

Representative Stephen G. Handy proposes the following substitute bill:

EDUCATION BACKGROUND CHECK AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen G. Handy

Senate Sponsor: Ann Millner

LONG TITLE

General Description:

This bill modifies provisions regarding criminal background checks.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies and amends background check provisions for licensed educators and employees or volunteers who work at local education agencies and certain private schools;
- ▶ amends the Public Safety Code to allow certain qualifying entities to request that the Bureau of Criminal Identification within the Department of Public Safety (bureau) register fingerprints taken for the purpose of conducting a criminal background check with certain systems;
- ▶ amends background check provisions for charter school governing board members;
- ▶ requires an entity that is authorized to request a background check under the provisions of this bill (authorized entity) to register fingerprints of certain individuals with certain systems for ongoing monitoring;
- ▶ requires the bureau to notify an authorized entity when a new entry is made against an individual whose fingerprints are registered with certain systems regarding any



- 26 alleged offense or a conviction, including a plea in abeyance;
- 27 ▶ removes the requirement that a local education agency or qualifying private school
- 28 require certain individuals to periodically submit to a criminal background check;
- 29 ▶ provides that authorized entities may only consider certain offenses when making
- 30 employment, appointment, or licensing decisions;
- 31 ▶ requires certain individuals to self-report criminal history information to authorized
- 32 entities in accordance with rules established by the State Board of Education;
- 33 ▶ requires the State Board of Education and the bureau to collaborate to provide
- 34 training to authorized entities;
- 35 ▶ requires the State Board of Education to update certain rules;
- 36 ▶ requires a local school board or charter school governing board to update certain
- 37 policies;
- 38 ▶ requires the Legislative Auditor General to issue a report; and
- 39 ▶ makes technical and conforming changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a special effective date.

44 **Utah Code Sections Affected:**

45 AMENDS:

- 46 **53-10-108**, as last amended by Laws of Utah 2014, Chapters 79 and 377
- 47 **53A-1a-504**, as repealed and reenacted by Laws of Utah 2014, Chapter 363
- 48 **53A-1a-512.5**, as repealed and reenacted by Laws of Utah 2010, Chapter 362
- 49 **53A-1a-705**, as last amended by Laws of Utah 2009, Chapter 197
- 50 **53A-6-104.1**, as enacted by Laws of Utah 2008, Chapter 145
- 51 **53A-6-104.5**, as last amended by Laws of Utah 2004, Chapter 19
- 52 **53A-6-109**, as repealed and reenacted by Laws of Utah 1999, Chapter 108
- 53 **53A-6-306**, as last amended by Laws of Utah 2010, Chapter 283
- 54 **53A-6-403**, as enacted by Laws of Utah 1999, Chapter 108
- 55 **53A-6-404**, as last amended by Laws of Utah 2000, Chapter 103
- 56 **53A-29-104**, as enacted by Laws of Utah 1996, Chapter 73

57 **53B-16-404**, as enacted by Laws of Utah 1996, Chapter 73

58 **78A-6-1105**, as last amended by Laws of Utah 2009, Chapter 148

59 ENACTS:

60 **53A-15-1501**, Utah Code Annotated 1953

61 **53A-15-1502**, Utah Code Annotated 1953

62 **53A-15-1503**, Utah Code Annotated 1953

63 **53A-15-1504**, Utah Code Annotated 1953

64 **53A-15-1505**, Utah Code Annotated 1953

65 **53A-15-1506**, Utah Code Annotated 1953

66 **53A-15-1507**, Utah Code Annotated 1953

67 **53A-15-1508**, Utah Code Annotated 1953

68 **53A-15-1509**, Utah Code Annotated 1953

69 **53A-15-1510**, Utah Code Annotated 1953

70 REPEALS AND REENACTS:

71 **53A-6-401**, as last amended by Laws of Utah 2010, Chapter 362

72 REPEALS:

73 **53A-3-410**, as last amended by Laws of Utah 2010, Chapter 362



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

76 Section 1. Section **53-10-108** is amended to read:

77 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
78 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
79 **-- Missing children records -- Penalty for misuse of records.**

80 (1) As used in this section:

81 (a) "FBI Rap Back System" means the rap back system maintained by the Federal
82 Bureau of Investigation.

83 (b) "Rap back system" means a system that enables authorized entities to receive
84 ongoing status notifications of any criminal history reported on individuals whose fingerprints
85 are registered in the system.

86 (c) "WIN Database" means the Western Identification Network Database that consists
87 of eight western states sharing one electronic fingerprint database.

88 ~~[(+)]~~ (2) Dissemination of information from a criminal history record or warrant of
89 arrest information from division files is limited to:

90 (a) criminal justice agencies for purposes of administration of criminal justice and for
91 employment screening by criminal justice agencies;

92 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
93 executive order, court rule, court order, or local ordinance;

94 (c) agencies or individuals for the purpose of obtaining required clearances connected
95 with foreign travel or obtaining citizenship;

96 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
97 agency to provide services required for the administration of criminal justice; and

98 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
99 purposes for which given, and ensure the security and confidentiality of the data;

100 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
101 accordance with the requirements of Sections [78B-6-128](#) and [78B-6-130](#);

102 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose
103 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
104 agency; and

105 (ii) private security agencies through guidelines established by the commissioner for
106 employment background checks for their own employees and prospective employees;

107 (g) a qualifying entity for employment background checks for their own employees and
108 persons who have applied for employment with the qualifying entity; and

109 (h) other agencies and individuals as the commissioner authorizes and finds necessary
110 for protection of life and property and for offender identification, apprehension, and
111 prosecution pursuant to an agreement.

112 ~~[(2)]~~ (3) An agreement under Subsection ~~[(+)]~~ (2)(f) or ~~[(+)]~~ (2)(h) shall specifically
113 authorize access to data, limit the use of data to research, evaluative, or statistical purposes,
114 preserve the anonymity of individuals to whom the information relates, and ensure the
115 confidentiality and security of the data.

116 ~~[(3)]~~ (4) (a) Before requesting information under Subsection ~~[(+)]~~ (2)(g), a qualifying
117 entity must obtain a signed waiver from the person whose information is requested.

118 (b) The waiver must notify the signee:

- 119 (i) that a criminal history background check will be conducted;
- 120 (ii) who will see the information; and
- 121 (iii) how the information will be used.
- 122 (c) Information received by a qualifying entity under Subsection ~~[(1)]~~ (2)(g) may only
- 123 be:
- 124 (i) available to persons involved in the hiring or background investigation of the
- 125 employee; and
- 126 (ii) used for the purpose of assisting in making an employment or promotion decision.
- 127 (d) A person who disseminates or uses information obtained from the division under
- 128 Subsection ~~[(1)]~~ (2)(g) for purposes other than those specified under Subsection ~~[(3)]~~ (4)(c), in
- 129 addition to any penalties provided under this section, is subject to civil liability.
- 130 (e) A qualifying entity that obtains information under Subsection ~~[(1)]~~ (2)(g) shall
- 131 provide the employee or employment applicant an opportunity to:
- 132 (i) review the information received as provided under Subsection ~~[(8)]~~ (9); and
- 133 (ii) respond to any information received.
- 134 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 135 division may make rules to implement this Subsection ~~[(3)]~~ (4).
- 136 ~~[(g)(i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.]~~
- 137 ~~[(ii) The name check fee under Subsection (1)(g) is \$15.]~~
- 138 ~~[(iii) These fees remain in effect until changed by the division through the process~~
- 139 ~~under Section [63J-1-504](#).]~~
- 140 ~~[(iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be~~
- 141 ~~deposited in the General Fund as a dedicated credit by the department to cover the costs~~
- 142 ~~incurred in providing the information.]~~
- 143 ~~[(h)]~~ (g) The division or its employees are not liable for defamation, invasion of
- 144 privacy, negligence, or any other claim in connection with the contents of information
- 145 disseminated under Subsection ~~[(1)]~~ (2)(g).
- 146 ~~[(4)]~~ (5) (a) Any criminal history record information obtained from division files may
- 147 be used only for the purposes for which it was provided and may not be further disseminated,
- 148 except under Subsection ~~[(4)]~~ (5)(b), (c), or (d).
- 149 (b) A criminal history provided to an agency pursuant to Subsection ~~[(1)]~~ (2)(e) may be

150 provided by the agency to the person who is the subject of the history, another licensed
151 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
152 adoption.

153 (c) A criminal history of a defendant provided to a criminal justice agency under
154 Subsection ~~[(+)]~~ (2)(a) may also be provided by the prosecutor to a defendant's defense
155 counsel, upon request during the discovery process, for the purpose of establishing a defense in
156 a criminal case.

157 (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public
158 Transit District Act, that is under contract with a state agency to provide services may, for the
159 purposes of complying with Subsection 62A-5-103.5(7), provide a criminal history record to
160 the state agency or the agency's designee.

161 ~~[(5)]~~ (6) The division may not disseminate criminal history record information to
162 qualifying entities under Subsection ~~[(+)]~~ (2)(g) regarding employment background checks if
163 the information is related to charges:

- 164 (a) that have been declined for prosecution;
165 (b) that have been dismissed; or
166 (c) regarding which a person has been acquitted.

167 ~~[(6)]~~ (7) (a) This section does not preclude the use of the division's central computing
168 facilities for the storage and retrieval of criminal history record information.

169 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
170 unauthorized agencies or individuals.

171 ~~[(7)]~~ (8) Direct access through remote computer terminals to criminal history record
172 information in the division's files is limited to those agencies authorized by the commissioner
173 under procedures designed to prevent unauthorized access to this information.

174 ~~[(8)]~~ (9) (a) The commissioner shall establish procedures to allow an individual right
175 of access to review and receive a copy of the individual's criminal history report.

176 (b) A processing fee for the right of access service, including obtaining a copy of the
177 individual's criminal history report under Subsection ~~[(8)]~~ (9)(a) is \$15. This fee remains in
178 effect until changed by the commissioner through the process under Section 63J-1-504.

179 (c) (i) The commissioner shall establish procedures for an individual to challenge the
180 completeness and accuracy of criminal history record information contained in the division's

181 computerized criminal history files regarding that individual.

182 (ii) These procedures shall include provisions for amending any information found to
183 be inaccurate or incomplete.

184 [~~(9)~~] (10) The private security agencies as provided in Subsection [~~(1)~~] (2)(f)(ii):

185 (a) shall be charged for access; and

186 (b) shall be registered with the division according to rules made by the division under
187 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

188 [~~(10)~~] (11) Before providing information requested under this section, the division
189 shall give priority to criminal justice agencies needs.

190 [~~(11)~~] (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally
191 access, use, disclose, or disseminate a record created, maintained, or to which access is granted
192 by the division or any information contained in a record created, maintained, or to which access
193 is granted by the division for a purpose prohibited or not permitted by statute, rule, regulation,
194 or policy of a governmental entity.

195 (b) A person who discovers or becomes aware of any unauthorized use of records
196 created or maintained, or to which access is granted by the division shall inform the
197 commissioner and the director of the Utah Bureau of Criminal Identification of the
198 unauthorized use.

199 (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in
200 Subsection (2)(b) may request that the division register fingerprints taken for the purpose of
201 conducting current and future criminal background checks under this section with:

202 (i) the WIN Database rap back system, or any successor system;

203 (ii) the FBI Rap Back System; or

204 (iii) a system maintained by the division.

205 (b) A qualifying entity or an entity described in Subsection (2)(b) may only make a
206 request under Subsection (13)(a) if the entity:

207 (i) has the authority through state or federal statute or federal executive order;

208 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

209 and

210 (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives
211 notifications for individuals with whom the entity maintains an authorizing relationship.

212 (14) The division is authorized to submit fingerprints to the FBI Rap Back System to
213 be retained in the FBI Rap Back System for the purpose of being searched by future
214 submissions to the FBI Rap Back System, including latent fingerprint searches.

215 (15) (a) (i) The applicant fingerprint card fee under Subsection (2) is \$20.

216 (ii) The name check fee under Subsection (2) is \$15.

217 (iii) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.

218 (iv) The fees described in this Subsection (15)(a) remain in effect until changed by the
219 division through the process under Section [63J-1-504](#).

220 (b) Funds generated under this Subsection (15) shall be deposited into the General
221 Fund as a dedicated credit by the department to cover the costs incurred in providing the
222 information.

223 (c) The division may collect fees charged by an outside agency for services required
224 under this section.

225 Section 2. Section **53A-1a-504** is amended to read:

226 **53A-1a-504. Charter school application -- Applicants -- Contents -- Expansion.**

227 (1) (a) An application to establish a charter school may be submitted by:

228 (i) an individual;

229 (ii) a group of individuals; or

230 (iii) a nonprofit legal entity organized under Utah law.

231 (b) An authorized charter school may apply under this chapter for a charter from
232 another charter school authorizer.

233 (2) A charter school application shall include:

234 (a) the purpose and mission of the school;

235 (b) except for a charter school authorized by a local school board, a statement that,
236 after entering into a charter agreement, the charter school will be organized and managed under
237 Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;

238 (c) a description of the governance structure of the school, including:

239 (i) a list of the governing board members that describes the qualifications of each
240 member; and

241 (ii) an assurance that the applicant shall, within 30 days of authorization, provide the
242 authorizer with the results of a background check for each member;

- 243 (d) a description of the target population of the school that includes:
- 244 (i) the projected maximum number of students the school proposes to enroll;
- 245 (ii) the projected school enrollment for each of the first three years of school operation;
- 246 and
- 247 (iii) the ages or grade levels the school proposes to serve;
- 248 (e) academic goals;
- 249 (f) qualifications and policies for school employees, including policies that:
- 250 (i) ~~[require completion of a]~~ comply with the criminal background check ~~[for teachers]~~
- 251 requirements described in Section [53A-1a-512.5](#);
- 252 (ii) require employee evaluations; and
- 253 (iii) address employment of relatives within the charter school;
- 254 (g) a description of how the charter school will provide, as required by state and federal
- 255 law, special education and related services;
- 256 (h) for a public school converting to charter status, arrangements for:
- 257 (i) students who choose not to continue attending the charter school; and
- 258 (ii) teachers who choose not to continue teaching at the charter school;
- 259 (i) a statement that describes the charter school's plan for establishing the charter
- 260 school's facilities, including:
- 261 (i) whether the charter school intends to lease or purchase the charter school's facilities;
- 262 and
- 263 (ii) financing arrangements;
- 264 (j) a market analysis of the community the school plans to serve;
- 265 (k) a capital facility plan;
- 266 (l) a business plan;
- 267 (m) other major issues involving the establishment and operation of the charter school;
- 268 and
- 269 (n) the signatures of the governing board members of the charter school.
- 270 (3) A charter school authorizer may require a charter school application to include:
- 271 (a) the charter school's proposed:
- 272 (i) curriculum;
- 273 (ii) instructional program; or

- 274 (iii) delivery methods;
- 275 (b) a method for assessing whether students are reaching academic goals, including, at
276 a minimum, participation in the Utah Performance Assessment System for Students under
277 Chapter 1, Part 6, Achievement Tests;
- 278 (c) a proposed calendar;
- 279 (d) sample policies;
- 280 (e) a description of opportunities for parental involvement;
- 281 (f) a description of the school's administrative, supervisory, or other proposed services
282 that may be obtained through service providers; or
- 283 (g) other information that demonstrates an applicant's ability to establish and operate a
284 charter school.

285 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
286 State Board of Education shall make rules regarding the expansion of a charter school,
287 including establishing a satellite campus, that provide:

- 288 (a) requirements for a charter school to apply and qualify for expansion; and
289 (b) procedures and deadlines for the application process.

290 Section 3. Section **53A-1a-512.5** is amended to read:

291 **53A-1a-512.5. Criminal background checks on school personnel.**

292 The following individuals are required to submit to a criminal background check and
293 ongoing monitoring as provided in Section [~~53A-3-410~~] [53A-15-1503](#):

294 (1) an employee of a charter school who does not hold a current Utah educator license
295 issued by the State Board of Education under Title 53A, Chapter 6, Educator Licensing and
296 Professional Practices Act;

297 (2) a volunteer for a charter school who is given significant unsupervised access to a
298 student in connection with the volunteer's assignment; [~~or~~]

299 (3) a contract employee, as defined in Section [~~53A-3-410~~] [53A-15-1502](#), who works
300 at a charter school[~~;~~]; and

301 (4) a charter school governing board member.

302 Section 4. Section **53A-1a-705** is amended to read:

303 **53A-1a-705. Eligible private schools.**

304 (1) To be eligible to enroll a scholarship student, a private school shall:

305 (a) have a physical location in Utah where the scholarship students attend classes and
306 have direct contact with the school's teachers;

307 (b) (i) (A) obtain an audit and report from a licensed independent certified public
308 accountant that conforms with the following requirements:

309 (I) the audit shall be performed in accordance with generally accepted auditing
310 standards;

311 (II) the financial statements shall be presented in accordance with generally accepted
312 accounting principles; and

313 (III) the audited financial statements shall be as of a period within the last 12 months;
314 or

315 (B) contract with a licensed independent certified public accountant to perform an
316 agreed upon procedure as follows:

317 (I) the agreed upon procedure shall be to determine that the private school has adequate
318 working capital to maintain operations for the first full year; and

319 (II) working capital shall be calculated by subtracting current liabilities from current
320 assets; and

321 (ii) submit the audit report or report of the agreed upon procedure to the board when
322 the private school applies to accept scholarship students;

323 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

324 (d) meet state and local health and safety laws and codes;

325 (e) disclose to the parent of each prospective student, before the student is enrolled, the
326 special education services that will be provided to the student, including the cost of those
327 services;

328 (f) (i) administer an annual assessment of each scholarship student's academic
329 progress;

330 (ii) report the results of the assessment to the student's parent; and

331 (iii) make the results available to the assessment team evaluating the student pursuant
332 to Subsection [53A-1a-704\(6\)](#);

333 (g) employ or contract with teachers who:

334 (i) hold baccalaureate or higher degrees;

335 (ii) have at least three years of teaching experience in public or private schools; or

336 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to
337 provide instruction:

338 (A) in the subjects taught; and

339 (B) to the special needs students taught; [~~and~~]

340 (h) require the following individuals to submit to a criminal background check and

341 ongoing monitoring, in accordance with Section 53A-15-1503, as a condition for employment

342 or appointment:

343 (i) an employee who does not hold a current Utah educator license issued by the board

344 under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act;

345 (ii) a contract employee; and

346 (iii) a volunteer who is given significant unsupervised access to a student in connection

347 with the volunteer's assignment; and

348 [~~(h)~~] (i) provide to parents the relevant credentials of the teachers who will be teaching
349 their students.

350 (2) A private school is not eligible to enroll scholarship students if:

351 (a) the audit report submitted under Subsection (1)(b) contains a going concern

352 explanatory paragraph; or

353 (b) the report of the agreed upon procedure submitted under Subsection (1)(b) shows

354 that the private school does not have adequate working capital to maintain operations for the

355 first full year, as determined under Subsection (1)(b).

356 (3) A home school is not eligible to enroll scholarship students.

357 (4) Residential treatment facilities licensed by the state are not eligible to enroll

358 scholarship students.

359 (5) A private school intending to enroll scholarship students shall submit an application

360 to the board by May 1 of the school year preceding the school year in which it intends to enroll

361 scholarship students.

362 (6) The board shall:

363 (a) approve a private school's application to enroll scholarship students, if the private

364 school meets the eligibility requirements of this section; and

365 (b) make available to the public a list of the eligible private schools.

366 (7) An approved eligible private school that changes ownership shall submit a new

367 application to the board and demonstrate that it continues to meet the eligibility requirements
368 of this section.

369 Section 5. Section **53A-6-104.1** is amended to read:

370 **53A-6-104.1. Reinstatement of a license.**

371 (1) An educator who previously held a license and whose license has expired may have
372 the license reinstated by:

373 (a) filing an application with the board on the form prescribed by the board;

374 (b) paying the fee required by Section [53A-6-105](#); and

375 (c) submitting to a criminal background check as required by Section [~~53A-6-401~~]
376 [53A-15-1504](#).

377 (2) Upon successful completion of the criminal background check and verification that
378 the applicant's previous license had not been revoked, suspended, or surrendered, the board
379 shall reinstate the license.

380 (3) An educator whose license is reinstated may not be required to obtain professional
381 development not required of other educators with the same number of years of experience,
382 except as provided in Subsection (4).

383 (4) The principal of the school at which an educator whose license is reinstated is
384 employed shall provide information and training, based on the educator's experience and
385 education, that will assist the educator in performing the educator's assigned position.

386 (5) The procedures for reinstating a license as provided in this section do not apply to
387 an educator's license that expires while the educator is employed in a position requiring the
388 license.

389 Section 6. Section **53A-6-104.5** is amended to read:

390 **53A-6-104.5. Licensing by competency.**

391 (1) A competency-based license to teach may be issued based on the demonstrated
392 competence of a teacher as provided in this section.

393 (2) A local school board or charter school may request, and the State Board of
394 Education shall grant, upon receipt of documentation from the local school board or charter
395 school verifying the person's qualifications as specified in this section, a competency-based
396 license to a person who meets the qualifications specified in this section and submits to a
397 criminal background check as required in Section [~~53A-6-401~~] [53A-15-1504](#).

398 (3) A local school board or charter school may request a competency-based license if
399 the candidate meets the following qualifications:

400 (a) a license candidate who teaches one or more core academic subjects in an
401 elementary school shall:

402 (i) hold at least a bachelor's degree; and

403 (ii) have demonstrated, by passing a rigorous state test, subject knowledge and teaching
404 skills in reading, writing, mathematics, and other areas of the basic elementary school
405 curriculum;

406 (b) a license candidate who teaches one or more core academic subjects in a middle or
407 secondary school shall:

408 (i) hold at least a bachelor's degree; and

409 (ii) have demonstrated a high level of competency in each of the academic subjects in
410 which the teacher teaches by:

411 (A) passing a rigorous state academic subject test in each of the academic subjects in
412 which the teacher teaches; or

413 (B) successful completion, in each of the academic subjects in which the teacher
414 teaches, of an academic major, a graduate degree, course work equivalent to an undergraduate
415 academic major, or advanced certification or credentialing; or

416 (c) a license candidate who teaches subjects other than a core academic subject in an
417 elementary, middle, or high school shall:

418 (i) hold a bachelor's degree, associate's degree, or skill certification; and

419 (ii) have skills, talents, or abilities, as evaluated by the employing entity, that make the
420 person suited for the teaching position.

421 (4) A school district or charter school:

422 (a) shall monitor and assess the performance of each teacher holding a
423 competency-based license; and

424 (b) may recommend that the competency-based license holder's training and
425 assessment be reviewed by the Utah State Office of Education for a level 1 license.

426 Section 7. Section **53A-6-109** is amended to read:

427 **53A-6-109. Substitute teachers.**

428 (1) A substitute teacher need not hold a license to teach, but school districts are

429 encouraged to hire licensed personnel as substitutes when available.

430 (2) A person must submit to a background check under Section [~~53A-3-410~~]

431 53A-15-1503 prior to employment as a substitute teacher.

432 (3) A teacher's position in the classroom may not be filled by an unlicensed substitute
433 [~~teachers~~] teacher for more than a total of 20 days during any school year unless licensed
434 personnel are not available.

435 (4) A person who is ineligible to hold a license for any reason other than professional
436 preparation may not serve as a substitute teacher.

437 Section 8. Section **53A-6-306** is amended to read:

438 **53A-6-306. Purpose, powers, and duties of UPPAC.**

439 (1) UPPAC shall:

440 (a) adopt rules consistent with applicable law and board rules to carry out its

441 responsibilities under this chapter;

442 (b) make recommendations to the board and professional organizations of educators:

443 (i) concerning standards of professional performance, competence, and ethical conduct
444 for persons holding licenses issued by the board; and

445 (ii) for the improvement of the education profession;

446 (c) establish procedures for receiving and acting upon reports or allegations regarding
447 immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of
448 standards of ethical conduct, performance, or professional competence;

449 (d) investigate any allegation of sexual abuse of a student or a minor by an educator;

450 and

451 (e) establish the manner in which hearings are conducted and reported, and

452 recommendations are submitted to the board for its action.

453 (2) (a) UPPAC may conduct or authorize investigations relating to any matter before
454 UPPAC.

455 (b) Those investigations shall be independent of and separate from any criminal
456 investigation.

457 (c) In conducting an investigation UPPAC or an investigator operating under UPPAC
458 authorization may:

459 (i) administer oaths and issue subpoenas which may be enforced through the state

460 district courts;

461 (ii) receive any evidence related to an alleged offense, including sealed or expunged
462 records released to the board under Section [77-40-109](#); and

463 (iii) where reasonable cause exists, initiate a criminal background check on a license
464 holder.

465 (d) (i) A license holder shall receive written notice if a fingerprint check is required as
466 a part of the background check.

467 (ii) Fingerprints of the individual shall be taken, and the Law Enforcement and
468 Technical Services Division of the Department of Public Safety shall release the individual's
469 full record, as shown on state, regional, and national records, to UPPAC.

470 (iii) UPPAC shall pay the cost of the background check except as provided under
471 Section [~~53A-6-401~~] [53A-15-1504](#), and the money collected shall be credited to the Law
472 Enforcement and Technical Services Division to offset its expenses.

473 (3) UPPAC is entitled to a rebuttable evidentiary presumption that a person has
474 committed a sexual offense against a minor child if the person has:

475 (a) after having had a reasonable opportunity to contest the allegation, been found
476 pursuant to a criminal, civil, or administrative action to have committed a sexual offense
477 against a minor child;

478 (b) pled guilty to a reduced charge in the face of a charge of having committed a sexual
479 offense against a minor child, entered a plea of no contest, entered into a plea in abeyance
480 resulting in subsequent dismissal of such a charge, or failed to defend himself against such a
481 charge when given reasonable opportunity to do so; or

482 (c) voluntarily surrendered a license or certificate or allowed a license or certificate to
483 lapse in the face of a charge of having committed a sexual offense against a minor child.

484 (4) In resolving a complaint UPPAC may:

485 (a) dismiss the complaint;

486 (b) issue a warning or reprimand;

487 (c) issue an order of probation requiring an educator to comply with specific conditions
488 in order to retain a license;

489 (d) enter into a written agreement requiring an educator to comply with certain
490 conditions;

491 (e) recommend board action such as revocation or suspension of a license or restriction
492 or prohibition of licensure; or

493 (f) take other appropriate action.

494 (5) UPPAC may not:

495 (a) participate as a party in any dispute relating to negotiations between a school
496 district or charter school and its educators;

497 (b) take action against an educator without giving the individual an opportunity for a
498 fair hearing to contest the allegations upon which the action would be based; or

499 (c) take action against an educator unless it finds that the action or the failure of the
500 educator to act impairs the educator's ability to perform the functions of the educator's position.

501 Section 9. Section **53A-6-401** is repealed and reenacted to read:

502 **53A-6-401. Background checks.**

503 In accordance with Section **53A-15-1504**, the State Board of Education shall require a
504 license applicant to submit to a criminal background check and ongoing monitoring as a
505 condition for licensing.

506 Section 10. Section **53A-6-403** is amended to read:

507 **53A-6-403. Office tie-in with the Criminal Investigations and Technical Services**
508 **Division.**

509 (1) The office shall:

510 (a) be an online terminal agency with the Department of Public Safety's Criminal
511 Investigations and Technical Services Division under Section **53-10-108**; and

512 (b) provide relevant information concerning current or prospective employees or
513 volunteers upon request to other school officials as provided in Section **53A-6-402**.

514 (2) The cost of the online service shall be borne by the entity making the inquiry[;
515 ~~using funds available to the entity, which may include funds authorized under Section~~
516 ~~**53A-6-401**].~~

517 Section 11. Section **53A-6-404** is amended to read:

518 **53A-6-404. Certification in other jurisdictions -- Impact on licensing in Utah.**

519 (1) An applicant for a license, renewal of a license, or reinstatement of a license shall
520 provide the administrator of teacher licensing with an affidavit, stating under oath the current
521 status of any certificate, license, or other authorization required for a professional position in

522 education, which the applicant holds or has held in any other jurisdiction.

523 (2) An applicant for a license who has held a teacher's license in any other jurisdiction
524 or who graduated from an institution of higher education in another state shall also provide the
525 administrator of teacher licensing with:

526 (a) a complete listing of the higher education institutions attended by the applicant,
527 whether the applicant's enrollment or eligibility for completion of a program was terminated by
528 the institution, and, if so, the reasons for termination;

529 (b) a complete list of prior school employers; and

530 (c) a release on a form provided by the administrator permitting the office to obtain
531 records from other jurisdictions and from institutions of higher education attended by the
532 applicant, including expunged or otherwise protected records, relating to any offense described
533 substantially in the same language as in [~~Subsection 53A-6-401(5)~~] Section 53A-15-1506.

534 (3) If the applicant's certificate, license, or authorization as an educator in any other
535 jurisdiction is under investigation, has expired or been surrendered, suspended or revoked, or is
536 currently not valid for any other reason, the office may not grant the requested license, renewal,
537 or reinstatement until it has received confirmation from the administrator of professional
538 certification in that jurisdiction that the applicant would be eligible for certification or licensure
539 in that jurisdiction.

540 (4) The office may not withhold a license for the sole reason that the applicant would
541 be ineligible for certification, licensure, or authorization in the jurisdiction referred to in
542 Subsection (3) because of failure to meet current requirements in that jurisdiction relating to
543 education, time in service, or residence.

544 Section 12. Section **53A-15-1501** is enacted to read:

545 **Part 15. Background Checks**

546 **53A-15-1501. Title.**

547 This part is known as "Background Checks."

548 Section 13. Section **53A-15-1502** is enacted to read:

549 **53A-15-1502. Definitions.**

550 As used in this part:

551 (1) "Authorized entity" means an LEA, qualifying private school, or the State Board of
552 Education that is authorized to request a background check and ongoing monitoring under this

553 part.

554 (2) "Bureau" means the Bureau of Criminal Identification within the Department of
555 Public Safety, created in Section 53-10-201.

556 (3) "Contract employee" means an employee of a staffing service who works at a
557 public or private school under a contract between the staffing service and the public or private
558 school.

559 (4) "LEA" means a school district, charter school, or the Utah Schools for the Deaf and
560 the Blind.

561 (5) (a) "License applicant" means an applicant for a license issued by the State Board
562 of Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

563 (b) "License applicant" includes an applicant for reinstatement of an expired, lapsed,
564 suspended, or revoked license.

565 (6) "Non-licensed employee" means an employee of an LEA or qualifying private
566 school that does not hold a current Utah educator license issued by the State Board of
567 Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

568 (7) "Personal identifying information" means:

569 (a) current name, former names, nicknames, and aliases;

570 (b) date of birth;

571 (c) address;

572 (d) telephone number;

573 (e) driver license number or other government-issued identification number;

574 (f) Social Security number; and

575 (g) fingerprints.

576 (8) "Qualifying private school" means a private school that enrolls students under Title
577 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act.

578 (9) "Rap back system" means a system that enables authorized entities to receive
579 ongoing status notifications of any criminal history reported on individuals whose fingerprints
580 are registered in the system.

581 (10) "WIN Database" means the Western Identification Network Database that consists
582 of eight western states sharing one electronic fingerprint database.

583 Section 14. Section **53A-15-1503** is enacted to read:

584 53A-15-1503. Background checks for non-licensed employees, contract employees,
585 volunteers, and charter school governing board members.

586 (1) An LEA or qualifying private school shall:

587 (a) require the following individuals to submit to a criminal background check and
588 ongoing monitoring as a condition for employment or appointment:

589 (i) a non-licensed employee;

590 (ii) a contract employee;

591 (iii) a volunteer who will be given significant unsupervised access to a student in
592 connection with the volunteer's assignment; and

593 (iv) a charter school governing board member;

594 (b) collect the following from an individual required to submit to a background check
595 under Subsection (1)(a):

596 (i) personal identifying information;

597 (ii) subject to Subsection (2), a fee described in Subsection [53-10-108\(14\)](#); and

598 (iii) consent, on a form specified by the LEA or qualifying private school, for:

599 (A) an initial background check upon submission of the application; and

600 (B) retention of personal identifying information for ongoing monitoring through
601 registration with the systems described in Section [53A-15-1505](#);

602 (c) submit the individual's personal identifying information, including fingerprints, to
603 the bureau for:

604 (i) an initial background check; and

605 (ii) ongoing monitoring through registration with the systems described in Section
606 [53A-15-1505](#) if the results of the initial background check do not contain disqualifying
607 criminal history information as determined by the LEA or qualifying private school in
608 accordance with Section [53A-15-1506](#); and

609 (d) identify the appropriate privacy risk mitigation strategy that will be used to ensure
610 that the LEA or qualifying private school only receives notifications for individuals with whom
611 the LEA or qualifying private school maintains an authorizing relationship.

612 (2) An LEA or qualifying private school may not require an individual to pay the fee
613 described in Subsection (1)(b)(ii) unless the individual:

614 (a) has passed an initial review; and

- 615 (b) is one of a pool of no more than five candidates for the position.
- 616 (3) By September 1, 2018, an LEA or qualifying private school shall:
- 617 (a) collect the information described in Subsection (1)(b) from individuals:
- 618 (i) who were employed or appointed prior to July 1, 2015; and
- 619 (ii) with whom the LEA or qualifying private school currently maintains an authorizing
- 620 relationship; and
- 621 (b) submit the information to the bureau for ongoing monitoring through registration
- 622 with the systems described in Section [53A-15-1505](#).
- 623 (4) An LEA or qualifying private school that receives criminal history information
- 624 about a licensed educator under Subsection [53A-15-1504](#)(5) shall assess the employment status
- 625 of the licensed educator as provided in Section [53A-15-1506](#).
- 626 (5) An LEA or qualifying private school may establish a policy to exempt an individual
- 627 described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under Subsection (1) if
- 628 the individual is being temporarily employed or appointed.
- 629 Section 15. Section **53A-15-1504** is enacted to read:
- 630 **53A-15-1504. Background checks for licensed educators.**
- 631 The State Board of Education shall:
- 632 (1) require a license applicant to submit to a criminal background check and ongoing
- 633 monitoring as a condition for licensing;
- 634 (2) collect the following from an applicant:
- 635 (a) personal identifying information;
- 636 (b) a fee described in Subsection [53-10-108](#)(14); and
- 637 (c) consent, on a form specified by the State Board of Education, for:
- 638 (i) an initial background check upon submission of the application;
- 639 (ii) retention of personal identifying information for ongoing monitoring through
- 640 registration with the systems described in Section [53A-15-1505](#); and
- 641 (iii) disclosure of any criminal history information to the individual's employing LEA
- 642 or qualifying private school;
- 643 (3) submit an applicant's personal identifying information, including fingerprints, to the
- 644 bureau for:
- 645 (a) an initial background check; and

646 (b) ongoing monitoring through registration with the systems described in Section
647 53A-15-1505 if the results of the initial background check do not contain disqualifying
648 criminal history information as determined by the State Board of Education in accordance with
649 Section 53A-15-1506;

650 (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure
651 that the board only receives notifications for individuals with whom the State Board of
652 Education maintains an authorizing relationship;

653 (5) notify the employing LEA or qualifying private school upon receipt of any criminal
654 history information reported on a licensed educator employed by the LEA or qualifying private
655 school; and

656 (6) (a) collect the information described in Subsection (2) from individuals who were
657 licensed prior to July 1, 2015, by the individual's next license renewal date; and

658 (b) submit the information to the bureau for ongoing monitoring through registration
659 with the systems described in Section 53A-15-1505.

660 Section 16. Section 53A-15-1505 is enacted to read:

661 **53A-15-1505. Bureau responsibilities.**

662 The bureau shall:

663 (1) upon request from an authorized entity, register the fingerprints submitted by the
664 authorized entity as part of a background check with:

665 (a) the WIN Database rap back system, or any successor system; and

666 (b) the rap back system maintained by the Federal Bureau of Investigation;

667 (2) notify an authorized entity when a new entry is made against an individual whose
668 fingerprints are registered with the rap back systems described in Subsection (1) regarding:

669 (a) an alleged offense; or

670 (b) a conviction, including a plea in abeyance;

671 (3) assist authorized entities to identify the appropriate privacy risk mitigation strategy
672 that is to be used to ensure that the authorized entity only receives notifications for individuals
673 with whom the authorized entity maintains an authorizing relationship; and

674 (4) collaborate with the State Board of Education to provide training to authorized
675 entities on the notification procedures and privacy risk mitigation strategies described in this
676 part.

677 Section 17. Section **53A-15-1506** is enacted to read:

678 **53A-15-1506. Due process for accused individuals--Review of criminal history**
679 **information.**

680 (1) (a) In accordance with Section [53-10-108](#), an authorized entity shall provide an
681 individual an opportunity to review and respond to any criminal history information received
682 under this part.

683 (b) If an authorized entity decides to disqualify an individual as a result of criminal
684 history information received under this part, an individual may request a review of:

685 (i) information received; and

686 (ii) the reasons for the disqualification.

687 (c) An authorized entity shall provide an individual described in Subsection (1)(b) with
688 written notice of:

689 (i) the reasons for the disqualification; and

690 (ii) the individual's right to request a review of the disqualification.

691 (2) (a) An LEA or qualifying private school shall make decisions regarding criminal
692 history information for the individuals subject to the background check requirements under
693 Section [53A-15-1503](#) in accordance with:

694 (i) Subsection (3);

695 (ii) administrative procedures established by the LEA or qualifying private school; and

696 (iii) rules established by the State Board of Education.

697 (b) The State Board of Education shall make decisions regarding criminal history
698 information for licensed educators in accordance with:

699 (i) Subsection (3);

700 (ii) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act; and

701 (iii) rules established by the State Board of Education.

702 (3) When making decisions regarding initial employment, initial licensing, or initial
703 appointment for the individuals subject to background checks under this part, an authorized
704 entity shall consider:

705 (a) any convictions, including pleas in abeyance;

706 (b) any matters involving a felony; and

707 (c) any matters involving an alleged:

- 708 (i) sexual offense;
- 709 (ii) class A misdemeanor drug offense;
- 710 (iii) offense against the person under Title 76, Chapter 5, Offenses Against the Person;
- 711 (iv) class A misdemeanor property offense that is alleged to have occurred within the
- 712 previous three years; and
- 713 (v) any other type of criminal offense, if more than one occurrence of the same type of
- 714 offense is alleged to have occurred within the previous eight years.

715 Section 18. Section **53A-15-1507** is enacted to read:

716 **53A-15-1507. Self-reporting requirement.**

717 (1) Individuals subject to the background check requirements under this part shall

718 self-report conviction, arrest, or offense information in accordance with rules established by the

719 State Board of Education.

720 (2) An LEA shall report conviction, arrest, or offense information received from

721 licensed educators under Subsection (1) to the State Board of Education in accordance with

722 rules established by the State Board of Education.

723 Section 19. Section **53A-15-1508** is enacted to read:

724 **53A-15-1508. Update criminal background check rules and policies.**

725 On or before September 1, 2015:

- 726 (1) the board shall update the board's criminal background check rules consistent with
- 727 this part; and
- 728 (2) an LEA shall update the LEA's criminal background check policies consistent with
- 729 this part.

730 Section 20. Section **53A-15-1509** is enacted to read:

731 **53A-15-1509. Training provided to authorized entities.**

732 The board shall collaborate with the bureau to provide training to authorized entities on

733 the provisions of this part.

734 Section 21. Section **53A-15-1510** is enacted to read:

735 **53A-15-1510. Legislative audit.**

736 After the conclusion of the 2018-2019 school year, subject to the prioritization of the

737 Legislative Audit Subcommittee, the Legislative Auditor General shall conduct a review and

738 issue a report on the extent to which the criminal background check procedures and ongoing

739 monitoring described in this part adequately detect and identify the criminal histories of
740 individuals who are employed by or volunteering in public schools.

741 Section 22. Section **53A-29-104** is amended to read:

742 **53A-29-104. Internship programs -- Criminal background checks.**

743 Officers and employees of a cooperating employer who will be given significant
744 unsupervised access to a student in connection with the student's activities as an intern shall be
745 considered to be a volunteer [~~school workers solely~~] for purposes of criminal background
746 checks under Section [~~53A-3-410~~] [53A-15-1503](#).

747 Section 23. Section **53B-16-404** is amended to read:

748 **53B-16-404. Internship programs -- Criminal background checks.**

749 An institution of higher education shall require an officer or employee of the institution
750 or a cooperating employer, who will be given significant unsupervised access to a minor
751 student in connection with the student's activities as an intern, to submit to a criminal
752 background check on the same basis as a volunteer [~~school district workers~~] under Section
753 [~~53A-3-410~~] [53A-15-1503](#).

754 Section 24. Section **78A-6-1105** is amended to read:

755 **78A-6-1105. Expungement of juvenile court record -- Petition -- Procedure.**

756 (1) (a) A person who has been adjudicated under this chapter may petition the court for
757 the expungement of the person's juvenile court record and any related records in the custody of
758 a state agency, if:

759 (i) the person has reached 18 years of age; and

760 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of
761 the juvenile court or, if the person was committed to a secure youth corrections facility, one
762 year from the date of the person's unconditional release from the custody of the Division of
763 Juvenile Justice Services.

764 (b) The court may waive the requirements in Subsection (1)(a), if the court finds, and
765 states on the record, the reason why the waiver is appropriate.

766 (c) The petitioner shall include in the petition any agencies known or alleged to have
767 any documents related to the offense for which expungement is being sought.

768 (d) The petitioner shall include with the petition the original criminal history report
769 obtained from the Bureau of Criminal Identification in accordance with the provisions of

770 [~~Subsection~~] Section 53-10-108~~[(8)]~~.

771 (e) The petitioner shall send a copy of the petition to the county attorney or, if within a
772 prosecution district, the district attorney.

773 (f) (i) Upon the filing of a petition, the court shall:

774 (A) set a date for a hearing;

775 (B) notify the county attorney or district attorney, and the agency with custody of the
776 records at least 30 days prior to the hearing of the pendency of the petition; and

777 (C) notify the county attorney or district attorney, and the agency with records the
778 petitioner is asking the court to expunge of the date of the hearing.

779 (ii) The court shall provide a victim with the opportunity to request notice of a petition
780 for expungement. A victim shall receive notice of a petition for expungement at least 30 days
781 prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a
782 child or a person who is incapacitated or deceased, the victim's next of kin or authorized
783 representative, submits a written and signed request for notice to the court in the judicial
784 district in which the crime occurred or judgment was entered. The notice shall include a copy
785 of the petition and statutes and rules applicable to the petition.

786 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other
787 person who may have relevant information about the petitioner may testify.

788 (b) In deciding whether to grant a petition for expungement, the court shall consider
789 whether the rehabilitation of the petitioner has been attained to the satisfaction of the court,
790 taking into consideration the petitioner's response to programs and treatment, the petitioner's
791 behavior subsequent to adjudication, and the nature and seriousness of the conduct.

792 (c) The court may order sealed all petitioner's records under the control of the juvenile
793 court and any of petitioner's records under the control of any other agency or official pertaining
794 to the petitioner's adjudicated juvenile court cases, including relevant related records contained
795 in the Management Information System created by Section 62A-4a-1003 and the Licensing
796 Information System created by Section 62A-4a-1005, if the court finds that:

797 (i) the petitioner has not, since the termination of the court's jurisdiction or [~~his~~] the
798 petitioner's unconditional release from the Division of Juvenile Justice Services, been
799 convicted of a:

800 (A) felony; or

801 (B) misdemeanor involving moral turpitude;
802 (ii) no proceeding involving a felony or misdemeanor is pending or being instituted
803 against the petitioner; and
804 (iii) a judgment for restitution entered by the court on the conviction for which the
805 expungement is sought has been satisfied.

806 (3) The petitioner shall be responsible for service of the order of expungement to all
807 affected state, county, and local entities, agencies, and officials. To avoid destruction or
808 sealing of the records in whole or in part, the agency or entity receiving the expungement order
809 shall only expunge all references to the petitioner's name in the records pertaining to the
810 petitioner's adjudicated juvenile court cases.

811 (4) Upon the entry of the order, the proceedings in the petitioner's case shall be
812 considered never to have occurred and the petitioner may properly reply accordingly upon any
813 inquiry in the matter. Inspection of the records may thereafter only be permitted by the court
814 upon petition by the person who is the subject of the records, and only to persons named in the
815 petition.

816 (5) The court may not expunge a juvenile court record if the record contains an
817 adjudication of:

818 (a) Section 76-5-202, aggravated murder; or
819 (b) Section 76-5-203, murder.

820 (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments
821 as provided in Section 78A-6-602 may petition the court for expungement of the person's
822 record if the person:

823 (i) has reached 18 years of age; and
824 (ii) has completed the conditions of the nonjudicial adjustments.

825 (b) The court shall, without a hearing, order sealed all petitioner's records under the
826 control of the juvenile court and any of petitioner's records under the control of any other
827 agency or official pertaining to the petitioner's nonjudicial adjustments.

828 **Section 25. Repealer.**
829 This bill repeals:
830 Section 53A-3-410, **Criminal background checks on school personnel -- Notice --**
831 **Payment of costs -- Request for review.**

832 Section 26. **Effective date.**
833 This bill takes effect on July 1, 2015.