

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-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 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.

(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) 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, 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-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, 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 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 3. 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) 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, 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, 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.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.