

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

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

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

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

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

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

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

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

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

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

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

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

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

58 (i) the applicant:

59 (A) has passed an initial review;

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

61 (C) except as may be otherwise provided by state board rule for an applicant who
62 submitted to a background check while completing a higher education program at a Utah

63 institution of higher education, has not been the subject of a criminal background check of similar
64 scope during the preceding two years that was requested by a potential employer or the State Board
65 of Education; and

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

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

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

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

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

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

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

83 (i) submit a request to the school; and

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

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

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

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

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

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

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

99 **62A-4a-116. Management information system -- Requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

126 (i) limited to:

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

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

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

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

140 (ii) accessible by:

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

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

147 (C) the State Office of Education for the purpose of evaluating whether an individual
148 should be permitted to obtain or retain a license as an educator or serve as an employee or
149 volunteer in a school. The office shall provide the subject of a report received under Subsection
150 (4)(a)(ii)(C) with an opportunity to respond to the report before making a decision concerning
151 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.

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

184 **62A-4a-412. Reports and information confidential.**

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

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

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

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

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

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

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

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

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

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

207 (j) the State Office of Education for the purpose of evaluating whether an individual
208 should be permitted to obtain or retain a license as an educator or serve as an employee or
209 volunteer in a school, with the understanding that the office must provide the subject of a report
210 received under Subsection (1)(j) with an opportunity to respond to the report before making a
211 decision concerning licensure or employment; and

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

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

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

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

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

223 **78-3a-206. Court records - Inspection.**

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

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

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

229 (b) the State Office of Education for the purpose of evaluating whether an individual
230 should be permitted to obtain or return a license as an educator or serve as an employee or
231 volunteer in a school, with the understanding that the office must provide the individual with an
232 opportunity to respond to any information gathered from its inspection of the records before it
233 makes a decision concerning licensure or employment; and

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

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

240 (4) If a petition is filed charging a minor 14 years of age or older with an offense that
241 would be a felony if committed by an adult, the court shall make available to any person upon
242 request the petition, any adjudication or disposition orders, and the delinquency history summary
243 of the minor charged unless the records are closed by the court upon findings on the record for
244 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