



North Dakota Legislative Council

Prepared for the Juvenile Justice Committee
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CRIMINAL HISTORY RECORD CHECK - BACKGROUND MEMORANDUM

Section 1 of Senate Bill No. 2238 ([appendix](#)) directs the Legislative Management to study the statewide criminal history record check process. The study may include a comparison between the statewide and nationwide criminal history record check standards, a review of the average processing time of a requested criminal history record check, and an evaluation of methods to improve efficiency and processing times of the statewide criminal history record check process.

BACKGROUND

North Dakota Century Code Chapter 12-60 establishes the procedure for the creation and dissemination of criminal history record information. Section 12-60-16.2 provides each criminal justice agency is required to report information to the Bureau of Criminal Investigation (BCI) regarding all felonies as well as certain misdemeanors, which are known as "reportable offenses." Section 12-60-16.5 provides the criminal history record information may be disclosed and exchanged among criminal justice agencies and courts, by subpoena, and as otherwise expressly required by law.

Section 12-60-16.6 allows for the dissemination of criminal history record information to parties not described in Section 12-60-16.5 if certain requirements are met. Pursuant to Section 12-60-16.9, the BCI is required to impose a \$15 fee for each state record check, a \$5 fee for record checks for certain nonprofit charitable organizations, and a \$15 fee for processing fingerprints necessary for a nationwide criminal history record check. The section also requires the BCI to waive the fees for any criminal justice agency or court.

Section 12-60-24 identifies the agencies and entities that are required to conduct criminal history record checks on certain individuals. The section requires the agencies and entities named in that section to "require each applicant, employee, or petitioner for adoption or name change to consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, registration, employment, or adoption." The section also requires the agency or entity to obtain two sets of fingerprints from each applicant, employee, or petitioner for adoption or name change. The agency or entity is required to submit the fingerprints to the BCI for a nationwide criminal history record check that includes the submission of the fingerprints to the Federal Bureau of Investigation (FBI).

The agencies and entities listed under Section 12-60-24 which are required to conduct criminal history record checks include the:

- Agriculture Commissioner for each applicant for a license to grow industrial hemp;
- Education Standards and Practices Board for initial and reciprocal teacher licenses; and
- Department of Health and Human Services (DHHS) for foster care licenses, approvals, and identified relatives under Chapter 50-11, appointments of legal guardians under Chapter 50-11.3, and petitions for adoptions under Chapter 50-12; a final applicant for a job opening or a current employee with the department as designated by the State Health Officer; an individual being investigated by the department; and, when requested by the department, an applicant for registration as a designated caregiver or a compassion center agent under Chapter 19-24.1, and for a criminal history record check for a children's advocacy center as authorized under Section 50-25.1-11.1.

In addition to the agencies and entities required to conduct criminal history checks on applicants and employees, several other statutes throughout the Century Code require criminal history checks on certain individuals. For example, Section 12-63-06 provides a complete criminal history check is required as a condition of licensure for peace officers. Section 12-63-01 defines a peace officer as "a public servant authorized by law or by government agency or branch to enforce the law and to conduct or engage in investigations of violations of the

law." Section 53-06.1-06 requires the Attorney General to conduct a criminal history check on each employee of a licensed charitable gaming organization. Section 43-07-04 authorizes the Secretary of State to require a criminal history check on an applicant for a contractor's license.

SENATE BILL NO. 2238 (2023)

Section 50-11.1-06.2 requires a provider holding or an applicant for early childhood services licensure, self-declaration, or in-home provider registration; emergency designees and staff members of providers holding and applicants for early childhood services licensure, self-declaration, or in-home provider registration; and household members of a residence out of which early childhood services are provided to obtain two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints for the purpose of a criminal history record check. The individual is then required to request the agency to submit the fingerprints and a completed fingerprint card for each set to the Division of Children and Family Services of DHHS or to the Department's authorized agent. The division is not subject to the fee imposed under Section 12-60-16.9 when requesting criminal history record information from the BCI. The Department of Health and Human Services may use the background investigation findings to determine approval, denial, or revocation of an early childhood services license, self-declaration, or in-home registration.

As introduced, Senate Bill No. 2238 (2023) was intended to shorten the time it takes to receive criminal background checks for child care providers under Section 50-11.1-06.2. Based on testimony received for Senate Bill No. 2238, the fingerprinting process and criminal background check delays arise during multiple steps in the process. First, it is difficult to schedule an appointment to get fingerprinted (with an average wait of 12 days in Fargo). When the fingerprint is returned to the provider and then mailed to DHHS, the average response takes 11 days. This results in a 3- to 4-week delay from the time of initial referral for fingerprinting to the time results for an in-state applicant are received. As a result of the delays, as many as 50 percent of child care applicants in some areas of North Dakota have obtained employment by the time the background checks are completed.

Senate Bill No. 2238, as introduced, attempted to streamline the criminal background check process for child care providers under Section 50-11.1-06.2 by amending the section to require DHHS to ensure access to fingerprinting is readily available for an individual who is required to obtain fingerprinting. The bill defined readily available as "within a fifty-mile radius and within forty-eight hours of an individual scheduling a request." The addition to Section 50-11.1-06.2 would effectively have established a criminal background check infrastructure for child care employees which is timely and responsive to providers and applicants.

CRIMINAL HISTORY RECORDS

The Bureau of Criminal Investigation is the state's central repository for criminal history information. The system compiles records of arrests and prosecutions of individual offenders for use by law enforcement, the courts, and the public. The criminal history information is submitted by local law enforcement agencies, state's attorneys, the courts, and parole and probation, to the BCI.

Background Check vs. State Criminal History Record Check

A background check is a search of publicly available online records, such as court records, sex offender registries, and other sources, which cross-references records by a person's name, or name and date of birth. These public records may have data for more than one person with the same name or may be out of date.

A state criminal history record check is a search of confidential law enforcement databases, which cross-references the person's name, date of birth, social security number, and other specific identifiers (including fingerprints). The extensive cross-referencing ensures the result relates only to that person, even if the person has used several names or there are other individuals with the same name. By law, only the BCI can supply a criminal history record check.

Criminal History Record Check

A North Dakota criminal history record check may be name based or fingerprint based. A name-based search will not identify records if the subject was arrested under a different name from the name or names listed on the request form. A fingerprint-based search will identify arrest records even if the subject used an unknown alias. If a fingerprint-based search is requested, fingerprints must be provided.

To request a criminal history record check, an individual will need the subject's:

- Full name, including maiden name, former name, and any known aliases;

- Date of birth;
- Social security number or the subject's fingerprints; and
- Current address or a signed authorization form, unless a signed authorization accompanies the request.

The BCI will mail a notice to the subject that the criminal history record has been released.

Processing Time

It takes approximately 7 to 10 business days to process and complete a criminal history record check. The Bureau of Criminal Investigation provides an option for expedited record checks, which require the applicant to include a prepaid, self-addressed, overnight, or priority mail envelope and payment only in the form of a certified cashier's check or money order.

Although the BCI begins processing requests upon receipt, some boards and agencies submit requests to the BCI only on a monthly basis. The BCI returns the record check to the board or agency as soon as the record check is completed, but the board or agency may not review the completed record checks until its next scheduled board meeting.

National Record Check

A request for criminal history record information only provides North Dakota records. For individuals who are required by state or federal law to obtain a national FBI record check (including applicants for professional licenses, foster care providers, potential adoptive parents, and others listed in Section 12-60-24), the request must be made through the BCI.

The FBI can provide individuals with an Identity History Summary, often referred to as a criminal history or "rap sheet," listing certain information taken from fingerprint submissions kept by the FBI and related to arrests and, in some instances, federal employment, naturalization, or military service. If the fingerprint submissions are related to an arrest, the Identity History Summary includes the name of the agency that submitted the fingerprints to the FBI, the date of the arrest, the arrest charge, and the disposition of the arrest, if known. All arrest information included in an Identity History Summary is obtained from fingerprint submissions, disposition reports, and other information submitted by authorized criminal justice agencies.

If the request is received online, the current processing time for an Identity History Summary is 5 to 10 days after the FBI receives the fingerprint card. If the request is received through the mail, the processing can take up to 2 months.

PROPOSED STUDY APPROACH

The committee may wish to receive information from DHHS and the BCI regarding an overview of the average processing time of a requested criminal history record check and pinpoint methods, mechanisms, or infrastructure needed to improve efficiency and processing times of the statewide criminal history record check process.

ATTACH: 1