

Introduced by

Senators Casper, Nelson, Poolman

Representatives Delmore, Dockter, Karls

1 A BILL for an Act to amend and reenact sections 12-60-07.1, 12-60-16.1, 12-60-16.2,  
2 12-60-16.6, and 12-60-16.9, subsection 1 of section 12-60-24, and subsection 7 of section  
3 12.1-32-15 of the North Dakota Century Code, relating to criminal history record information and  
4 registration for offenders against children and sex offenders.

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

6 **SECTION 1. AMENDMENT.** Section 12-60-07.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **12-60-07.1. Automated ~~fingerprint~~biometric data identification system.**

9 The bureau may establish and maintain an automated ~~fingerprint~~biometric data  
10 identification system for this state. The bureau may cooperate with other states for the operation  
11 of a regional automated ~~fingerprint~~biometric data identification system.

12 **SECTION 2. AMENDMENT.** Section 12-60-16.1 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14 **12-60-16.1. Definitions.**

15 As used in ~~sections 12-60-16.1 through 12-60-16.10~~this chapter and in section 12.1-32-15,  
16 unless the context otherwise requires:

17 1. "Biometric data" includes fingerprints, palm prints, voice prints, retinal or iris images,  
18 facial recognition, and DNA profiles.

19 2. "Bureau" means the bureau of criminal investigation.

20 ~~2.3.~~ "Court" means the supreme court, district courts, and municipal courts of the North  
21 Dakota judicial system.

22 ~~3.4.~~ "Criminal history record" means the compilation of criminal history record information  
23 of a person reported to the bureau in accordance with this chapter.

1     ~~4-5.~~ "Criminal history record information" includes information collected by criminal justice  
2           agencies on individuals consisting of identifiable descriptions and notations of arrests,  
3           detentions, indictments, information, or other criminal charges, any dispositions arising  
4           therefrom, sentencing, correctional supervision, and release.

5     ~~5-6.~~ "Criminal justice agency" means any government law enforcement agency or entity  
6           authorized by law to provide information regarding, or to exercise the powers of,  
7           arrest, detention, prosecution, correctional supervision, rehabilitation, or release of  
8           persons suspected in, charged with, or convicted of, a crime.

9     ~~6-7.~~ "Disseminate" means to transmit criminal history record information in any oral or  
10          written form. The term does not include:  
11          a.    The transmittal of the information within a criminal justice agency.  
12          b.    The reporting of the information as required by section 12-60-16.2.  
13          c.    The transmittal of the information between criminal justice agencies in order to  
14                permit the initiation of subsequent criminal justice proceedings against a person  
15                relating to the same offense.

16     ~~7-8.~~ "Noncriminal justice agency" means an entity that is not a criminal justice agency.

17     ~~8-9.~~ "Record subject" means the person who is the primary subject of a criminal history  
18          record. The term includes any representative designated by that person by power of  
19          attorney or notarized authorization. If the subject of the record is under legal disability,  
20          the term includes that person's parents or duly appointed legal representative.

21     ~~9-10.~~ "Reportable event" means an interaction with a criminal justice agency for which a  
22          report is required to be filed under section 12-60-16.2. The term includes only those  
23          events in which the subject of the event is an adult or a juvenile adjudicated as an  
24          adult.

25           **SECTION 3. AMENDMENT.** Section 12-60-16.2 of the North Dakota Century Code is  
26    amended and reenacted as follows:

27           **12-60-16.2. Criminal history record information - Reportable events.**

28           Except as otherwise provided in sections 12-60-16.1 through 12-60-16.10, each criminal  
29    justice agency shall report to the bureau the information described in this section for each felony  
30    and reportable offense so designated pursuant to section 12-60-16.4. The bureau may require  
31    the criminal justice agency to provide the information in a manner that the bureau determines to

1 be the most efficient or accurate means of collection. The following criminal justice agencies  
2 shall perform the duties indicated:

- 3 1. Except as otherwise provided in this subsection, each criminal justice agency that  
4 makes an arrest for a reportable offense shall, with respect to that offense and the  
5 person arrested, furnish to the bureau the ~~fingerprints~~necessary biometric data,  
6 charges, and descriptions of the person arrested. If the arrest is made by a criminal  
7 justice agency that is a state law enforcement agency, then, on request of the  
8 arresting agency, a sheriff or jail administrator shall ~~take~~collect the  
9 ~~fingerprints~~necessary biometric data. The arresting agency shall then furnish the  
10 required information to the bureau. If a decision is made not to refer the arrest for  
11 prosecution, the criminal justice agency making that decision shall report the decision  
12 to the bureau. A criminal justice agency may make agreements with other criminal  
13 justice agencies for the purpose of furnishing to the bureau information required under  
14 this subsection.
- 15 2. The prosecuting attorney shall notify the bureau of all charges filed, including all those  
16 added after the filing of a criminal court case, and whether charges were not filed in  
17 criminal cases for which the bureau has a record of an arrest.
- 18 3. After the court pronounces sentence for a reportable offense, and if the necessary  
19 biometric data of the person being sentenced has not been ~~fingerprinted~~collected with  
20 respect to that case, the prosecuting attorney shall ask the court to order a law  
21 enforcement agency to ~~fingerprint~~collect the necessary biometric data from that  
22 person. If the court determines that the necessary biometric data of the person being  
23 so sentenced has not previously been ~~fingerprinted~~collected for the same case, the  
24 court shall order the ~~fingerprints taken~~necessary biometric data to be collected from  
25 that person. The law enforcement agency shall forward the ~~fingerprints~~necessary  
26 biometric data to the bureau.
- 27 4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the  
28 bureau all final dispositions of criminal cases for which the bureau has a record of an  
29 arrest or a record of ~~fingerprints~~biometric data reported under subsection 3. For each  
30 charge, this information must include at least the following:

- 1 a. Judgments of not guilty, judgments of guilty including the sentence pronounced
  - 2 by the court, discharges, and dismissals in the trial court;
  - 3 b. Reviewing court orders filed with the clerk of the court which reverse or remand a
  - 4 reported conviction or which vacate or modify a sentence; and
  - 5 c. Judgments terminating or revoking a sentence to probation and any resentencing
  - 6 after such a revocation.
- 7 5. The North Dakota ~~state penitentiary~~department of corrections and rehabilitation,
- 8 pardon clerk, parole board, and local correctional facility administrators shall furnish
- 9 the bureau with all information concerning the receipt, escape, death, release, pardon,
- 10 conditional pardon, reprieve, parole, commutation of sentence, or discharge of an
- 11 individual who has been sentenced to that agency's custody for any reportable offense
- 12 which is required to be collected, maintained, or disseminated by the bureau. In the
- 13 case of an escape from custody or death while in custody, information concerning the
- 14 receipt and escape or death must also be furnished.

15 **SECTION 4. AMENDMENT.** Section 12-60-16.6 of the North Dakota Century Code is

16 amended and reenacted as follows:

17 **12-60-16.6. Criminal history record information - Dissemination to parties not**

18 **described in section 12-60-16.5.**

19 Only the bureau may disseminate a criminal history record to parties not described in

20 section 12-60-16.5. The dissemination may be made only if all the following requirements are

21 met:

- 22 1. The criminal history record information has not been purged or sealed.
- 23 2. The criminal history record information is of a conviction, including a conviction for
- 24 violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11
- 25 notwithstanding any disposition following a deferred imposition of sentence; or the
- 26 criminal history record information is of a reportable event occurring within three years
- 27 preceding the request.
- 28 3. The request is written and contains:
  - 29 a. The name of the requester.
  - 30 b. The ~~fingerprints~~biometric data of the record subject or, if the request is made
  - 31 without submitting the ~~fingerprints~~biometric data, the request must also include

1 the name of the record subject and at least two items of information used by the  
2 bureau to retrieve criminal history records, including:

3 (1) The state identification number assigned to the record subject by the  
4 bureau.

5 (2) The social security number of the record subject.

6 (3) The date of birth of the record subject.

7 (4) A specific reportable event identified by date and either agency or court.

8 4. The identifying information supporting a request for a criminal history record does not  
9 match the record of more than one individual.

10 In order to confirm a record match, the bureau may contact the requester to collect additional  
11 information if a request contains an item of information that appears to be inaccurate or  
12 incomplete. This section does not prohibit the disclosure of a criminal history record by the  
13 requester or other persons after the dissemination of the record by the bureau to the requester.

14 **SECTION 5. AMENDMENT.** Section 12-60-16.9 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16 **12-60-16.9. Criminal history record information - Fee for record check.**

17 The bureau shall impose a fee of fifteen dollars for each state record check. The bureau  
18 shall impose a fee of five dollars for each record check for a nonprofit organization that is  
19 organized and operated in this state exclusively for charitable purposes for the exclusive benefit  
20 of minors. The bureau shall impose a fee of five dollars for each record check conducted on a  
21 volunteer providing services for a nonprofit organization that is organized and operated in this  
22 state exclusively for charitable purposes for the exclusive benefit of vulnerable elderly adults.

23 The bureau shall impose a fee of fifteen dollars for processing fingerprintsbiometric data  
24 necessary for each nationwide criminal history record check. The bureau shall waive the fees  
25 for any criminal justice agency or court.

26 **SECTION 6. AMENDMENT.** Subsection 1 of section 12-60-24 of the North Dakota Century  
27 Code is amended and reenacted as follows:

28 1. a. Each applicant, employee, or petitioner for adoption or name change who is  
29 subject to a criminal history record check under subsection 2 shall consent to a  
30 statewide and nationwide criminal history record check for the purpose of

1 determining suitability or fitness for a permit, license, registration, employment, or  
2 adoption.

3 b. Each applicant, employee, registrant, or petitioner for adoption or name change  
4 subject to a criminal history record check shall provide to the requesting agency  
5 or entity written consent to conduct the check and to release or disclose the  
6 information in accordance with state and federal law, two sets of fingerprints from  
7 a law enforcement agency or other local agency authorized to take fingerprints,  
8 any other identifying information requested, and a statement indicating whether  
9 the applicant or employee has ever been convicted of a crime.

10 c. The agency, official, or entity shall submit these fingerprints to the bureau of  
11 criminal investigation for nationwide criminal history record information that  
12 includes resubmission of the fingerprints by the bureau of criminal investigation to  
13 the federal bureau of investigation. Except if otherwise provided by law, federal  
14 bureau of investigation criminal history record information obtained by an agency  
15 or entity is confidential. For a request for nationwide criminal history record  
16 information made under this section, the bureau of criminal investigation is the  
17 sole source to receive the fingerprint submissions and responses from the federal  
18 bureau of investigation. A person who takes fingerprints under this section may  
19 charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise  
20 provided by law, the bureau of criminal investigation may charge appropriate fees  
21 for criminal history information.

22 d. Fingerprints and any other identifying information the bureau has obtained under  
23 this section may be retained by the bureau and the federal bureau of  
24 investigation at the request of the agency, official, or entity submitting the  
25 fingerprints and any other identifying information for a statewide and nationwide  
26 criminal history record check. The subject of the records must be provided notice  
27 of the retention of the fingerprints and any other identifying information. The  
28 bureau may provide to each agency, official, or entity listed in subsection 2 of this  
29 section the response of the bureau and the federal bureau of investigation any  
30 any statewide criminal history record information that may lawfully be made  
31 available under this chapter.

1           e. The bureau may provide the results of a criminal history background check made  
2           under subsection 2 of this section to another state's identification bureau or  
3           central repository for the collection, maintenance, and dissemination of criminal  
4           history record information when the other state's identification bureau or central  
5           repository has requested the results of the criminal history background check and  
6           the agency, official, or entity of the other state has equivalent authority to  
7           subsection 2 of this section to request a statewide and nationwide criminal history  
8           check.

9           **SECTION 7. AMENDMENT.** Subsection 7 of section 12.1-32-15 of the North Dakota  
10 Century Code is amended and reenacted as follows:

11           7. Registration consists of a written statement signed by the individual, giving the  
12 information required by the attorney general, and the ~~fingerprints~~biometric data and  
13 photograph of the individual. An individual who is not required to provide a sample of  
14 blood and other body fluids under section 31-13-03 or by the individual's state or court  
15 of conviction or adjudication shall submit a sample of blood and other body fluids for  
16 inclusion in a centralized database of DNA identification records under section  
17 31-13-05. The collection, submission, testing and analysis of, and records produced  
18 from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence  
19 of the DNA profile comparison is admissible in accordance with section 31-13-02. A  
20 report of the DNA analysis certified by the state crime laboratory is admissible in  
21 accordance with section 31-13-05. A district court shall order an individual who refuses  
22 to submit a sample of blood or other body fluids for registration purposes to show  
23 cause at a specified time and place why the individual should not be required to  
24 submit the sample required under this subsection. Within three days after registration,  
25 the registering law enforcement agency shall forward the statement,  
26 ~~fingerprints~~biometric data, and photograph to the attorney general and shall submit the  
27 sample of the individual's blood and body fluids to the state crime laboratory. If an  
28 individual required to register under this section has a change in vehicle or computer  
29 online identity, the individual shall inform in writing, within three days after the change,  
30 the law enforcement agency with which that individual last registered of the individual's  
31 new vehicle or computer online identity. If an individual required to register pursuant to

1           this section has a change in name, school, or residence or employment address, that  
2           individual shall inform in writing, at least ten days before the change, the law  
3           enforcement agency with which that individual last registered of the individual's new  
4           name, school, residence address, or employment address. A change in school or  
5           employment address includes the termination of school or employment for which an  
6           individual required to register under this section shall inform in writing within five days  
7           of the termination the law enforcement agency with which the individual last  
8           registered. The law enforcement agency, within three days after receipt of the  
9           information, shall forward it to the attorney general. The attorney general shall forward  
10          the appropriate registration data to the law enforcement agency having local  
11          jurisdiction of the new place of residence, school, or employment. Upon a change of  
12          address, the individual required to register shall also register within three days at the  
13          law enforcement agency having local jurisdiction of the new place of residence,  
14          school, or employment. The individual registering under this section shall periodically  
15          confirm the information required under this subsection in a manner and at an interval  
16          determined by the attorney general. A law enforcement agency that has previously  
17          registered an offender may omit the ~~fingerprint~~biometric data portion of the registration  
18          if that agency has a set of ~~fingerprints~~biometric data on file for that individual and is  
19          personally familiar with and can visually identify the offender. These provisions also  
20          apply in any other state that requires registration.