

**HB 1095 – Department of Human Services  
Senate Judiciary Committee  
January 18, 2009**

Chairman Nething and members of the Senate Judiciary Committee, I am Julie Hoffman, Administrator of Adoption Services for the ND Department of Human Services. Thank you for the opportunity to provide testimony for HB 1095. The Department supports a do pass on HB 1095.

The Department has introduced this bill regarding criminal background checks in order to provide consistency in the interpretation of criminal history results between the foster care and adoption programs. This bill will also require fingerprint criminal background checks for employees of licensed child-placing agencies who have direct contact with children and families and require the Department to consider such results when licensing the agency.

As background for our discussion today, there are a number of statutes and rules that govern the criminal background check process for foster care and adoption. The process for these criminal background checks are laid out in N.D.C.C. chapter 50-11 for foster care, and chapter 50-12 for adoption. N.D.C.C. chapter 50-11.3 speaks to such background checks for guardianship purposes and to the effect of the results of the background check (the interpretation). These sections were implemented after the passage of the Adoption and Safe Families Act of 1997, a federal law which implemented fingerprint-based checks for prospective foster and adoptive parents. The Adam Walsh Act (2006) made fingerprint based criminal background checks and multi-state Child Protection Services (CPS) registry checks a requirement for all states. In addition to statute, there are rules that provide additional guidance for

criminal background checks as they relate to foster care, residential child care facilities, and psychiatric residential treatment facilities. Having these various statutes and rules has provided a challenge to the Department in consistently interpreting criminal history results across foster care, guardianship, and adoption programs. This bill seeks to provide the authority to further clarify these issues in administrative rule, and to bring some helpful interpretive language into the adoption statute.

Section One of the bill provides two new paragraphs that would allow the Department to adopt rules under N.D.C.C. chapter 50-11.3 relating to criminal background checks for foster care and adoption, using this section as a minimum requirement for determinations to deny or revoke a foster care license or determining suitability for adoption.

Section Two of the bill provides authority for the Department to adopt rules establishing the requirements for licensure for child-placing agencies. Currently, there are no administrative rules related to licensure for child-placing agencies.

Section Three requires child-placing agencies to request criminal background checks for all employees who have direct contact with children and families. It additionally requires the Department to consider any criminal history record information available regarding the owner, prior to licensing an agency and prior to an employee having direct contact with families and children. Most of the child-placing agencies currently licensed in North Dakota do conduct some type of criminal background check for their employees on a voluntary basis. This provision would require that they do so, and would require the Department to consider the criminal history information in licensing.

Section Four provides that a criminal history does not disqualify a person from employment in a child-placing agency unless the Department determines that the criminal history has a direct bearing on the person's ability to serve or the person is not sufficiently rehabilitated.

Section Five introduces language currently found in foster care regulation regarding "direct bearing offenses". This provision directly relates to the consistent interpretation of criminal history results between foster care and adoption programs. Both foster care and adoption look to N.D.C.C. chapter 50-11.3 to interpret the results of a criminal history background check. This section outlines a number of violent and child-related crimes that preclude individuals from being licensed for foster care or approved to adopt. In addition, administrative rule instructs the Department in listing additional offenses considered to have a "direct bearing" on an individual's ability to serve as a foster care provider. Adoption does not have such an administrative rule. Therefore, it is not uncommon for an individual with certain criminal history (assault, numerous DUI, etc.) to be precluded from being licensed for foster care, but not precluded for adoption purposes. It is these inconsistencies that we are attempting to deal with in this section by adding the "direct bearing" language to the licensed child-placing agency (adoption agency) statute.

The Department supports a do pass on HB 1095. Thank you for your time today and I would be happy to answer any questions you might have.