

1 **PROVISION OF SERVICES FOR PEOPLE**
2 **WITH DISABILITIES**
3 2005 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Rebecca D. Lockhart**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Human Services Code and the Judicial Code to provide for a
10 criminal background check of a direct service worker whose services are paid for with
11 public funds. This bill modifies the responsibilities and authority of the Division of
12 Services for People with Disabilities.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ provides the Department of Human Services with access to records to determine
17 whether a direct service worker is listed in the:
- 18 • Licensing Information System of the Division of Child and Family Services;
 - 19 • juvenile court records as having a substantiated finding of severe child abuse or
20 neglect; or
 - 21 • statewide database of the Division of Aging and Adult Services as having a
22 substantiated finding of abuse, neglect, or exploitation of a vulnerable adult;
- 23 ▶ provides that the Department of Human Services may inform a direct service
24 worker, or the direct service worker's employer, of the status of a direct service
25 worker in the records described above;
- 26 ▶ amends the responsibilities and authority of the Division of Services for People with
27 Disabilities;



- 28 ▶ grants rulemaking authority to the Division of Services for People with Disabilities;
- 29 ▶ ~~§~~ **subject to certain exceptions**, ~~§~~ prohibits the Division of Services for People with
- 29a Disabilities from disbursing
- 30 public funds to pay for the services of a direct service worker, unless the direct
- 31 service worker successfully completes a background check ~~§~~ [~~§~~ **or, after submitting the**
- 31a **required information for a background check, and before a determination on the background**
- 31b **check is made, the direct service worker is directly supervised by a direct service worker who**
- 31c **successfully completes a background check** ~~§~~ ~~§~~ ;
- 32 ▶ requires the Office of Licensing in the Department of Human Services to conduct a
- 33 background check of a direct service worker before the Division of Services for
- 34 People with Disabilities may disburse public funds to pay for the services of the
- 35 direct service worker; and
- 36 ▶ makes technical changes.

37 Monies Appropriated in this Bill:

38 None

39 Other Special Clauses:

40 ~~§~~ [~~None~~] **This bill provides a coordination clause.** ~~§~~

41 Utah Code Sections Affected:

42 AMENDS:

43 **62A-2-121**, as last amended by Chapter 86, Laws of Utah 2004

44 **62A-2-122**, as enacted by Chapter 300, Laws of Utah 2002

45 **62A-4a-116.2**, as last amended by Chapter 86, Laws of Utah 2004

46 **62A-5-101**, as last amended by Chapter 332, Laws of Utah 1996

47 **62A-5-103**, as last amended by Chapter 332, Laws of Utah 1996

48 **63A-9-808.1**, as enacted by Chapter 342, Laws of Utah 2004

49 **78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003

50 ENACTS:

51 **62A-5-103.5**, Utah Code Annotated 1953

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

54 Section 1. Section **62A-2-121** is amended to read:

55 **62A-2-121. Access to abuse and neglect information.**

56 (1) For purposes of this section, "direct service worker" is as defined in Section

57 62A-5-101.

58 ~~(+)~~ (2) With respect to a human services [~~licensees~~] licensee, or a direct service

59 worker, the department may access only the Licensing Information System of the Division of
 60 Child and Family Services created by Section 62A-4a-116.2 and juvenile court records under
 61 Subsection 78-3a-320~~(4)~~ (6), for the purpose of:

62 (a) (i) determining whether a person associated with a licensee, with direct access to
 63 children~~[-]~~:

64 (A) is listed in the Licensing Information System; or

65 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 66 neglect under Subsections 78-3a-320(1) and (2); and

67 ~~(b)~~ (ii) informing a licensee that a person associated with the licensee:

68 (A) is listed in the Licensing Information System; or

69 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 70 neglect under Subsections 78-3a-320(1) and (2)~~[-]~~; or

71 (b) (i) determining whether a direct service worker:

72 (A) is listed in the Licensing Information System; or

73 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 74 neglect under Subsections 78-3a-320(1) and (2); and

75 (ii) informing a direct service worker or the direct service worker's employer that the
 76 direct service worker:

77 (A) is listed in the Licensing Information System; or

78 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
 79 neglect under Subsections 78-3a-320(1) and (2).

80 ~~(2)~~ (3) Notwithstanding Subsection ~~(1)~~ (2), the department may access the Division
 81 of Child and Family Service's Management Information System under Section 62A-4a-116 for
 82 the purpose of licensing and monitoring foster parents.

83 ~~(3)~~ (4) After receiving identifying information for a person under Subsection
 84 62A-2-120(1), the department shall process the information for the purposes described in
 85 Subsection ~~(1)~~ (2).

86 ~~(4)~~ (5) The department shall adopt rules under Title 63, Chapter 46a, Utah
 87 Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under
 88 which a person ~~who has~~ may have direct access or provide services to children ~~and who~~
 89 when:

90 (a) the person is listed in the Licensing Information System of the Division of Child
91 and Family Services created by Section 62A-4a-116.2; or ~~[has]~~

92 (b) juvenile court records show that a court made a substantiated finding ~~[by a court of]~~
93 under Section 78-3a-320, that the person committed a severe type of child abuse or neglect
94 ~~[under Subsections 78-3a-320(1) and (2) may provide services to children].~~

95 Section 2. Section **62A-2-122** is amended to read:

96 **62A-2-122. Access to vulnerable adult abuse and neglect information.**

97 (1) For purposes of this section "direct service worker" is as defined in Section
98 62A-5-101.

99 ~~[(+)]~~ (2) With respect to a human services [licensees] licensee or a direct service
100 worker, the department may access the data base created by Section 62A-3-311.1 for the
101 purpose of:

102 (a) (i) determining whether a person associated with a licensee, with direct access to
103 vulnerable adults, has a substantiated finding of:

104 (A) abuse[;];

105 (B) neglect[;]; or

106 (C) exploitation; and

107 ~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee has a
108 substantiated finding of:

109 (A) abuse[;];

110 (B) neglect[;]; or

111 (C) exploitation[;]; or

112 (b) (i) determining whether a direct service worker has a substantiated finding of:

113 (A) abuse;

114 (B) neglect; or

115 (C) exploitation; and

116 (ii) informing a direct service worker or the direct service worker's employer that the
117 direct service worker has a substantiated finding of:

118 (A) abuse;

119 (B) neglect; or

120 (C) exploitation.

121 ~~[(2)]~~ (3) After receiving identifying information for a person under Subsection
 122 62A-2-120(1), the department shall process the information for the purposes described in
 123 Subsection (1).

124 ~~[(3)]~~ (4) The department shall adopt rules under Title 63, Chapter 46a, Utah
 125 Administrative Rulemaking Act, consistent with this chapter and consistent with Section
 126 62A-3-311.1, defining the circumstances under which a person ~~[who has]~~ may have direct
 127 access or provide services to vulnerable adults ~~[and who has a substantiated finding of abuse,~~
 128 ~~neglect, or exploitation may provide services to vulnerable adults]~~ when the person is listed in
 129 the statewide database of the Division of Aging and Adult Services created by Section
 130 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation.

131 Section 3. Section **62A-4a-116.2** is amended to read:

132 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**
 133 **-- Protected record -- Access -- Criminal penalty.**

134 (1) (a) The division shall maintain a sub-part of the Management Information System
 135 established pursuant to Section 62A-4a-116, to be known as the Licensing Information System,
 136 to be used ~~[solely]~~:

137 (i) for licensing purposes~~[-];~~ or

138 (ii) as otherwise specifically provided for by law.

139 (b) The Licensing Information System shall include only the following information:

140 ~~[(a)]~~ (i) the information described in Subsections 62A-4a-116.1(1)(a) and (6)(b);

141 ~~[(b)]~~ (ii) consented-to supported findings by alleged perpetrators under Subsection
 142 62A-4a-116.1(6)(a)(iii); and

143 ~~[(c)]~~ (iii) the information in the licensing part of the division's Management
 144 Information System as of May 6, 2002.

145 (2) Notwithstanding Subsection (1), the department's access to information in the
 146 Management Information System for the licensure and monitoring of foster parents is governed
 147 by Sections 62A-4a-116 and 62A-2-121.

148 (3) (a) ~~[The]~~ Subject to subsection (3)(b), upon receipt of a finding from the juvenile
 149 court under Section 78-3a-320, the division shall:

150 (i) promptly amend the Licensing Information System~~[-, upon receipt of a finding from~~
 151 ~~the juvenile court under Section 78-3a-320,];~~ and ~~[shall]~~

152 (ii) enter the ~~same~~ information in the Management Information System. ~~However~~
153 (b) Notwithstanding Subsection (3)(a), if a finding of unsubstantiated or without merit
154 is appealed, the supported finding shall not be amended until the appeal is concluded.

155 (4) (a) Information contained in the Licensing Information System is classified as a
156 protected record under Title 63, Chapter 2, Government Records Access and Management Act.

157 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government
158 Records Access and Management Act, the information contained in the Licensing Information
159 System may only be used or disclosed as specifically provided in this chapter and Section
160 62A-2-121 ~~and~~.

161 (c) The information described in Subsection (4)(b) is accessible only to:

162 ~~(a)~~ (i) the Office of Licensing within the department~~;~~;

163 (A) for licensing purposes ~~only~~; or

164 (B) as otherwise specifically provided for by law;

165 ~~(b)~~ (ii) the division~~;~~ for the following purposes] to:

166 ~~(i)~~ (A) ~~to~~ screen a person at the request of the Office of the Guardian Ad Litem
167 Director~~;~~;

168 (I) at the time that person seeks a paid or voluntary position with the Office of the
169 Guardian Ad Litem Director; and

170 (II) each year ~~thereafter that~~ after the person described in Subsection (4)(c)(ii)(A)(I)
171 remains with that office; and

172 ~~(i)~~ (B) ~~to~~ respond to a request for information from a person whose name is listed
173 in the Licensing Information System;

174 ~~(e)~~ (iii) two persons designated by and within the Department of Health, only for the
175 following purposes:

176 ~~(i)~~ (A) licensing a child care program or provider; or

177 ~~(i)~~ (B) determining whether a person associated with a covered health care facility,
178 as defined by the Department of Health by rule, who provides direct care to a child, has a
179 supported finding of severe child abuse or neglect; and

180 ~~(d)~~ (iv) the department, as specifically provided in this chapter.

181 (5) The two persons designated by the Department of Health under Subsection
182 (4)(c)(iii) shall adopt measures to:

183 (a) protect the security of the Licensing Information System; and
 184 (b) strictly limit access to the Licensing Information System to those persons
 185 designated by statute.

186 (6) All persons designated by statute as having access to information contained in the
 187 Licensing Information System shall receive training from the department with respect to:

188 (a) accessing the Licensing Information System;
 189 (b) maintaining strict security; and
 190 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the
 191 improper release of information.

192 (7) (a) No person, except those authorized by this chapter, may request another person
 193 to obtain or release any other information in the Licensing Information System to screen for
 194 potential perpetrators of child abuse or neglect.

195 (b) A person who requests information knowing that it is a violation of this Subsection
 196 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

197 Section 4. Section **62A-5-101** is amended to read:

198 **62A-5-101. Definitions.**

199 As used in this chapter:

200 [~~(8)~~] (1) "Approved provider" means a person [~~who has been~~]:

201 (a) approved by the division to provide home-based services; and
 202 (b) who has agreed to be compensated by voucher under Part 4, Home-Based Services.

203 [~~(+)~~] (2) "Board" means the Board of Services for People with Disabilities established
 204 in accordance with Section 62A-1-105.

205 [~~(2)~~] (3) "Developmental center" means the Utah State Developmental Center,
 206 established in accordance with Part 2 of this chapter.

207 (4) "Direct service worker" means a person who provides services to a person with a
 208 disability:

209 (a) when the services are rendered in:

210 (i) the physical presence of the person with a disability; or

211 (ii) a location where the person rendering the services has access to the physical
 212 presence of the person with a disability; and

213 (b) under:

214 (i) a contract with the division; or

215 (ii) a grant agreement with the division.

216 [~~(3)~~] (5) "Director" means the director of the Division of Services for People with
217 Disabilities.

218 [~~(4)~~] (6) (a) "Disability" means a severe, chronic disability that:

219 (i) is attributable to a mental or physical impairment or a combination of mental and
220 physical impairments;

221 (ii) is likely to continue indefinitely;

222 (iii) results in a substantial functional limitation in three or more of the following areas
223 of major life activity:

224 (A) self-care;

225 (B) receptive and expressive language;

226 (C) learning;

227 (D) mobility;

228 (E) self-direction;

229 (F) capacity for independent living; or

230 (G) economic self-sufficiency; and

231 (iv) requires a combination or sequence of special interdisciplinary or generic care,
232 treatment, or other services that may continue throughout life and must be individually planned
233 and coordinated.

234 (b) For purposes of this chapter mental illness alone does not constitute a "disability."

235 [~~(5)~~] (7) "Division" means the Division of Services for People with Disabilities.

236 (8) "Eligibility" means qualification, based on criteria established by the division in
237 accordance with Subsection 62A-5-102(3), to receive services that are administered by the
238 division.

239 (9) "Endorsed program" means a facility or program that:

240 (a) is operated:

241 (i) by the division; or

242 (ii) under contract with the division; or

243 (b) provides services to a person committed to the division under Part 3, Admission to
244 Mental Retardation Facility.

245 ~~[(6)]~~ (10) "Mental retardation" means a significant, subaverage general intellectual
 246 functioning, existing concurrently with deficits in adaptive behavior, and manifested during the
 247 developmental period as defined in the current edition of the Diagnostic and Statistical Manual
 248 of Mental Disorders, published by the American Psychiatric Association.

249 ~~[(7)]~~ (11) "Mental retardation facility" means a residential facility for persons with
 250 mental retardation, that receives state or federal funds under Title XIX of the federal Social
 251 Security Act, for the purpose of serving the population of mentally retarded persons in this
 252 state.

253 (12) "Public funds" means state or federal funds that are disbursed by the division.

254 ~~[(9)]~~ (13) "Voucher" means a document that:

255 (a) is issued by the division to a person with a disability or to his parent or guardian;

256 (b) describes the services and supports that may be received with the voucher;

257 (c) lists approved providers;

258 (d) may be used by a person with a disability or his parent or guardian to purchase
 259 services and supports from an approved provider;

260 (e) includes a maximum dollar value;

261 (f) states the period of time within which the voucher must be used by the person with
 262 a disability or his parent or guardian to purchase services and supports; and

263 (g) is redeemable by an approved provider for payment by the division up to the dollar
 264 value of the voucher.

265 Section 5. Section **62A-5-103** is amended to read:

266 **62A-5-103. Responsibility and authority of division.**

267 [~~The division has the authority and responsibility to:~~]

268 (1) For purposes of this section "administer" means to:

269 ~~[(+)]~~ (a) plan[-];

270 (b) develop[-and];

271 (c) manage;

272 (d) monitor; and

273 (e) conduct certification reviews.

274 (2) The division has the authority and responsibility to:

275 (a) administer an array of services and supports for persons with disabilities and their

276 families throughout the state[. Those services and supports may include, but are not limited
277 to:];

278 [~~(a) residential services and supports;~~]

279 [~~(b) day training services and supports, including work activity, sheltered employment,
280 and supported employment;~~]

281 [~~(c) personal attendant care;~~]

282 [~~(d) apartment follow-along;~~]

283 [~~(e) supervised apartment living;~~]

284 [~~(f) respite care;~~]

285 [~~(g) specialized foster care;~~]

286 [~~(h) community skills training;~~]

287 [~~(i) transportation;~~]

288 [~~(j) assessment;~~]

289 [~~(k) family support;~~]

290 [~~(l) service coordination services, except as limited by Part 4; and]~~

291 [~~(m) home-based services, provided in accordance with Part 4;~~]

292 (b) make rules in accordance with Title 63, Chapter 46a, Utah Administrative
293 Rulemaking Act, that establish eligibility criteria for the services and supports described in
294 Subsection (2)(a);

295 (c) consistent with Section 62A-5-206, supervise the programs and facilities of the
296 Developmental Center;

297 [~~(2)~~ (d) in order to enhance the quality of life for a person with a disability, establish
298 either directly, or by contract with private, nonprofit organizations, programs of;

299 (i) outreach[;];

300 (ii) information and referral[;];

301 (iii) prevention[;];

302 (iv) technical assistance[;]; and

303 (v) public awareness[; in an effort to enhance the quality of life for persons with
304 disabilities in this state];

305 [~~(3)~~ (e) supervise the programs and facilities operated by, or under contract with, the
306 division;

307 ~~[(4)(a)]~~ (f) cooperate with other state, governmental, and private agencies that provide
 308 services to ~~[persons with disabilities]~~ a person with a disability;

309 ~~[(b)]~~ (g) subject to Subsection (3), ensure that [the] a person with a disability is not
 310 deprived of that person's constitutionally protected [liberty interests of persons with disabilities
 311 are not deprived] rights without due process procedures designed to minimize the risk of error
 312 when ~~[those persons are]~~ a person with a disability is admitted to any structured residential
 313 mental retardation facility, including:

314 (i) the developmental center; and

315 (ii) facilities within the community ~~[such as intermediate care facilities for the mentally~~
 316 ~~retarded. Those services shall include initial and periodic reviews to determine the~~
 317 ~~constitutional appropriateness of the placement. The constitutional due process review process~~
 318 ~~required by this subsection, with regard to intermediate care facilities for the mentally retarded,~~
 319 ~~does not necessitate commitment to the division];~~

320 ~~[(5)]~~ contract for services and supports for persons with disabilities;

321 ~~[(6)]~~ (h) determine whether to approve [and] providers;

322 (i) monitor and sanction approved providers ~~H→~~ **, as specified in the providers'**
 322a **contract ←H** ;

323 ~~[(7)]~~ (j) ~~[act as a fiscal agent to]~~ subject to Section 62A-5-103.5, receive and disburse
 324 public funds;

325 (k) review financial actions of a provider who is a representative payee appointed by
 326 the Social Security Administration;

327 ~~[(8)]~~ (l) establish standards and rules for the administration and operation of programs
 328 [operated] conducted by, or under contract with, the division;

329 ~~[(9)]~~ (m) approve and monitor division programs to insure compliance with the board's
 330 [policies] rules and standards;

331 ~~[(10)]~~ (n) establish standards and rules necessary to fulfill the division's responsibilities
 332 under Parts 2 and 3 of this chapter with regard to mental retardation facilities;

333 ~~[(11)]~~ (o) ~~[establish]~~ assess and collect [fair and] equitable fees for a person who
 334 receives services provided [by the division, and account for those funds] under this chapter;

335 (p) maintain records of, and account for, the funds described in Subsection (2)(o);

336 (q) establish and apply rules to determine whether to approve, deny, or defer the
 337 division's services to a person who is;

338 (i) applying to receive the services; or
 339 (ii) currently receiving the services;
 340 ~~[(12)]~~ (r) in accordance with state law, establish rules;
 341 (i) relating to a mental retardation facility that is an endorsed program; and
 342 (ii) governing the admission, transfer, and discharge of ~~[persons with disabilities to~~
 343 ~~mental retardation facilities, in accordance with state law, with regard to facilities and~~
 344 ~~programs operated by or under contract with the division, and with regard to facilities and~~
 345 ~~programs that serve persons committed to the division under Part 3]~~ a person with a disability;
 346 ~~[(13)]~~ (s) manage funds for a person residing in a facility operated by the division[;];
 347 (i) upon request of a parent or guardian[;] of the person; or
 348 (ii) under administrative or court order; and
 349 ~~[(14)]~~ (t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for
 350 Persons with Disabilities.

351 (3) The due process procedures described in Subsection (2)(g):
 352 (a) shall include initial and periodic reviews to determine the constitutional
 353 appropriateness of the placement; and
 354 (b) with regard to facilities in the community, do not require commitment to the
 355 division.

356 Section 6. Section **62A-5-103.5** is enacted to read:

357 **62A-5-103.5. Disbursal of public funds -- Background check of a direct service**
 358 **worker.**

359 (1) For purposes of this section ~~H→~~ :

359a (a) ~~←H~~ "office" is as defined in Section 62A-2-101 ~~H→~~ [;] ; and

359b (b) "**directly supervised**" means that the person being supervised is under the
 359c **uninterrupted visual and auditory surveillance of the person doing the supervising.** ~~←H~~

360 (2) Subject to Subsection (4), public funds may not be disbursed to pay a direct service
 361 worker for personal services rendered to a person, unless ~~H→~~ :

361a (a) ~~←H~~ the direct service worker is approved
 362 by the office to have direct access and provide services to children or vulnerable adults
 363 pursuant to Section 62A-2-120 ~~H→~~ [;] ; ~~S→~~ [or] ~~←S~~

363a (b) (i) **during the time that the direct service worker renders the services**
 363b **described in this Subsection (2), the direct service worker who renders the services is directly**
 363c **supervised by a direct service worker who is approved by the office to have direct access and**
 363d **provide services to children or vulnerable adults pursuant to Section 62A-2-120;**

- 363e (ii) the direct service worker who renders the services described in this
 363f Subsection (2) has submitted the information required for a background check pursuant to
 363g Section 62A-2-120; and
- 363h (iii) the office has not determined whether to approve the direct service
 363i worker described in Subsection (2)(b)(ii) to have direct access and provide services to children
 363j or vulnerable adults ~~§~~ ~~→~~ ~~[.]~~ ~~←~~ ~~§~~ ~~←~~ ~~§~~ ~~→~~; or
- 363k (c) the direct service worker:
- 363l (i) (A) is a direct ancestor or descendent of the person to whom the services are
 363m rendered, but is not the person's parent;
- 363n (B) is the aunt, uncle, or sibling of the person to whom the services are
 363o rendered; or
- 363p (C) (I) has submitted the information required for a background check
 363q pursuant to Section 62A-2-120; and
- 363r (II) the office has not determined whether to approve the direct service worker
 363s to have direct access and provide services to children or vulnerable adults;
 363t and
- 363u (ii) is not listed in:
- 363v (A) the Licensing Information System of the Division of Child and Family Services
 363w created by Section 62A-4a-116.2;
- 363x (B) the statewide database of the Division of Aging and Adult Services created by
 363y Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or
 363z exploitation; or
- 363aa (C) juvenile court records as having a substantiated finding under Section 78-3a-320
 363ab that the direct service worker committed a severe type of child abuse or neglect. ~~←~~ ~~§~~
- 364 (3) For purposes of Subsection (2), the office shall conduct a background check of a
 365 direct service worker:
- 366 (a) ~~§~~ ~~→~~ , except as provided in Subsection (2)(b) ~~§~~ ~~→~~ or (c) ~~←~~ ~~§~~ , ~~←~~ ~~§~~ before public funds
 366a are disbursed
- 366a to pay the direct service worker for the personal
 367 services described in Subsection (2); and
- 368 (b) using the same procedures established for a background check of an applicant for

369 an initial license under Section 62A-2-120.

370 (4) The background check and the approval determination described in this section
371 shall be conducted for a direct service worker on an annual basis.

372 Section 7. Section **63A-9-808.1** is amended to read:

373 **63A-9-808.1. Transfer of information technology equipment for persons with a**
374 **disability.**

375 (1) As used in this section, "[~~persons~~] person with a disability" means [~~persons~~] a
376 person who [~~meet~~] meets the criteria in Subsections 62A-5-101[~~(4)~~](6)(a)(i) and (ii).

377 (2) The division may transfer information technology equipment, or authorize the
378 transfer of technology equipment by an agency, to a nonprofit entity for distribution to and use
379 by [~~persons~~] a person with a disability.

380 (3) Interagency transfers and sales of surplus property to state and local agencies within
381 the 30-day period under Section 63A-9-808 shall have priority over transfers under Subsection
382 (2).

383 (4) The division shall annually report to the Division of Services for People With
384 Disabilities the:

- 385 (a) names of the nonprofit entities receiving transfers under Subsection (2); and [~~the~~]
- 386 (b) types and amounts of equipment received.

387 Section 8. Section **78-3a-320** is amended to read:

388 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

389 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division
390 of Child and Family Services or any interested person informing the court, among other things,
391 that the division has made a supported finding of one or more of the severe types of child abuse
392 or neglect described in Subsection 62A-4a-116.1(2), the court shall:

- 393 (a) make a finding of substantiated, unsubstantiated, or without merit;
- 394 (b) include the finding described in Subsection (1)(a) in a written order; and
- 395 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

396 (2) The judicial finding under Subsection (1) shall be made:

- 397 (a) as part of [~~or~~] the adjudication hearing;
- 398 (b) at the conclusion of the adjudication hearing; or
- 399 [~~(b)~~] (c) as part of a court order entered pursuant to a written stipulation of the parties.

400 (3) (a) Any person described in Subsection 62A-4a-116.6(1) may at any time file with
 401 the court a petition for removal of the person's name from the Licensing Information System.

402 (b) At the conclusion of the hearing on the petition, the court shall:

403 [~~(a)~~] (i) make a finding of substantiated, unsubstantiated, or without merit;

404 [~~(b)~~] (ii) include the finding described in Subsection (1)(a) in a written order; and

405 [~~(c)~~] (iii) deliver a certified copy of the order described in Subsection (1)(b) to the
 406 division.

407 (4) A proceeding for adjudication of a supported finding of a nonsevere type of abuse
 408 or neglect under this section may be joined in the juvenile court with an adjudication of a
 409 severe type of abuse or neglect.

410 (5) If a person whose name appears on the Licensing Information system prior to May
 411 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
 412 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
 413 final decision no later than 60 days after the filing of the petition.

414 (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118,
 415 and for the purposes described in Section 62A-2-121:

416 (a) the court shall make available records of its findings under Subsections (1) and (2)
 417 for licensing purposes, only to those with statutory authority to access also the Licensing
 418 Information System created under Section 62A-4a-116.2; and

419 (b) any appellate court shall make available court records of appeals from juvenile
 420 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those
 421 with statutory authority to access also the Licensing Information System.

421a **H→ Section 9. Coordinating H.B. 79 with H.B. 64.**

421b If this H.B. 79 and H.B. 64, Provisions of Services for People with Disabilities, both pass, it is the
 421c intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare
 421d the Utah Code database for publication as follows:

421e (1) combine the amendments made by this bill and H.B. 64 to Section 62A-2-121 so that
 421f Section 62A-2-121 reads as follows:

421g **"62A-2-121. Access to abuse and neglect information.**

421h (1) For purposes of this section:

421i (a) "direct service worker" is as defined in Section 62A-5-101; and

421j (b) "personal care attendant" is as defined in Section 62A-3-101.

421k [~~(1)~~] (2) With respect to a human services [~~licensees~~] licensee, a direct service worker, or a
 421l personal care attendant, the department may access only the Licensing Information System of the ←H

421m ~~H~~→Division of Child and Family Services created by Section 62A-4a-116.2 and juvenile court
 421n records under Subsection 78-3a-320[~~(4)~~](6), for the purpose of:

421o (a) (i) determining whether a person associated with a licensee, with direct access to
 421p children[-];

421q (A) is listed in the Licensing Information System; or
 421r (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
 421s under Subsections 78-3a-320(1) and (2); and

421t [~~(b)~~] (ii) informing a licensee that a person associated with the licensee;

421u (A) is listed in the Licensing Information System; or
 421v (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
 421w under Subsections 78-3a-320(1) and (2)[-];

421x (b) (i) determining whether a direct service worker:

421y (A) is listed in the Licensing Information System; or
 421z (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
 421aa under Subsections 78-3a-320(1) and (2); and

421ab (ii) informing a direct service worker or the direct service worker's employer that the direct
 421ac service worker:

421ad (A) is listed in the Licensing Information System; or
 421ae (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
 421af under Subsections 78-3a-320(1) and (2); or

421ag (c) (i) determining whether a personal care attendant:

421ah (A) is listed in the Licensing Information System; or
 421ai (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
 421aj under Subsections 78-3a-320(1) and (2); and

421ak (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
 421al personal care attendant:

421am (A) is listed in the Licensing Information System; or
 421an (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
 421ao under Subsections 78-3a-320(1) and (2).

421ap [~~(2)~~] (3) Notwithstanding Subsection [~~(1)~~] (2), the department may access the Division of
 421aq Child and Family Service's Management Information System under Section 62A-4a-116 for the
 421ar purpose of licensing and monitoring foster parents.

421as [~~(3)~~] (4) After receiving identifying information for a person under Subsection
 421at 62A-2-120(1), the department shall process the information for the purposes described in ←~~H~~

421au ~~H~~→Subsection [(+) (2).

421av [(+) (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
421aw Rulemaking Act, consistent with this chapter, defining the circumstances under which a person [~~who~~
421ax ~~has~~] may have direct access or provide services to children [~~and who~~] when:

421ay (a) the person is listed in the Licensing Information System of the Division of Child and
421az Family Services created by Section 62A-4a-116.2; or [has]

421ba (b) juvenile court records show that a court made a substantiated finding [by a court of]
421bb under Section 78-3a-320, that the person committed a severe type of child abuse or neglect [under
421bc Subsections 78-3a-320(1) and (2) may provide services to children]." ; and(2) combine the
421bd amendments made by this bill and H.B. 64 to Section 62A-2-122 so that Section 62A-2-122 reads as
421be follows:

421bf **"62A-2-122. Access to vulnerable adult abuse and neglect information.**

421bg (1) For purposes of this section:

421bh (a) "direct service worker" is as defined in Section 62A-5-101; and

421bi (b) "personal care attendant" is as defined in Section 62A-3-101.

421bj [(+) (2) With respect to a human services [~~licensees~~] licensee, a direct service worker, or a
421bk personal care attendant, the department may access the data base created by Section 62A-3-311.1 for
421bl the purpose of:

421bm (a) (i) determining whether a person associated with a licensee, with direct access to
421bn vulnerable adults, has a substantiated finding of:

421bo (A) abuse[;];

421bp (B) neglect[;]; or

421bq (C) exploitation; and

421br [(+) (ii) informing a licensee that a person associated with the licensee has a substantiated
421bs finding of:

421bt (A) abuse[;];

421bu (B) neglect[;]; or

421bv (C) exploitation[;];

421bw (b) (i) determining whether a direct service worker has a substantiated finding of:

421bx (A) abuse;

421by (B) neglect; or

421bz (C) exploitation; and

421ca (ii) informing a direct service worker or the direct service worker's employer that the direct
421cb service worker has a substantiated finding of: ←H

421cc **H→** (A) abuse;

421cd (B) neglect; or

421ce (C) exploitation; or

421cf (c) (i) determining whether a personal care attendant has a substantiated finding of:

421cg (A) abuse;

421ch (B) neglect; or

421ci (C) exploitation; and

421cj (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a

421ck personal care attendant has a substantiated finding of:

421cl (A) abuse;

421cm (B) neglect; or

421cn (C) exploitation;

421co ~~[(2)]~~ (3) After receiving identifying information for a person under Subsection

421cp 62A-2-120(1), the department shall process the information for the purposes described in

421cq Subsection (1).

421cr ~~[(3)]~~ (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative

421cs Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1, defining the

421ct circumstances under which a person ~~[who has]~~ may have direct access or provide services to

421cu vulnerable adults [and who has a substantiated finding of abuse, neglect, or exploitation may provide

421cv services to vulnerable adults] when the person is listed in the statewide database of the Division of

421cw Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse,

421cx neglect, or exploitation."

421cy Section 10. **Coordinating H.B. 79 with S.B. 107.**

421cz If this H.B. 79 and S.B. 107, Licensure and Regulation of Programs and Facilities, both pass,

421da it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall

421db prepare the Utah Code database for publication as follows:

421dc (1) combine the amendments made by this bill and S.B. 107 to Section 62A-2-121 so that

421dd Section 62A-2-121 reads as follows:

421de **"62A-2-121. Access to abuse and neglect information.**

421df (1) For purposes of this section "direct service worker" is as defined in Section 62A-5-101.

421dg ~~[(4)]~~ (2) With respect to ~~[human services licensees]~~ a licensee, a certified local inspector

421dh applicant, or a direct service worker, the department may access only the Licensing Information

421di System of the Division of Child and Family Services created by Section 62A-4a-116.2 and juvenile

421dj court records under Subsection 78-3a-320~~[(4)]~~ (6), for the purpose of: ←H

421dk ~~H~~→ (a) (i) determining whether a person associated with a licensee, with direct access to
421dl children[-];

421dm (A) is listed in the Licensing Information System; or

421dn (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
421do under Subsections 78-3a-320(1) and (2); and

421dp [~~h~~] (ii) informing a licensee that a person associated with the licensee;

421dq (A) is listed in the Licensing Information System; or

421dr (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
421ds under Subsections 78-3a-320(1) and (2)[-];

421dt (b) (i) determining whether a certified local inspector applicant:

421du (A) is listed in the Licensing Information System; or

421dv (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
421dw under Subsections 78-3a-320(1) and (2); and

421dx (ii) informing a local government that a certified local inspector applicant:

421dy (A) is listed in the Licensing Information System; or

421dz (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
421ea under Subsections 78-3a-320(1) and (2);

421eb (c) (i) determining whether a direct service worker:

421ec (A) is listed in the Licensing Information System; or

421ed (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
421ee under Subsections 78-3a-320(1) and (2); and

421ef (ii) informing a direct service worker or the direct service worker's employer that the direct
421eg service worker:

421eh (A) is listed in the Licensing Information System; or

421ei (B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect
421ej under Subsections 78-3a-320(1) and (2).

421ek [~~h~~] (3) Notwithstanding Subsection [~~h~~] (2), the department may access the Division of
421el Child and Family Service's Management Information System under Section 62A-4a-116 for the
421em purpose of licensing and monitoring foster parents.

421en [~~h~~] (4) After receiving identifying information for a person under Subsection
421eo 62A-2-120(1), the department shall process the information for the purposes described in Subsection
421ep [~~h~~] (2).

421eq [~~h~~] (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
421er Rulemaking Act, consistent with this chapter, defining the circumstances under which a person ←~~H~~

421es ~~H~~→ ~~[who has]~~ may have direct access or provide services to children ~~[and who]~~ when:

421et (a) the person is listed in the Licensing Information System of the Division of Child and

421eu Family Services created by Section 62A-4a-116.2; or [has]

421ev (b) juvenile court records show that a court made a substantiated finding [by a court of]

421ew under Section 78-3a-320, that the person committed a severe type of child abuse or neglect [under

421ex Subsections 78-3a-320(1) and (2) may provide services to children].' ; and

421ey (2) combine the amendments made by this bill and S.B. 107 to Section 62A-2-122 so that

421ez Section 62A-2-122 reads as follows:

421fa **"62A-2-122. Access to vulnerable adult abuse and neglect information.**

421fb (1) For purposes of this section "direct service worker" is as defined in Section 62A-5-101.

421fc ~~[(+)]~~ (2) With respect to [human services licensees] a licensee, a direct service worker, or a

421fd certified local inspector applicant, the department may access the data base created by Section

421fe 62A-3-311.1 for the purpose of:

421ff (a) (i) determining whether a person associated with a licensee, with direct access to

421fg vulnerable adults, has a substantiated finding of:

421fh (A) abuse[;];

421fi (B) neglect[;]; or

421fj (C) exploitation; and

421fk ~~[(+)]~~ (ii) informing a licensee that a person associated with the licensee has a substantiated

421fl finding of:

421fm (A) abuse[;];

421fn (B) neglect[;]; or

421fo (C) exploitation[;];

421fp (b) (i) determining whether a direct service worker has a substantiated finding of:

421fq (A) abuse;

421fr (B) neglect; or

421fs (C) exploitation; and

421ft (ii) informing a direct service worker or the direct service worker's employer that the direct

421fu service worker has a substantiated finding of:

421fv (A) abuse;

421fw (B) neglect; or

421fx (C) exploitation; or

421fy (c) (i) determining whether a certified local inspector applicant has a substantiated finding

421fz of: ←~~H~~

421ga ~~H→~~ (A) abuse;

421gb (B) neglect; or

421gc (C) exploitation; and

421gd (ii) informing a local government that a certified local inspector applicant has a substantiated

421ge finding of:

421gf (A) abuse;

421gg (B) neglect; or

421gh (C) exploitation.

421gi ~~[(2)]~~ (3) After receiving identifying information for a person under Subsection

421gj 62A-2-120(1), the department shall process the information for the purposes described in Subsection

421gk (1).

421gl ~~[(3)]~~ (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative

421gm Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1, defining the

421gn circumstances under which a person ~~[who has]~~ may have direct access or provide services to

421go vulnerable adults ~~[and who has a substantiated finding of abuse, neglect, or exploitation may provide~~

421gp ~~services to vulnerable adults]~~ when the person is listed in the statewide database of the Division of

421gq Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse,

421gr neglect, or exploitation." ←~~H~~

Legislative Review Note
as of 1-18-05 10:43 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0079

Provision of Services for People with Disabilities

24-Jan-05

2:03 PM

State Impact

Costs to implement provisions of this legislation can be handled within existing departmental budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst