Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2215
(Senators Casper, Nelson, Poolman)
(Representatives Delmore, Dockter, Karls)

AN ACT to amend and reenact sections 12-60-07.1, 12-60-16.1, 12-60-16.2, 12-60-16.6, and 12-60-16.9, subsection 1 of section 12-60-24, and subsection 7 of section 12.1-32-15 of the North Dakota Century Code, relating to criminal history record information and registration for offenders against children and sex offenders.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-60-07.1 of the North Dakota Century Code is amended and reenacted as follows:

12-60-07.1. Automated ~~fingerprint~~biometric data identification system.

The bureau may establish and maintain an automated ~~fingerprint~~biometric data identification system for this state. The bureau may cooperate with other states for the operation of a regional automated ~~fingerprint~~biometric data identification system.

SECTION 2. AMENDMENT. Section 12-60-16.1 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.1. Definitions.

As used in ~~sections 12-60-16.1 through 12-60-16.10~~this chapter and in section 12.1-32-15, unless the context otherwise requires:

1. "Biometric data" includes fingerprints, palm prints, voice prints, retinal or iris images, facial recognition, and DNA profiles.

2. "Bureau" means the bureau of criminal investigation.

~~2.~~3. "Court" means the supreme court, district courts, and municipal courts of the North Dakota judicial system.

~~3.~~4. "Criminal history record" means the compilation of criminal history record information of a person reported to the bureau in accordance with this chapter.

~~4.~~5. "Criminal history record information" includes information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other criminal charges, any dispositions arising therefrom, sentencing, correctional supervision, and release.

~~5.~~6. "Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.

~~6.~~7. "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:

a. The transmittal of the information within a criminal justice agency.

b. The reporting of the information as required by section 12-60-16.2.

c. The transmittal of the information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.

~~7.~~8. "Noncriminal justice agency" means an entity that is not a criminal justice agency.

~~8.~~9. "Record subject" means the person who is the primary subject of a criminal history record. The term includes any representative designated by that person by power of attorney or notarized authorization. If the subject of the record is under legal disability, the term includes that person's parents or duly appointed legal representative.

~~9.~~10. "Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 12-60-16.2. The term includes only those events in which the subject of the event is an adult or a juvenile adjudicated as an adult.

SECTION 3. AMENDMENT. Section 12-60-16.2 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.2. Criminal history record information - Reportable events.

Except as otherwise provided in sections 12-60-16.1 through 12-60-16.10, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 12-60-16.4. The bureau may require the criminal justice agency to provide the information in a manner that the bureau determines to be the most efficient or accurate means of collection. The following criminal justice agencies shall perform the duties indicated:

1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the ~~fingerprints~~necessary biometric data, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall ~~take~~collect the ~~fingerprints~~necessary biometric data. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.

2. The prosecuting attorney shall notify the bureau of all charges filed, including all those added after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.

3. After the court pronounces sentence for a reportable offense, and if the necessary biometric data of the person being sentenced has not been ~~fingerprinted~~collected with respect to that case, the prosecuting attorney shall ask the court to order a law enforcement agency to ~~fingerprint~~collect the necessary biometric data from that person. If the court determines that the necessary biometric data of the person being so sentenced has not previously been ~~fingerprinted~~collected for the same case, the court shall order the ~~fingerprints taken~~necessary biometric data to be collected from that person. The law enforcement agency shall forward the ~~fingerprints~~necessary biometric data to the bureau.

4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of ~~fingerprints~~biometric data reported under subsection 3. For each charge, this information must include at least the following:

   a. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;

b. Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and

c. Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.

5. The North Dakota ~~state penitentiary~~department of corrections and rehabilitation, pardon clerk, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, conditional pardon, reprieve, parole, commutation of sentence, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death must also be furnished.

SECTION 4. AMENDMENT. Section 12-60-16.6 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5.

Only the bureau may disseminate a criminal history record to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The criminal history record information has not been purged or sealed.

2. The criminal history record information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the criminal history record information is of a reportable event occurring within three years preceding the request.

3. The request is written and contains:

   a. The name of the requester.

   b. The ~~fingerprints~~biometric data of the record subject or, if the request is made without submitting the ~~fingerprints~~biometric data, the request must also include the name of the record subject and at least two items of information used by the bureau to retrieve criminal history records, including:

      (1) The state identification number assigned to the record subject by the bureau.

      (2) The social security number of the record subject.

      (3) The date of birth of the record subject.

      (4) A specific reportable event identified by date and either agency or court.

4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete. This section does not prohibit the disclosure of a criminal history record by the requester or other persons after the dissemination of the record by the bureau to the requester.

SECTION 5. AMENDMENT. Section 12-60-16.9 of the North Dakota Century Code is amended and reenacted as follows:

12-60-16.9. Criminal history record information - Fee for record check.

The bureau shall impose a fee of fifteen dollars for each state record check. The bureau shall impose a fee of five dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors. The bureau shall impose a fee of five dollars for each record check conducted on a volunteer providing services for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of vulnerable elderly adults. The bureau shall impose a fee of fifteen dollars for processing ~~fingerprints~~biometric data necessary for each nationwide criminal history record check. The bureau shall waive the fees for any criminal justice agency or court.

SECTION 6. AMENDMENT. Subsection 1 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

1. a. Each applicant, employee, or petitioner for adoption or name change who is subject to a criminal history record check under subsection 2 shall 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.

   b. Each applicant, employee, registrant, or petitioner for adoption or name change subject to a criminal history record check shall provide to the requesting agency or entity written consent to conduct the check and to release or disclose the information in accordance with state and federal law, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.

   c. The agency, official, or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.

   d. Fingerprints and any other identifying information the bureau has obtained under this section may be retained by the bureau and the federal bureau of investigation at the request of the agency, official, or entity submitting the fingerprints and any other identifying information for a statewide and nationwide criminal history record check. The subject of the records must be provided notice of the retention of the fingerprints and any other identifying information. The bureau may provide to each agency, official, or entity listed in subsection 2 of this section the response of the bureau and the federal bureau of investigation any statewide criminal history record information that may lawfully be made available under this chapter.

   e. The bureau may provide the results of a criminal history background check made under subsection 2 of this section to another state's identification bureau or central repository for the collection, maintenance, and dissemination of criminal history record information when the other state's identification bureau or central repository has requested the results of the criminal history background check and the agency, official, or entity of the other state has equivalent authority to subsection 2 of this section to request a statewide and nationwide criminal history check.

SECTION 7. AMENDMENT. Subsection 7 of section 12.1-32-15 of the North Dakota Century Code is amended and reenacted as follows:

7. Registration consists of a written statement signed by the individual, giving the information required by the attorney general, and the ~~fingerprints~~biometric data and photograph of the individual. An individual who is not required to provide a sample of blood and other body fluids under section 31-13-03 or by the individual's state or court of conviction or adjudication shall submit a sample of blood and other body fluids for inclusion in a centralized database of DNA identification records under section 31-13-05. The collection, submission, testing and analysis of, and records produced from, samples of blood and other body fluids, are subject to chapter 31-13. Evidence of the DNA profile comparison is admissible in accordance with section 31-13-02. A report of the DNA analysis certified by the state crime laboratory is admissible in accordance with section 31-13-05. A district court shall order an individual who refuses to submit a sample of blood or other body fluids for registration purposes to show cause at a specified time and place why the individual should not be required to submit the sample required under this subsection. Within three days after registration, the registering law enforcement agency shall forward the statement, ~~fingerprints~~biometric data, and photograph to the attorney general and shall submit the sample of the individual's blood and body fluids to the state crime laboratory. If an individual required to register under this section has a change in vehicle or computer online identity, the individual shall inform in writing, within three days after the change, the law enforcement agency with which that individual last registered of the individual's new vehicle or computer online identity. If an individual required to register pursuant to this section has a change in name, school, or residence or employment address, that individual shall inform in writing, at least ten days before the change, the law enforcement agency with which that individual last registered of the individual's new name, school, residence address, or employment address. A change in school or employment address includes the termination of school or employment for which an individual required to register under this section shall inform in writing within five days of the termination the law enforcement agency with which the individual last registered. The law enforcement agency, within three days after receipt of the information, shall forward it to the attorney general. The attorney general shall forward the appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. Upon a change of address, the individual required to register shall also register within three days at the law enforcement agency having local jurisdiction of the new place of residence, school, or employment. The individual registering under this section shall periodically confirm the information required under this subsection in a manner and at an interval determined by the attorney general. A law enforcement agency that has previously registered an offender may omit the ~~fingerprint~~biometric data portion of the registration if that agency has a set of ~~fingerprints~~biometric data on file for that individual and is personally familiar with and can visually identify the offender. These provisions also apply in any other state that requires registration.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2215.

Senate Vote:	Yeas 46	Nays 0	Absent 1
House Vote:	Yeas 86	Nays 0	Absent 8

Secretary of the Senate

Received by the Governor at 10:23A M. on March 26, 2015.

Approved at 2:04P. M. on March 27, 2015.

Governor

Filed in this office this 27th day of March, 2015,

at 3:03 o'clock P M.

Secretary of State