

# Fingerprint-based criminal history record check



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## Who Must Complete a Fingerprint-based criminal history record check?

In response to Federal Reauthorization of the Child Care and Development Block Grant Act of 2014 that was signed into law (Pub.L. 113-186) by President Obama on November 19, 2014, the North Dakota Department of Human Services needed to modify its current rules on background check requirements and administrative rule in order to be in compliance with federal law.

Effective April 1, 2016, North Dakota Administrative code describes our requirements, policies, and procedures for fingerprint-based criminal background checks for child care staff members and child care providers.

A provider shall submit an application for a fingerprint-based criminal history record check at the time of application and every five years after initial approval. The provider shall ensure that each staff member submits an application for a fingerprint-based criminal history record check upon hire and every five years after initial approval.

For the purposes of this requirement, staff member means any individual at least 18 years of age whose activities involve the care of children or who have unsupervised access to children in care. This does include substitute staff.

**SFN 831**, *Personal Authorization for Criminal History Background Check Inquiry – Early Childhood* can be found online at <https://apps.nd.gov/itd/recmgmt/rm/stFrm/efrms/Doc/sfn00831.pdf>. The form is fillable and savable; so to save time, it is recommend that you complete the first sections of the form with your county licensing information, and the second section with your program information. You can then save the information, and then print off the form with some of the information already completed when you have staff members who need to be fingerprinted.

The fingerprint background check also requires the **SFN 377**, *Criminal History Background Check Address Disclosure/Release of Information*, which is the address history disclosure. You will want to make sure your staff members complete both forms accurately, ensuring that the address history form contains the full five year address history, with no gaps in dates, and with any overlaps in history explained. Any incomplete forms will be returned to you for completion and will slow the process.

For all staff, upon hire and annually, you will continue to submit the **SFN 508**, *Authorization for Child Abuse and Neglect Background Check* form, which authorizes the department to complete the Child Abuse/Neglect check. You will also complete the North Dakota Court check annually, and document those results, including how you have determined rehabilitation for any criminal convictions. You can access the North Dakota Court website at: <http://publicsearch.ndcourts.gov/default.aspx>.

## Effect of conviction on licensure and employment

An applicant or provider may not be, and a group child care may not employ or allow, in any capacity that involves or permits contact between the emergency designee, group child care supervisor, staff member, or household member and any child cared for by the group child care, a provider, emergency designee, group child care supervisor, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:

- An offense described in North Dakota Century Code chapter 12.1-16, homicide; 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 12.1-17-01, simple assault; 12.1-17-01.1, assault; 12.1-17-02, aggravated assault; 12.1-17-03, reckless endangerment; 12.1-17-04, terrorizing; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 12.1-17-12, assault or homicide while fleeing a police officer; 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of 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; 12.1-21-01, arson; 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;
- In the case of a misdemeanor offense described in North Dakota Century Code sections 12.1-17-01, simple assault; 12.1-17-03, reckless endangerment; 12.1-17-06, criminal coercion; 12.1-17-07.1, stalking; 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 conviction.
- The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff.

## Review of fingerprint-based criminal history record check

- If an individual disputes the results of the criminal history record check required under this chapter, the individual may request a review of the results by submitting a written request for review to the department within thirty calendar days of the date of the department's memo outlining the results. The individual's request for review must include a statement of each disputed item and the reason for the dispute.
- The department shall assign the individual's request for review to a department review panel. An individual who has requested a review may contact the department for an informal conference regarding the review any time before the department has issued its final decision.
- The department shall notify the individual of the department's final decision in writing within sixty calendar days of receipt of the individual's request for review.

## Additional Resources

Additional information is found in North Dakota Administrative Code section Effect of conviction on licensure and employment available at <http://www.nd.gov/dhs/services/childcare/>

Thank you for your cooperation, and feel free to contact your licenser, regional supervisor, or the North Dakota Department of Human Services with any questions!