

**CRIMINAL BACKGROUND CHECKS FOR  
LICENSED PROVIDERS OF HUMAN  
SERVICES**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Leonard M. Blackham**

**This act amends the Human Services Code. The act adds new defined terms and modifies others. The act excludes individuals serving on certain governing bodies and boards from the requirement of criminal background checks. The act modifies licensing requirements of human services licensees and persons associated with a licensee. The act amends criminal background check provisions. The act requires that the Department of Human Services and the Human Services Licensing Board conduct a comprehensive review of criminal and court records and related circumstances in connection with certain convictions found in a search. The act clarifies and modifies the process for challenging a decision by the department not to approve a person to have direct access in a licensee program serving children or vulnerable adults. The act makes technical changes.**

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

AMENDS:

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

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

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

ENACTS:

**62A-2-122**, Utah Code Annotated 1953

REPEALS:

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

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

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

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

As used in this chapter:

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

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

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

(a) finding a person to adopt the child;

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

(c) foster home placement.

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

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

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

(7) "Direct access" means that an individual has, or likely will have, contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(15)]~~ (19) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized

treatment, rehabilitation, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies. In residential treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living independently in the community.

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

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

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

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

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

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

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

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

~~[(a)]~~ (i) serves either adjudicated or nonadjudicated youth;

~~[(b)]~~ (ii) charges a fee for its services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the person is found to have no criminal history record; or
- (b) (i) the only convictions in the person's criminal history record are:
  - (A) misdemeanors not involving any of the offenses described in Subsection (3); or
  - (B) infractions not involving any of the offenses described in Subsection (3); and
- (ii) the date of the last conviction under Subsection (2)(b)(i) is more than five years before the date of the search.

(3) The department may not approve a person to have direct access in the licensee program serving children or vulnerable adults if the person has at any time been convicted of an offense, whether a felony, misdemeanor, or infraction, that was:

- (a) identified as domestic violence, lewdness, assault, or battery;
- (b) a violation of any pornography law, including sexual exploitation of a minor;
- (c) prostitution;
- (d) identified in Title 76, Utah Criminal Code, as an offense against the family or an offense against the person; or
- (e) identified in Title 76, Utah Criminal Code, as a sexual offense.

(4) (a) If a person for whom identifying information is submitted under Subsection (1) is not approved by the department under Subsection (2) to have direct access in the licensee program serving children or vulnerable adults, the department shall conduct a comprehensive review of criminal and court records and related circumstances if a person for whom identifying information

is submitted under Subsection (1):

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

(ii) has been convicted within five years of the date of the search of:

(A) any misdemeanor not listed in Subsection (3); or

(B) any infraction not listed in Subsection (3); or

(iii) has been convicted at any time of a protective order or ex parte protective order

violation under Section 76-5-18 or a similar statute in another state.

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

(i) the date of the offense;

(ii) the nature and seriousness of the offense;

(iii) the circumstances under which the offense occurred;

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

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

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

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

(B) sexual abuse;

(C) sexual exploitation; and

(D) negligent treatment;

(vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric treatment received, or additional academic or vocational schooling completed, by the person; and

(viii) any other pertinent information.

(c) At the conclusion of the comprehensive review under this Subsection (4), the department shall either approve or not approve the person who is the subject of the review to have direct access to children or vulnerable adults, based upon the determination of the department and the Human Services Licensing Board of whether or not granting approval would likely create a risk of harm to a child or vulnerable adult.

(d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the department may make rules, consistent with this chapter, defining procedures for the comprehensive

review described in this Subsection (4).

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

- (i) the department's decision regarding its background screening clearance and findings; and
- (ii) a listing of any convictions found in the search.

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

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

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

- (i) defining procedures for the challenge of its background screening decision described in this Subsection (5); and
- (ii) expediting the process for renewal of a license pursuant to the requirements of this section and other applicable sections.

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

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

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

- (a) determining whether a person associated with a licensee, [~~who provides care described in Subsection (2)] with direct access to children, has a substantiated finding of abuse or neglect; and~~
- (b) informing a licensee[~~, who provides care described in Subsection (2);~~] that a person associated with the licensee has a substantiated finding of child abuse or neglect.



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

~~[(b) The office]~~ (2) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information ~~[to determine whether the licensee or a person associated with a licensee has a substantiated finding of child abuse or neglect]~~ for the purposes described in Subsection (1).

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

Section 4. Section **62A-2-122** is enacted to read:

**62A-2-122. Access to vulnerable adult abuse and neglect information for licensing purposes.**

(1) With respect to human services licensees, the department may access the data base created by Section 62A-3-311.1 for the purpose of:

(a) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a substantiated finding of abuse, neglect, or exploitation; and

(b) informing a licensee that a person associated with the licensee has a substantiated finding of abuse, neglect, or exploitation.

(2) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection (1).

(3) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1, defining the circumstances under which a person who has direct access to vulnerable adults and who has a

substantiated finding of abuse, neglect, or exploitation may provide services to vulnerable adults.

Section 5. **Repealer.**

This act repeals:

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