

**CHAPTER 75-03-14
FAMILY FOSTER HOME FOR CHILDREN**

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SECTION 1. Section 75-03-14-01 is amended as follows:

75-03-14-01. Definitions. Those definitions set forth in North Dakota Century Code section 50-11-00.1 are applicable to this chapter. Additionally, in this chapter, unless the context or subject matter requires otherwise:

1. "Adult" means a person twenty-one years of age or older.
2. "Background check" means a child protection services check in each state that the individual has resided in the previous five years and a criminal history record investigation.
3. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
4. "Regional center" means the regional human service center.
45. "Supervising agency" means the agency or person having care, custody, and control of the foster child as ordered by a court of competent jurisdiction or the designee of that agency or person.

History: Effective December 1, 1984; amended effective January 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-00.1, 50-11-06.8

SECTION 2. Subsection 8 of section 75-03-14-03 is amended as follows:

75-03-14-03. Minimum physical standards for the family foster home for children.

8. Any source other than an approved municipal water supply must be tested annually for compliance for approved drinking water standards. The sample must be tested and approved by the North Dakota state department of health and the report sent to the North Dakota department of health or a United States environmental protection agency approved laboratory for testing and approval. The results must be submitted to the department.

History: Effective December 1, 1984; amended effective July 1, 1993; April 1, 2004; January 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 3. Subsections 8 and 9 of section 75-03-14-04 are amended as follows:

75-03-14-04. Qualifications of persons residing in the family foster home for children.

8. All foster parents or potential parents must demonstrate a working knowledge of the reasonable and prudent parent standard by allowing foster children the opportunity to participate in developmentally and age appropriate activities. All foster parents must engage in the reasonable and prudent parent standard.
9. Initial and annual fire safety training hours will not be counted toward the minimum number of training hours required for initial or annual licensing.

History: Effective December 1, 1984; amended effective April 1, 2004; July 1, 2006; January 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03, NDCC 50-11-03.4

Law Implemented: NDCC 50-11-02

SECTION 4. Section 75-03-14-04.1 is amended as follows:

75-03-14-04.1. Criminal conviction - Effect on licensure.

1. A family foster home for children applicant, family foster home for children provider, or members of the family foster home for children must not be known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults – threats - coercion - harassment;

~~or~~ 12.1-18, kidnapping; 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an~~ 14-09-22, abuse or neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the ~~enumerated North Dakota statutes offenses~~ identified in subdivision a; or
- b.c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
- (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without a subsequent charge or conviction, has elapsed.
- (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in ~~subdivision~~ subdivisions a and b of subsection 1 have a direct bearing on an individual's ability to provide foster care for children.
3. If the offense is a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that an individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of

community corrections or imprisonment, without subsequent conviction. The department may not be compelled to make such determination.

4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - b.c. Discovered by the authorized agent or department as a result of a background check.

History: Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 5. Section 75-03-14-08 is amended as follows:

75-03-14-08. Fingerprints excused.

The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been ~~accepted-submitted~~ and rejected. If a person is excused from providing fingerprints, the department ~~shall~~ may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective April 1, 2004; amended effective January 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

CHAPTER 75-03-16
LICENSING OF GROUP HOMES AND RESIDENTIAL CHILD CARE FACILITIES

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SECTION 6. Section 75-03-16-01 is amended as follows:

75-03-16-01. Definitions. As used in this chapter:

1. "Custodian" means a person, other than a parent or guardian, who stands in loco parentis to a child in placement or a person to whom legal custody of the child has been given by order.
2. "Department" means the North Dakota department of human services.
3. "Employee" means an individual compensated by the facility to work in a part-time, full-time, intermittent, or seasonal capacity for the facility. This definition is not inclusive to contracted service providers who come onsite to conduct trainings, treatment groups, individual therapy, or other program services.
4. "Facility" means a residential child care facility providing foster care to thirteen or more unrelated children or group home providing foster care regularly for more than four, but fewer than thirteen, unrelated children.
5. "Nonemployee" means an individual who is not compensated by the facility, such as a volunteer or student intern.
6. "Out-based program" means a sequence of planned activities designed to provide therapeutic outdoor physical, environmental educational, athletic, or other activities which:
 - a. Involve physical and psychological challenges;
 - b. Are designed to:
 - (1) Stimulate competence and personal growth;
 - (2) Expand individual capabilities;
 - (3) Develop self-confidence and insight; or
 - (4) Improve interpersonal skills and relationships; and
 - c. Take place in a setting of twenty-four-hour participant supervision.
7. "Overnight hours" means from eleven p.m. until seven a.m.
8. "Participant" means a child participating in an out-based program.

9. "Reasonable and prudent parent standard" means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child participating in extracurricular, enrichment, cultural, and social activities.
10. "Solo activity" means an experience in which an individual cares for himself or herself in a solitary setting away from others, but under employee supervision.
4011. "Utilization review" means a process that applies established criteria to evaluate the services provided in terms of cost-effectiveness, necessity, and effective use of resources.

History: Effective July 1, 1987; amended effective January 1, 1995; March 1, 1999; April 1, 2014; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-03

SECTION 7. Subdivision d of subsection 1 and subdivisions a and b of subsection 2 of section 75-03-16-05 are amended as follows:

75-03-16-05. Employee and nonemployee files.

1. The facility shall maintain an individual file on each employee. The file must include:
 - d. The following required training certificates:
 - (1) First-aid training;
 - (2) Cardiopulmonary resuscitation and automated external defibrillator; and
 - (3) Behavior management, crisis management, and nonviolent Nonviolent crisis intervention;
2. The facility shall maintain an individual file on each nonemployee. The file must include:
 - a. Personal identification information; ~~and~~
 - b. Results of background checks for criminal conviction record, motor vehicle operator's license record, as applicable, and child abuse or neglect record;

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 8. Subsection 4 of section 75-03-16-06 is amended as follows:

75-03-16-06. Facility administrator. The governing body of the facility shall designate an administrator for the facility.

4. The administrator shall designate at least one employee, with respect to any child in placement, who is authorized to apply the reasonable and prudent parent standard to decisions involving the participation of the child in age or developmentally appropriate activities. The designated employee must receive department-approved training on how to use and apply the reasonable and prudent parent standard.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 9. Section 75-03-16-10.1 is created as follows:

75-03-16-10.1 Nursing Services

1. A residential child care facility shall provide for a licensed nurse to accommodate the medical needs of children in placement onsite.
2. The residential child care facility shall clearly define, in writing, the duties and responsibilities of the licensed nurse which must be within the scope of nursing practice.

History: Effective April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 10. Section 75-03-16-12.1 is amended as follows:

75-03-16-12.1. Criminal conviction - Effect on operation of facility or employment by facility.

1. A facility operator may not be, and a facility may not employ, in any capacity that involves or permits contact between the employee and any child cared for by the facility, an individual who is known to have been found guilty of, pled guilty to, or pled no contest to:
 - a. An offense described in North Dakota Century Code chapters chapter 12.1-16, homicide; 12.1-17, assaults – threats – coercion – harassment; ~~or~~ 12.1-18, kidnapping; 12.1-27.2, sexual

performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code sections ~~section~~ 12.1-20-03, gross sexual imposition; ~~12.1-20-03.1, continuous sexual abuse of a child;~~ 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; ~~12.1-20-05.1, luring minors by computer or other electronic means;~~ 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code section~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; ~~or an~~ 14-09-22, abuse or neglect of a child;

- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the ~~enumerated North Dakota statutes offenses~~ identified in subdivision a; or
 - b.c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in ~~subdivision~~ subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity involving the provision of foster care to children.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of

community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.

4. The department may discontinue processing a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - c. Reported to-Discovered by the facility, authorized agent, or department as the result of an employee a background check.
56. A facility shall establish written policies and engage in practices that conform to those policies, to effectively implement this section, North Dakota Century Code section 50-11-06.8, and subsection 4 of North Dakota Century Code section 50-11-07.
7. A facility shall establish written policies specific to how the facility will proceed if a current employee or nonemployee is known to have been found guilty of, pled guilty to, or pled no contest to an offense.
8. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

History: Effective March 1, 1999; amended effective April 1, 2004; April 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 11. Section 75-03-16-13 is amended as follows:

75-03-16-13. Minimum employee requirements.

1. For purposes of this section:
 - a. "Reside" means to sleep and keep personal effects; and

- b. "Structure" means a building that is or may be free standing. The existence of a walkway, tunnel, or other connecting device on, above, or below ground is not effective to make one structure from two or more component structures.
2. For purposes of this section, social service, program director, and administrator positions are expressed in full-time equivalents.
3. Each facility shall adopt a policy declaring employee coverage for overnight hours in the facility.
4. Each facility shall comply with the following minimum employee-to-child ratio requirements for social service employees, program director, nurse, and administrator:
 - a. One social service employee and a half-time administrator for a facility providing services for one to nine children; ~~and~~
 - b. No less than one social service employee for each ~~sixteen~~ twelve children, one program director, and one administrator for a facility providing services for ten or more children;
 - c. A residential child care facility shall provide onsite nursing services to accommodate the medical needs of children in placement; and
 - d. A facility shall notify the department, in writing, if the minimum employee-to-child ratios are not met based on position vacancies. An interim plan to cover the position duties must be approved by the department.
5. During awake hours each facility shall have:
 - a. ~~One~~ no less than one direct care employee on duty ~~during times when one to nine~~ for each six children are present in the facility; ~~and~~
 - b. ~~No less than one direct care employee on duty for each eight children during times when ten or more children are present in the facility.~~
6. During overnight hours each facility shall have:
 - a. Awake direct care employees;
 - b. No less than one direct care employee on duty for each ~~sixteen~~ twelve children ~~who are present in the facility; and~~

- c. ~~A policy describing how often employees~~ which includes a requirement that an employee will check on children in placement during overnight hours at a minimum of every thirty minutes.
- 7. During overnight hours each facility structure in which children reside must meet the employee-to-child ratio requirements.
- 8. A facility which operates more than one structure in which children reside shall count the children in all structures collectively for purposes of determining the number of children for which the facility provides services, the need to employ a program director, the required number of social service employees, and to determine the appropriate employee-to-child ratios.
- 9. Educational program employees may not be counted as direct care employees, social service employees, an administrator, or a program director during any time educational services are provided.

History: Effective July 1, 1987; amended effective March 1, 1999; April 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 12. Section 75-03-16-14 is amended as follows:

75-03-16-14. Employee professional development.

- 1. Each facility shall ensure that all employees in contact with children in placement receive at least twenty hours of annual training to assist in the overall quality of care provided to children in placement.
- 2. Required training to prepare employees to meet the needs of the children served includes:
 - a. ~~First-Certified~~ first aid;
 - b. ~~Child abuse and neglect mandated reporting training~~;
 - e. ~~Cardiopulmonary-Certified~~ cardiopulmonary resuscitation and automated external defibrillator training;
 - dc. ~~Behavior management, crisis management, and Certified~~ nonviolent crisis intervention training;
 - ed. Child abuse and neglect mandated reporting training;
 - e. Training addressing children's emotional needs; and

- f. Suicide prevention training.
3. A certified instructor shall provide classroom, hands-on training for nonviolent crisis intervention, first aid, cardiopulmonary resuscitation, and automated external defibrillator. The facility shall place training completion certificates. A certificate must be provided to each employee or nonemployee demonstrating their competencies in the specific training area. A copy of the certificate must be placed in the employee or nonemployee file.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 13. Subsections 3, 5, and 6 of section 75-03-16-15 are amended as follows:

75-03-16-15. Child abuse and neglect.

3. The facility's policies and procedures must describe:
- a. To whom a report is made;
 - b. When a report must be made;
 - c. The contents of the report;
 - d. The responsibility of each individual in the reporting chain; and
 - e. ~~The status of an employee or nonemployee who is an alleged perpetrator subject of a report pending assessment, administrative proceeding, or criminal proceeding;~~
 - f. ~~The discipline of an employee or nonemployee who is the perpetrator subject of a decision that services are required or a determination that institutional child abuse or neglect is indicated, up to and including termination; and~~
 - g. The status and discipline of an employee or nonemployee who fails to report suspected child abuse or neglect.
5. The facility shall notify the department licensing administrator, in writing, of the corrective action the facility has taken or plans to take to comply with the recommendations based on an "indicated" finding. The facility must respond within thirty days of receiving written notification of the finding.

6. A facility shall establish written policies specific to how the facility will proceed when a current employee or nonemployee is known to be:
 - a. Involved in any capacity in a reported incident of institutional child abuse or neglect, or
 - b. The subject of a services required decision in a child abuse or neglect report that occurred outside of the facility.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02, 50-25.1-03

SECTION 14. Section 75-03-16-16 is amended as follows:

75-03-16-16. ~~Intake~~Pre-admission, admission and discharge.

1. A facility shall adopt written ~~intake-pre-admission~~, admission, and discharge policies including age, sex, and characteristics of children eligible for admission.
2. A facility must have an ~~intake-admission~~ committee and a discharge committee. The committees may have the same members.
 - a. The ~~intake-admission~~ and discharge committees may include the program director, a social service employee, a direct care • employee, and such additional members as the facility determines appropriate.
 - b. The program director or a social service employee shall chair each committee.
3. No child may be denied admission on the basis of race, color, creed, religion, or national origin.
4. ~~Intake~~Pre-admission procedures.
 - a. The ~~intake-admission~~ committee shall screen applications and decide which children are admitted to the facility for care. The ~~intake-admission~~ committee shall make admissions decisions within thirty days of the receipt of sufficient information or a completed application.
 - b. To determine if it is appropriate to admit a child, the facility shall develop a policy requiring:
 - (1) The child's social and family history;

- (2) The child's educational records including a copy of the school district notification, previous and current individual education plans, if any, and the name of the responsible school district;
 - (3) A psychiatric or psychological history, if indicated;
 - (4) A medical history, physical, and examination records;
 - (5) The terms and methods of payment for the child's maintenance, clothing, personal allowance, medical care, and other expenses;
 - (6) The name, address, and telephone number of the custodian, parent, or guardian, if any, and copies of the documents which establish the authority of the legal custodian or guardianship; and
 - (7) The written authorization from the custodian, parent, or guardian to obtain necessary medical treatment.
- c. A facility may admit a child without first securing all required information if:
- (1) The facility has secured substantially all required information, has documented diligent efforts to secure all required information, and the ~~facility's intake committee~~ facility has determined that admission is appropriate; or
 - (2) The child's circumstances require immediate placement and the ~~facility's intake committee~~ facility has preliminarily determined that admission is appropriate.
- d. A child admitted under paragraph 2 of subdivision c may be admitted only on condition that the referring agency provides, or arranges for provision of, substantially all required information within thirty days of the child's admission.
- e. ~~The facility shall request documentation of the services the family of a child in placement will receive in the home community while the child is receiving services in the facility.~~
- f. ~~The facility shall request quarterly child and family team meeting process reports from the referring agency.~~

- ~~g.~~ If a private placement is made by a parent or guardian, rather than a court-appointed custodian, the parent or guardian making the placement is the referring agency.
- ~~h.~~ If a child is not admitted, the facility shall indicate to the referring agency the reason the child was not admitted.

5. Admission Procedures. The facility shall:

- a. Develop an intake screening process to determine the treatment needs for the child in placement;
- b. Request documentation of the services the family of a child in placement will receive in the home community while the child is receiving services in the facility; and
- c. Request quarterly child and family team meeting progress reports from the referring agency.

56. Discharge Procedures.

- a. Prior to discharging a child in placement, the facility and the referring agency shall plan for the needs of the child, including preparation of a discharge report. The discharge report must include:
 - (1) A facility progress report of the child, including an outline of appropriate steps the child and family, if appropriate, can engage in to maintain placement out of facility care;
 - ~~b.~~(2) The reason for discharge;
 - ~~c.~~(3) The immediate and future services recommended for the child and the child's family, if appropriate, to remain successful;
 - ~~d.~~(4) A statement regarding the potential need for the child to return to the facility, if needed in the future; ~~and~~
 - ~~e.~~(5) The facility's reason for not involving the family in discharge planning, if the family has not been included under subdivisions a and c; and
- 6b. The facility shall adopt a policy addressing the circumstances under which a child in placement may be discharged on an emergency basis. If a child in placement is discharged on an

emergency basis, the facility shall immediately inform the custodian, parent, or guardian of a child in placement.

History: Effective July 1, 1987; amended effective March 1, 1999; July 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 15. Section 75-03-16-31 is amended as follows:

75-03-16-31. Outcomes data collection. The department may require a facility to engage in data management practices to collect and report outcomes every six months. Data collection efforts will offer facilities a continuous improvement process that measures and monitors the safety, well-being, and service delivery provided to children in placement. Facilities must have written policy to identify a plan to implement, collect, and measure outcomes data requirements. Facilities must respond to the identified data outcomes needing improvement by developing and implementing one or more facility improvement plans.

History: Effective April 1, 2014; April 1, 2016.

General Authority: NDCC 50-11-03

Law Implemented: NDCC 50-11-02

SECTION 16. Section 75-03-16-32 is created as follows:

75-03-16-32. Normalcy Activities. Each facility shall document the child's normalcy activities and share the information with the child's custodian, parent, or guardian. Each facility shall create a written policy detailing:

1. The employee job description related to carrying out the duties of the reasonable and prudent parent standard;
2. The variety of normalcy activities offered to children in placement; and
3. Procedures identifying supervision, transportation, and off-site activity emergency responses.

History: Effective April 1, 2016.

General Authority: NDCC 50-11-03.4

Law Implemented: NDCC 50-11-02

**CHAPTER 75-03-36
LICENSING OF CHILD-PLACING AGENCIES**

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SECTION 17. Section 75-03-36-01 is amended as follows:

75-03-36-01. Definitions - Application.

1. The terms used in this chapter have the same meaning as in North Dakota Century Code chapter 50-12. In addition, as used in this chapter:
 - a. "Adoption disruption" means an interruption of an adoption prior to finalization in which the child is returned to foster care or placed with another family.
 - b. "Adoption services" is a coordinated program of services for the child, the child's birth parents, and the adoptive applicants and adoptive parents.
 - c. "Authorized agent" means the county social service board, unless another entity is designated by the department.
 - d. "Department" means the North Dakota department of human services.
 - e. "Family foster home" means an occupied private residence in which foster care for children is regularly provided by the owner or lessee of the home to no more than four children, unless all the children in foster care are related to each other by blood or marriage or unless the department approves otherwise for the placement of siblings, in which case the limitation in this subsection does not apply. For the purposes of this subsection, foster care for children applies to those agencies placing children that are in the custody of a county, a tribe, or the state in family foster homes.
 - ef. "Foster care for children" means the provision of substitute parental child care for those children who are in need of care for which the child's parent, guardian, or custodian is unable, neglects, or refuses to provide, and includes the provision of food, shelter, security and safety, guidance, and comfort on a twenty-four-hour basis, to one or more children under twenty-one years of age to safeguard the child's growth and development and to

minimize and counteract hazards to the child's emotional health inherent in the separation from the child's family.

- eg. "Legal risk adoptive placement" means placement of a child with a prospective adoptive family when the child is not legally free for adoption.
- fh. "Life book" means a tool used with children in out-of-home care and children who have been adopted to record memories and life events as they move to different placements.
- gj. "Permanent adoption record" means all paper, records, and identifying and nonidentifying information related to an adopted individual, birth siblings, birth parents, or adoptive parents which pertains to an adoption.
- hj. "Regional supervisor" means the regional supervisor of county social services located in each of the eight regional human service centers.
- ik. "Resident child-placing agency" means a child-placing agency that maintains an office within this state.

2. In these rules, the requirements for licensure for a child-placing agency apply to a new application for licensure as well as to an application for relicensure unless the context otherwise specifically implies.

History: Effective April 1, 2010; April 1, 2016.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 18. Subsection 6 of section 75-03-36-12 is amended as follows:

75-03-36-12. Employee background checks.

6. ~~The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.~~

History: Effective April 1, 2010; amended effective April 1, 2016.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 19. Section 75-03-36-13 is amended as follows:

75-03-36-13. Criminal conviction - Effect on licensure.

1. A prospective adoptive parent or any adult living in the prospective adoptive parent home may not be approved for the adoption of a child, or a child-placing agency owner or employee, must not have been ~~may not be known to have, and a child-placing agency may not employ an individual who is known to have, been found guilty of, pled guilty to, or pled no contest to:~~
 - a. An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults, ~~threats, coercion, and~~ harassment; 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or 12.1-40, human trafficking; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
 - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the ~~North Dakota statutes~~ offenses identified in subdivision a; or
 - c. An offense, other than an offense identified in subdivision a or b, if the department determines that the individual has not been sufficiently rehabilitated.
 - (1) The department will not consider a claim that the individual has been sufficiently rehabilitated until any term of probation, parole, or other form of community corrections or imprisonment, without a subsequent charge or conviction, has elapsed.
 - (2) An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the individual's ability to serve the public in a capacity as an adoptive home placement and as an owner or employee of a child-placing agency.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction. The department may not be compelled to make such determination.
4. The department may deny a request for a criminal background check for any individual who provides false or misleading information about the individual's criminal history.
5. The department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide-nationwide name-based criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.
6. An individual is known to have been found guilty of, pled guilty to, or pled no contest to an offense when it is:
 - a. Common knowledge in the community;
 - b. Acknowledged by the individual; or
 - c. Discovered by the child-placing agency, authorized agent, or department as a result of a background check.
7. A child-placing agency shall establish written policies and engage in practices that conform to those policies to effectively implement this section, and North Dakota Century Code sections 50-11.3-02 and 50-12-03.2.
8. A child-placing agency shall establish written policies specific to how the facility will proceed if a current employee or volunteer is known to have been found guilty of, pled guilty to, or pled no contest to an offense.

History: Effective April 1, 2010; amended effective April 1, 2016.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12 and NDCC 50-11.3

SECTION 20. Subdivision f of subsection 1 of section 75-03-36-14 is amended as follows:

75-03-36-14. Volunteers.

1. A child-placing agency which utilizes volunteers who work directly with children and families on a regular basis shall:
 - f. Require each volunteer to successfully complete a criminal history record investigation and a child abuse and neglect index investigation, ~~the results of which do not disqualify the volunteer,~~ prior to allowing the volunteer to have unsupervised contact with children.

History: Effective April 1, 2010; amended effective April 1, 2016.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12

SECTION 21. Subsection 3 of section 75-03-36-26 is amended as follows:

75-03-36-26. Selection of interim care for child pending adoptive placement.

3. The child-placing agency may make a legal risk adoptive placement, prior to the termination of parental rights, into the home of a prospective adoptive parent of that child, provided that:
 - a. The prospective family home has been fully studied and recommended for adoption placement; and
 - b. ~~The legal risk adoptive placement is anticipated to be for less than thirty days; and~~
 - e. The prospective adoptive parents sign a document acknowledging that they understand the risk of the birth parent reclaiming the child and that the prospective adoptive parents will return the child to the child-placing agency upon the child-placing agency's request.

History: Effective April 1, 2010; amended effective April 1, 2016.

General Authority: NDCC 50-12-05

Law Implemented: NDCC 50-12