

**BACKGROUND CHECKS FOR BOARDING  
SCHOOLS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Bradley G. Last**

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**LONG TITLE**

**General Description:**

This bill amends the Utah Human Services Code to provide for a background check on a boarding school employee or an applicant for employment at a boarding school.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides the Department of Human Services with access to records to determine whether a boarding school employee or an applicant for employment at a boarding school is listed in the:
  - Licensing Information System of the Division of Child and Family Services;
  - juvenile court records as having a substantiated finding of severe child abuse or neglect; or
  - statewide database of the Division of Aging and Adult Services as having a substantiated finding of abuse, neglect, or exploitation of a vulnerable adult;
- ▶ provides that the Department of Human Services shall provide a boarding school with a statement of the status of a boarding school employee or an applicant for employment at the boarding school in the records described above if the boarding school:
  - provides the Department of Human Services with a release signed by the boarding school employee or applicant for employment at the boarding school;



- 28           • provides the Department of Human Services with the required identifying
- 29 information; and
- 30           • pays a fee to the Department of Human Services to cover the cost of processing
- 31 and providing the statement;
- 32           ▶ grants rulemaking authority to the Department of Human Services to implement the
- 33 provisions of this bill;
- 34           ▶ requires the Department of Human Services to establish a fee for a boarding school
- 35 to reimburse the Department of Human Services for the cost of processing and
- 36 providing the statement regarding the status of a boarding school employee or an
- 37 applicant for employment at the boarding school in the records described above; and
- 38           ▶ makes technical changes.

39 **Monies Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

42           None

43 **Utah Code Sections Affected:**

44 AMENDS:

45           **62A-2-101**, as last amended by Chapter 22, Laws of Utah 2003

46           **62A-2-121**, as last amended by Chapter 86, Laws of Utah 2004

47           **62A-2-122**, as enacted by Chapter 300, Laws of Utah 2002

48           **62A-4a-116.2**, as last amended by Chapter 86, Laws of Utah 2004

49 ENACTS:

50           **62A-2-123**, Utah Code Annotated 1953



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

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

54           **62A-2-101. Definitions.**

55           As used in this chapter:

- 56           (1) "Adult day care" means continuous care and supervision for three or more adults
- 57 for at least four but less than 24 hours a day, that meets the needs of functionally impaired
- 58 adults through a comprehensive program that provides a variety of health, social, recreational,

59 and related support services in a protective setting.

60 (2) (a) "Boarding school" means a private school that:

61 (i) uses a regionally accredited education program;

62 (ii) provides a residence to the school's students:

63 (A) for the purpose of enabling the school's students to attend classes at the school; and

64 (B) as an ancillary service to educating the students at the school;

65 (iii) has the primary purpose of providing the school's students with an education, as

66 defined in Subsection (2)(b)(i); and

67 (iv) (A) does not provide the treatment or services described in Subsection (20); or

68 (B) provides the treatment or services described in Subsection (20) on a limited basis,

69 as described in Subsection (2)(b)(ii).

70 (b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for

71 one or more of grades kindergarten through 12th grade.

72 (ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or

73 services described in Subsection (20) on a limited basis if:

74 (A) the treatment or services described in Subsection (20) are provided only as an

75 incidental service to a student; and

76 (B) the school does not:

77 (I) specifically solicit a student for the purpose of providing the treatment or services

78 described in Subsection (20); or

79 (II) have a primary purpose of providing the services described in Subsection (20).

80 (3) "Boarding school applicant" means a person who:

81 (a) is an employee of a boarding school; or

82 (b) has applied for employment with a boarding school.

83 ~~[(2)]~~ (4) "Child" means a person under 18 years of age.

84 ~~[(3)]~~ (5) "Child placing" means receiving, accepting, or providing custody or care for

85 any child ~~[under 18 years of age]~~, temporarily or permanently, for the purpose of:

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

87 (b) placing the child ~~[temporarily or permanently]~~ in a home for adoption; or

88 (c) foster home placement.

89 ~~[(4)]~~ (6) "Client" means an individual who receives or has received services from a

90 human services licensee [~~under this chapter~~].

91 ~~[(5)]~~ (7) (a) "Day treatment" means specialized treatment for less than 24 hours a day  
92 for four or more persons who are unrelated to the owner or provider and who have emotional,  
93 psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical  
94 dependencies.

95 (b) Day treatment is provided in lieu of, or in coordination with, a more restrictive  
96 residential or inpatient environment or service.

97 ~~[(6)]~~ (8) "Department" means the Department of Human Services.

98 ~~[(7)]~~ (9) "Direct access" means that an individual has, or likely will have, contact with  
99 or access to a child or vulnerable adult that provides the individual with an opportunity for  
100 personal communication or touch.

101 ~~[(8)]~~ (10) "Director" means the director of the Office of Licensing.

102 ~~[(9)]~~ (11) "Domestic violence treatment program" means a nonresidential program  
103 designed to provide psychological treatment and educational services to perpetrators and  
104 victims of domestic violence.

105 ~~[(10)]~~ (12) "Elder adult" means a person 65 years of age or older.

106 ~~[(11)]~~ (13) "Executive director" means the executive director of the department.

107 ~~[(12)]~~ (14) "Human services licensee" or "licensee" means a youth program, resource  
108 family home, or a facility or program, licensed by the department, that provides care, secure  
109 treatment, inpatient treatment, residential treatment, residential support, adult day care, day  
110 treatment, outpatient treatment, domestic violence treatment, child placing services, or social  
111 detoxification.

112 ~~[(13)]~~ (15) "Licensing board" means the Human Services Licensing Board.

113 ~~[(14)]~~ (16) "Minor" has the same meaning as "child."

114 ~~[(15)]~~ (17) "Office" means the Office of Licensing within the Department of Human  
115 Services.

116 ~~[(16)]~~ (18) "Outpatient treatment" means individual, family, or group therapy or  
117 counseling designed to improve and enhance social or psychological functioning for those  
118 whose physical and emotional status allows them to continue functioning in their usual living  
119 environment.

120 ~~[(17)]~~ (19) (a) "Person associated with the licensee" means an owner, director, member

121 of the governing body, employee, provider of care, or volunteer of:

122        (i) a human services licensee; or [of]

123        (ii) an applicant to become a licensee.

124        (b) Notwithstanding Subsection [~~(17)~~] (19)(a), "person associated with the licensee"

125 does not include an individual serving on [~~either of~~] the following bodies unless that individual  
126 has direct access to children or vulnerable adults:

127        (i) a local mental health authority under Section 17-43-301 [~~or~~];

128        (ii) a local substance abuse authority under Section 17-43-201; or

129        [~~(ii)~~] (iii) a board of an organization operating under a contract to provide  
130 comprehensive;

131        (A) mental health or substance abuse programs; or

132        (B) services for the local mental health authority or substance abuse authority.

133        [~~(18)~~] (20) (a) "Residential support" means arranging for or providing the necessities of  
134 life as a protective service to individuals or families who are disabled or who are experiencing  
135 a dislocation or emergency which prevents them from providing these services for themselves  
136 or their families.

137        (b) Treatment is not a necessary component of residential support.

138        [~~(19)~~] (21) (a) "Residential treatment" means a 24-hour group living environment for  
139 four or more individuals unrelated to the owner or provider that offers room or board and  
140 specialized treatment, rehabilitation, or habilitation services for persons with emotional,  
141 psychological, developmental, or behavioral dysfunctions, impairments, or chemical  
142 dependencies.

143        (b) In residential treatment, individuals are assisted in acquiring the social and  
144 behavioral skills necessary for living independently in the community.

145        [~~(20)~~] (22) "Resource family home" means a home licensed to provide services to a  
146 child in the custody of the state and includes a foster care home and a legal risk home.

147        [~~(21)~~] (23) (a) "Secure treatment" means 24-hour specialized residential treatment or  
148 care for persons whose current functioning is such that they cannot live independently or in a  
149 less restrictive environment.

150        (b) Secure treatment differs from residential treatment to the extent that it requires  
151 intensive supervision, locked doors, and other security measures which are imposed on

152 residents with neither their consent nor control.

153           ~~[(22)]~~ (24) "Social detoxification" means short-term residential services for persons  
154 who are intoxicated, that are provided outside of a health care facility licensed under Title 26,  
155 Chapter 21, Health Care Facility ~~[Licensure]~~ Licensing and Inspection Act, and that include:

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

158           (b) specialized rehabilitation to acquire sobriety; and

159           (c) aftercare services.

160           ~~[(23)]~~ (25) "Unrelated persons" means persons other than parents, legal guardians,  
161 grandparents, brothers, sisters, uncles, or aunts.

162           ~~[(24)]~~ (26) "Vulnerable adult" means an elder adult or an adult who has a mental or  
163 physical impairment that substantially affects the person's ability to:

164           (a) provide personal protection;

165           (b) provide necessities such as food, shelter, clothing, or mental or other health care;

166           (c) obtain services necessary for health, safety, or welfare;

167           (d) carry out the activities of daily living;

168           (e) manage the adult's own resources; or

169           (f) comprehend the nature and consequences of remaining in a situation of abuse,  
170 neglect, or exploitation.

171           ~~[(25)]~~ (27) (a) "Youth program" means a nonresidential program, designed to provide  
172 behavioral, substance abuse or mental health services to minors that:

173           (i) serves ~~[either]~~ adjudicated or nonadjudicated youth;

174           (ii) charges a fee for its services;

175           (iii) may or may not provide host homes or other arrangements for overnight  
176 accommodation of the youth;

177           (iv) may or may not provide all or part of its services in the outdoors;

178           (v) may or may not limit or censor access to parents or guardians; and

179           (vi) prohibits or restricts a minor's ability to leave the program at any time of his own  
180 free will.

181           (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl  
182 Scouts, 4-H, and other such organizations.

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

184 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

185 (1) With respect to a human services [~~licensees~~] licensee or a boarding school  
186 applicant, the department may access only the Licensing Information System of the Division of  
187 Child and Family Services created by Section 62A-4a-116.2 and juvenile court records under  
188 Subsection 78-3a-320[~~(4)~~](6), for the purpose of:

189 (a) (i) determining whether a person associated with a licensee, with direct access to  
190 children[-];

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

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

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

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

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

198 (b) (i) determining whether a boarding school applicant:

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

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

202 (ii) informing a boarding school that a boarding school applicant:

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

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

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

209 (3) After receiving identifying information for a person under Subsection  
210 62A-2-120(1), the department shall process the information for the purposes described in  
211 Subsection (1).

212 (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative  
213 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person

214 [~~who has~~] may have direct access to children [~~and who~~] when:

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

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

220 Section 3. Section **62A-2-122** is amended to read:

221 **62A-2-122. Access to vulnerable adult abuse and neglect information for**  
222 **licensing purposes.**

223 (1) With respect to a human services [~~licensees~~] licensee, or a boarding school  
224 applicant, the department may access the data base created by Section 62A-3-311.1 for the  
225 purpose of:

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

228 (A) abuse[:];

229 (B) neglect[:]; or

230 (C) exploitation; and

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

233 (A) abuse[:];

234 (B) neglect[:]; or

235 (C) exploitation[:]; or

236 (b) (i) determining whether a boarding school applicant has a substantiated finding of:

237 (A) abuse;

238 (B) neglect; or

239 (C) exploitation; and

240 (ii) informing a boarding school that a boarding school applicant has a substantiated  
241 finding of:

242 (A) abuse;

243 (B) neglect; or

244 (C) exploitation.

245 (2) After receiving identifying information for a person under Subsection  
246 62A-2-120(1), the department shall process the information for the purposes described in  
247 Subsection (1).

248 (3) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative  
249 Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1,  
250 defining the circumstances under which a person [~~who has~~] may have direct access or provide  
251 services to vulnerable adults [and who has a substantiated finding of abuse, neglect, or  
252 exploitation may provide services to vulnerable adults.] when the person is listed in the  
253 statewide database of the Division of Aging and Adult Services created by Section  
254 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation.

255 Section 4. Section **62A-2-123** is enacted to read:

256 **62A-2-123. Background check on a boarding school applicant -- Rulemaking**  
257 **authority -- Establishment of fee to pay for background check.**

258 (1) Consistent with Subsection (2), the department shall provide to a boarding school a  
259 written statement regarding whether:

260 (a) a boarding school applicant is listed in the statewide database of the Division of  
261 Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of  
262 abuse, neglect, or exploitation;

263 (b) a boarding school applicant is listed in the Licensing Information System of the  
264 Division of Child and Family Services created by Section 62A-4a-116.2; or

265 (c) juvenile court records show that a court made a substantiated finding under Section  
266 78-3a-320, that a boarding school applicant committed a severe type of child abuse or neglect.

267 (2) To receive the written statement described in Subsection (1), a boarding school  
268 must submit to the department:

269 (a) on a form prepared by the department, a release signed by the boarding school  
270 applicant, authorizing the department to release the information described in Subsection (1) to  
271 the boarding school;

272 (b) the boarding school applicant's:

273 (i) name;

274 (ii) fingerprints, if required by the department; and

275 (iii) other identifying information required by the department; and

276 (c) a fee to reimburse the department for the cost of processing and providing the  
277 statement described in Subsection (1).

278 (3) The department shall:

279 (a) make rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act,  
280 to implement the provisions of this section; and

281 (b) establish a fee amount for a boarding school to reimburse the department for the  
282 cost of processing and providing the statement described in Subsection (1).

283 Section 5. Section **62A-4a-116.2** is amended to read:

284 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**  
285 **-- Protected record -- Access -- Criminal penalty.**

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

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

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

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

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

293 [~~(b)~~] (ii) consented-to supported findings by alleged perpetrators under Subsection  
294 62A-4a-116.1(6)(a)(iii); and

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

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

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

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

304 (ii) enter the [~~same~~] information in the Management Information System. [~~However~~]

305 (b) Notwithstanding Subsection (3)(a), if a finding of unsubstantiated or without merit  
306 is appealed, the supported finding shall not be amended until the appeal is concluded.

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

309 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government  
 310 Records Access and Management Act, the information contained in the Licensing Information  
 311 System may only be used or disclosed as specifically provided in this chapter and Section  
 312 62A-2-121 [~~and~~].

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

314 [~~(a)~~] (i) the Office of Licensing within the department[~~;~~];

315 (A) for licensing purposes [~~only~~]; or

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

317 [~~(b)~~] (ii) the division[~~, for the following purposes~~] to:

318 [(+)] (A) [~~to~~] screen a person at the request of the Office of the Guardian Ad Litem  
 319 Director[~~;~~];

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

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

324 [(+)] (B) [~~to~~] respond to a request for information from a person whose name is listed  
 325 in the Licensing Information System;

326 [(+)] (iii) two persons designated by and within the Department of Health, only for the  
 327 following purposes:

328 [(+)] (A) licensing a child care program or provider; or

329 [(+)] (B) determining whether a person associated with a covered health care facility,  
 330 as defined by the Department of Health by rule, who provides direct care to a child, has a  
 331 supported finding of severe child abuse or neglect; and

332 [(+)] (iv) the department, as specifically provided in this chapter.

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

335 (a) protect the security of the Licensing Information System; and

336 (b) strictly limit access to the Licensing Information System to those persons  
 337 designated by statute.

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

340 (a) accessing the Licensing Information System;

341 (b) maintaining strict security; and

342 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the  
343 improper release of information.

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

347 (b) A person who requests information knowing that it is a violation of this Subsection

348 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

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**Legislative Review Note**

**as of 2-11-05 4:33 PM**

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**