

1 **EXPEDITED BACKGROUND CHECKS FOR**
2 **HUMAN SERVICES PROVIDERS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jennifer M. Seelig**

6 Senate Sponsor: Daniel R. Liljenquist

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Utah Human Services Code to establish a pilot
11 program for expedited background checks of certain human services providers.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms;
- 15 ▶ establishes a pilot program for expedited initial background checks of certain
16 human services providers; and
- 17 ▶ requires the Office of Licensing, within the Department of Human Services, to
18 report on the pilot program to the Health and Human Services Interim Committee
19 during the 2011 interim;
- 20 ▶ provides a sunset date for the pilot program; and
- 21 ▶ makes technical changes.

22 **Monies Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 **AMENDS:**

28 **62A-2-120**, as last amended by Laws of Utah 2008, Chapters 3, 17, and 382

29 **63I-1-262**, as last amended by Laws of Utah 2009, Chapters 29 and 334

30 ENACTS:

31 **62A-2-120.5**, Utah Code Annotated 1953

32

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

34 Section 1. Section **62A-2-120** is amended to read:

35 **62A-2-120. Criminal background checks -- Direct access to children or**
36 **vulnerable adults.**

37 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
38 license renewal under this chapter shall submit to the office the names and other identifying
39 information, which may include fingerprints, of all persons associated with the licensee, as
40 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

41 (b) The Criminal Investigations and Technical Services Division of the Department of
42 Public Safety, or the office as authorized under Section 53-10-108, shall process the
43 information described in Subsection (1)(a) to determine whether the individual has been
44 convicted of any crime.

45 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived
46 in Utah for the five years immediately preceding the day on which the information referred to
47 in Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a
48 FBI national criminal history record check. The fingerprints shall be submitted to the FBI
49 through the Criminal Investigations and Technical Services Division.

50 (d) An individual is not required to comply with Subsection (1)(c) if:

51 (i) the individual continuously lived in Utah for the five years immediately preceding
52 the day on which the information described in Subsection (1)(a) is submitted to the office,
53 except for time spent outside of the United States and its territories; and

54 (ii) the background check of the individual is being conducted for a purpose other
55 than a purpose described in Subsection (1)(f).

56 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
57 States and its territories during the five years immediately preceding the day on which the

58 information described in Subsection (1)(a) is submitted to the office, the office shall require
59 the applicant to submit documentation establishing whether the applicant was convicted of a
60 crime during the time that the applicant spent outside of the United States and its territories.

61 (f) Notwithstanding Subsections (1)(a) through (e), and except as provided in
62 Subsection (1)(h), an applicant described in Subsection (1)(a) shall submit fingerprints for an
63 FBI national criminal history records check, through the Criminal Investigations and
64 Technical Services Division, if the background check of the applicant is being conducted for
65 the purpose of:

66 (i) licensing a prospective foster home; or

67 (ii) approving a prospective adoptive placement of a child in state custody.

68 (g) Except as provided in Subsection (1)(h), in addition to the other requirements of
69 this section, if the background check of an applicant described in Subsection (1)(a) is being
70 conducted for the purpose of licensing a prospective foster home or approving a prospective
71 adoptive placement of a child in state custody, the office shall:

72 (i) check the child abuse and neglect registry in each state where each prospective
73 foster parent or prospective adoptive parent resided in the five years immediately preceding
74 the day on which the prospective foster parent or prospective adoptive parent applied to be a
75 foster parent or adoptive parent, to determine whether the prospective foster parent or
76 prospective adoptive parent is listed in the registry as having a substantiated or supported
77 finding of child abuse or neglect; and

78 (ii) check the child abuse and neglect registry in each state where each adult living in
79 the home of the prospective foster parent or prospective adoptive parent described in
80 Subsection (1)(g)(i) resided in the five years immediately preceding the day on which the
81 prospective foster parent or prospective adoptive parent applied to be a foster parent or
82 adoptive parent, to determine whether the adult is listed in the registry as having a
83 substantiated or supported finding of child abuse or neglect.

84 (h) The requirements under Subsections (1)(f) and (g) do not apply to the extent that:

85 (i) federal law or rule permits otherwise; or

86 (ii) the requirements would prohibit the Division of Child and Family Services or a
87 court from placing a child with:

88 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

89 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209,
90 78A-6-307, or 78A-6-307.5, pending completion of the background check described in
91 Subsections (1)(f) and (g).

92 (i) The office shall make rules, in accordance with Title 63G, Chapter 3, Utah
93 Administrative Rulemaking Act, to implement the provisions of this Subsection (1) relating to
94 background checks.

95 (2) The office shall approve a person for whom identifying information is submitted
96 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
97 program if:

98 (a) (i) the person is found to have no criminal history record; or

99 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
100 or infractions not involving any of the offenses described in Subsection (3); and

101 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five
102 years before the date of the search;

103 (b) the person is not listed in the statewide database of the Division of Aging and
104 Adult Services created by Section 62A-3-311.1;

105 (c) juvenile court records do not show that a court made a substantiated finding, under
106 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

107 (d) the person is not listed in the Licensing Information System of the Division of
108 Child and Family Services created by Section 62A-4a-1006;

109 (e) the person has not pled guilty or no contest to a pending charge for any:

110 (i) felony;

111 (ii) misdemeanor listed in Subsection (3); or

112 (iii) infraction listed in Subsection (3); and

113 (f) for a person described in Subsection (1)(g), the registry check described in

114 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect
115 registry of another state as having a substantiated or supported finding of a severe type of child
116 abuse or neglect as defined in Section 62A-4a-1002.

117 (3) Except as provided in Subsection (8), unless at least 10 years have passed since the
118 date of conviction, the office may not approve a person to have direct access to children or
119 vulnerable adults in the licensee's human services program if that person has been convicted of
120 an offense, whether a felony, misdemeanor, or infraction, that is:

121 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

122 (b) a violation of any pornography law, including sexual exploitation of a minor;

123 (c) prostitution;

124 (d) included in:

125 (i) Title 76, Chapter 5, Offenses Against the Person;

126 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or

127 (iii) Title 76, Chapter 7, Offenses Against the Family;

128 (e) a violation of Section 76-6-103, aggravated arson;

129 (f) a violation of Section 76-6-203, aggravated burglary;

130 (g) a violation of Section 76-6-302, aggravated robbery; or

131 (h) a conviction for an offense committed outside of the state that, if committed in the
132 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

133 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
134 information is submitted under Subsection (1) is not approved by the office under Subsection
135 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
136 office shall conduct a comprehensive review of criminal and court records and related
137 circumstances if the reason the approval is not granted is due solely to one or more of the
138 following:

139 (i) a conviction for:

140 (A) any felony not listed in Subsection (3);

141 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of

142 the date of the search;

143 (C) a protective order or ex parte protective order violation under Section 76-5-108 or

144 a similar statute in another state; or

145 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least 10 years

146 have passed since the date of conviction;

147 (ii) a plea of guilty or no contest to a pending:

148 (A) felony;

149 (B) misdemeanor listed in Subsection (3); or

150 (C) infraction listed in Subsection (3);

151 (iii) the person is listed in the statewide database of the Division of Aging and Adult

152 Services created by Section 62A-3-311.1;

153 (iv) juvenile court records show that a court made a substantiated finding, under

154 Section 78A-6-323, that the person committed a severe type of child abuse or neglect;

155 (v) the person is listed in the Licensing Information System of the Division of Child

156 and Family Services created by Section 62A-4a-1006; or

157 (vi) the person is listed in a child abuse or neglect registry of another state as having a

158 substantiated or supported finding of a severe type of child abuse or neglect as defined in

159 Section 62A-4a-1002.

160 (b) The comprehensive review under Subsection (4)(a) shall include an examination

161 of:

162 (i) the date of the offense or incident;

163 (ii) the nature and seriousness of the offense or incident;

164 (iii) the circumstances under which the offense or incident occurred;

165 (iv) the age of the perpetrator when the offense or incident occurred;

166 (v) whether the offense or incident was an isolated or repeated incident;

167 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable

168 adult, including:

169 (A) actual or threatened, nonaccidental physical or mental harm;

170 (B) sexual abuse;
171 (C) sexual exploitation; and
172 (D) negligent treatment;
173 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
174 treatment received, or additional academic or vocational schooling completed, by the person;
175 and

176 (viii) any other pertinent information.

177 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
178 shall approve the person who is the subject of the review to have direct access to children or
179 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
180 vulnerable adult.

181 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
182 the office may make rules, consistent with this chapter, defining procedures for the
183 comprehensive review described in this Subsection (4).

184 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person
185 being supervised is under the uninterrupted visual and auditory surveillance of the person
186 doing the supervising.

187 (b) A licensee may not permit any person to have direct access to a child or a
188 vulnerable adult unless, subject to Subsection (5)(c), that person is:

189 (i) associated with the licensee and:

190 (A) approved by the office to have direct access to children or vulnerable adults under
191 this section; or

192 (B) (I) the office has not determined whether to approve that person to have direct
193 access to children or vulnerable adults;

194 (II) the information described in Subsection (1)(a), relating to that person, is submitted
195 to the department; and

196 (III) that person is directly supervised by a person associated with the licensee who is
197 approved by the office to have direct access to children or vulnerable adults under this section;

198 (ii) (A) not associated with the licensee; and
199 (B) directly supervised by a person associated with the licensee who is approved by
200 the office to have direct access to children or vulnerable adults under this section;
201 (iii) the parent or guardian of the child or vulnerable adult; or
202 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
203 have direct access to the child or vulnerable adult.

204 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
205 or a vulnerable adult if that person is prohibited by court order from having that access.

206 (6) (a) Within 30 days after receiving the identifying information for a person under
207 Subsection (1), the office shall give written notice to the person and to the licensee or
208 applicant with whom the person is associated of:

209 (i) the office's decision regarding its background screening clearance and findings; and
210 (ii) a list of any convictions found in the search.

211 (b) With the notice described in Subsection (6)(a), the office shall also give to the
212 person the details of any comprehensive review conducted under Subsection (4).

213 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
214 direct access to children or vulnerable adults, the notice shall further advise the persons to
215 whom the notice is given that either the person or the licensee or applicant with whom the
216 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
217 department's Office of Administrative Hearings, to challenge the office's decision.

218 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
219 the office shall make rules, consistent with this chapter:

220 (i) defining procedures for the challenge of its background screening decision
221 described in this Subsection (6); and
222 (ii) expediting the process for renewal of a license under the requirements of this
223 section and other applicable sections.

224 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
225 an initial license, or license renewal, to operate a substance abuse program that provides

226 services to adults only.

227 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
228 license a person as a prospective foster parent or a prospective adoptive parent if the person
229 has been convicted of:

230 (i) a felony involving conduct that constitutes any of the following:

231 (A) child abuse, as described in Section 76-5-109;

232 (B) commission of domestic violence in the presence of a child, as described in
233 Section 76-5-109.1;

234 (C) abuse or neglect of a disabled child, as described in Section 76-5-110;

235 (D) endangerment of a child, as described in Section 76-5-112.5;

236 (E) aggravated murder, as described in Section 76-5-202;

237 (F) murder, as described in Section 76-5-203;

238 (G) manslaughter, as described in Section 76-5-205;

239 (H) child abuse homicide, as described in Section 76-5-208;

240 (I) homicide by assault, as described in Section 76-5-209;

241 (J) kidnapping, as described in Section 76-5-301;

242 (K) child kidnapping, as described in Section 76-5-301.1;

243 (L) aggravated kidnapping, as described in Section 76-5-302;

244 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

245 (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;

246 (O) aggravated arson, as described in Section 76-6-103;

247 (P) aggravated burglary, as described in Section 76-6-203;

248 (Q) aggravated robbery, as described in Section 76-6-302; or

249 (R) domestic violence, as described in Section 77-36-1; or

250 (ii) an offense committed outside the state that, if committed in the state, would
251 constitute a violation of an offense described in Subsection (8)(a)(i).

252 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
253 a person as a prospective foster parent or a prospective adoptive parent if, within the five years

254 immediately preceding the day on which the person would otherwise be approved or licensed,
255 the person has been convicted of a felony involving conduct that constitutes any of the
256 following:

- 257 (i) aggravated assault, as described in Section 76-5-103;
- 258 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 259 (iii) mayhem, as described in Section 76-5-105;
- 260 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 261 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 262 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances

263 Act;

- 264 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 265 Precursor Act; or

- 266 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

267 (9) If any provision of this section conflicts with a provision of Section 62A-2-120.5,
268 the conflicting provision of Section 62A-2-120.5 shall govern.

269 Section 2. Section **62A-2-120.5** is enacted to read:

270 **62A-2-120.5. Pilot program for expedited background check of a qualified**
271 **human services applicant.**

272 (1) As used in this section:

273 (a) "Business day" means a day on which the office is open.

274 (b) "Qualified human services applicant" means a person who:

275 (i) is associated with a licensee that provides services, under contract with the

276 Division of Services for People with Disabilities, to a person with a disability; and

277 (ii) has not lived outside of Utah for the five years immediately preceding the day on
278 which the person applies for a background check.

279 (2) Beginning on May 11, 2010, and ending on July 1, 2012, the office shall, within
280 two business days after the day on which the office receives a request for an initial background
281 check of a qualified human services applicant:

282 (a) conduct the background check; and
283 (b) (i) send an email to the licensee that submitted the request for the background
284 check, stating that the qualified human services applicant passed the background check, if:
285 (A) the licensee submits with the request a waiver that:
286 (I) is approved by the office;
287 (II) is signed by the qualified human services applicant; and
288 (III) permits the office to provide the results of the background check to the licensee
289 that submits the request;
290 (B) the background check does not indicate that the qualified human services
291 applicant has a criminal history;
292 (C) the qualified human services applicant is not listed in the statewide database of the
293 Division of Aging and Adult Services created by Section 62A-3-311.1; and
294 (D) the qualified human services applicant is not listed in the Licensing Information
295 System of the Division of Child and Family Services created by Section 62A-4a-1006; or
296 (ii) send an email to the licensee that submitted the request for the background check,
297 stating that the qualified human services applicant did not pass the background check, or that
298 additional research is needed, if:
299 (A) the licensee submits with the request a waiver that:
300 (I) is approved by the office;
301 (II) is signed by the qualified human services applicant; and
302 (III) permits the office to provide the results of the background check to the licensee
303 that submits the request; and
304 (B) (I) the background check indicates that the qualified human services applicant
305 may have a criminal history;
306 (II) the qualified human services applicant is listed in the statewide database of the
307 Division of Aging and Adult Services created by Section 62A-3-311.1; or
308 (III) the qualified human services applicant is listed in the Licensing Information
309 System of the Division of Child and Family Services created by Section 62A-4a-1006.

310 (3) The office shall, during the 2011 interim, report to the Legislature's Health and
311 Human Services Interim Committee, regarding:

312 (a) the functioning of the pilot program described in this section;

313 (b) whether the pilot program should be converted to an ongoing program;

314 (c) whether the pilot program should be modified; and

315 (d) whether the pilot program should be expanded to include background checks of
316 other human services providers.

317 Section 3. Section **63I-1-262** is amended to read:

318 **63I-1-262. Repeal dates, Title 62A.**

319 (1) Section 62A-2-120.5, Pilot program for expedited background check of a qualified
320 human services applicant, is repealed July 1, 2012.

321 (2) Section 62A-5-103.1, Program for provision of supported employment services, is
322 repealed July 1, 2013.