

1 **CRIMINAL BACKGROUND CHECKS FOR**
2 **LICENSED PROVIDERS OF HUMAN**
3 **SERVICES**

4 2002 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Leonard M. Blackham**

7 **This act amends the Human Services Code. The act adds new defined terms and modifies**
8 **others. The act excludes individuals serving on certain governing bodies and boards from**
9 **the requirement of criminal background checks. The act modifies licensing requirements**
10 **of human services licensees and persons associated with a licensee. The act amends criminal**
11 **background check provisions. The act eliminates the requirement for criminal background**
12 **checks and substantiated child abuse management information system screenings in**
13 **connection with license renewal. The act requires that the Department of Human Services**
14 **and the Human Services Licensing Board conduct a comprehensive review of criminal and**
15 **court records and related circumstances in connection with certain convictions found in a**
16 **search. The act clarifies and modifies the process for challenging a decision by the**
17 **department not to approve a person to provide direct services in a licensee program serving**
18 **children or vulnerable adults. The act makes technical changes.**

19 This act affects sections of Utah Code Annotated 1953 as follows:

20 AMENDS:

21 **62A-2-101**, as last amended by Chapter 358, Laws of Utah 1998

22 **62A-2-120**, as enacted by Chapter 358, Laws of Utah 1998

23 **62A-2-121**, as last amended by Chapter 164, Laws of Utah 1999

24 REPEALS:

25 **62A-4a-413**, as last amended by Chapters 263 and 358, Laws of Utah 1998

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

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



28 **62A-2-101. Definitions.**

29 As used in this chapter:

30 (1) "Adult day care" means continuous care and supervision for three or more adults for
31 at least four but less than 24 hours a day, that meets the needs of functionally impaired adults
32 through a comprehensive program that provides a variety of health, social, recreational, and related
33 support services in a protective setting.

34 (2) "Child" means a person under 18 years of age.

35 [~~2~~] (3) "Child placing" means receiving, accepting, or providing custody or care for any
36 child under 18 years of age, temporarily or permanently, for the purpose of:

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

38 (b) placing the child temporarily or permanently in a home for adoption; or

39 (c) foster home placement.

40 [~~3~~] (4) "Client" means an individual who receives or has received services from a human
41 services licensee under this chapter.

42 [~~4~~] (5) "Day treatment" means specialized treatment for less than 24 hours a day for four
43 or more persons who are unrelated to the owner or provider and who have emotional,
44 psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical
45 dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive
46 residential or inpatient environment or service.

47 [~~5~~] (6) "Department" means the Department of Human Services.

48 (7) "Direct services" means the provision of therapy, counseling, child-placing services,
49 youth programs, substitute care, foster care, institutional care, or other services to a child or a
50 vulnerable adult by an individual whose actual contact with the child or vulnerable adult involves
51 control over the child or vulnerable adult and subjects the child or vulnerable adult to the influence
52 of that individual.

53 [~~6~~] (8) "Director" means the director of the Office of Licensing.

54 [~~7~~] (9) "Domestic violence treatment program" means a nonresidential program designed
55 to provide psychological treatment and educational services to perpetrators and victims of
56 domestic violence.

57 (10) "Elder adult" means a person 65 years of age or older.

58 [~~8~~] (11) "Executive director" means the executive director of the [Department of Human

59 Services] department.

60 [~~(9)~~] (12) "Human services licensee" or "licensee" means a youth program, resource family
61 home, or a facility or program, licensed by the department, that provides care, secure treatment,
62 inpatient treatment, residential treatment, residential support, adult day care, day treatment,
63 outpatient treatment, domestic violence treatment, child placing services, or social detoxification.

64 [~~(10)~~] (13) "Licensing board" means the Human Services Licensing Board.

65 (14) "Minor" has the same meaning as "child."

66 [~~(11)~~] (15) "Office" means the Office of Licensing within the Department of Human
67 Services.

68 [~~(12)~~] (16) "Outpatient treatment" means individual, family, or group therapy or
69 counseling designed to improve and enhance social or psychological functioning for those whose
70 physical and emotional status allows them to continue functioning in their usual living
71 environment.

72 [~~(13)~~] (17) (a) "Person associated with [~~a~~] the licensee" means an owner, director, member
73 of the governing body, employee, provider of care, [~~and~~] or volunteer of a human services licensee
74 or of an applicant to become a licensee.

75 (b) Notwithstanding Subsection (17)(a), "person associated with the licensee" does not
76 include an individual serving on either of the following bodies unless that individual also provides
77 direct services:

78 (i) a county governing body designated as a local mental health authority under Section
79 17A-3-602 or as a local substance abuse authority under Section 17A-3-701; or

80 (ii) a board of an organization operating under a contract to provide comprehensive mental
81 health or substance abuse programs or services for the local mental health authority.

82 [~~(14)~~] (18) "Residential support" means arranging for or providing the necessities of life
83 as a protective service to individuals or families who are disabled or who are experiencing a
84 dislocation or emergency which prevents them from providing these services for themselves or
85 their families. Treatment is not a necessary component of residential support.

86 [~~(15)~~] (19) "Residential treatment" means a 24-hour group living environment for four or
87 more individuals unrelated to the owner or provider that offers room or board and specialized
88 treatment, rehabilitation, or habilitation services for persons with emotional, psychological,
89 developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential

90 treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living
91 independently in the community.

92 [~~(16)~~] (20) "Resource family home" means a home licensed to provide services to a child
93 in the custody of the state and includes a foster care home and a legal risk home.

94 [~~(17)~~] (21) "Secure treatment" means 24-hour specialized residential treatment or care for
95 persons whose current functioning is such that they cannot live independently or in a less
96 restrictive environment. Secure treatment differs from residential treatment to the extent that it
97 requires intensive supervision, locked doors, and other security measures which are imposed on
98 residents with neither their consent nor control.

99 [~~(18)~~] (22) "Social detoxification" means short-term residential services for persons who
100 are intoxicated, that are provided outside of a health care facility licensed under Title 26, Chapter
101 21, Health Care Facility Licensure and Inspection Act, and that include:

- 102 (a) room and board for persons who are unrelated to the owner or manager of the facility;
- 103 (b) specialized rehabilitation to acquire sobriety; and
- 104 (c) aftercare services.

105 [~~(19)~~] (23) "Unrelated persons" means persons other than parents, legal guardians,
106 grandparents, brothers, sisters, uncles, or aunts.

107 (24) "Vulnerable adult" means an elder adult or an adult who has a mental or physical
108 impairment that affects the person's ability to:

- 109 (a) provide personal protection;
- 110 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 111 (c) obtain services necessary for health, safety, or welfare;
- 112 (d) carry out the activities of daily living;
- 113 (e) manage the adult's own resources; or
- 114 (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect,
115 or exploitation.

116 [~~(20)~~] (25) (a) "Youth program" means a nonresidential program, designed to provide
117 behavioral, substance abuse or mental health services to minors that:

- 118 [~~(a)~~] (i) serves either adjudicated or nonadjudicated youth;
- 119 [~~(b)~~] (ii) charges a fee for its services;
- 120 [~~(c)~~] (iii) may or may not provide host homes or other arrangements for overnight

121 accommodation of the youth;

122 ~~[(d)]~~ (iv) may or may not provide all or part of its services in the outdoors;

123 ~~[(e)]~~ (v) may or may not limit or censor access to parents or guardians; and

124 ~~[(f)]~~ (vi) prohibits or restricts a minor's ability to leave the program at any time of his own
125 free will~~[-and]~~.

126 ~~[(g) will not apply to]~~ (b) "Youth program" does not include recreational programs such
127 as Boy Scouts, Girl Scouts, 4-H, and other such organizations.

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

129 **62A-2-120. Criminal background checks.**

130 (1) (a) ~~[A human services licensee or individual applying for or renewing a]~~ An applicant
131 for an initial license [to provide child-placing services, youth programs, substitute care, foster care,
132 or institutionalized care to children;] under this chapter shall submit to the department the [name]
133 names and other identifying information, which may include fingerprints, of all persons associated
134 with the licensee who provide or will provide direct services. A human services licensee seeking
135 to renew its license under this chapter is not required to provide this identifying information in
136 order to obtain license renewal.

137 (b) A human services licensee shall submit to the department the name and other
138 identifying information, which may include fingerprints, of:

139 (i) any new employee of the licensee who is to be a person associated with the licensee,
140 as defined in Section 62A-2-101, before that employee provides any direct services;

141 (ii) any person associated with the licensee immediately after the licensee receives actual
142 notice that the person has been convicted of a felony, misdemeanor, or infraction; and

143 (iii) any person associated with the licensee immediately after the licensee receives actual
144 notice that the person is the alleged perpetrator in a substantiated finding of child abuse or neglect.

145 ~~[(b)]~~ (c) The Criminal Investigations and Technical Services Division of the Department
146 of Public Safety shall process that information to determine whether the individual has been
147 convicted of any crime.

148 ~~[(e)]~~ (d) If an individual has not lived in Utah for five years, the individual shall submit
149 fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted
150 to the FBI through the Criminal Investigations and Technical Services Division.

151 ~~[(2) A person associated with the licensee who has a felony conviction may not provide~~

152 ~~child-placing services, foster care, youth programs, substitute care, or institutionalized care for~~
153 ~~children in facilities or programs licensed by the department.]~~

154 ~~[(3) The department shall adopt rules defining the circumstances under which a person~~
155 ~~who has been convicted of a misdemeanor may provide child-placing services, foster care, youth~~
156 ~~programs, substitute care, or institutionalized care for children in a facility or program licensed by~~
157 ~~the department.]~~

158 (2) The department shall approve a person for whom identifying information is submitted
159 under Subsection (1) to provide direct services in the licensee program serving children or
160 vulnerable adults if:

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

162 (b) (i) the only convictions in the person's criminal history record are misdemeanors or
163 infractions not involving domestic violence, lewdness, battery, or offenses identified in Title 76,
164 Utah Criminal Code, as a sexual offense; and

165 (ii) the date of the last conviction under Subsection (2)(b)(i) is more than five years before
166 the date of the search.

167 (3) The department may not approve a person to provide direct services in the licensee
168 program serving children or vulnerable adults if the person has at any time been convicted of:

169 (a) a felony, misdemeanor, or infraction involving an offense identified as domestic
170 violence, lewdness, or battery;

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

172 (c) prostitution;

173 (d) an offense identified in Title 76, Utah Criminal Code, as an offense against the family
174 or an offense against the person; or

175 (e) an offense identified in Title 76, Utah Criminal Code, as a sexual offense.

176 (4) (a) The department and the Human Services Licensing Board shall conduct a
177 comprehensive review of criminal and court records and related circumstances if a person for
178 whom identifying information is submitted under Subsection (1):

179 (i) has been convicted at any time of any felony not listed in Subsection (3); or

180 (ii) has been convicted within five years of the date of the search of any misdemeanor or
181 infraction not listed in Subsection (3).

182 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:

- 183 (i) the date of the offense;
184 (ii) the nature and seriousness of the offense;
185 (iii) the circumstances under which the offense occurred;
186 (iv) the age of the applicant when the offense was committed;
187 (v) whether the offense was an isolated or repeated incident;
188 (vi) whether the offense directly relates to abuse of a child or vulnerable adult, including:
189 (A) actual or threatened, nonaccidental physical or mental harm;
190 (B) sexual abuse;
191 (C) sexual exploitation; and
192 (D) negligent treatment;
193 (vii) any evidence of rehabilitation, counseling, or psychiatric treatment received, or
194 additional academic or vocational schooling completed, by the applicant; and
195 (viii) any other pertinent information.
196 (c) At the conclusion of the comprehensive review under this Subsection (4), the
197 department shall either approve or not approve the person who is the subject of the review to
198 provide direct services in the licensee program serving children or vulnerable adults, based upon
199 the determination of the department and the Human Services Licensing Board of whether or not
200 granting approval would create an unreasonable risk of harm to a child or vulnerable adult.
201 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
202 department may make rules, consistent with this chapter, defining procedures for the
203 comprehensive review described in this Subsection (4).
204 (5) (a) Within 30 days after receiving the identifying information for a person under
205 Subsection (1)(a) or (b), the department shall give written notice and explanation to the person and
206 to the human services licensee or applicant with whom the person is associated of:
207 (i) the department's decision regarding its background screening clearance and findings;
208 (ii) a listing of any convictions found in the search; and
209 (iii) the details of any comprehensive review conducted under Subsection (4).
210 (b) If the notice under Subsection (5)(a) states that the person is not approved to provide
211 direct services in the licensee program serving children or vulnerable adults, the notice shall further
212 advise the persons to whom the notice is given that either the person or the human services
213 licensee or applicant with whom the person is associated, or both, may, pursuant to Subsection

214 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
215 challenge the department's decision.

216 (c) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
217 department may make rules, consistent with this chapter, defining procedures for the challenge of
218 its background screening decision described in this Subsection (5).

219 Section 3. Section **62A-2-121** is amended to read:

220 **62A-2-121. Access to child abuse and neglect information for licensing purposes.**

221 (1) With respect to human services licensees, the department may access only the licensing
222 part of the Division of Child and Family Service's management information system created by
223 Section 62A-4a-116 for the purpose of:

224 (a) determining whether a person associated with a licensee, who provides [~~care described~~
225 ~~in Subsection (2)] direct services to children, has a substantiated finding of abuse or neglect; and~~

226 (b) informing a licensee, who provides care described in Subsection (2), that a person
227 associated with the licensee has a substantiated finding of child abuse or neglect.

228 [~~(2) (a) A licensee or individual applying for or renewing a license to provide child-placing~~
229 ~~services, youth programs, substitute care, foster care, or institutionalized care to children shall~~
230 ~~submit to the department the name and other identifying information of a person associated with~~
231 ~~the licensee.]~~

232 [~~(b) The office]~~ (2) After receiving identifying information for a person under Subsection
233 62A-2-120(1), if the licensee or applicant provides or will provide child-placing services, youth
234 programs, substitute care, foster care, or institutionalized care to children, the department shall
235 process the information to determine whether the [~~licensee or a~~] person [~~associated with a licensee~~
236 ~~has a]~~ is the alleged perpetrator in any substantiated finding of child abuse or neglect.

237 (3) The [~~office]~~ department shall adopt rules under Title 63, Chapter 46a, Utah
238 Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under
239 which a person who has a substantiated finding of child abuse or neglect may provide
240 [~~child-placing services, foster care, youth programs, substitute care, or institutionalized care for~~
241 ~~children in a facility licenced by the department]~~ direct services to children.

242 Section 4. **Repealer.**

243 This act repeals:

244 Section **62A-4a-413, Agencies and individuals providing services to children -- Felony**

245 or misdemeanor conviction.

Legislative Review Note
as of 12-19-01 4:09 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel