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H.B. 364

SAFETY IN PUBLIC SCHOOLS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Bill Wright

AN ACT RELATING TO EDUCATION; REQUIRING THE CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY TO MAINTAIN A SEPARATE FILE OF FINGERPRINTS SUBMITTED FOR A CRIMINAL BACKGROUND CHECK ON SCHOOL PERSONNEL AND NOTIFY THE STATE OFFICE OF EDUCATION WHEN A NEW ENTRY IS MADE AGAINST A PERSON WHOSE FINGERPRINTS ARE HELD IN THE FILE; MODIFYING REQUIREMENTS AS TO WHO PAYS FOR A BACKGROUND CHECK; AND PROVIDING THE STATE OFFICE OF EDUCATION WITH ACCESS TO CHILD AND FAMILY SERVICES RECORDS AND REPORTS AND JUVENILE COURT RECORDS FOR THE PURPOSE OF EVALUATING WHETHER AN INDIVIDUAL SHOULD BE PERMITTED TO OBTAIN OR RETAIN AN EDUCATOR'S LICENSE OR SERVE AS AN EMPLOYEE OR VOLUNTEER IN A SCHOOL.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53A-3-410, as last amended by Chapter 263, Laws of Utah 1998

62A-4a-116, as last amended by Chapter 196, Laws of Utah 1998

62A-4a-412, as last amended by Chapters 169, 196 and 274, Laws of Utah 1998

78-3a-206, as last amended by Chapters 237 and 263, Laws of Utah 1998

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **53A-3-410** is amended to read:

53A-3-410. Criminal background checks on school personnel -- Notice -- Payment of cost -- Request for review.

(1) A school district superintendent or the superintendent's designee:

(a) shall require a potential employee or a volunteer who will be given significant

unsupervised access to a student in connection with the volunteer's assignment to submit to a criminal background check as a condition for employment or appointment; and

(b) where reasonable cause exists, may require an existing employee or volunteer to submit to a criminal background check.

(2) The chief administrative officer of a private school may require:

(a) a potential employee or volunteer to submit to a criminal background check as a condition for employment or appointment; and

(b) where reasonable cause exists, an existing employee or volunteer to submit to a criminal background check.

(3) The applicant, volunteer, or employee shall receive written notice that the background check has been requested.

(4) (a) (i) Fingerprints of the individual shall be taken, and the Criminal Investigations and Technical Services Division of the Department of Public Safety, established in Section 53-10-103, shall release the individual's full record of criminal convictions to the administrator requesting the information.

(ii) The division shall maintain a separate file of fingerprints submitted under Subsection (4)(a)(i) and notify the State Office of Education when a new entry is made against a person whose fingerprints are held in the file ĥ **REGARDING:**

(A) ANY MATTERS INVOLVING AN ALLEGED SEXUAL OFFENSE;

(B) ANY MATTERS INVOLVING AN ALLEGED FELONY OR CLASS A MISDEMEANOR DRUG OFFENSE; OR

(C) ANY MATTERS INVOLVING AN ALLEGED OFFENSE AGAINST THE PERSON UNDER TITLE 76, CHAPTER 5, OFFENSES AGAINST THE PERSON ĥ .

(iii) The cost of maintaining the separate file shall be paid by the State Office of Education from fees charged to those submitting fingerprints.

(b) Information received by the division from entities other than agencies or political subdivisions of the state may not be released to a private school unless the release is permissible under applicable laws or regulations of the entity providing the information.

(5) The superintendent, local school board, or their counterparts at a private school shall consider only those convictions which are job-related for the employee, applicant, or volunteer.

(6) (a) The district or private school shall pay the cost of the background check except as otherwise provided in Subsection (6)(b), and the monies collected shall be credited to the Criminal Investigations and Technical Services Division to offset its expenses.

(b) The district or private school may require an applicant to pay the costs of a background check as a condition for consideration for employment or appointment, if:

(i) the applicant:

(A) has passed an initial review;

(B) is one of a pool of no more than five candidates for a position; and

(C) <u>except as may be otherwise provided by state board rule for an applicant who submitted to a background check while completing a higher education program at a Utah institution of higher education,</u> has not been the subject of a criminal background check of similar scope during the preceding two years that was requested by a potential employer or the State Board of Education; and

(ii) a copy of the background check is provided to the district or school considering employment or appointment of the applicant.

(7) The Criminal Investigations and Technical Services Division shall, upon request, seek additional information from regional or national criminal data files in responding to inquiries under this section.

(8) (a) A private school seeking information from the Federal Bureau of Investigation or other national criminal data file which the private school may not access directly shall submit its request to the Teacher Certification Section of the State Board of Education, together with the required fee and the school's criminal data-related criteria for limiting or rejecting employment.

(b) The section shall submit the request and, upon receiving the requested information, shall determine whether the subject of the inquiry is entitled to employment under the school's criteria.

(c) The section shall disclose its determination to the school but may not disclose the data in the national criminal data file.

(9) (a) The applicant, volunteer, or employee shall have opportunity to respond to any information received as a result of the background check.

(b) A private school applicant, volunteer, or employee who wishes to respond shall:

(i) submit a request to the school; and

(ii) give a written statement to the Teacher Certification Office authorizing the office to release the background check information to a hearing officer selected by the individual and the school.

(c) The individual and the school shall equally share any costs incurred under Subsection (9)(b).

(d) A public agency shall resolve any request for review by an applicant, volunteer, or

employee seeking employment or employed by the agency through normal administrative procedures established by the agency.

(10) If a person is denied employment or is dismissed from employment because of information obtained through a criminal background check, the person shall receive written notice of the reasons for denial or dismissal and have an opportunity to respond to the reasons under the procedures set forth in Subsection (9).

(11) Information obtained under this part is confidential and may only be disclosed as provided in this section.

Section 2. Section **62A-4a-116** is amended to read:

62A-4a-116. Management information system -- Requirements.

(1) The division shall develop and implement a management information system that meets the requirements of this section and the requirements of federal law and regulation.

(2) With regard to all child welfare cases, the management information system shall:

(a) provide each caseworker with a complete history of each child in his caseload, including:

(i) all past action taken by the division with regard to that child and his siblings, the complete case history and all reports and information in the control or keeping of the division regarding that child and his siblings;

(ii) the number of times the child has been in foster care;

(iii) the cumulative period of time the child has been in foster care;

(iv) all reports of abuse or neglect received by the division with regard to that child's parent or parents, including documentation regarding whether each report was substantiated or unsubstantiated;

(v) the number of times the child's parent or parents have failed any treatment plan; and

(vi) the number of different caseworkers who have been assigned to that child in the past;

(b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect; and

(c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans.

(3) With regard to all child protective services cases, the management information system shall, in addition to the information required in Subsection (2), monitor compliance with the policy of the division, the laws of this state, and federal law and regulation.

(4) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:

(i) limited to:

(A) substantiated findings of abuse or neglect since January 1, 1994, after notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;

(B) substantiated findings of child abuse or neglect for which a notice has been sent under Section 62A-4a-116.5 by July 1, 1998, and found by an administrative hearing officer before December 1, 1998, to have occurred between January 1, 1988, and January 1, 1994, except that if a person applies for licensure or an adoption before June 30, 1999, and that person has not previously been given notice under Section 62A-4a-116.5, the department may determine whether a substantiated finding exists between January 1, 1988, and January 1, 1994, and if so, provide notice and an opportunity to challenge under Section 62A-4a-116.5 before the license or adoption may be approved;

(C) an adjudication of child abuse or neglect by a court of competent jurisdiction; and

(D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual abuse of any person; and

(ii) accessible by:

(A) the Office of Licensing for licensing purposes only; [~~and~~]

(B) subject to the provisions of Subsection (4)(c), the Bureau of Health Facility Licensure within the Department of Health only for the purpose of licensing a child care program or provider, or for determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child has a substantiated finding of child abuse or neglect[~~.~~]; and

(C) the State Office of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school. The office shall provide the subject of a report received under Subsection (4)(a)(ii)(C) with an opportunity to respond to the report before making a decision concerning licensure or employment.

152 (b) For the purpose of Subsection (4)(a), "substantiated":
153 (i) means a finding, at the completion of an investigation, that there is a reasonable basis
154 to conclude that one or more of the following types of abuse or neglect has occurred:
155 (A) physical abuse;
156 (B) sexual abuse;
157 (C) sexual exploitation;
158 (D) abandonment;
159 (E) medical neglect resulting in death, disability, or serious illness; or
160 (F) chronic or severe neglect; and
161 (ii) does not include the use of reasonable and necessary physical restraint or force by an
162 educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401.
163 (c) (i) The Department of Health shall:
164 (A) designate two persons within the Department of Health to access the licensing part of
165 the management information system; and
166 (B) adopt measures to:
167 (I) protect the security of the licensing part of the management information system; and
168 (II) strictly limit access to the licensing part of the management information system to
169 those designated under Subsection (4)(c)(i)(A).
170 (ii) Those designated under Subsection (4)(c)(i)(A) shall receive training from the
171 department with respect to:
172 (A) accessing the licensing part of the management information system;
173 (B) maintaining strict security; and
174 (C) the criminal provisions in Section 62A-4a-412 for the improper release of information.
175 (iii) Those designated under Subsection (4)(c)(i)(A):
176 (A) are the only ones in the Department of Health with the authority to access the licensing
177 part of the management information system; and
178 (B) may only access the licensing part of the management information system in
179 accordance with the provisions of Subsection (4)(a)(ii).
180 (5) All information contained in the management information system shall be available
181 to the department upon the approval of the executive director, on a need-to-know basis.
182 (6) The information contained in the management information system shall be encrypted.

Section 3. Section **62A-4a-412** is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report is confidential and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency, including a school district, that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(e) a court, upon a finding that access to the records may be necessary for the determination of an issue before it;

(f) an office of the public prosecutor or its deputies;

(g) a person authorized by a [~~Childrens'~~] Children's Justice Center, for the purposes described in Section 67-5b-102;

(h) the Bureau of Health Facility Licensure within the Department of Health, as provided for in Section 26-21-9.5, for the sole purpose of determining whether a person associated with a covered health care facility and who provides direct care to children has a substantiated finding of child abuse or neglect;

(i) the Bureau of Health Facility Licensure within the Department of Health for the purpose of determining whether a person associated with a child care provider has a substantiated finding of child abuse or neglect on the licensing part of the management information system created in Section 62A-4a-116; [~~and~~]

(j) the State Office of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, ĥ **LIMITED TO INFORMATION WITH SUBSTANTIATED FINDINGS INVOLVING AN ALLEGED SEXUAL OFFENSE, AN ALLEGED FELONY OR CLASS A MISDEMEANOR DRUG OFFENSE, OR ANY ALLEGED OFFENSE AGAINST THE PERSON UNDER TITLE 76, CHAPTER 5, OFFENSES AGAINST THE PERSON, AND** ĥ with the understanding that the office must provide the subject of a report received under Subsection (1)(j) with an opportunity to respond to the report before making a decision concerning licensure or employment; and

[~~(j)~~] (k) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses.

(2) The division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(3) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained in the central register, in violation of this part, is guilty of a class C misdemeanor.

(4) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

Section 4. Section **78-3a-206** is amended to read:

78-3a-206. Court records - Inspection.

(1) The court and the probation department shall keep records as required by the board and the presiding judge.

(2) Court records shall be open to inspection by:

(a) the parents or guardian, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred; [~~and~~]

(b) ĥ **FOR INFORMATION RELATING TO ADULT OFFENDERS ALLEGED TO HAVE COMMITTED A SEXUAL OFFENSE, A FELONY OR CLASS A MISDEMEANOR DRUG OFFENSE, OR AN OFFENSE AGAINST THE PERSON UNDER TITLE 76, CHAPTER 5, OFFENSES AGAINST THE PERSON,** ĥ the State Office of Education for the purpose of evaluating whether an individual should be permitted to obtain or ĥ **[~~return~~] RETAIN** ĥ a license as an educator or serve as an employee or volunteer in a school, with the understanding that the office must provide the individual with an opportunity to respond to any information gathered from its inspection of the records before it makes a decision concerning licensure or employment; and

[~~(b)~~] (c) the Division of Criminal Investigations and Technical Services, established in Section 53-10-103, for the purpose of establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704.

(3) With the consent of the judge, court records may be inspected by the minor, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) If a petition is filed charging a minor 14 years of age or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

245 (5) Probation officers' records and reports of social and clinical studies are not open to
246 inspection, except by consent of the court, given under rules adopted by the board.
247 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency
248 history summary of any person charged as an adult with a felony offense shall be made available
249 to any person upon request.
250 (b) This provision does not apply to records that have been destroyed or expunged in
251 accordance with court rules.
252 (c) The court may charge a reasonable fee to cover the costs associated with retrieving a
253 requested record that has been archived.

Legislative Review Note
as of 2-12-99 10:07 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel