

**CRIMINAL BACKGROUND CHECKS FOR  
PERSONAL CARE ATTENDANTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Fred R. Hunsaker**

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**LONG TITLE**

**General Description:**

This bill amends the Human Services Code and the Judicial Code to provide for a criminal background check of a personal care attendant who receives public funds for the personal care attendant's services.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ provides the Department of Human Services with access to records to determine whether a personal care attendant is listed in the:
  - Licensing Information System of the Division of Child and Family Services;
  - juvenile court records as having a substantiated finding of severe child abuse or neglect; or
  - statewide database of the Division of Aging and Adult Services as having a substantiated finding of abuse, neglect, or exploitation of a vulnerable adult;
- ▶ provides that the Department of Human Services may inform a client, or the client's agent, of the status of a personal care attendant in the records described above;
- ▶ prohibits the Division of Aging and Adult Services and an area agency on aging from disbursing public funds to a personal care attendant, unless the personal care attendant successfully completes a background check;
- ▶ requires the Office of Licensing in the Department of Human Services to conduct a



28 background check of a personal care attendant who desires to receive public funds; and  
29       ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31       None

32 **Other Special Clauses:**

33       ~~It~~ → [None] **This bill provides a coordination clause.** ← ~~It~~

34 **Utah Code Sections Affected:**

35 AMENDS:

36       **62A-2-121**, as last amended by Chapter 86, Laws of Utah 2004

37       **62A-2-122**, as enacted by Chapter 300, Laws of Utah 2002

38       **62A-3-101**, as last amended by Chapter 8, Laws of Utah 2002, Fifth Special Session

39       **62A-3-104**, as last amended by Chapter 352, Laws of Utah 2004

40       **62A-3-104.1**, as last amended by Chapter 254, Laws of Utah 1998

41       **62A-4a-116.2**, as last amended by Chapter 86, Laws of Utah 2004

42       **78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003

43 ENACTS:

44       **62A-3-104.3**, Utah Code Annotated 1953



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

47       Section 1. Section **62A-2-121** is amended to read:

48       **62A-2-121. Access to abuse and neglect information.**

49       (1) For purposes of this section, "personal care attendant" is as defined in Section  
50 62A-3-101.

51       ~~(1)~~ (2) With respect to a human services ~~licensees~~ licensee, or a personal care  
52 attendant, the department may access only the Licensing Information System of the Division of  
53 Child and Family Services created by Section 62A-4a-116.2 and juvenile court records under  
54 Subsection 78-3a-320~~(4)~~(6), for the purpose of:

55       (a) (i) determining whether a person associated with a licensee, with direct access to  
56 children~~;~~:

57       (A) is listed in the Licensing Information System; or

58       (B) has a substantiated finding by a juvenile court of a severe type of child abuse or

59 neglect under Subsections 78-3a-320(1) and (2); and  
 60 ~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee;  
 61 (A) is listed in the Licensing Information System; or  
 62 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or  
 63 neglect under Subsections 78-3a-320(1) and (2)~~[-];~~ or  
 64 (b) (i) determining whether a personal care attendant:  
 65 (A) is listed in the Licensing Information System; or  
 66 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or  
 67 neglect under Subsections 78-3a-320(1) and (2); and  
 68 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a  
 69 personal care attendant:  
 70 (A) is listed in the Licensing Information System; or  
 71 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or  
 72 neglect under Subsections 78-3a-320(1) and (2).

73 ~~[(2)]~~ (3) Notwithstanding Subsection ~~[(1)]~~ (2), the department may access the Division  
 74 of Child and Family Service's Management Information System under Section 62A-4a-116 for  
 75 the purpose of licensing and monitoring foster parents.

76 ~~[(3)]~~ (4) After receiving identifying information for a person under Subsection  
 77 62A-2-120(1), the department shall process the information for the purposes described in  
 78 Subsection ~~[(1)]~~ (2).

79 ~~[(4)]~~ (5) The department shall adopt rules under Title 63, Chapter 46a, Utah  
 80 Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under  
 81 which a person ~~[who has]~~ may have direct access or provide services to children ~~[and who]~~  
 82 when:

83 (a) the person is listed in the Licensing Information System ~~[or has]~~ of the Division of  
 84 Child and Family Services created by Section 62A-4a-116.2; or

85 (b) juvenile court records show that a court made a substantiated finding ~~[by a court of]~~  
 86 under Section 78-3a-320, that the person committed a severe type of child abuse or neglect  
 87 ~~[under Subsections 78-3a-320(1) and (2) may provide services to children].~~

88 Section 2. Section **62A-2-122** is amended to read:

89 **62A-2-122. Access to vulnerable adult abuse and neglect information.**

90 (1) For purposes of this section, "personal care attendant" is as defined in Section  
91 62A-3-101.

92 ~~[(1)]~~ (2) With respect to a human services ~~[licensees]~~ licensee, or a personal care  
93 attendant, the department may access the data base created by Section 62A-3-311.1 for the  
94 purpose of:

95 (a) (i) determining whether a person associated with a licensee, with direct access to  
96 vulnerable adults, has a substantiated finding of:

- 97 (A) abuse[;];
- 98 (B) neglect[;]; or
- 99 (C) exploitation; and

100 ~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee has a  
101 substantiated finding of:

- 102 (A) abuse[;];
- 103 (B) neglect[;]; or
- 104 (C) exploitation[;]; or

105 (b) (i) determining whether a personal care attendant has a substantiated finding of:

- 106 (A) abuse;
- 107 (B) neglect; or
- 108 (C) exploitation; and

109 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a  
110 personal care attendant has a substantiated finding of:

- 111 (A) abuse;
- 112 (B) neglect; or
- 113 (C) exploitation.

114 ~~[(2)]~~ (3) After receiving identifying information for a person under Subsection  
115 62A-2-120(1), the department shall process the information for the purposes described in  
116 Subsection (1).

117 ~~[(3)]~~ (4) The department shall adopt rules under Title 63, Chapter 46a, Utah  
118 Administrative Rulemaking Act, consistent with this chapter and consistent with Section  
119 62A-3-311.1, defining the circumstances under which a person ~~[who has]~~ may have direct  
120 access or provide services to vulnerable adults ~~[and who has a substantiated finding of abuse;~~

121 ~~neglect, or exploitation may provide services to vulnerable adults]~~ when the person is listed in  
 122 the statewide database of the Division of Aging and Adult Services created by Section  
 123 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation.

124 Section 3. Section **62A-3-101** is amended to read:

125 **62A-3-101. Definitions.**

126 As used in this chapter:

127 (1) "Adult" or "high risk adult" means a person 18 years of age or older who  
 128 experiences a condition:

129 (a) that places the person at a high risk of being unable to care for himself[;];

130 (i) as determined by assessment[~~, because of~~]; and

131 (ii) due to the onset of a physical or cognitive impairment or frailty; and

132 (b) for which the person is not eligible to receive services under:

133 (i) Chapter 5, Services to People with Disabilities[;]; or

134 (ii) Chapter 15, Substance Abuse and Mental Health Act.

135 (2) "Aging" and "aged" means a person 60 years of age or older.

136 (3) "Area agency" means an area agency that provides services to the aged, high risk  
 137 adults, or both within a planning and service area.

138 (4) "Area agency on aging" means a public or private nonprofit agency or office  
 139 designated by the division to:

140 (a) operate within a planning and service area of the state [to]; and

141 (b) develop and implement a broad range of services for the aged in [that area] the area  
 142 described in Subsection (4)(a).

143 (5) "Area agency on high risk adults" means a public or private nonprofit agency or  
 144 office designated by the division to:

145 (a) operate within a planning and service area of the state [to]; and

146 (b) develop and implement services for high risk adults in [that area] the area described  
 147 in Subsection (5)(a).

148 (6) "Board" means the Board of Aging and Adult Services.

149 (7) "Director" means the director of the [~~Division of Aging and Adult Services]~~  
 150 division.

151 (8) "Division" means the Division of Aging and Adult Services within the department.

152 (9) "Personal care attendant" means a person who:

153 (a) is selected by:

154 (i) an aged person;

155 (ii) an agent of an aged person;

156 (iii) a high risk adult; or

157 (iv) an agent of a high risk adult; and

158 (b) provides personal services to the:

159 (i) aged person described in Subsection (9)(a)(i); or

160 (ii) high risk adult described in Subsection (9)(a)(iii).

161 (10) "Personal services" means nonmedical care and support, including assisting a  
162 person with:

163 (a) meal preparation;

164 (b) eating;

165 (c) bathing;

166 (d) dressing;

167 (e) personal hygiene; or

168 (f) daily living activities.

169 ~~[(9)]~~ (11) "Planning and service area" means a geographical area of the state designated  
170 by the division for purposes of planning, development, delivery, and overall administration of  
171 services for the aged or high risk adults.

172 (12) (a) "Public funds" means state or federal funds that are disbursed by:

173 (i) the Department of Health;

174 (ii) the division;

175 (iii) an area agency; or

176 (iv) an area agency on aging.

177 (b) "Public funds" includes:

178 (i) Medicaid funds; and

179 (ii) Medicaid waiver funds.

180 Section 4. Section **62A-3-104** is amended to read:

181 **62A-3-104. Authority of division.**

182 (1) The division is the sole state agency, as defined by the Older Americans Act of

183 1965, 42 U.S.C. 3001 et seq., to:

184 (a) serve as an effective and visible advocate for the aging and adult population of this  
185 state~~[-to]~~;

186 (b) develop and administer a state plan under the policy direction of the board~~[-]~~; and  
187 ~~[to]~~

188 (c) take primary responsibility for state activities relating to provisions of the Older  
189 Americans Act of 1965, as amended.

190 (2) (a) The division has authority to designate:

191 (i) planning and service areas for the state~~[-]~~; and ~~[to designate]~~

192 (ii) an area agency on aging within each planning and service area to design and  
193 implement a comprehensive and coordinated system of services and programs for the aged  
194 within appropriations from the Legislature.

195 (b) Designation as an area agency on aging may be withdrawn:

196 (i) upon request of the area agency on aging; or

197 (ii) upon noncompliance with the provisions of the:

198 (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.~~[-the]~~;

199 (B) federal regulations enacted under ~~[that act, the]~~ the Older Americans Act of 1965,  
200 42 U.S.C. 3001 et seq.;

201 (C) provisions of this chapter~~[-]~~; or ~~[the]~~

202 (D) rules, policies, or procedures established by the division.

203 (3) (a) The division has the authority to designate:

204 (i) planning and service areas for the state; and ~~[to designate]~~

205 (ii) subject to Subsection (3)(b), an area agency on high risk adults within each  
206 planning and service area ~~[in accordance with Subsection (3)(b)]~~ to design and implement a  
207 comprehensive and coordinated system of case management and programs for high risk adults  
208 within appropriations from the Legislature.

209 (b) ~~[Before]~~ For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division  
210 shall designate as the area agency on high risk adults in a planning and service area:

211 (i) the area agency on aging that operates within the same geographic area if that  
212 agency ~~[has requested]~~ requests, before July 1, 1998, to expand ~~[its]~~ that agency's current  
213 contract with the division to include the responsibility of:

- 214 (A) being the area agency on high risk adults; or  
215 (B) operating the area agency on high risk adults;  
216 (I) through joint cooperation with one or more existing area agencies on aging; and  
217 (II) without reducing geographical coverage in any service area; or  
218 (ii) a public or private nonprofit agency or office if the area agency on aging that  
219 operates within the same geographic area has not made a request in accordance with Subsection  
220 (3)(b)(i).
- 221 (c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.  
222 (ii) The division's efforts to establish area agencies on high risk adults shall start with  
223 counties with a population of more than 150,000 people.
- 224 (d) Designation as an area agency on high risk adults may be withdrawn:  
225 (i) upon request by the area agency; or  
226 (ii) upon noncompliance with:  
227 (A) state [~~or~~] law;  
228 (B) federal [~~laws,~~] law; or  
229 (C) rules, policies, or procedures established by the division.
- 230 (4) (a) The division may, by following the procedures and requirements of Title 63,  
231 Chapter 38e, Federal Funds Procedures[~~;~~]:  
232 (i) seek federal grants, loans, or participation in federal programs; and  
233 (ii) receive and distribute state and federal funds for the division's programs and  
234 services to the aging and adult populations of the state.
- 235 (b) The division may not disburse public funds to a personal care attendant as payment  
236 for personal services rendered to an aged person or high risk adult, except as provided in  
237 Section 62A-3-104.3.
- 238 (5) The division has authority to establish, either directly or by contract, programs of  
239 advocacy, monitoring, evaluation, technical assistance, and public education to enhance the  
240 quality of life for aging and adult citizens of the state.
- 241 (6) In accordance with the rules of the division and Title 63, Chapter 56, Utah  
242 Procurement Code, the division may contract with:  
243 (a) [~~contract with~~] the governing body of an area agency to provide a comprehensive  
244 program of services; [~~and~~] or



- 245 (b) ~~[contract with]~~ public and private entities for special services.
- 246 (7) The division has authority to provide for collection, compilation, and dissemination  
247 of information, statistics, and reports relating to issues facing aging and adult citizens.
- 248 (8) The division has authority to prepare and submit reports regarding the operation  
249 and administration of the division to the department, the Legislature, and the governor, as  
250 requested.
- 251 (9) The division shall:
- 252 (a) implement and enforce policies established by the board governing all aspects of  
253 the division's programs for aging and adult persons in the state;
- 254 (b) in order to ensure compliance with all applicable state and federal statutes, policies,  
255 and procedures, monitor and evaluate programs provided by or under contract with:
- 256 (i) the division~~;~~;
- 257 (ii) area agencies~~;~~; and ~~[any]~~
- 258 (iii) an entity that receives funds from an area agency ~~[to ensure compliance with all~~  
259 ~~applicable state and federal statutes, policies, and procedures];~~
- 260 (c) examine expenditures of public funds;
- 261 (d) withhold funds from programs based on contract noncompliance;
- 262 (e) review and approve plans of area agencies in order to ensure:
- 263 (i) compliance with division policies; and ~~[to ensure]~~
- 264 (ii) a statewide comprehensive program;
- 265 (f) in order to further programs for aging and adult persons and prevent duplication of  
266 services, promote and establish cooperative relationships with:
- 267 (i) state and federal agencies~~;~~;
- 268 (ii) social and health agencies~~;~~;
- 269 (iii) education and research organizations~~;~~; and
- 270 (iv) other related groups ~~[in order to further programs for aging and adult persons, and~~  
271 ~~prevent duplication of services];~~
- 272 (g) advocate for the aging and adult populations;
- 273 (h) promote and conduct research on the problems and needs of aging and adult  
274 persons~~;~~ and;
- 275 (i) submit recommendations for changes in policies, programs, and funding to the;

276 (i) governor; and ~~[the]~~  
277 (ii) Legislature; and  
278 ~~[(i)]~~ (j) (i) accept contributions to and administer the funds contained in the "Out and  
279 About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and  
280 (ii) make rules in accordance with Title 63, Chapter 46a, Utah Administrative  
281 Rulemaking Act, to facilitate the administration of the "Out and About" Homebound  
282 Transportation Assistance Fund in accordance with Section 62A-3-110.  
283 Section 5. Section **62A-3-104.1** is amended to read:  
284 **62A-3-104.1. Powers and duties of area agencies.**  
285 (1) An area agency that provides services to ~~[the aged,]~~ an aged person, or a high risk  
286 ~~[adults, or both]~~ adult shall within ~~[its]~~ the area agency's respective jurisdiction:  
287 (a) advocate by monitoring, evaluating, and providing input on all policies, programs,  
288 hearings, and levies that affect ~~[those persons]~~ a person described in this Subsection (1);  
289 (b) design and implement a comprehensive and coordinated system of services within a  
290 designated planning and service area;  
291 (c) conduct periodic reviews and evaluations of needs and services;  
292 (d) prepare and submit to the division plans for funding and service delivery for  
293 services within the designated planning and service area;  
294 (e) establish, either directly or by contract, programs licensed under Chapter 2 of this  
295 title;  
296 (f) (i) appoint an area director~~[-];~~  
297 (ii) prescribe ~~[his]~~ the area director's duties~~[-];~~ and  
298 (iii) provide adequate and qualified staff to carry out the area plan described in  
299 Subsection (1)(d);  
300 (g) establish rules not contrary to policies of the board and rules of the division,  
301 regulating local services and facilities;  
302 (h) operate other services and programs funded by sources other than those  
303 administered by the division;  
304 (i) establish mechanisms to provide direct citizen input, including an area agency  
305 advisory council with a majority of members who are eligible for services from the area  
306 agency;

307 (j) establish fee schedules; and

308 (k) comply with the requirements and procedures of:

309 (i) Title 11, Chapter 13, Interlocal Cooperation Act~~[;]~~; and ~~[with the requirements and~~

310 ~~procedures of]~~

311 (ii) Title 51, Chapter 2, Accounting Reports from Political Subdivisions, Interlocal

312 Organizations, and Other Local Entities Act.

313 (2) Before disbursing any public funds, an area agency shall require that all entities

314 receiving any public funds agree in writing that:

315 (a) the division may examine the entity's program and financial records; and

316 (b) the auditor of the local area agency may examine and audit the entity's program and

317 financial records, if requested by the local area agency.

318 (3) An area agency on aging may not disburse public funds to a personal care attendant

319 as payment for personal services rendered to an aged person or high risk adult, except as

320 provided in Section 62A-3-104.3.

321 ~~[(3)]~~ (4) (a) ~~[Local area agencies]~~ For the purpose of providing services pursuant to this

322 part, a local area agency may receive:

323 (i) property~~[;]~~;

324 (ii) grants~~[;]~~;

325 (iii) gifts~~[;]~~;

326 (iv) supplies~~[;]~~;

327 (v) materials~~[, including]~~;

328 (vi) any benefit derived ~~[therefrom,]~~ from the items described in Subsections (4)(a)(i)

329 through (v); and

330 (vii) contributions ~~[for the purpose of providing services pursuant to this part].~~

331 (b) If ~~[those gifts are]~~ a gift is conditioned upon [their] the gift's use for a specified

332 service or program, [they shall be so used] the gift shall be used for the specific service or

333 program.

334 ~~[(4)]~~ (5) (a) Area agencies shall award all public funds in compliance with:

335 (i) the requirements of Title 63, Chapter 56, Utah Procurement Code~~[;]~~; or ~~[with]~~

336 (ii) a county procurement ordinance that requires ~~[similar]~~ procurement procedures

337 similar to those described in Subsection (5)(a)(i).

338 (b) (i) If all initial bids on a project are rejected, the area agency shall publish a new  
339 invitation to bid.

340 (ii) If no satisfactory bid is received by the area agency described in Subsection  
341 (5)(b)(i), when the bids received from the second invitation are opened[;] the area agency may  
342 execute a contract without requiring competitive bidding.

343 (c) (i) An area agency need not comply with the procurement provisions of this section  
344 when it disburses public funds to [~~other~~] another governmental [~~entities~~] entity.

345 (ii) For purposes of this Subsection (4)(c), "governmental entity" means any political  
346 subdivision or institution of higher education of the state.

347 (d) (i) Contracts awarded by an area agency shall be for a:

348 (A) fixed amount; and

349 (B) limited period. [~~Contracts~~]

350 (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in  
351 available funding for the same contract purpose without competition.

352 [~~(5)~~] (6) Local area agencies shall comply with [~~all~~]:

353 (a) applicable state and federal;

354 (i) statutes[;];

355 (ii) policies[;]; and

356 (iii) audit requirements[;]; and [~~any~~]

357 (b) directives resulting from [~~those audits~~] an audit described in Subsection (6)(a)(iii).

358 Section 6. Section **62A-3-104.3** is enacted to read:

359 **62A-3-104.3. Disbursal of public funds -- Background check of a personal care**  
360 **attendant.**

361 (1) For purposes of this section, "office" is as defined in Section 62A-2-101.

362 (2) Subject to Subsection (4), public funds may not be disbursed to a personal care  
363 attendant as payment for personal services rendered to an aged person or high risk adult, unless  
364 the personal care attendant is approved by the office to have direct access and provide services  
365 to children or vulnerable adults pursuant to Section 62A-2-120.

366 (3) For purposes of Subsection (2), the office shall conduct a background check of a  
367 personal care attendant:

368 (a) who desires to receive public funds as payment for the personal services described

369 in Subsection (2); and

370 (b) using the same procedures established for a background check of an applicant for  
 371 an initial license under Section 62A-2-120.

372 (4) The background check and the approval determination described in this section  
 373 shall be conducted for a personal care attendant on an annual basis.

374 Section 7. Section **62A-4a-116.2** is amended to read:

375 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**  
 376 **-- Protected record -- Access -- Criminal penalty.**

377 (1) (a) The division shall maintain a sub-part of the Management Information System  
 378 established pursuant to Section 62A-4a-116, to be known as the Licensing Information System,  
 379 to be used [solely]:

380 (i) for licensing purposes[-]; or

381 (ii) as otherwise specifically provided for by law.

382 (b) The Licensing Information System shall include only the following information:

383 [~~(a)~~] (i) the information described in Subsections 62A-4a-116.1(1)(a) and (6)(b);

384 [~~(b)~~] (ii) consented-to supported findings by alleged perpetrators under Subsection  
 385 62A-4a-116.1(6)(a)(iii); and

386 [~~(c)~~] (iii) the information in the licensing part of the division's Management  
 387 Information System as of May 6, 2002.

388 (2) Notwithstanding Subsection (1), the department's access to information in the  
 389 Management Information System for the licensure and monitoring of foster parents is governed  
 390 by Sections 62A-4a-116 and 62A-2-121.

391 (3) [~~The~~] (a) Subject to Subsection (3)(b), upon receipt of a finding from the juvenile  
 392 court under Section 78-3a-320, the division shall:

393 (i) promptly amend the Licensing Information System[~~, upon receipt of a finding from~~  
 394 ~~the juvenile court under Section 78-3a-320,]; and [shall enter the same]~~

395 (ii) enter the information in the Management Information System. [~~However,~~]

396 (b) Notwithstanding Subsection (3)(a), if a finding of unsubstantiated or without merit  
 397 is appealed, the supported finding shall not be amended until the appeal is concluded.

398 (4) (a) Information contained in the Licensing Information System is classified as a  
 399 protected record under Title 63, Chapter 2, Government Records Access and Management Act.

400           (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government  
401 Records Access and Management Act, the information contained in the Licensing Information  
402 System may only be used or disclosed as specifically provided in this chapter and Section  
403 62A-2-121 [~~and~~].

404           (c) The information described in Subsection (4)(b) is accessible only to:

405           ~~[(a)]~~ (i) the Office of Licensing within the department[;];

406           (A) for licensing purposes [only]; or

407           (B) as otherwise specifically provided for by law;

408           ~~[(b)]~~ (ii) the division[; ~~for the following purposes~~] to:

409           ~~[(i) to]~~ (A) screen a person at the request of the Office of the Guardian Ad Litem  
410 Director[;];

411           (I) at the time that person seeks a paid or voluntary position with the Office of the  
412 Guardian Ad Litem Director; and

413           (II) each year [~~thereafter that~~] after the person described in Subsection (4)(c)(ii)(A)(I)  
414 remains with that office; and

415           ~~[(ii) to]~~ (B) respond to a request for information from a person whose name is listed in  
416 the Licensing Information System;

417           ~~[(c)]~~ (iii) two persons designated by and within the Department of Health, only for the  
418 following purposes:

419           ~~[(i)]~~ (A) licensing a child care program or provider; or

420           ~~[(ii)]~~ (B) determining whether a person associated with a covered health care facility,  
421 as defined by the Department of Health by rule, who provides direct care to a child, has a  
422 supported finding of severe child abuse or neglect; and

423           ~~[(d)]~~ (iv) the department, as specifically provided in this chapter.

424           (5) The two persons designated by the Department of Health under Subsection  
425 (4)(c)(iii) shall adopt measures to:

426           (a) protect the security of the Licensing Information System; and

427           (b) strictly limit access to the Licensing Information System to those persons  
428 designated by statute.

429           (6) All persons designated by statute as having access to information contained in the  
430 Licensing Information System shall receive training from the department with respect to:

- 431 (a) accessing the Licensing Information System;  
 432 (b) maintaining strict security; and  
 433 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the  
 434 improper release of information.

435 (7) (a) No person, except those authorized by this chapter, may request another person  
 436 to obtain or release any other information in the Licensing Information System to screen for  
 437 potential perpetrators of child abuse or neglect.

438 (b) A person who requests information knowing that it is a violation of this Subsection  
 439 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

440 Section 8. Section **78-3a-320** is amended to read:

441 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

442 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division  
 443 of Child and Family Services or any interested person informing the court, among other things,  
 444 that the division has made a supported finding of one or more of the severe types of child abuse  
 445 or neglect described in Subsection 62A-4a-116.1(2), the court shall:

- 446 (a) make a finding of substantiated, unsubstantiated, or without merit;  
 447 (b) include the finding described in Subsection (1)(a) in a written order; and  
 448 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

449 (2) The judicial finding under Subsection (1) shall be made:

- 450 (a) as part of ~~[or]~~ the adjudication hearing;  
 451 (b) at the conclusion of the adjudication hearing; or  
 452 ~~[(b)]~~ (c) as part of a court order entered pursuant to a written stipulation of the parties.

453 (3) (a) Any person described in Subsection 62A-4a-116.6(1) may at any time file with  
 454 the court a petition for removal of the person's name from the Licensing Information System.

455 (b) At the conclusion of the hearing on the petition, the court shall:

- 456 ~~[(a)]~~ (i) make a finding of substantiated, unsubstantiated, or without merit;  
 457 ~~[(b)]~~ (ii) include the finding described in Subsection (1)(a) in a written order; and  
 458 ~~[(c)]~~ (iii) deliver a certified copy of the order described in Subsection (1)(b) to the  
 459 division.

460 (4) A proceeding for adjudication of a supported finding of a nonsevere type of abuse  
 461 or neglect under this section may be joined in the juvenile court with an adjudication of a

462 severe type of abuse or neglect.

463 (5) If a person whose name appears on the Licensing Information system prior to May  
464 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to  
465 work with children or vulnerable adults is pending, the court shall hear the matter and enter a  
466 final decision no later than 60 days after the filing of the petition.

467 (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118,  
468 and for the purposes described in Section 62A-2-121:

469 (a) the court shall make available records of its findings under Subsections (1) and (2)  
470 for licensing purposes, only to those with statutory authority to access also the Licensing  
471 Information System created under Section 62A-4a-116.2; and

472 (b) any appellate court shall make available court records of appeals from juvenile  
473 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those  
474 with statutory authority to access also the Licensing Information System.

474a **Ĥ→ Section 9. Coordinating H.B. 64 with H.B. 79.**

474b **If this H.B. 64 and H.B. 79, Provisions of Services for People with Disabilities, both**  
474c **pass, it is the intent of the Legislature that the Office of Legislative Research and General**  
474d **Counsel shall prepare the Utah Code database for publication as follows:**

474e **(1) combine the amendments made by this bill and H.B. 79 to Section 62A-2-121 so that**  
474f **Section 62A-2-121 reads as follows:**

474g **"62A-2-121. Access to abuse and neglect information.**

474h **(1) For purposes of this section:**

474i **(a) "direct service worker" is as defined in Section 62A-5-101; and**

474j **(b) "personal care attendant" is as defined in Section 62A-3-101.**

474k **[Ĥ] (2) With respect to a human services [licensees] licensee, a direct service worker,**  
474l **or a personal care attendant, the department may access only the Licensing Information**  
474m **System of the Division of Child and Family Services created by Section 62A-4a-116.2 and**  
474n **juvenile court records under Subsection 78-3a-320[Ĥ](6), for the purpose of:**

474o **(a) (i) determining whether a person associated with a licensee, with direct access to**  
474p **children[;]:**

474q **(A) is listed in the Licensing Information System; or**

474r **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474s **neglect under Subsections 78-3a-320(1) and (2); and**

474t **[Ĥ] (ii) informing a licensee that a person associated with the licensee;**

474u **(A) is listed in the Licensing Information System; or ←Ĥ**



474v ~~H~~→ **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474w **neglect under Subsections 78-3a-320(1) and (2)[;];**

474x **(b) (i) determining whether a direct service worker:**  
474y **(A) is listed in the Licensing Information System; or**  
474z **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474aa **neglect under Subsections 78-3a-320(1) and (2); and**

474ab **(ii) informing a direct service worker or the direct service worker's employer that the**  
474ac **direct service worker:**  
474ad **(A) is listed in the Licensing Information System; or**  
474ae **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474af **neglect under Subsections 78-3a-320(1) and (2); or**

474ag **(c) (i) determining whether a personal care attendant:**  
474ah **(A) is listed in the Licensing Information System; or**  
474ai **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474aj **neglect under Subsections 78-3a-320(1) and (2); and**

474ak **(ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a**  
474al **personal care attendant:**  
474am **(A) is listed in the Licensing Information System; or**  
474an **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474ao **neglect under Subsections 78-3a-320(1) and (2).**

474ap **[~~(2)~~] (3) Notwithstanding Subsection [~~(1)~~] (2), the department may access the Division**  
474aq **of Child and Family Service's Management Information System under Section 62A-4a-116 for**  
474ar **the purpose of licensing and monitoring foster parents.**

474as **[~~(3)~~] (4) After receiving identifying information for a person under Subsection**  
474at **62A-2-120(1), the department shall process the information for the purposes described in**  
474au **Subsection [~~(1)~~] (2).**

474av **[~~(4)~~] (5) The department shall adopt rules under Title 63, Chapter 46a, Utah**  
474aw **Administrative Rulemaking Act, consistent with this chapter, defining the circumstances**  
474ax **under which a person [~~who has~~] may have direct access or provide services to children [and**  
474ay **who] when:**

474az **(a) the person is listed in the Licensing Information System of the Division of Child and**  
474ba **Family Services created by Section 62A-4a-116.2; or [has]**

474bb **(b) juvenile court records show that a court made a substantiated finding [by a court**  
474bc **of] under Section 78-3a-320, that the person committed a severe type of child abuse or ←~~H~~**

474bd ~~H~~→neglect [under Subsections 78-3a-320(1) and (2) may provide services to children]." ; and  
 474be (2) combine the amendments made by this bill and H.B. 79 to Section 62A-2-122 so that

474bf Section 62A-2-122 reads as follows:

474bg "62A-2-122. Access to vulnerable adult abuse and neglect information.

474bh (1) For purposes of this section:

474bi (a) "direct service worker" is as defined in Section 62A-5-101; and

474bj (b) "personal care attendant" is as defined in Section 62A-3-101.

474bk ~~[(1)]~~ (2) With respect to a human services [licensees] licensee, a direct service worker,  
 474bl or a personal care attendant, the department may access the data base created by Section  
 474bm 62A-3-311.1 for the purpose of:

474bn (a) (i) determining whether a person associated with a licensee, with direct access to  
 474bo vulnerable adults, has a substantiated finding of:

474bp (A) abuse[;];

474bq (B) neglect[;]; or

474br (C) exploitation; and

474bs ~~[(b)]~~ (ii) informing a licensee that a person associated with the licensee has a  
 474bt substantiated finding of:

474bu (A) abuse[;];

474bv (B) neglect[;]; or

474bw (C) exploitation[;];

474bx (b) (i) determining whether a direct service worker has a substantiated finding of:

474by (A) abuse;

474bz (B) neglect; or

474ca (C) exploitation; and

474cb (ii) informing a direct service worker or the direct service worker's employer that the  
 474cc direct service worker has a substantiated finding of:

474cd (A) abuse;

474ce (B) neglect; or

474cf (C) exploitation; or

474cg (c) (i) determining whether a personal care attendant has a substantiated finding of:

474ch (A) abuse;

474ci (B) neglect; or

474cj (C) exploitation; and

474ck (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that←H

474cl **H→ a personal care attendant has a substantiated finding of:**

474cm **(A) abuse;**

474cn **(B) neglect; or**

474co **(C) exploitation;**

474cp **[(2)] (3) After receiving identifying information for a person under Subsection**  
 474cq **62A-2-120(1), the department shall process the information for the purposes described in**  
 474cr **Subsection (1).**

474cs **[(3)] (4) The department shall adopt rules under Title 63, Chapter 46a, Utah**  
 474ct **Administrative Rulemaking Act, consistent with this chapter and consistent with Section**  
 474cu **62A-3-311.1, defining the circumstances under which a person [who has] may have direct**  
 474cv **access or provide services to vulnerable adults [and who has a substantiated finding of abuse,**  
 474cw **neglect, or exploitation may provide services to vulnerable adults] when the person is listed in**  
 474cx **the statewide database of the Division of Aging and Adult Services created by Section**  
 474cy **62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation."**

474cz **Section 10. Coordinating H.B. 64 with S.B. 107.**

474da **If this H.B. 64 and S.B. 107, Licensure and Regulation of Programs and Facilities, both**  
 474db **pass, it is the intent of the Legislature that the Office of Legislative Research and General**  
 474dc **Counsel shall prepare the Utah Code database for publication as follows:**

474dd **(1) combine the amendments made by this bill and S.B. 107 to Section 62A-2-121 so**  
 474de **that Section 62A-2-121 reads as follows:**

474df **"62A-2-121. Access to abuse and neglect information.**

474dg **(1) For purposes of this section "personal care attendant" is as defined in Section**  
 474dh **62A-5-101.**

474di **[(1)] (2) With respect to [human services licensees] a licensee, a certified local inspector**  
 474dj **applicant, or a personal care attendant, the department may access only the Licensing**  
 474dk **Information System of the Division of Child and Family Services created by Section**  
 474dl **62A-4a-116.2 and juvenile court records under Subsection 78-3a-320[(4)](6), for the purpose**  
 474dm **of:**

474dn **(a) (i) determining whether a person associated with a licensee, with direct access to**  
 474do **children[;]:**

474dp **(A) is listed in the Licensing Information System; or**

474dq **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
 474dr **neglect under Subsections 78-3a-320(1) and (2); and**

474ds **[(b)] (ii) informing a licensee that a person associated with the licensee;**

474dt **(A) is listed in the Licensing Information System; or**

474du **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
 474dv **neglect under Subsections 78-3a-320(1) and (2)[;]:**

474dw **(b) (i) determining whether a certified local inspector applicant:**

474dx **(A) is listed in the Licensing Information System; or ←H**

474dy **↵→ (B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474dz **neglect under Subsections 78-3a-320(1) and (2); and**  
474ea **(ii) informing a local government that a certified local inspector applicant:**  
474eb **(A) is listed in the Licensing Information System; or**  
474ec **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474ed **neglect under Subsections 78-3a-320(1) and (2); or**  
474ee **(c) (i) determining whether a personal care attendant:**  
474ef **(A) is listed in the Licensing Information System; or**  
474eg **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474eh **neglect under Subsections 78-3a-320(1) and (2); and**  
474ei **(ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a**  
474ej **personal care attendant:**  
474ek **(A) is listed in the Licensing Information System; or**  
474el **(B) has a substantiated finding by a juvenile court of a severe type of child abuse or**  
474em **neglect under Subsections 78-3a-320(1) and (2).**

474en **[~~(2)~~] (3) Notwithstanding Subsection [~~(1)~~] (2), the department may access the Division**  
474eo **of Child and Family Service's Management Information System under Section 62A-4a-116 for**  
474ep **the purpose of licensing and monitoring foster parents.**

474eq **[~~(3)~~] (4) After receiving identifying information for a person under Subsection**  
474er **62A-2-120(1), the department shall process the information for the purposes described in**  
474es **Subsection [~~(1)~~] (2).**

474et **[~~(4)~~] (5) The department shall adopt rules under Title 63, Chapter 46a, Utah**  
474eu **Administrative Rulemaking Act, consistent with this chapter, defining the circumstances**  
474ev **under which a person [~~who has~~] may have direct access or provide services to children [~~and~~**  
474ew **who] when:**

474ex **(a) the person is listed in the Licensing Information System of the Division of Child and**  
474ey **Family Services created by Section 62A-4a-116.2; or [has]**

474ez **(b) juvenile court records show that a court made a substantiated finding [by a court**  
474fa **of] under Section 78-3a-320, that the person committed a severe type of child abuse or**  
474fb **neglect [under Subsections 78-3a-320(1) and (2) may provide services to children]." ; and**  
474fc **(2) combine the amendments made by this bill and S.B. 107 to Section 62A-2-122 so**  
474fd **that Section 62A-2-122 reads as follows:**

474fe **"62A-2-122. Access to vulnerable adult abuse and neglect information.**

474ff **(1) For purposes of this section "personal care attendant" is as defined in Section**  
474fg **62A-3-101.**

474fh **[~~(1)~~] (2) With respect to [~~human services licensees~~] a licensee, a certified local inspector**  
474fi **applicant, or a personal care attendant, the department may access the data base created by**  
474fj **Section 62A-3-311.1 for the purpose of:**

474fk **(a) (i) determining whether a person associated with a licensee, with direct access to ↵↵**

474fl **Ĥ→vulnerable adults, has a substantiated finding of:**

474fm **(A) abuse[;];**

474fn **(B) neglect[;]; or**

474fo **(C) exploitation; and**

474fp **[(b)] (ii) informing a licensee that a person associated with the licensee has a**

474fq **substantiated finding of:**

474fr **(A) abuse[;];**

474fs **(B) neglect[;]; or**

474ft **(C) exploitation[;];**

474fu **(b) (i) determining whether a certified local inspector applicant has a substantiated**

474fv **finding of:**

474fw **(A) abuse;**

474fx **(B) neglect; or**

474fy **(C) exploitation; and**

474fz **(ii) informing a local government that a certified local inspector applicant has a**

474ga **substantiated finding of:**

474gb **(A) abuse;**

474gc **(B) neglect; or**

474gd **(C) exploitation; or**

474ge **(c) (i) determining whether a personal care attendant has a substantiated finding of:**

474gf **(A) abuse;**

474gg **(B) neglect; or**

474gh **(C) exploitation; and**

474gi **(ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that**

474gj **a personal care attendant has a substantiated finding of:**

474gk **(A) abuse;**

474gl **(B) neglect; or**

474gm **(C) exploitation.**

474gn **[(2)] (3) After receiving identifying information for a person under Subsection**

474go **62A-2-120(1), the department shall process the information for the purposes described in**

474gp **Subsection (1).**

474gq **[(3)] (4) The department shall adopt rules under Title 63, Chapter 46a, Utah**

474gr **Administrative Rulemaking Act, consistent with this chapter and consistent with Section**

474gs **62A-3-311.1, defining the circumstances under which a person [~~who has~~] may have direct**

474gt **access or provide services to vulnerable adults [~~and who has a substantiated finding of abuse,~~**

474gu **~~neglect, or exploitation may provide services to vulnerable adults~~] when the person is listed in**

474gv **the statewide database of the Division of Aging and Adult Services created by Section**

474gw **62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation." ←Ĥ**

**Legislative Review Note**  
**as of 1-4-05 8:33 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0064**

**Criminal Background Checks for Personal Care Attendants**

*21-Jan-05*

*7:40 AM*

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**State Impact**

Any additional cost of provisions in this legislation can be handled within existing budgets.

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**Individual and Business Impact**

Some personal care attendants that would require an FBI background check will have to pay that fee, currently \$24.

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**Office of the Legislative Fiscal Analyst**