

1 **LICENSURE OF PROGRAMS AND**
2 **FACILITIES - CRIMINAL BACKGROUND**
3 **CHECK AMENDMENTS**

4 2006 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Thomas V. Hatch**

7 House Sponsor: Wayne A. Harper

8
9 **LONG TITLE**

10 **General Description:**

11 This bill modifies criminal background check requirements, contained in the Licensure
12 of Programs and Facilities chapter of the Utah Human Services Code, for a person who
13 has direct access to children or vulnerable adults.

14 **Highlighted Provisions:**

15 This bill:

16 ▶ modifies the requirements for a person undergoing a criminal background check by
17 the Office of Licensing, within the Department of Human Services, to determine
18 whether the person may have direct access to children or vulnerable adults;

19 ▶ provides that a person described in the preceding paragraph who continuously lived
20 in Utah during the five years preceding the background check, except for time spent
21 outside of the United States and its territories, is not required to submit fingerprints
22 for an FBI national criminal history record check;

23 ▶ provides that the office may require a person described in the preceding paragraph
24 to submit documentation establishing whether the person was convicted of a crime
25 during the time that the person spent outside of the United States and its territories;
26 and

27 ▶ grants rulemaking authority to the Office of Licensing.



28 **Monies Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **62A-2-120**, as last amended by Chapter 188, Laws of Utah 2005



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

37 Section 1. Section **62A-2-120** is amended to read:

38 **62A-2-120. Criminal background checks -- Direct access to children or**
39 **vulnerable adults.**

40 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
41 license renewal under this chapter shall submit to the office the names and other identifying
42 information, which may include fingerprints, of all persons associated with the licensee, as
43 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

44 (b) The Criminal Investigations and Technical Services Division of the Department of
45 Public Safety, or the office as authorized under Section 53-10-108, shall process the
46 information described in Subsection (1)(a) to determine whether the individual has been
47 convicted of any crime.

48 (c) [Hf] Except as provided in Subsection (1)(d), if an individual has not continuously
49 lived in Utah for the five years immediately preceding the day on which the information
50 referred to in Subsection (1)(a) is submitted to the office, the individual shall submit
51 fingerprints for a FBI national criminal history record check. The fingerprints shall be
52 submitted to the FBI through the Criminal Investigations and Technical Services Division.

53 (d) An individual is not required to comply with Subsection (1)(c) if the individual
54 continuously lived in Utah for the five years immediately preceding the day on which the
55 information described in Subsection (1)(a) is submitted to the office, except for time spent
56 outside of the United States and its territories.

57 (e) If an applicant described in Subsection (1)(a) spent time outside of the United
58 States and its territories at any time during the five years immediately preceding the day on

59 which the information described in Subsection (1)(a) is submitted to the office, the office may
60 require the applicant to submit documentation establishing whether the applicant was convicted
61 of a crime during the time that the applicant spent outside of the United States and its
62 territories.

63 (f) The office shall make rules, in accordance with Title 63, Chapter 46a, Utah
64 Administrative Rulemaking Act, to implement the provisions of this Subsection (1).

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

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

69 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
70 or infractions not involving any of the offenses described in Subsection (3); and

71 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
72 before the date of the search;

73 (b) the person is not listed in the statewide database of the Division of Aging and Adult
74 Services created by Section 62A-3-311.1;

75 (c) juvenile court records do not show that a court made a substantiated finding, under
76 Section 78-3a-320, that the person committed a severe type of child abuse or neglect;

77 (d) the person is not listed in the Licensing Information System of the Division of
78 Child and Family Services created by Section 62A-4a-116.2; and

79 (e) the person has not pled guilty or no contest to a pending charge for any:

80 (i) felony;

81 (ii) misdemeanor listed in Subsection (3); or

82 (iii) infraction listed in Subsection (3).

83 (3) Unless at least ten years have passed since the date of conviction, the office may not
84 approve a person to have direct access to children or vulnerable adults in the licensee's human
85 services program if that person has been convicted of an offense, whether a felony,
86 misdemeanor, or infraction, that is:

87 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

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

89 (c) prostitution;

- 90 (d) included in:
- 91 (i) Title 76, Chapter 5, Offenses Against the Person;
- 92 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or
- 93 (iii) Title 76, Chapter 7, Offenses Against the Family; or
- 94 (e) a conviction in:
- 95 (i) (A) another state, territory, or district of the United States; or
- 96 (B) a federal court of the United States; and
- 97 (ii) for an offense that, if committed in the state, would constitute a violation of an
- 98 offense described in Subsection (3)(d).
- 99 (4) (a) If a person for whom identifying information is submitted under Subsection (1)
- 100 is not approved by the office under Subsection (2) or (3) to have direct access to children or
- 101 vulnerable adults in the licensee program, the office shall conduct a comprehensive review of
- 102 criminal and court records and related circumstances if the reason the approval is not granted
- 103 is due solely to one or more of the following:
- 104 (i) a conviction for:
- 105 (A) any felony not listed in Subsection (3);
- 106 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
- 107 date of the search;
- 108 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
- 109 a similar statute in another state; or
- 110 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years
- 111 have passed since the date of conviction;
- 112 (ii) a plea of guilty or no contest to a pending:
- 113 (A) felony;
- 114 (B) misdemeanor not listed in Subsection (3); or
- 115 (C) infraction not listed in Subsection (3);
- 116 (iii) the person is listed in the statewide database of the Division of Aging and Adult
- 117 Services created by Section 62A-3-311.1;
- 118 (iv) juvenile court records show that a court made a substantiated finding, under
- 119 Section 78-3a-320, that the person committed a severe type of child abuse or neglect; or
- 120 (v) the person is listed in the Licensing Information System of the Division of Child

121 and Family Services created by Section 62A-4a-116.2.

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

123 (i) the date of the offense or incident;

124 (ii) the nature and seriousness of the offense or incident;

125 (iii) the circumstances under which the offense or incident occurred;

126 (iv) the age of the perpetrator when the offense or incident occurred;

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

128 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable

129 adult, including:

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

131 (B) sexual abuse;

132 (C) sexual exploitation; and

133 (D) negligent treatment;

134 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric

135 treatment received, or additional academic or vocational schooling completed, by the person;

136 and

137 (viii) any other pertinent information.

138 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office

139 shall approve the person who is the subject of the review to have direct access to children or

140 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or

141 vulnerable adult.

142 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the

143 office may make rules, consistent with this chapter, defining procedures for the comprehensive

144 review described in this Subsection (4).

145 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person

146 being supervised is under the uninterrupted visual and auditory surveillance of the person doing

147 the supervising.

148 (b) A licensee may not permit any person to have direct access to a child or a

149 vulnerable adult unless, subject to Subsection (5)(c), that person is:

150 (i) associated with the licensee and:

151 (A) approved by the office to have direct access to children or vulnerable adults under

152 this section; or

153 (B) (I) the office has not determined whether to approve that person to have direct
154 access to children or vulnerable adults;

155 (II) the information described in Subsection (1)(a), relating to that person, is submitted
156 to the department; and

157 (III) that person is directly supervised by a person associated with the licensee who is
158 approved by the office to have direct access to children or vulnerable adults under this section;

159 (ii) (A) not associated with the licensee; and

160 (B) directly supervised by a person associated with the licensee who is approved by the
161 office to have direct access to children or vulnerable adults under this section;

162 (iii) the parent or guardian of the child or vulnerable adult; or

163 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
164 have direct access to the child or vulnerable adult.

165 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
166 or a vulnerable adult if that person is prohibited by court order from having that access.

167 (6) (a) Within 30 days after receiving the identifying information for a person under
168 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
169 with whom the person is associated of:

170 (i) the office's decision regarding its background screening clearance and findings; and

171 (ii) a list of any convictions found in the search.

172 (b) With the notice described in Subsection (6)(a), the office shall also give to the
173 person the details of any comprehensive review conducted under Subsection (4).

174 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
175 direct access to children or vulnerable adults, the notice shall further advise the persons to
176 whom the notice is given that either the person or the licensee or applicant with whom the
177 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
178 department's Office of Administrative Hearings, to challenge the office's decision.

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

181 (i) defining procedures for the challenge of its background screening decision
182 described in this Subsection (6); and

183 (ii) expediting the process for renewal of a license under the requirements of this
184 section and other applicable sections.

185 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
186 an initial license, or license renewal, to operate a substance abuse treatment program that
187 provides services to adults only.

Legislative Review Note

as of 1-23-06 3:07 PM

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