

**Sixty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 3, 2023**

SENATE BILL NO. 2051  
(Human Services Committee)  
(At the request of the Department of Health and Human Services)

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

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

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

- f. The department of health and human services for foster care licenses, certified family foster home for children providers, approvals approved tribal foster care facilities, and identified relatives under chapter 50-11, appointments of legal guardians under chapter 50-11.3, and petitions for adoptions under chapter 50-12, except that the criminal history record investigation must be conducted in accordance with those chapters. A criminal history record investigation completed under chapter 25-03.2, 50-06, 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal history record investigation under either of the other two four chapters. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation purpose may not be reused to satisfy the requirements of another federal bureau of investigation's criminal history record investigation for a different purpose.

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

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

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

1. The premises to be used are in fit, safe, and sanitary condition and properly equipped to provide good care and treatment;
2. The program director of the facility holds, at a minimum, a master's degree in social work, psychology, or in a related field with at least two years of professional experience in the treatment of children suffering from mental illnesses or emotional disturbances. The executive director of the facility must have, at a minimum, a bachelor's degree in a behavioral science or a bachelor's degree in any field and two years of experience in administration;
3. The staff employed by the facility is supervised by the program director and qualified by training and experience to provide services to children suffering from mental illnesses or emotional disturbances. The facility annually must provide training to staff which is relevant to the needs of the client population;

4. The health, safety, and well-being of the children cared for and treated in the facility will be properly safeguarded;
5. There are sufficient treatment, educational, recreational and leisure, and physical facilities and services available to the children in the facility;
6. The facility will provide for a medical and psychological examination of each child within seventy-two hours of admission and thereafter as needed by the child;
7. An interdisciplinary team will review each individual treatment plan at least monthly and update or amend the plan to meet the needs of the child;
8. The facility develops postdischarge plans and coordinates facility services and related community services with partial discharge plans with each child's family, school, and community upon discharge to ensure continuity of care; ~~and~~
9. The facility is in compliance with requirements for psychiatric residential treatment facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of Federal Regulations, part 441, and with this chapter and rules adopted under this chapter;
10. The facility has sought and obtained a criminal history record when required by this chapter; and
11. In accordance with rules of the department, the department has determined whether a license may be issued to a facility that has a facility operator or any individual employed by the facility, contracted service provider of the facility, or nonemployee of the facility, having contact with any child cared for by the facility who has a criminal record.

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

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

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

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

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

1. Each psychiatric residential treatment facility for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from a facility operator, and any individual employed by the facility, contracted service provider of the facility, and nonemployee of the facility, having contact with any child cared for by the facility.
2. The facility shall assure information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of the state criminal history record information response received from the bureau of criminal investigation to the facility or authorized agent making the request.

4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the operators of a facility or employees of a facility, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each psychiatric residential treatment facility for children.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-06-01.9, 50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 6 of this Act. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation purpose may not be reused to satisfy the requirements for another federal bureau of investigation's criminal history record investigation for a different purpose.

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

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

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

1. Job applicants of the department and employees of the department ~~upon hiring~~ as part of contingent offer of employment;
2. Job applicants of the human service zone, current employees of the human service zone and department, and the department's and human service zones' contractors and contractors' subcontractors ~~job applicants and current employees~~ that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
3. A criminal history record check conducted under subsections 1 and 2 is valid for ~~ten~~ five years, after which the department shall require another criminal history record check on employees of the department, human service zones, and the department's and human service zones' contractors and contractors' subcontractors that may have access to federal tax information received from the United States internal revenue service through a computer match and stored in the department's eligibility system;
4. The department's and human service zones' contractors and contractors' subcontractors ~~job applicants and current employees of contractors and contractors' subcontractors~~ that may have access to social security administration information received from the United States social security administration stored in the department's eligibility system;
5. Providers licensed by the department under chapter 50-12, as well as for any employees, volunteers, or students for field placement of those providers ~~who have direct contact with families, with children, or both~~;

- 5-6. Providers holding, applicants for, and emergency designees and staff members of providers holding and applicants for early childhood services licensure, self-declaration, or in-home provider registration under chapter 50-11.1. The department also may require criminal history record checks for household members of a residence out of which early childhood services within the provider's home are provided; and
- 6-7. Medicaid services applicant providers, Medicaid services providers, or an individual with a five percent or more direct or indirect ownership interest in the applicant provider or provider under chapter 50-24.1;
8. An operator of a facility licensed by the department under chapter 25-03.2, as well as any individual employed by the facility, contracted service provider of the facility, and nonemployee of the facility, having contact with any child cared for by the facility; and
9. Providers, applicants for, and employees of a shelter care program certified by the department under chapter 50-06.

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

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

1. Each shelter care program shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from any individual employed by the shelter care program.
2. The shelter care program shall assure information obtained under subsection 1 is provided to the department.
3. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of the state criminal history record information response received from the bureau of criminal investigation to the shelter care program or authorized agent making the request.
4. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.
5. Upon request by the provider or employees of a provider, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
6. The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each shelter care provider.
7. An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
8. A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-06-01.9, 50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 2 of this Act. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation

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

9. Before certifying a shelter care program and during the shelter care program operation, the department shall seek a criminal history record when required by this section. The department, in accordance with the rules of the department, shall consider any criminal history information available at the time a decision is made for certification and during the operation of the certified shelter care program.
10. "Shelter care program" means a nonsecure permanent dwelling run by an agency with certification obtained by the department, where employees offer safe shelter, food, and structured routine and is available twenty-four hours a day to a resident age ten to eighteen years old in need of temporary safe out-of-home emergency placement, not to exceed seven days, unless otherwise approved by the department.

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

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

1. Each facility providing foster care for children shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
  - a. Any individual employed by, or providing care in, the facility; and
  - b. Any adult living in the facility, but not being provided care in the facility.
2. Each identified relative, at the request by the department, shall secure, from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from the identified relative and any adult living in the home of the identified relative.
3. Each certified family foster home for children provider, at the request of the department, shall secure from a law enforcement agency or any other agency authorized to take fingerprints, two sets of fingerprints and shall provide all other information necessary to secure state criminal history record information and a nationwide background check under federal law from the certified family foster home for children provider and any adult living in the home of the certified family foster home for children provider.
4. The facility, certified family foster home for children provider, or identified relative shall assure that information obtained under subsections 1 ~~and~~, 2, and 3 is provided to the department.
- 4.5. Upon receipt of all fingerprints and necessary information relating to a criminal history record investigation, the department shall submit the information and fingerprints to the bureau of criminal investigation. The department shall provide a copy of the state criminal history record information response received from the bureau of criminal investigation to the facility, certified family foster home for children provider, identified relative, public agency, or authorized agent making the request.
- 5.6. The bureau of criminal investigation shall request a nationwide background check from the federal bureau of investigation and, upon receipt of a response, provide the response of the federal bureau of investigation to the department. The bureau of criminal investigation also shall provide any criminal history record information that may lawfully be made available under chapter 12-60 to the department.

- ~~6-7.~~ Upon request by the operators of a facility, employees of a facility, certified family foster home for children provider, or identified relative, a law enforcement agency shall take fingerprints of individuals described in this section if the request is made for purposes of this section.
- ~~7-8.~~ The department shall pay the cost of securing fingerprints, any criminal history record information made available under chapter 12-60, and a nationwide background check for each facility providing foster care for children, certified family foster home for children provider, and identified relative.
- ~~8-9.~~ An agency that takes fingerprints as provided under this section may charge a reasonable fee to offset the costs of the fingerprinting.
- ~~9-10.~~ Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall secure from a law enforcement agency or any other agency authorized to take fingerprints two sets of fingerprints and all other information necessary to secure state criminal history record information and a nationwide background check under federal law from:
- a. Any individual employed by, or providing care in, an adult family foster care facility; and
  - b. Any adult living in an adult family foster care facility, but not being provided care in the facility.
- ~~10-11.~~ A criminal history record investigation completed under this section may be used to satisfy the criminal history record investigation requirements of sections 50-06-01.9, 50-11.3-01, and 50-12-03.2 and sections 2 and 6 of this Act. The federal bureau of investigation's criminal history record investigation obtained from one criminal history record investigation purpose may not be reused to satisfy the requirements for another federal bureau of investigation's criminal history record investigation for a different purpose.

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

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

The department of health and 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, volunteer, or student for field placement of a child-placing agency who has direct contact with families, with children, or with both. The department of health and 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 health and 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 9. AMENDMENT.** Section 50-25.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Records and digital media in the possession of a children's advocacy center relating to a forensic medical examination, forensic interview, or therapy are confidential and may be

released only to a person other than a law enforcement agency, the department or the department's authorized agent, or a medical or mental health professional when the child comes before the medical or mental health professional in that person's professional capacity, upon service of a subpoena signed by a judge.

2. The department may submit a request for a criminal history record check under section 12-60-24 on a board member, an employee, a final applicant for employment, of a children's advocacy center, a contractor, ~~multidisciplinary team member~~, or volunteer of a children's advocacy center who has contact with a child at or through a children's advocacy center.
3. As used in this section, "board member" means an individual serving on the board of a children's advocacy center.

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President of the Senate

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Speaker of the House

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Secretary of the Senate

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Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2051.

Senate Vote:    Yeas 46            Nays 1            Absent 0

House Vote:    Yeas 92            Nays 0            Absent 2

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Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2023.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2023,

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

\_\_\_\_\_  
Secretary of State