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

(1) As used in this section:

- (a) "FBI Rap Back System" means the rap back system maintained by the Federal Bureau of Investigation.
- (b) "Rap back system" means a system that enables authorized entities to receive ongoing status notifications of any criminal history reported on individuals whose fingerprints are registered in the system.
- (c) "WIN Database" means the Western Identification Network Database that consists of eight western states sharing one electronic fingerprint database.

(2) Dissemination of information from a criminal history record or warrant of arrest information from division files is limited to:

- (a) criminal justice agencies for purposes of administration of criminal justice and for employment screening by criminal justice agencies;
- (b) noncriminal justice agencies or individuals for any purpose authorized by statute, executive order, court rule, court order, or local ordinance;
- (c) agencies or individuals for the purpose of obtaining required clearances connected with foreign travel or obtaining citizenship;

(d)

- (i) agencies or individuals pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice; and
- (ii) the agreement shall specifically authorize access to data, limit the use of the data to purposes for which given, and ensure the security and confidentiality of the data;

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

(f)

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

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

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

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

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

(4)

(a) Before requesting information under Subsection (2)(g), a qualifying entity must obtain a signed waiver from the person whose information is requested.

(b) The waiver must notify the signee:

- (i) that a criminal history background check will be conducted;

- (ii) who will see the information; and
 - (iii) how the information will be used.
 - (c) Information received by a qualifying entity under Subsection (2)(g) may only be:
 - (i) available to persons involved in the hiring or background investigation of the employee; and
 - (ii) used for the purpose of assisting in making an employment or promotion decision.
 - (d) A person who disseminates or uses information obtained from the division under Subsection (2)(g) for purposes other than those specified under Subsection (4)(c), in addition to any penalties provided under this section, is subject to civil liability.
 - (e) A qualifying entity that obtains information under Subsection (2)(g) shall provide the employee or employment applicant an opportunity to:
 - (i) review the information received as provided under Subsection (9); and
 - (ii) respond to any information received.
 - (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to implement this Subsection (4).
 - (g) The division or its employees are not liable for defamation, invasion of privacy, negligence, or any other claim in connection with the contents of information disseminated under Subsection (2)(g).
- (5)
- (a) Any criminal history record information obtained from division files may be used only for the purposes for which it was provided and may not be further disseminated, except under Subsection (5)(b), (c), or (d).
 - (b) A criminal history provided to an agency pursuant to Subsection (2)(e) may be provided by the agency to the person who is the subject of the history, another licensed child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an adoption.
 - (c) A criminal history of a defendant provided to a criminal justice agency under Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel, upon request during the discovery process, for the purpose of establishing a defense in a criminal case.
 - (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that is under contract with a state agency to provide services may, for the purposes of complying with Subsection 62A-5-103.5(5), provide a criminal history record to the state agency or the agency's designee.
- (6) The division may not disseminate criminal history record information to qualifying entities under Subsection (2)(g) regarding employment background checks if the information is related to charges:
- (a) that have been declined for prosecution;
 - (b) that have been dismissed; or
 - (c) regarding which a person has been acquitted.
- (7)
- (a) This section does not preclude the use of the division's central computing facilities for the storage and retrieval of criminal history record information.
 - (b) This information shall be stored so it cannot be modified, destroyed, or accessed by unauthorized agencies or individuals.
- (8) Direct access through remote computer terminals to criminal history record information in the division's files is limited to those agencies authorized by the commissioner under procedures designed to prevent unauthorized access to this information.
- (9)
- (a) The commissioner shall establish procedures to allow an individual right of access to review and receive a copy of the individual's criminal history report.

- (b) A processing fee for the right of access service, including obtaining a copy of the individual's criminal history report under Subsection (9)(a) is \$15. This fee remains in effect until changed by the commissioner through the process under Section 63J-1-504.
- (c)
 - (i) The commissioner shall establish procedures for an individual to challenge the completeness and accuracy of criminal history record information contained in the division's computerized criminal history files regarding that individual.
 - (ii) These procedures shall include provisions for amending any information found to be inaccurate or incomplete.
- (10) The private security agencies as provided in Subsection (2)(f)(ii):
 - (a) shall be charged for access; and
 - (b) shall be registered with the division according to rules made by the division under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (11) Before providing information requested under this section, the division shall give priority to criminal justice agencies needs.
- (12)
 - (a) It is a class B misdemeanor for a person to knowingly or intentionally access, use, disclose, or disseminate a record created, maintained, or to which access is granted by the division or any information contained in a record created, maintained, or to which access is granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or policy of a governmental entity.
 - (b) A person who discovers or becomes aware of any unauthorized use of records created or maintained, or to which access is granted by the division shall inform the commissioner and the director of the Utah Bureau of Criminal Identification of the unauthorized use.
- (13)
 - (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in Subsection (2)(b) may request that the division register fingerprints taken for the purpose of conducting current and future criminal background checks under this section with:
 - (i) the WIN Database rap back system, or any successor system;
 - (ii) the FBI Rap Back System; or
 - (iii) a system maintained by the division.
 - (b) A qualifying entity or an entity described in Subsection (2)(b) may only make a request under Subsection (13)(a) if the entity:
 - (i) has the authority through state or federal statute or federal executive order;
 - (ii) obtains a signed waiver from the individual whose fingerprints are being registered; and
 - (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives notifications for individuals with whom the entity maintains an authorizing relationship.
- (14) The division is authorized to submit fingerprints to the FBI Rap Back System to be retained in the FBI Rap Back System for the purpose of being searched by future submissions to the FBI Rap Back System, including latent fingerprint searches.
- (15)
 - (a)
 - (i) The applicant fingerprint card fee under Subsection (2) is \$20.
 - (ii) The name check fee under Subsection (2) is \$15.
 - (iii) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.
 - (iv) The fees described in this Subsection (15)(a) remain in effect until changed by the division through the process under Section 63J-1-504.

- (b) Funds generated under this Subsection (15) shall be deposited into the General Fund as a dedicated credit by the department to cover the costs incurred in providing the information.
- (c) The division may collect fees charged by an outside agency for services required under this section.