

1 **CRIMINAL BACKGROUND CHECKS FOR**
2 **MENTAL HEALTH PROVIDERS AND OTHERS**

3 2001 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Leonard M. Blackham**

6 **This act modifies provisions of the Utah Human Services Code related to the licensing**
7 **requirements for a Human Services licensee who provides direct services to a minor.**

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

9 AMENDS:

10 **62A-2-101**, as last amended by Chapter 358, Laws of Utah 1998

11 **62A-2-120**, as enacted by Chapter 358, Laws of Utah 1998

12 **62A-2-121**, as last amended by Chapter 164, Laws of Utah 1999

13 **62A-4a-116**, as last amended by Chapters 304 and 321, Laws of Utah 2000

14 **62A-4a-413**, as last amended by Chapters 263 and 358, Laws of Utah 1998

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

16 Section 1. Section **62A-2-101** is amended to read:

17 **62A-2-101. Definitions.**

18 As used in this chapter:

19 (1) "Adult day care" means continuous care and supervision for three or more adults for
20 at least four but less than 24 hours a day, that meets the needs of functionally impaired adults
21 through a comprehensive program that provides a variety of health, social, recreational, and related
22 support services in a protective setting.

23 (2) "Child placing" means receiving, accepting, or providing custody or care for any child
24 under 18 years of age, temporarily or permanently, for the purpose of:

25 (a) finding a person to adopt the child;

26 (b) placing the child temporarily or permanently in a home for adoption; or

27 (c) foster home placement.



28 (3) "Client" means an individual who receives or has received services from a human
29 services licensee under this chapter.

30 (4) "Day treatment" means specialized treatment for less than 24 hours a day for four or
31 more persons who are unrelated to the owner or provider and who have emotional, psychological,
32 developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies. Day
33 treatment is provided in lieu of, or in coordination with, a more restrictive residential or inpatient
34 environment or service.

35 (5) "Department" means the Department of Human Services.

36 (6) "Director" means the director of the Office of Licensing.

37 (7) "Domestic violence treatment program" means a nonresidential program designed to
38 provide psychological treatment and educational services to perpetrators and victims of domestic
39 violence.

40 (8) "Executive director" means the executive director of the Department of Human
41 Services.

42 (9) "Human services licensee" or "licensee" means a youth program, resource family home,
43 or a facility or program that provides care, secure treatment, inpatient treatment, residential
44 treatment, residential support, adult day care, day treatment, outpatient treatment, domestic
45 violence treatment, child placing services, or social detoxification.

46 (10) "Licensing board" means the Human Services Licensing Board.

47 (11) "Office" means the Office of Licensing within the Department of Human Services.

48 (12) "Outpatient treatment" means individual, family, or group therapy or counseling
49 designed to improve and enhance social or psychological functioning for those whose physical and
50 emotional status allows them to continue functioning in their usual living environment.

51 (13) "Person associated with a licensee" means an owner, director, member of the
52 governing body, employee, provider of care, and volunteer of a human services licensee.

53 (14) "Provide direct services to a minor" means the provision of therapy, counseling,
54 child-placing services, youth programs, substitute care, foster care, institutional care, or other
55 services to minors by an individual whose actual contact with the minor involves control over the
56 minor and subjects the minor to the influence of the individual.

57 (15) "Proximate adverse effect" means the offense for which the individual has been
58 convicted directly relates to abuse of a minor including:

59 (a) actual or threatened nonaccidental physical or mental harm;

60 (b) sexual abuse;

61 (c) sexual exploitation; and

62 (d) negligent treatment.

63 [~~(14)~~] (16) "Residential support" means arranging for or providing the necessities of life
64 as a protective service to individuals or families who are disabled or who are experiencing a
65 dislocation or emergency which prevents them from providing these services for themselves or
66 their families. Treatment is not a necessary component of residential support.

67 [~~(15)~~] (17) "Residential treatment" means a 24-hour group living environment for four or
68 more individuals unrelated to the owner or provider that offers room or board and specialized
69 treatment, rehabilitation, or habilitation services for persons with emotional, psychological,
70 developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential
71 treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living
72 independently in the community.

73 [~~(16)~~] (18) "Resource family home" means a home licensed to provide services to a child
74 in the custody of the state and includes a foster care home and a legal risk home.

75 [~~(17)~~] (19) "Secure treatment" means 24-hour specialized residential treatment or care for
76 persons whose current functioning is such that they cannot live independently or in a less
77 restrictive environment. Secure treatment differs from residential treatment to the extent that it
78 requires intensive supervision, locked doors, and other security measures which are imposed on
79 residents with neither their consent nor control.

80 [~~(18)~~] (20) "Social detoxification" means short-term residential services for persons who
81 are intoxicated, that are provided outside of a health care facility licensed under Title 26, Chapter
82 21, Health Care Facility [~~Licensure~~] Licensing and Inspection Act, and that include:

83 (a) room and board for persons who are unrelated to the owner or manager of the facility;

84 (b) specialized rehabilitation to acquire sobriety; and

85 (c) aftercare services.

86 [~~(19)~~] (21) "Unrelated persons" means persons other than parents, legal guardians,
87 grandparents, brothers, sisters, uncles, or aunts.

88 [~~(20)~~] (22) "Youth program" means a nonresidential program designed to provide
89 behavioral, substance abuse, or mental health services to minors that:

- 90 (a) serves either adjudicated or nonadjudicated youth;
- 91 (b) charges a fee for its services;
- 92 (c) may or may not provide host homes or other arrangements for overnight
93 accommodation of the youth;
- 94 (d) may or may not provide all or part of its services in the outdoors;
- 95 (e) may or may not limit or censor access to parents or guardians;
- 96 (f) prohibits or restricts a minor's ability to leave the program at any time of his own free
97 will; and
- 98 (g) will not apply to recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other
99 such organizations.

100 Section 2. Section **62A-2-120** is amended to read:

101 **62A-2-120. Criminal background checks.**

102 (1) (a) A human services licensee or individual applying for or renewing a license to
103 provide [~~child-placing~~] direct services[~~-, youth programs, substitute care, foster care, or~~
104 ~~institutionalized care to children;~~] to a minor shall submit to the department the name and other
105 identifying information, which may include fingerprints, of persons associated with the licensee.

106 (b) The Criminal Investigations and Technical Services Division of the Department of
107 Public Safety shall process that information to determine whether the individual has been
108 convicted of any crime.

109 (c) If an individual has not lived in Utah for five years, the individual shall submit
110 fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted
111 to the FBI through the Criminal Investigations and Technical Services Division.

112 (2) [~~A person~~] An individual associated with the licensee [~~who has a felony conviction~~]
113 may not provide [~~child-placing~~] direct services[~~-, foster care, youth programs, substitute care, or~~
114 ~~institutionalized care for children~~] to a minor in facilities or programs licensed by the department
115 if the individual's criminal history background check reveals a record of conviction of any crime
116 that would have a proximate adverse effect on the individual's providing direct services to a minor.

117 (3) The department shall adopt rules defining the circumstances under which [~~a person~~]
118 an individual who has been convicted of a misdemeanor may provide [~~child-placing~~] direct
119 services[~~-, foster care, youth programs, substitute care, or institutionalized care for children~~] to a
120 minor in a facility or program licensed by the department.

121 (4) The department shall promptly notify the individual, the individual's employer, or both,
122 where applicable, whose criminal history background check reveals a disqualifying criminal
123 conviction under Subsection (2). The individual has 30 days from receipt of that notice to petition
124 for a review and cite reasons substantiating the review.

125 (5) (a) Notwithstanding Subsection (2), no individual is disqualified from providing direct
126 services to a minor on the basis of any conviction disclosed by a criminal history record
127 background check if the individual has affirmatively demonstrated clear and convincing evidence
128 of the individual's rehabilitation.

129 (b) To determine whether an individual has affirmatively demonstrated rehabilitation, the
130 following factors shall be considered:

131 (i) whether the offense would have a proximate adverse effect on the individual's provision
132 of direct services to a minor;

133 (ii) the nature and responsibility of the position that the convicted individual would hold
134 or has held;

135 (iii) the nature and seriousness of the offense;

136 (iv) the circumstances under which the offense occurred;

137 (v) the date of the offense;

138 (vi) the age of the individual when the offense was committed;

139 (vii) whether the offense was an isolated or repeated incident;

140 (viii) any evidence of rehabilitation, including:

141 (A) good conduct in prison or the community;

142 (B) counseling or psychiatric treatment received;

143 (C) acquisition of additional academic or vocational schooling;

144 (D) successful participation in correctional work-release programs; or

145 (E) the recommendation of a person who has had the individual under the person's
146 supervision; or

147 (ix) successful work history in a related position.

148 Section 3. Section **62A-2-121** is amended to read:

149 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

150 (1) With respect to human services licensees, the department may access only the licensing
151 part of the Division of Child and Family Service's management information system created by

152 Section 62A-4a-116 for the purpose of:

153 (a) determining whether ~~[a person]~~ an individual associated with a licensee, who provides
154 ~~[care described in Subsection (2);]~~ direct services to a minor, has a substantiated finding of child
155 abuse or neglect;

156 (b) informing a licensee, an individual associated with a licensee, or both, who provides
157 ~~[care described in Subsection (2);]~~ direct services to a minor that ~~[a person]~~ an individual
158 associated with the licensee has a substantiated finding of child abuse or neglect.

159 (2) (a) A licensee or individual applying for or renewing a license to provide
160 ~~[child-placing]~~ direct services~~[- youth programs, substitute care, foster care, or institutionalized~~
161 ~~care to children]~~ to a minor shall submit to the department the name and other identifying
162 information of ~~[a person]~~ an individual associated with the licensee.

163 (b) The office shall process the information to determine whether the licensee or ~~[a person]~~
164 an individual associated with a licensee has a substantiated finding of child abuse or neglect.

165 (3) The office shall adopt rules defining the circumstances under which ~~[a person]~~ an
166 individual who has a substantiated finding of child abuse or neglect may provide ~~[child-placing]~~
167 direct services~~[- foster care, youth programs, substitute care, or institutionalized care for children]~~
168 to a minor in a facility ~~[licensed]~~ licensed by the department.

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

170 **62A-4a-116. Management information system -- Requirements.**

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

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

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

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

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

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

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

183 unsubstantiated, or without merit;

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

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

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

190 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
191 plans; and

192 (d) unless the executive director determines that there is good cause for keeping the report
193 on the system based on standards established by rule, delete any reference to:

194 (i) a report that is without merit if no subsequent report involving the same alleged
195 perpetrator has occurred within one year; or

196 (ii) a report that is unsubstantiated if no subsequent report involving the same alleged
197 perpetrator has occurred within ten years.

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

201 (4) With regard to all child welfare and protective services cases, the age and date of birth
202 of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be
203 included in the management information system.

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

206 (i) limited to:

207 (A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and
208 an opportunity to challenge has been provided under Section 62A-4a-116.5;

209 (B) the name of a person who was not sent a notice of agency action under Section
210 62A-4a-116.5 because his location was not available on the management information system or
211 who was sent a notice of agency action that was returned to the division as undelivered for the sole
212 purpose of alerting the division of the need to afford the person an opportunity to challenge the
213 finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond

214 delaying the person's licensing application to provide an opportunity for challenge, may be taken;

215 (C) an adjudication of child abuse or neglect by a court of competent jurisdiction if

216 Subsection 62A-4a-116.5(5) has been met; and

217 (D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual

218 abuse of any person; and

219 (ii) accessible by:

220 (A) the Office of Licensing for licensing purposes only;

221 (B) the division:

222 (I) to screen a person at the request of the Office of the Guardian Ad Litem Director,

223 created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the

224 Office of the Guardian Ad Litem and each year thereafter that the person remains with the office;

225 and

226 (II) to respond to a request for information from the person who is identified as a

227 perpetrator in the report, after advising the person of the screening prohibition in Subsection

228 (4)(d)(iii);

229 (C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure

230 within the Department of Health only for the purpose of licensing a child care program or provider,

231 or for determining whether a person associated with a covered health care facility, as defined by

232 the Department of Health by rule, who provides direct [~~care~~] services to a [~~child~~] minor as defined

233 in Section 62A-2-101 has a substantiated finding of child abuse or neglect; and

234 (D) the department as provided in Subsection (6) and Section 62A-1-118.

235 (b) For the purpose of Subsection (5)(a), "substantiated":

236 (i) means a finding that there is a reasonable basis to conclude that:

237 (A) a person 18 years of age or older committed one or more of the following types of

238 child abuse or neglect:

239 (I) physical abuse;

240 (II) sexual abuse;

241 (III) sexual exploitation;

242 (IV) abandonment;

243 (V) medical neglect resulting in death, disability, or serious illness; or

244 (VI) chronic or severe neglect; and

- 245 (B) a person under the age of 18:
- 246 (I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
- 247 which indicates a significant risk to other children; or
- 248 (II) engaged in sexual behavior with or upon another child which indicates a significant
- 249 risk to other children; and
- 250 (ii) does not include:
- 251 (A) the use of reasonable and necessary physical restraint or force by an educator in
- 252 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
- 253 (B) a person's conduct that:
- 254 (I) is justified under Section 76-2-401; or
- 255 (II) constituted the use of reasonable and necessary physical restraint or force in
- 256 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
- 257 other dangerous object in the possession or under the control of a child or to protect the child or
- 258 another person from physical injury.
- 259 (iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in
- 260 accordance with risk assessment tools and policies established by the division that focus on age,
- 261 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other
- 262 related considerations.
- 263 (B) The division shall train its child protection workers to apply the risk assessment tools
- 264 and policies established under Subsection (5)(b)(iii)(A).
- 265 (c) (i) The Department of Health shall:
- 266 (A) designate two persons within the Department of Health to access the licensing part of
- 267 the management information system; and
- 268 (B) adopt measures to:
- 269 (I) protect the security of the licensing part of the management information system; and
- 270 (II) strictly limit access to the licensing part of the management information system to
- 271 those designated under Subsection (5)(c)(i)(A).
- 272 (ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the
- 273 department with respect to:
- 274 (A) accessing the licensing part of the management information system;
- 275 (B) maintaining strict security; and

276 (C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

277 (iii) Those designated under Subsection (5)(c)(i)(A):

278 (A) are the only ones in the Department of Health with the authority to access the licensing
279 part of the management information system; and

280 (B) may only access the licensing part of the management information system in
281 accordance with the provisions of Subsection (5)(a)(ii).

282 (iv) The Department of Health may obtain information in the possession of the division
283 that relates to a substantiated finding of abuse or neglect of a person screened under this
284 Subsection (5)(c).

285 (d) (i) Information in the licensing part of the management information system is
286 confidential and may only be used or disclosed as specifically provided in this section, Section
287 62A-2-121, and Section 62A-4a-116.5.

288 (ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain
289 or release a report or any other information in the possession of the division obtained as a result
290 of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators
291 of child abuse or neglect.

292 (iii) A person who requests information knowing that it is a violation of Subsection
293 (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

294 (6) All information contained in the management information system shall be available
295 to the department upon the approval of the executive director, on a need-to-know basis.

296 (7) (a) The division may allow its contract providers to have limited access to the
297 management information system. The division shall limit that access to information about persons
298 who are currently receiving services from the specific contract provider.

299 (b) Each contract provider shall:

300 (i) take all necessary precautions to safeguard the security of the information contained in
301 the management information system;

302 (ii) train its employees regarding requirements for confidentiality and the criminal
303 penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

304 (iii) monitor its employees to ensure that they comply with the confidentiality requirements
305 related to the management information system.

306 (c) The division shall take reasonable precautions to ensure that its contract providers are

307 complying with Subsection (7)(b).

308 (8) The division shall take all necessary precautions, including password protection and
309 other appropriate technological techniques, to prevent unauthorized access to the information
310 contained in the management information system.

311 (9) (a) The division shall send a certified letter to a person who submitted a report of child
312 abuse or neglect that is put onto any part of the management information system if the division
313 determines, at the conclusion of its investigation, that:

314 (i) the report is false;

315 (ii) it is more likely than not that the person knew that the report was false at the time the
316 person submitted the report; and

317 (iii) the person's address is known or reasonably available.

318 (b) The letter shall inform the person of:

319 (i) the determination made under Subsection (9)(a);

320 (ii) the penalty for submitting false information under Section 76-8-506 and other
321 applicable laws;

322 (iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

323 (A) in the present instance if an immediate referral is justified by the facts; or

324 (B) if the person submits a subsequent false report involving the same alleged perpetrator
325 or victim.

326 (c) (i) The division may inform law enforcement and the alleged perpetrator of a report for
327 which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by
328 the facts.

329 (ii) The division shall inform law enforcement and the alleged perpetrator of a report for
330 which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the
331 person involving the same alleged perpetrator or victim.

332 (iii) The division shall determine, in consultation with law enforcement:

333 (A) the information to be given to an alleged perpetrator about a false claim; and

334 (B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator
335 about a false claim.

336 (d) Nothing in this Subsection (9) may be construed as requiring the division to conduct
337 an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report

338 is false.

339 Section 5. Section **62A-4a-413** is amended to read:

340 **62A-4a-413. Agencies and individuals providing services to children -- Felony or**
341 **misdemeanor conviction.**

342 (1) (a) As of July 1, 1990, each public or private agency or individual licensed by the
343 department to provide [~~child placing~~] direct services[~~, youth programs, substitute, foster, or~~
344 ~~institutionalized care to children~~] to a minor as defined in Section 62A-2-101 shall, in order to
345 obtain or renew a license under Section 62A-2-108, submit to the department the name and other
346 identifying information, which may include fingerprints, of new and proposed:

347 (i) owners;

348 (ii) directors;

349 (iii) members of the governing body;

350 (iv) employees;

351 (v) providers of care; and

352 (vi) volunteers, except parents of children enrolled in the programs.

353 (b) The Criminal Investigations and Technical Services Division of the Department of
354 Public Safety, established in Section 53-10-103, shall process that information to determine
355 whether the individual has been convicted of any crime.

356 (c) If an individual has not lived in Utah for five years, the individual shall submit
357 fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted
358 to the FBI through the Criminal Investigations and Technical Services Division.

359 (2) An owner, director, member of the governing body, employee, provider of care, or
360 volunteer who has a felony conviction may not provide [~~child placing~~] direct services[~~, foster care,~~
361 ~~youth programs, substitute care, or institutionalized care for children~~] to a minor as defined in
362 Section 62A-2-101 in facilities or programs licensed by the department.

363 (3) The office shall adopt rules defining the circumstances under which an owner, director,
364 member of the governing body, employee, provider of care, or volunteer who has been convicted
365 of a misdemeanor may provide services described in Subsection (1)(a).

Legislative Review Note
as of 2-15-01 5:01 PM

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

Office of Legislative Research and General Counsel