

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, and identified relatives under
16 chapter 50-11, appointments of legal guardians under chapter 50-11.3, and
17 petitions for adoptions under chapter 50-12, except that the criminal history
18 record investigation must be conducted in accordance with those chapters. A
19 criminal history record investigation completed under chapter 25-03.2, 50-06,
20 50-11, 50-11.3, or 50-12 may be used to satisfy the requirements of a criminal
21 history record investigation under either of the other ~~two~~four chapters.

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

1 **25-03.2-03. Requirements for license.**

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

- 4 1. The premises to be used are in fit, safe, and sanitary condition and properly equipped
5 to provide good care and treatment;
- 6 2. The program director of the facility holds, at a minimum, a master's degree in social
7 work, psychology, or in a related field with at least two years of professional
8 experience in the treatment of children suffering from mental illnesses or emotional
9 disturbances. The executive director of the facility must have, at a minimum, a
10 bachelor's degree in a behavioral science or a bachelor's degree in any field and two
11 years of experience in administration;
- 12 3. The staff employed by the facility is supervised by the program director and qualified
13 by training and experience to provide services to children suffering from mental
14 illnesses or emotional disturbances. The facility annually must provide training to staff
15 which is relevant to the needs of the client population;
- 16 4. The health, safety, and well-being of the children cared for and treated in the facility
17 will be properly safeguarded;
- 18 5. There are sufficient treatment, educational, recreational and leisure, and physical
19 facilities and services available to the children in the facility;
- 20 6. The facility will provide for a medical and psychological examination of each child
21 within seventy-two hours of admission and thereafter as needed by the child;
- 22 7. An interdisciplinary team will review each individual treatment plan at least monthly
23 and update or amend the plan to meet the needs of the child;
- 24 8. The facility develops postdischarge plans and coordinates facility services and related
25 community services with partial discharge plans with each child's family, school, and
26 community upon discharge to ensure continuity of care; and
- 27 9. The facility is in compliance with requirements for psychiatric residential treatment
28 facilities under 42 U.S.C. 1396d [Pub. L. 89-97; 79 Stat. 351] and title 42, Code of
29 Federal Regulations, part 441, and with this chapter and rules adopted under this
30 chapter;

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

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

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

10 **25-03.2-04. Conviction not bar to licensure - Exceptions.**

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

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

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

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

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

28 3. Upon receipt of all fingerprints and necessary information relating to a criminal history
29 record investigation, the department shall submit the information and fingerprints to
30 the bureau of criminal investigation. The department shall provide a copy of the state

- 1 criminal history record information response received from the bureau of criminal
2 investigation to the facility or authorized agent making the request.
- 3 4. The bureau of criminal investigation shall request a nationwide background check from
4 the federal bureau of investigation and, upon receipt of a response, provide the
5 response of the federal bureau of investigation to the department. The bureau of
6 criminal investigation also shall provide any criminal history record information that
7 may lawfully be made available under chapter 12-60 to the department.
- 8 5. Upon request by the operators of a facility or employees of a facility, a law
9 enforcement agency shall take fingerprints of individuals described in this section if the
10 request is made for purposes of this section.
- 11 6. The department shall pay the cost of securing fingerprints, any criminal history record
12 information made available under chapter 12-60, and a nationwide background check
13 for each psychiatric residential treatment facility for children.
- 14 7. An agency that takes fingerprints as provided under this section may charge a
15 reasonable fee to offset the costs of the fingerprinting.
- 16 8. A criminal history record investigation completed under this section may be used to
17 satisfy the criminal history record investigation requirements of sections 50-06-01.9,
18 50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 6 of this Act.

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

21 **50-06-01.9. Criminal history record checks.**

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

- 24 1. Job applicants of the department and employees of the department ~~upon hiring~~ as part
25 of contingent offer of employment;
- 26 2. Job applicants of the human service zone, current employees of the human service
27 zone and department, and the department's and human service zones' contractors
28 and contractors' subcontractors ~~job applicants and current employees~~ that may have
29 access to federal tax information received from the United States internal revenue
30 service through a computer match and stored in the department's eligibility system;

- 1 3. A criminal history record check conducted under subsections 1 and 2 is valid for
2 ~~ten~~five years, after which the department shall require another criminal history record
3 check on employees of the department, human service zones, and the department's
4 and human service zones' contractors and contractors' subcontractors that may have
5 access to federal tax information received from the United States internal revenue
6 service through a computer match and stored in the department's eligibility system;
- 7 4. The department's and human service zones' contractors and contractors'
8 subcontractors job applicants and current employees of contractors and contractors'
9 subcontractors that may have access to social security administration information
10 received from the United States social security administration stored in the
11 department's eligibility system;
- 12 5. Providers licensed by the department under chapter 50-12, as well as for any
13 employees, volunteers, or students for field placement of those providers who have
14 direct contact with families, with children, or both;
- 15 5-6. Providers holding, applicants for, and emergency designees and staff members of
16 providers holding and applicants for early childhood services licensure,
17 self-declaration, or in-home provider registration under chapter 50-11.1. The
18 department also may require criminal history record checks for household members of
19 a residence out of which early childhood services within the provider's home are
20 provided; ~~and~~
- 21 6-7. Medicaid services applicant providers, Medicaid services providers, or an individual
22 with a five percent or more direct or indirect ownership interest in the applicant
23 provider or provider under chapter 50-24.1;
- 24 8. An operator of a facility licensed by the department under chapter 25-03.2, as well as
25 any individual employed by the facility, contracted service provider of the facility, and
26 nonemployee of the facility, having contact with any child cared for by the facility; and
- 27 9. A shelter care program certified by the department under chapter 50-06, as well as
28 any individual employed by the program.

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

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

- 2 1. Each shelter care program shall secure, from a law enforcement agency or any other
3 agency authorized to take fingerprints, two sets of fingerprints and shall provide all
4 other information necessary to secure state criminal history record information and a
5 nationwide background check under federal law from any individual employed by the
6 shelter care program.
- 7 2. The shelter care program shall assure information obtained under subsection 1 is
8 provided to the department.
- 9 3. Upon receipt of all fingerprints and necessary information relating to a criminal history
10 record investigation, the department shall submit the information and fingerprints to
11 the bureau of criminal investigation. The department shall provide a copy of the state
12 criminal history record information response received from the bureau of criminal
13 investigation to the shelter care program or authorized agent making the request.
- 14 4. The bureau of criminal investigation shall request a nationwide background check from
15 the federal bureau of investigation and, upon receipt of a response, provide the
16 response of the federal bureau of investigation to the department. The bureau of
17 criminal investigation also shall provide any criminal history record information that
18 may lawfully be made available under chapter 12-60 to the department.
- 19 5. Upon request by the provider or employees of a provider, a law enforcement agency
20 shall take fingerprints of individuals described in this section if the request is made for
21 purposes of this section.
- 22 6. The department shall pay the cost of securing fingerprints, any criminal history record
23 information made available under chapter 12-60, and a nationwide background check
24 for each shelter care provider.
- 25 7. An agency that takes fingerprints as provided under this section may charge a
26 reasonable fee to offset the costs of the fingerprinting.
- 27 8. A criminal history record investigation completed under this section may be used to
28 satisfy the criminal history record investigation requirements of sections 50-06-01.9,
29 50-11-06.8, 50-11.3-01, and 50-12-03.2 and section 2 of this Act.
- 30 9. Before certifying a shelter care program and during the shelter care program
31 operation, the department shall seek a criminal history record when required by this

1 section. The department, in accordance with the rules of the department, shall
2 consider any criminal history information available at the time a decision is made for
3 certification and during the operation of the certified shelter care program.

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

6 **50-11-06.8. Criminal history record investigation - Fingerprinting required.**

7 1. Each facility providing foster care for children shall secure, from a law enforcement
8 agency or any other agency authorized to take fingerprints, two sets of fingerprints and
9 shall provide all other information necessary to secure state criminal history record
10 information and a nationwide background check under federal law from:

- 11 a. Any individual employed by, or providing care in, the facility; and
12 b. Any adult living in the facility, but not being provided care in the facility.

13 2. Each identified relative, at the request by the department, shall secure, from a law
14 enforcement agency or any other agency authorized to take fingerprints, two sets of
15 fingerprints and shall provide all other information necessary to secure state criminal
16 history record information and a nationwide background check under federal law from
17 the identified relative and any adult living in the home of the identified relative.

18 3. Each certified family foster home for children provider, at the request of the
19 department, shall secure from a law enforcement agency or any other agency
20 authorized to take fingerprints, two sets of fingerprints and shall provide all other
21 information necessary to secure state criminal history record information and a
22 nationwide background check under federal law from the certified family foster home
23 for children provider and any adult living in the home of the certified family foster home
24 for children provider.

25 4. The facility, certified family foster home for children provider, or identified relative shall
26 assure that information obtained under subsections 1 ~~and~~ 2, and 3 is provided to the
27 department.

28 4.5. Upon receipt of all fingerprints and necessary information relating to a criminal history
29 record investigation, the department shall submit the information and fingerprints to
30 the bureau of criminal investigation. The department shall provide a copy of the state
31 criminal history record information response received from the bureau of criminal

1 investigation to the facility, certified family foster home for children provider, identified
2 relative, public agency, or authorized agent making the request.

3 ~~5-6.~~ The bureau of criminal investigation shall request a nationwide background check from
4 the federal bureau of investigation and, upon receipt of a response, provide the
5 response of the federal bureau of investigation to the department. The bureau of
6 criminal investigation also shall provide any criminal history record information that
7 may lawfully be made available under chapter 12-60 to the department.

8 ~~6-7.~~ Upon request by the operators of a facility, employees of a facility, certified family
9 foster home for children provider, or identified relative, a law enforcement agency shall
10 take fingerprints of individuals described in this section if the request is made for
11 purposes of this section.

12 ~~7-8.~~ The department shall pay the cost of securing fingerprints, any criminal history record
13 information made available under chapter 12-60, and a nationwide background check
14 for each facility providing foster care for children, certified family foster home for
15 children provider, and identified relative.

16 ~~8-9.~~ An agency that takes fingerprints as provided under this section may charge a
17 reasonable fee to offset the costs of the fingerprinting.

18 ~~9-10.~~ Except as provided in sections 50-11-02.4 and 50-11-06.9, the department shall
19 secure from a law enforcement agency or any other agency authorized to take
20 fingerprints two sets of fingerprints and all other information necessary to secure state
21 criminal history record information and a nationwide background check under federal
22 law from:

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

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

27 ~~10-11.~~ A criminal history record investigation completed under this section may be used to
28 satisfy the criminal history record investigation requirements of sections 50-06-01.9,
29 50-11.3-01, and 50-12-03.2 and sections 2 and 6 of this Act.

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

1 **50-12-03. Requirements for licensure and employment - Term - Moral or religious**
2 **conviction not bar to licensure or employment.**

3 The department of health and human services shall issue licenses for the conduct of
4 child-placing agencies upon application. A child-placing agency shall require a criminal history
5 record investigation on the owner and each employee, volunteer, or student for field placement
6 of a child-placing agency who has direct contact with families, with children, or with both. The
7 department of health and human services shall consider any criminal history record information
8 available about the owner at the time a licensing decision is made and about an employee prior
9 to the owner or the employee having direct contact with families, with children, or with both.
10 Licenses must be granted for a period not exceeding two years. Licenses must be issued to
11 reputable and responsible applicants upon a showing that they, and their agents, are equipped
12 properly by training and experience to find and select suitable temporary or permanent homes
13 for children and to supervise the homes when children are placed in them, to the end that the
14 health, morality, and general well-being of children placed by them will be properly safeguarded.
15 The department of health and human services may not deny a license because of the
16 applicant's objection to performing, assisting, counseling, recommending, facilitating, referring,
17 or participating in a placement that violates the applicant's written religious or moral convictions
18 or policies.

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

21 **50-25.1-11.1. Children's advocacy centers - Confidentiality of records - Criminal**
22 **history record checks.**

- 23 1. Records and digital media in the possession of a children's advocacy center relating to
24 a forensic medical examination, forensic interview, or therapy are confidential and may
25 be released only to a person other than a law enforcement agency, the department or
26 the department's authorized agent, or a medical or mental health professional when
27 the child comes before the medical or mental health professional in that person's
28 professional capacity, upon service of a subpoena signed by a judge.
- 29 2. The department may submit a request for a criminal history record check under
30 section 12-60-24 on a board member, an employee, a final applicant for employment,
31 of a children's advocacy center, a contractor, ~~multidisciplinary team member~~, or

- 1 volunteer of a children's advocacy center who has contact with a child at or through a
2 children's advocacy center.
- 3 3. As used in this section, "board member" means an individual serving on the board of a
4 children's advocacy center.