - d. (4) A crime involving violence, including rape, sexual assault, or murder, but not including other physical assault or battery;
  2. b. A felony conviction entered within the past five years by a court of competent jurisdiction for criminal conduct involving:
    - a. (1) A crime involving violence not described in ~~subsection 4~~ subdivision a;
    - b. (2) Any drug-related offense; or
    - c. (3) An attempt, facilitation, solicitation, or conspiracy to commit criminal conduct described in ~~subsection 4~~ subdivision a;
  3. c. A felony conviction entered by a court of competent jurisdiction for criminal conduct described in ~~subsection 2~~ subdivision b 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~~ subdivision b 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 - Rules.** 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 or employment.** 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 of human services shall consider any criminal history record information available about the owner at the time a licensing decision is made and about an employee prior to the owner or the employee having direct contact with families, with children, or with both. Licenses must be granted for a period not exceeding two years. Licenses must be issued to reputable and responsible applicants upon a showing that they, and their agents, are equipped properly by training and experience to find and select suitable temporary or permanent homes for children and to supervise the homes when children are placed in them, to the end that the health, morality, and general well-being of children placed by them will be properly safeguarded. The department of human services may not deny a license because of the applicant's objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the applicant's written religious or moral convictions or policies.

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

**50-12-03.1. Conviction not bar to licensure or employment - Exceptions.** Conviction of an offense does not disqualify a person from licensure or employment under this chapter unless the department of human services determines that the offense has a direct bearing upon a person's ability to serve the public as the owner or ~~proprietor~~ employee of a child-placing agency, or that, following the person's conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

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

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

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1095.

House Vote:      Yeas    93      Nays    0      Absent    1

Senate Vote:    Yeas    46      Nays    0      Absent    1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2009.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2009,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State