

Sixty-eighth  
Legislative Assembly  
of North Dakota

ENGROSSED SENATE BILL NO. 2051

Introduced by

Human Services Committee

(At the request of the Department of Health and Human Services)

1 A BILL for an Act to create and enact a new section to chapters 25-03.2 and 50-06 of the North  
 2 Dakota Century Code, relating to fingerprint criminal history record investigations for psychiatric  
 3 residential facilities for children and for shelter care programs; and to amend and reenact  
 4 subdivision f of subsection 2 of section 12-60-24 and sections 25-03.2-03, 25-03.2-04,  
 5 50-06-01.9, 50-11-06.8, 50-12-03, and 50-25.1-11.1 of the North Dakota Century Code, relating  
 6 to fingerprint criminal history record checks for certified family foster home for children providers  
 7 and psychiatric residential treatment facility for children, identifying who the department of  
 8 health and human services may require criminal history record checks from, and criminal history  
 9 record checks for volunteers and students for field placement at child placing agencies and  
 10 children's advocacy centers.

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

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

14 f. The department of health and human services for foster care licenses, certified  
 15 family foster home for children providers, ~~approvals~~approved tribal foster care  
 16 facilities, and identified relatives under chapter 50-11, appointments of legal  
 17 guardians under chapter 50-11.3, and petitions for adoptions under chapter  
 18 50-12, except that the criminal history record investigation must be conducted in  
 19 accordance with those chapters. A criminal history record investigation completed  
 20 under chapter 25-03.2, 50-06, 50-11, 50-11.3, or 50-12 may be used to satisfy the  
 21 requirements of a criminal history record investigation under either of the other  
 22 ~~two~~four chapters. The federal bureau of investigation's criminal history record  
 23 investigation obtained from one criminal history record investigation purpose may

1 not be reused to satisfy the requirements of another federal bureau of  
2 investigation's criminal history record investigation for a different purpose.

3 **SECTION 2. AMENDMENT.** Section 25-03.2-03 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **25-03.2-03. Requirements for license.**

6 The department shall issue a license for the operation of a psychiatric residential treatment  
7 facility for children upon a showing that:

- 8 1. The premises to be used are in fit, safe, and sanitary condition and properly equipped  
9 to provide good care and treatment;
- 10 2. The program director of the facility holds, at a minimum, a master's degree in social  
11 work, psychology, or in a related field with at least two years of professional  
12 experience in the treatment of children suffering from mental illnesses or emotional  
13 disturbances. The executive director of the facility must have, at a minimum, a  
14 bachelor's degree in a behavioral science or a bachelor's degree in any field and two  
15 years of experience in administration;
- 16 3. The staff employed by the facility is supervised by the program director and qualified  
17 by training and experience to provide services to children suffering from mental  
18 illnesses or emotional disturbances. The facility annually must provide training to staff  
19 which is relevant to the needs of the client population;
- 20 4. The health, safety, and well-being of the children cared for and treated in the facility  
21 will be properly safeguarded;
- 22 5. There are sufficient treatment, educational, recreational and leisure, and physical  
23 facilities and services available to the children in the facility;
- 24 6. The facility will provide for a medical and psychological examination of each child  
25 within seventy-two hours of admission and thereafter as needed by the child;
- 26 7. An interdisciplinary team will review each individual treatment plan at least monthly  
27 and update or amend the plan to meet the needs of the child;
- 28 8. The facility develops postdischarge plans and coordinates facility services and related  
29 community services with partial discharge plans with each child's family, school, and  
30 community upon discharge to ensure continuity of care; and

1           9. The facility is in compliance with requirements for psychiatric residential treatment  
2           facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of  
3           Federal Regulations, part 441, and with this chapter and rules adopted under this  
4           chapter;

5           10. The facility has sought and obtained a criminal history record when required by this  
6           chapter; and

7           11. In accordance with rules of the department, the department has determined whether a  
8           license may be issued to a facility that has a facility operator or any individual  
9           employed by the facility, contracted service provider of the facility, or nonemployee of  
10          the facility, having contact with any child cared for by the facility who has a criminal  
11          record.

12          **SECTION 3. AMENDMENT.** Section 25-03.2-04 of the North Dakota Century Code is  
13          amended and reenacted as follows:

14          **25-03.2-04. Conviction not bar to licensure - Exceptions.**

15          Conviction of an offense by an owner or operator of a facility does not disqualify the  
16          centerpsychiatric residential treatment facility for children from licensure unless the department  
17          determines that the offense has a direct bearing upon a person's ability to serve the public as  
18          an owner or operator of a psychiatric residential treatment facility for children, or that, following  
19          conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

20          **SECTION 4.** A new section to chapter 25-03.2 of the North Dakota Century Code is created  
21          and enacted as follows:

22          **Criminal history record investigation - Fingerprinting required.**

23          1. Each psychiatric residential treatment facility for children shall secure, from a law  
24          enforcement agency or any other agency authorized to take fingerprints, two sets of  
25          fingerprints and shall provide all other information necessary to secure state criminal  
26          history record information and a nationwide background check under federal law from  
27          a facility operator, and any individual employed by the facility, contracted service  
28          provider of the facility, and nonemployee of the facility, having contact with any child  
29          cared for by the facility.

30          2. The facility shall assure information obtained under subsection 1 is provided to the  
31          department.

- 1       3. Upon receipt of all fingerprints and necessary information relating to a criminal history  
2       record investigation, the department shall submit the information and fingerprints to  
3       the bureau of criminal investigation. The department shall provide a copy of the state  
4       criminal history record information response received from the bureau of criminal  
5       investigation to the facility or authorized agent making the request.
- 6       4. The bureau of criminal investigation shall request a nationwide background check from  
7       the federal bureau of investigation and, upon receipt of a response, provide the  
8       response of the federal bureau of investigation to the department. The bureau of  
9       criminal investigation also shall provide any criminal history record information that  
10      may lawfully be made available under chapter 12-60 to the department.
- 11      5. Upon request by the operators of a facility or employees of a facility, a law  
12      enforcement agency shall take fingerprints of individuals described in this section if the  
13      request is made for purposes of this section.
- 14      6. The department shall pay the cost of securing fingerprints, any criminal history record  
15      information made available under chapter 12-60, and a nationwide background check  
16      for each psychiatric residential treatment facility for children.
- 17      7. An agency that takes fingerprints as provided under this section may charge a  
18      reasonable fee to offset the costs of the fingerprinting.
- 19      8. A criminal history record investigation completed under this section may be used to  
20      satisfy the criminal history record investigation requirements of sections 50-06-01.9,  
21      50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 6 of this Act. The federal bureau  
22      of investigation's criminal history record investigation obtained from one criminal  
23      history record investigation purpose may not be reused to satisfy the requirements for  
24      another federal bureau of investigation's criminal history record investigation for a  
25      different purpose.

26       **SECTION 5. AMENDMENT.** Section 50-06-01.9 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28       **50-06-01.9. Criminal history record checks.**

29       In accordance with section 12-60-24, the department may require criminal history record  
30 checks as the department determines appropriate for:

- 1        1.    Job applicants of the department and employees of the department upon hiring as part  
2        of contingent offer of employment;
- 3        2.    Job applicants of the human service zone, current employees of the human service  
4        zone and department, and the department's and human service zones' contractors  
5        and contractors' subcontractors job applicants and current employees that may have  
6        access to federal tax information received from the United States internal revenue  
7        service through a computer match and stored in the department's eligibility system;
- 8        3.    A criminal history record check conducted under subsections 1 and 2 is valid for  
9        ~~ten~~five years, after which the department shall require another criminal history record  
10       check on employees of the department, human service zones, and the department's  
11       and human service zones' contractors and contractors' subcontractors that may have  
12       access to federal tax information received from the United States internal revenue  
13       service through a computer match and stored in the department's eligibility system;
- 14       4.    The department's and human service zones' contractors and contractors'  
15       subcontractors job applicants and current employees of contractors and contractors'  
16       subcontractors that may have access to social security administration information  
17       received from the United States social security administration stored in the  
18       department's eligibility system;
- 19       5.   Providers licensed by the department under chapter 50-12, as well as for any  
20       employees, volunteers, or students for field placement of those providers who have  
21       direct contact with families, with children, or both;
- 22       ~~5-6.~~ Providers holding, applicants for, and emergency designees and staff members of  
23       providers holding and applicants for early childhood services licensure,  
24       self-declaration, or in-home provider registration under chapter 50-11.1. The  
25       department also may require criminal history record checks for household members of  
26       a residence out of which early childhood services within the provider's home are  
27       provided; ~~and~~
- 28       ~~6-7.~~ Medicaid services applicant providers, Medicaid services providers, or an individual  
29       with a five percent or more direct or indirect ownership interest in the applicant  
30       provider or provider under chapter 50-24.1;

- 1       8. An operator of a facility licensed by the department under chapter 25-03.2, as well as  
2       any individual employed by the facility, contracted service provider of the facility, and  
3       nonemployee of the facility, having contact with any child cared for by the facility; and  
4       9. Providers, applicants for, and employees of a shelter care program certified by the  
5       department under chapter 50-06, as well as any individual employed by the program.

6       **SECTION 6.** A new section to chapter 50-06 of the North Dakota Century Code is created  
7 and enacted as follows:

8       **Shelter care criminal history record investigation - Fingerprinting required.**

- 9       1. Each shelter care program shall secure, from a law enforcement agency or any other  
10       agency authorized to take fingerprints, two sets of fingerprints and shall provide all  
11       other information necessary to secure state criminal history record information and a  
12       nationwide background check under federal law from any individual employed by the  
13       shelter care program.  
14       2. The shelter care program shall assure information obtained under subsection 1 is  
15       provided to the department.  
16       3. Upon receipt of all fingerprints and necessary information relating to a criminal history  
17       record investigation, the department shall submit the information and fingerprints to  
18       the bureau of criminal investigation. The department shall provide a copy of the state  
19       criminal history record information response received from the bureau of criminal  
20       investigation to the shelter care program or authorized agent making the request.  
21       4. The bureau of criminal investigation shall request a nationwide background check from  
22       the federal bureau of investigation and, upon receipt of a response, provide the  
23       response of the federal bureau of investigation to the department. The bureau of  
24       criminal investigation also shall provide any criminal history record information that  
25       may lawfully be made available under chapter 12-60 to the department.  
26       5. Upon request by the provider or employees of a provider, a law enforcement agency  
27       shall take fingerprints of individuals described in this section if the request is made for  
28       purposes of this section.  
29       6. The department shall pay the cost of securing fingerprints, any criminal history record  
30       information made available under chapter 12-60, and a nationwide background check  
31       for each shelter care provider.

- 1       7. An agency that takes fingerprints as provided under this section may charge a  
2       reasonable fee to offset the costs of the fingerprinting.
- 3       8. A criminal history record investigation completed under this section may be used to  
4       satisfy the criminal history record investigation requirements of sections 50-06-01.9,  
5       50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 2 of this Act. The federal bureau  
6       of investigation's criminal history record investigation obtained from one criminal  
7       history record investigation purpose may not be reused to satisfy the requirements for  
8       another federal bureau of investigation's criminal history record investigation for a  
9       different purpose.
- 10      9. Before certifying a shelter care program and during the shelter care program  
11      operation, the department shall seek a criminal history record when required by this  
12      section. The department, in accordance with the rules of the department, shall  
13      consider any criminal history information available at the time a decision is made for  
14      certification and during the operation of the certified shelter care program.
- 15      10. "Shelter care program" means a nonsecure permanent dwelling run by an agency with  
16      certification obtained by the department, where employees offer safe shelter, food, and  
17      structured routine and is available twenty-four hours a day to a resident age ten to  
18      eighteen years old in need of temporary safe out-of-home emergency placement, not  
19      to exceed seven days, unless otherwise approved by the department.

20      **SECTION 7. AMENDMENT.** Section 50-11-06.8 of the North Dakota Century Code is  
21      amended and reenacted as follows:

22      **50-11-06.8. Criminal history record investigation - Fingerprinting required.**

- 23      1. Each facility providing foster care for children shall secure, from a law enforcement  
24      agency or any other agency authorized to take fingerprints, two sets of fingerprints and  
25      shall provide all other information necessary to secure state criminal history record  
26      information and a nationwide background check under federal law from:  
27      a. Any individual employed by, or providing care in, the facility; and  
28      b. Any adult living in the facility, but not being provided care in the facility.
- 29      2. Each identified relative, at the request by the department, shall secure, from a law  
30      enforcement agency or any other agency authorized to take fingerprints, two sets of  
31      fingerprints and shall provide all other information necessary to secure state criminal

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

1     ~~8-9.~~   An agency that takes fingerprints as provided under this section may charge a  
2             reasonable fee to offset the costs of the fingerprinting.

3     ~~9-10.~~   Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall  
4             secure from a law enforcement agency or any other agency authorized to take  
5             fingerprints two sets of fingerprints and all other information necessary to secure state  
6             criminal history record information and a nationwide background check under federal  
7             law from:

8             a.   Any individual employed by, or providing care in, an adult family foster care  
9                 facility; and

10            b.   Any adult living in an adult family foster care facility, but not being provided care  
11               in the facility.

12     ~~40-11.~~ A criminal history record investigation completed under this section may be used to  
13             satisfy the criminal history record investigation requirements of sections 50-06-01.9,  
14             50-11.3-01, and 50-12-03.2 and sections 2 and 6 of this Act. The federal bureau of  
15             investigation's criminal history record investigation obtained from one criminal history  
16             record investigation purpose may not be reused to satisfy the requirements for another  
17             federal bureau of investigation's criminal history record investigation for a different  
18             purpose.

19             **SECTION 8. AMENDMENT.** Section 50-12-03 of the North Dakota Century Code is  
20             amended and reenacted as follows:

21             **50-12-03. Requirements for licensure and employment - Term - Moral or religious**  
22             **conviction not bar to licensure or employment.**

23             The department of health and human services shall issue licenses for the conduct of  
24             child-placing agencies upon application. A child-placing agency shall require a criminal history  
25             record investigation on the owner and each employee, volunteer, or student for field placement  
26             of a child-placing agency who has direct contact with families, with children, or with both. The  
27             department of health and human services shall consider any criminal history record information  
28             available about the owner at the time a licensing decision is made and about an employee prior  
29             to the owner or the employee having direct contact with families, with children, or with both.  
30             Licenses must be granted for a period not exceeding two years. Licenses must be issued to  
31             reputable and responsible applicants upon a showing that they, and their agents, are equipped

1 properly by training and experience to find and select suitable temporary or permanent homes  
2 for children and to supervise the homes when children are placed in them, to the end that the  
3 health, morality, and general well-being of children placed by them will be properly safeguarded.  
4 The department of health and human services may not deny a license because of the  
5 applicant's objection to performing, assisting, counseling, recommending, facilitating, referring,  
6 or participating in a placement that violates the applicant's written religious or moral convictions  
7 or policies.

8 **SECTION 9. AMENDMENT.** Section 50-25.1-11.1 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal**  
11 **history record checks.**

- 12 1. Records and digital media in the possession of a children's advocacy center relating to  
13 a forensic medical examination, forensic interview, or therapy are confidential and may  
14 be released only to a person other than a law enforcement agency, the department or  
15 the department's authorized agent, or a medical or mental health professional when  
16 the child comes before the medical or mental health professional in that person's  
17 professional capacity, upon service of a subpoena signed by a judge.
- 18 2. The department may submit a request for a criminal history record check under  
19 section 12-60-24 on a board member, an employee, a final applicant for employment,  
20 of a children's advocacy center, a contractor, ~~multidisciplinary team member~~, or  
21 volunteer of a children's advocacy center who has contact with a child at or through a  
22 children's advocacy center.
- 23 3. As used in this section, "board member" means an individual serving on the board of a  
24 children's advocacy center.