

Senator Leonard M. Blackham proposes the following substitute bill:

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 requires that the Department of Human Services and**
12 **the Human Services Licensing Board conduct a comprehensive review of criminal and court**
13 **records and related circumstances in connection with certain convictions found in a search.**
14 **The act clarifies and modifies the process for challenging a decision by the department not**
15 **to approve a person to have direct access in a licensee program serving children or**
16 **vulnerable adults. The act makes technical changes.**

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

18 AMENDS:

19 **62A-2-101**, as last amended by Chapter 358, Laws of Utah 1998

20 **62A-2-120**, as enacted by Chapter 358, Laws of Utah 1998

21 **62A-2-121**, as last amended by Chapter 164, Laws of Utah 1999

22 REPEALS:

23 **62A-4a-413**, as last amended by Chapters 263 and 358, Laws of Utah 1998

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

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



26 **62A-2-101. Definitions.**

27 As used in this chapter:

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

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

33 ~~[(2)]~~ (3) "Child placing" means receiving, accepting, or providing custody or care for any
34 child under 18 years of age, temporarily or permanently, for the purpose of:

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

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

37 (c) foster home placement.

38 ~~[(3)]~~ (4) "Client" means an individual who receives or has received services from a human
39 services licensee under this chapter.

40 ~~[(4)]~~ (5) "Day treatment" means specialized treatment for less than 24 hours a day for four
41 or more persons who are unrelated to the owner or provider and who have emotional,
42 psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical
43 dependencies. Day treatment is provided in lieu of, or in coordination with, a more restrictive
44 residential or inpatient environment or service.

45 ~~[(5)]~~ (6) "Department" means the Department of Human Services.

46 (7) "Direct access" means, with regard to the provision of therapy, counseling,
47 child-placing services, youth programs, substitute care, foster care, institutional care, day
48 treatment, outpatient treatment, residential support, residential treatment, secure treatment, or
49 other services to a child or vulnerable adult, that an individual has, or likely will have, contact with
50 or access to a child or vulnerable adult that provides the individual with an opportunity for
51 personal communication or touch.

52 ~~[(6)]~~ (8) "Director" means the director of the Office of Licensing.

53 ~~[(7)]~~ (9) "Domestic violence treatment program" means a nonresidential program designed
54 to provide psychological treatment and educational services to perpetrators and victims of
55 domestic violence.

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

57 ~~[(8)]~~ (11) "Executive director" means the executive director of the ~~[Department of Human~~
58 ~~Services]~~ department.

59 ~~[(9)]~~ (12) "Human services licensee" or "licensee" means a youth program, resource family
60 home, or a facility or program, licensed by the department, that provides care, secure treatment,
61 inpatient treatment, residential treatment, residential support, adult day care, day treatment,
62 outpatient treatment, domestic violence treatment, child placing services, or social detoxification.

63 ~~[(10)]~~ (13) "Licensing board" means the Human Services Licensing Board.

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

65 ~~[(11)]~~ (15) "Office" means the Office of Licensing within the Department of Human
66 Services.

67 ~~[(12)]~~ (16) "Outpatient treatment" means individual, family, or group therapy or
68 counseling designed to improve and enhance social or psychological functioning for those whose
69 physical and emotional status allows them to continue functioning in their usual living
70 environment.

71 ~~[(13)]~~ (17) (a) "Person associated with ~~[a]~~ the licensee" means an owner, director, member
72 of the governing body, employee, provider of care, ~~[and]~~ or volunteer of a human services licensee
73 or of an applicant to become a licensee.

74 (b) Notwithstanding Subsection (17)(a), "person associated with the licensee" does not
75 include an individual serving on either of the following bodies unless that individual has direct
76 access to children or vulnerable adults:

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

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

80a SUBSTANCE ABUSE AUTHORITY § .

81 ~~[(14)]~~ (18) "Residential support" means arranging for or providing the necessities of life
82 as a protective service to individuals or families who are disabled or who are experiencing a
83 dislocation or emergency which prevents them from providing these services for themselves or
84 their families. Treatment is not a necessary component of residential support.

85 ~~[(15)]~~ (19) "Residential treatment" means a 24-hour group living environment for four or
86 more individuals unrelated to the owner or provider that offers room or board and specialized
87 treatment, rehabilitation, or habilitation services for persons with emotional, psychological,

88 developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential
89 treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living
90 independently in the community.

91 ~~[(16)]~~ (20) "Resource family home" means a home licensed to provide services to a child
92 in the custody of the state and includes a foster care home and a legal risk home.

93 ~~[(17)]~~ (21) "Secure treatment" means 24-hour specialized residential treatment or care for
94 persons whose current functioning is such that they cannot live independently or in a less
95 restrictive environment. Secure treatment differs from residential treatment to the extent that it
96 requires intensive supervision, locked doors, and other security measures which are imposed on
97 residents with neither their consent nor control.

98 ~~[(18)]~~ (22) "Social detoxification" means short-term residential services for persons who
99 are intoxicated, that are provided outside of a health care facility licensed under Title 26, Chapter
100 21, Health Care Facility Licensure and Inspection Act, and that include:

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

104 ~~[(19)]~~ (23) "Unrelated persons" means persons other than parents, legal guardians,
105 grandparents, brothers, sisters, uncles, or aunts.

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

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

115 ~~[(20)]~~ (25) (a) "Youth program" means a nonresidential program, designed to provide
116 behavioral, substance abuse or mental health services to minors that:

- 117 ~~[(a)]~~ (i) serves either adjudicated or nonadjudicated youth;
- 118 ~~[(b)]~~ (ii) charges a fee for its services;

119 ~~[(e)]~~ (iii) may or may not provide host homes or other arrangements for overnight
120 accommodation of the youth;

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

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

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

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

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

128 **62A-2-120. Criminal background checks.**

129 (1) (a) ~~[A human services licensee or individual applying for or renewing a]~~ An applicant
130 for an initial license ~~[to provide child-placing services, youth programs, substitute care, foster care,~~
131 ~~or institutionalized care to children;]~~ or a license renewal under this chapter shall submit to the
132 department the ~~[name]~~ names and other identifying information, which may include fingerprints,
133 of all persons associated with the licensee, as defined in Section 62A-2-101, with direct access to
134 children or vulnerable adults. This information for a given person associated with the licensee
135 shall be submitted before that person is permitted to have direct access to children or vulnerable
136 adults.

137 (b) The Criminal Investigations and Technical Services Division of the Department of
138 Public Safety shall process that information to determine whether the individual has been
139 convicted of any crime.

140 (c) If an individual has not lived in Utah for five years, the individual shall submit
141 fingerprints for a FBI national criminal history record check. The fingerprints shall be submitted
142 to the FBI through the Criminal Investigations and Technical Services Division.

143 ~~[(2) A person associated with the licensee who has a felony conviction may not provide~~
144 ~~child-placing services, foster care, youth programs, substitute care, or institutionalized care for~~
145 ~~children in facilities or programs licensed by the department.]~~

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

150 (2) The department shall approve a person for whom identifying information is submitted
151 under Subsection (1) to have direct access in the licensee program serving children or vulnerable
152 adults if:

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

154 (b) (i) the only convictions in the person's criminal history record are misdemeanors or
155 infractions not involving any of the offenses described in Subsection (3); and

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

158 (3) The department may not approve a person to have direct access in the licensee program
159 serving children or vulnerable adults if the person has at any time been convicted of:

160 (a) a felony, misdemeanor § **OTHER THAN A PROTECTIVE ORDER VIOLATION IN A**
160a **DOMESTIC CASE** § , or infraction involving an offense identified as domestic
161 violence, lewdness, assault, or battery;

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

163 (c) prostitution;

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

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

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

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

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

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

174 (i) the date of the offense;

175 (ii) the nature and seriousness of the offense;

176 (iii) the circumstances under which the offense occurred;

177 (iv) the age of the offender when the offense was committed;

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

179 (vi) whether the offense directly relates to abuse of a child or vulnerable adult, including:

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

181 (B) sexual abuse;

182 (C) sexual exploitation; and

183 (D) negligent treatment;

184 (vii) any evidence § PROVIDED BY THE PERSON § of rehabilitation, counseling, or
184a psychiatric treatment received, or

185 additional academic or vocational schooling completed, by the person; and

186 (viii) any other pertinent information.

187 (c) At the conclusion of the comprehensive review under this Subsection (4), the

188 department shall either approve or not approve the person who is the subject of the review to have
189 direct access to children or vulnerable adults, based upon the determination of the department and
190 the Human Services Licensing Board of whether or not granting approval would likely create a risk
191 of harm to a child or vulnerable adult.

192 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
193 department may make rules, consistent with this chapter, defining procedures for the
194 comprehensive review described in this Subsection (4).

195 (5) (a) Within 30 days after receiving the identifying information for a person under
196 Subsection (1), the department shall give written notice to the person and to the human services
197 licensee or applicant with whom the person is associated of:

198 (i) the department's decision regarding its background screening clearance and findings;
199 and

200 (ii) a listing of any convictions found in the search.

201 (b) With the notice described in Subsection (5)(a), the department shall also give to the
202 person the details of any comprehensive review conducted under Subsection (4).

203 (c) If the notice under Subsection (5)(a) states that the person is not approved to have
204 direct access to children or vulnerable adults, the notice shall further advise the persons to whom
205 the notice is given that either the person or the human services licensee or applicant with whom
206 the person is associated, or both, may, pursuant to Subsection 62A-2-111(2), request a hearing in
207 the department's Office of Administrative Hearings, to challenge the department's decision.

208 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
209 department shall make rules, consistent with this chapter:

210 (i) defining procedures for the challenge of its background screening decision described
211 in this Subsection (5); and

212 (ii) expediting the process for renewal of a license pursuant to the requirements of this
213 section and other applicable sections.

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

215 **62A-2-121. Access to child abuse and neglect information for licensing purposes.**

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

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

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

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

228 ~~[(b) The office]~~ (2) After receiving identifying information for a person under Subsection
229 62A-2-120(1), if the licensee or applicant provides or will provide therapy, counseling,
230 child-placing services, youth programs, substitute care, foster care, institutional care, day
231 treatment, outpatient treatment, residential support, residential treatment, secure treatment, or other
232 services to or for children, the department shall process the information to determine whether the
233 [licensee or a] person [associated with a licensee has a] is the alleged perpetrator in any
234 substantiated finding of child abuse or neglect.

235 (3) The ~~[office]~~ department shall adopt rules under Title 63, Chapter 46a, Utah
236 Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under
237 which a person who has direct access to children and who has a substantiated finding of child
238 abuse or neglect under Title 62A, Chapter 4a, may provide ~~[child-placing services, foster care,~~
239 ~~youth programs, substitute care, or institutionalized care for children in a facility licenced by the~~
240 ~~department]~~ services to children.

241 Section 4. **Repealer.**

242 This act repeals:

243 Section **62A-4a-413, Agencies and individuals providing services to children -- Felony**
244 **or misdemeanor conviction.**