

**Representative Bradley G. Last** proposes the following substitute bill:

**CLEARANCE FOR DIRECT PATIENT ACCESS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Health Care Facility Licensing and Inspection Act within the Utah Health Code, the Utah Human Services Code, and the Juvenile Court Act of 1996.

**Highlighted Provisions:**

This bill:

- ▶ amends Department of Health duties;
- ▶ repeals provisions requiring a background check of:
  - certain individuals who provide direct patient care in certain health care facilities and other settings; and
  - certain other individuals residing in a residential setting where care is provided;
- ▶ creates a new part, "Clearance for Direct Patient Access," in the Health Care Facility Licensing and Inspection Act;
- ▶ provides definitions;
- ▶ requires the department to grant, deny, or revoke clearance for an individual to have direct patient access;
- ▶ authorizes the department to limit the circumstances under which a covered individual granted clearance may have direct patient access;
- ▶ requires the department to adopt rules:



- 26           • specifying the information sources the department reviews to determine whether
- 27 an individual should be granted or retain clearance;
- 28           • specifying criteria to evaluate the information it reviews initially and on an
- 29 ongoing basis; and
- 30           • specifying the personal identification information that must be submitted to the
- 31 department;
- 32           ▶ requires the Department of Public Safety, the Administrative Office of the Courts,
- 33 the Department of Human Services, and the Division of Occupational and
- 34 Professional Licensing to allow the Department of Health to review information it is
- 35 required to review to grant, deny, or revoke clearance;
- 36           ▶ authorizes the Department of Health to establish fees;
- 37           ▶ requires the Department of Public Safety to notify the Department of Health of
- 38 information that becomes available about any individual who has applied for
- 39 clearance;
- 40           ▶ requires certain providers and contractors to apply for clearance of individuals they
- 41 engage who may have direct patient access;
- 42           ▶ requires a residential setting provider to apply for clearance for certain individuals,
- 43 other than residents, residing in the residential setting;
- 44           ▶ prohibits a residential setting provider from allowing certain individuals without
- 45 clearance, other than residents, to reside in the residential setting;
- 46           ▶ allows individuals to apply for clearance to have direct patient access;
- 47           ▶ requires the Department of Health to create a database that allows certain providers
- 48 and contractors to determine whether an individual has clearance to have direct
- 49 patient access;
- 50           ▶ authorizes the department to establish fees for use of the database by certain
- 51 contractors;
- 52           ▶ provides an exemption from civil liability;
- 53           ▶ makes conforming changes;
- 54           ▶ provides a period of transition for the clearance requirements;
- 55           ▶ makes technical corrections; and
- 56           ▶ repeals the transition language on July 1, 2013.

57 **Money Appropriated in this Bill:**

58 None

59 **Other Special Clauses:**

60 None

61 **Utah Code Sections Affected:**

62 AMENDS:

63 **26-21-6**, as last amended by Laws of Utah 1998, Chapter 169

64 **62A-3-305**, as last amended by Laws of Utah 2009, Chapter 267

65 **63I-1-226**, as last amended by Laws of Utah 2011, Chapter 199

66 **78A-6-209**, as last amended by Laws of Utah 2008, Chapter 111 and renumbered and  
67 amended by Laws of Utah 2008, Chapter 3

68 **78A-6-323**, as last amended by Laws of Utah 2008, Chapter 111 and renumbered and  
69 amended by Laws of Utah 2008, Chapter 3

70 ENACTS:

71 **26-21-100**, Utah Code Annotated 1953

72 **26-21-201**, Utah Code Annotated 1953

73 **26-21-202**, Utah Code Annotated 1953

74 **26-21-203**, Utah Code Annotated 1953

75 **26-21-204**, Utah Code Annotated 1953

76 **26-21-205**, Utah Code Annotated 1953

77 **26-21-206**, Utah Code Annotated 1953

78 **26-21-207**, Utah Code Annotated 1953

79 **26-21-208**, Utah Code Annotated 1953

80 **26-21-209**, Utah Code Annotated 1953

81 **26-21-210**, Utah Code Annotated 1953

82 **26-21-211**, Utah Code Annotated 1953

83 REPEALS:

84 **26-21-9.5**, as last amended by Laws of Utah 2011, Chapters 297 and 366



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

87 Section 1. Section **26-21-6** is amended to read:

88 **26-21-6. Duties of department.**

89 (1) The department shall:

90 (a) enforce rules established pursuant to this chapter;

91 (b) authorize an agent of the department to conduct inspections of health care facilities  
92 pursuant to this chapter;

93 (c) collect information authorized by the committee that may be necessary to ensure  
94 that adequate health care facilities are available to the public;

95 (d) collect and credit fees for licenses as free revenue as dedicated credits;

96 (e) (i) collect and credit fees for conducting plan reviews; and

97 (ii) beginning July 1, 2013, fees established under Chapter 21, Part 2, Clearance for  
98 Direct Patient Access, as dedicated credits;

99 (f) designate an executive secretary from within the department to assist the committee  
100 in carrying out its powers and responsibilities;

101 (g) establish reasonable standards for criminal background checks by public and  
102 private entities;

103 (h) recognize those public and private entities [~~which~~] that meet the standards  
104 established [~~in~~] pursuant to Subsection (1)(g); and

105 (i) provide necessary administrative and staff support to the committee.

106 (2) The department may:

107 (a) exercise all incidental powers necessary to carry out the purposes of this chapter;

108 (b) review architectural plans and specifications of proposed health care facilities or  
109 renovations of health care facilities to ensure that the plans and specifications conform to rules  
110 established by the committee; and

111 (c) make rules as necessary to implement the provisions of this chapter, except as  
112 authority is specifically delegated to the committee.

113 Section 2. Section **26-21-100** is enacted to read:

114 **26-21-100. Reserved.**

115 Reserved

116 Section 3. Section **26-21-201** is enacted to read:

117 **Part 2. Clearance for Direct Patient Access**

118 **26-21-201. Definitions.**

119 As used in this part:

120 (1) "Clearance" means approval by the department under Section 26-21-203 for an  
121 individual to have direct patient access.

122 (2) "Covered body" means a covered provider, covered contractor, or covered  
123 employer.

124 (3) "Covered contractor" means a person that supplies covered individuals, by contract,  
125 to a covered employer or covered provider.

126 (4) "Covered employer" means an individual who:

127 (a) engages a covered individual to provide services in a private residence to:

128 (i) an aged individual, as defined by department rule; or

129 (ii) a disabled individual, as defined by department rule;

130 (b) is not a covered provider; and

131 (c) is not a licensed health care facility within the state.

132 (5) "Covered individual":

133 (a) means an individual:

134 (i) whom a covered body engages; and

135 (ii) who may have direct patient access;

136 (b) includes:

137 (i) a nursing assistant, as defined by department rule;

138 (ii) a personal care aide, as defined by department rule;

139 (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter  
140 31b, Nurse Practice Act;

141 (iv) a provider of medical, therapeutic, or social services, including a provider of  
142 laboratory and radiology services;

143 (v) an executive;

144 (vi) administrative staff, including a manager or other administrator;

145 (vii) dietary and food service staff;

146 (viii) housekeeping and maintenance staff; and

147 (ix) any other individual, as defined by department rule, who has direct patient access;

148 and

149 (c) does not include a student, as defined by department rule, directly supervised by a

150 member of the staff of the covered body or the student's instructor.

151 (6) "Covered provider" means:

152 (a) an end stage renal disease facility;

153 (b) a long-term care hospital;

154 (c) a nursing care facility;

155 (d) a small health care facility;

156 (e) an assisted living facility;

157 (f) a hospice;

158 (g) a home health agency; or

159 (h) a personal care agency.

160 (7) "Direct patient access" means for an individual to be in a position where the

161 individual could, in relation to a patient or resident of the covered body who engages the

162 individual:

163 (a) cause physical or mental harm;

164 (b) commit theft; or

165 (c) view medical or financial records.

166 (8) "Engage" means to obtain one's services:

167 (a) by employment;

168 (b) by contract;

169 (c) as a volunteer; or

170 (d) by other arrangement.

171 (9) "Long-term care hospital":

172 (a) means a hospital that is certified to provide long-term care services under the

173 provisions of 42 U.S.C. Sec. 1395tt; and

174 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec.

175 1395i-4(c)(2).

176 (10) "Patient" means an individual who receives health care services from one of the

177 following covered providers:

178 (a) an end stage renal disease facility;

179 (b) a long-term care hospital;

180 (c) a hospice;

181 (d) a home health agency; or

182 (e) a personal care agency.

183 (11) "Personal care agency" means a health care facility defined by department rule.

184 (12) "Resident" means an individual who receives health care services from one of the

185 following covered providers:

186 (a) a nursing care facility;

187 (b) a small health care facility;

188 (c) an assisted living facility; or

189 (d) a hospice that provides living quarters as part of its services.

190 (13) "Residential setting" means a place provided by a covered provider:

191 (a) for residents to live as part of the services provided by the covered provider; and

192 (b) where an individual who is not a resident also lives.

193 (14) "Volunteer" means an individual, as defined by department rule, who provides  
194 services without pay or other compensation.

195 Section 4. Section **26-21-202** is enacted to read:

196 **26-21-202. Clearance required.**

197 (1) A covered provider may engage a covered individual only if the individual has  
198 clearance.

199 (2) A covered contractor may supply a covered individual to a covered employer or  
200 covered provider only if the individual has clearance.

201 (3) A covered employer may engage a covered individual who does not have clearance.

202 (4) (a) Notwithstanding Subsections (1) and (2), if a covered individual does not have  
203 clearance, a covered provider may engage the individual or a covered contractor may supply  
204 the individual to a covered provider or covered employer:

205 (i) under circumstances specified by department rule; and

206 (ii) only while an application for clearance for the individual is pending.

207 (b) For purposes of Subsection (4)(a), an application is pending if the following have  
208 been submitted to the department for the individual:

209 (i) an application for clearance;

210 (ii) the personal identification information specified by the department under

211 Subsection 26-21-204(4)(b); and

212 (iii) any fees established by the department under Subsection 26-21-204(9).

213 Section 5. Section **26-21-203** is enacted to read:

214 **26-21-203. Department authorized to grant, deny, or revoke clearance --**

215 **Department may limit direct patient access.**

216 (1) As provided in Section 26-21-204, the department may grant, deny, or revoke  
217 clearance for an individual, including a covered individual.

218 (2) The department may limit the circumstances under which a covered individual  
219 granted clearance may have direct patient access, based on the relationship the factors under  
220 Subsection 26-21-204(4)(a) and other mitigating factors may have to patient and resident  
221 protection.

222 Section 6. Section **26-21-204** is enacted to read:

223 **26-21-204. Clearance.**

224 (1) The department shall determine whether to grant clearance for each applicant for  
225 whom it receives:

226 (a) the personal identification information specified by the department under  
227 Subsection 26-21-204(4)(b); and

228 (b) any fees established by the department under Subsection 26-21-204(9).

229 (2) The department shall establish a procedure for obtaining and evaluating relevant  
230 information concerning covered individuals, including fingerprinting the applicant and  
231 submitting the prints to the Criminal Investigations and Technical Services Division of the  
232 Department of Public Safety for checking against applicable state, regional, and national  
233 criminal records files.

234 (3) The department may review the following sources to determine whether an  
235 individual should be granted or retain clearance, which may include:

236 (a) Department of Public Safety arrest, conviction, and disposition records described in  
237 Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including  
238 information in state, regional, and national records files;

239 (b) juvenile court arrest, adjudication, and disposition records, as allowed under  
240 Section 78A-6-209;

241 (c) federal criminal background databases available to the state;

242 (d) the Department of Human Services' Division of Child and Family Services



243 Licensing Information System described in Section 62A-4a-1006;  
244 (e) child abuse or neglect findings described in Section 78A-6-323;  
245 (f) the Department of Human Services' Division of Aging and Adult Services  
246 vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;  
247 (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;  
248 (h) licensing and certification records of individuals licensed or certified by the  
249 Division of Occupational and Professional Licensing under Title 58, Occupations and  
250 Professions; and  
251 (i) the List of Excluded Individuals and Entities database maintained by the United  
252 States Department of Health and Human Services' Office of Inspector General.  
253 (4) The department shall adopt rules that:  
254 (a) specify the criteria the department will use to determine whether an individual is  
255 granted or retains clearance:  
256 (i) based on an initial evaluation and ongoing review of information under Subsection  
257 (3); and  
258 (ii) including consideration of the relationship the following may have to patient and  
259 resident protection:  
260 (A) warrants for arrest;  
261 (B) arrests;  
262 (C) convictions, including pleas in abeyance;  
263 (D) pending diversion agreements;  
264 (E) adjudications by a juvenile court of committing an act that if committed by an adult  
265 would be a felony or misdemeanor, if the individual is over 28 years of age and has been  
266 convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for  
267 a felony or misdemeanor, or the individual is under 28 years of age; and  
268 (F) any other findings under Subsection (3); and  
269 (b) specify the personal identification information that must be submitted by an  
270 individual or covered body with an application for clearance, including:  
271 (i) the applicant's Social Security number; and  
272 (ii) except for applicants under 18 years of age, fingerprints.  
273 (5) For purposes of Subsection (4)(a), the department shall classify a crime committed

274 in another state according to the closest matching crime under Utah law, regardless of how the  
275 crime is classified in the state where the crime was committed.

276 (6) The Department of Public Safety, the Administrative Office of the Courts, the  
277 Department of Human Services, the Division of Occupational and Professional Licensing, and  
278 any other state agency or political subdivision of the state:

279 (a) shall allow the department to review the information the department may review  
280 under Subsection (3); and

281 (b) except for the Department of Public Safety, may not charge the department for  
282 access to the information.

283 (7) The department shall adopt measures to protect the security of the information it  
284 reviews under Subsection (3) and strictly limit access to the information to department  
285 employees responsible for processing an application for clearance.

286 (8) The department may disclose personal identification information specified under  
287 Subsection (4)(b) to the Department of Human Services to verify that the subject of the  
288 information is not identified as a perpetrator or offender in the information sources described in  
289 Subsections (3)(d) through (f).

290 (9) The department may establish fees, in accordance with Section 63J-1-504, for an  
291 application for clearance, which may include:

292 (a) the cost of obtaining and reviewing information under Subsection (3);

293 (b) a portion of the cost of creating and maintaining the Direct Access Clearance  
294 System database under Section 26-21-209; and

295 (c) other department costs related to the processing of the application and the ongoing  
296 review of information pursuant to Subsection (4)(a) to determine whether clearance should be  
297 retained.

298 Section 7. Section **26-21-205** is enacted to read:

299 **26-21-205. Department of Public Safety -- Retention of information -- Notification**  
300 **of Department of Health.**

301 The Criminal Investigations and Technical Services Division within the Department of  
302 Public Safety shall:

303 (1) retain, separate from other division records, personal information, including any  
304 fingerprints, sent to it by the Department of Health pursuant to Subsection 26-21-204(3)(a);

305 and

306 (2) notify the Department of Health upon receiving notice that an individual for whom  
307 personal information has been retained is the subject of:

308 (a) a warrant for arrest;

309 (b) an arrest;

310 (c) a conviction, including a plea in abeyance; or

311 (d) a pending diversion agreement.

312 Section 8. Section **26-21-206** is enacted to read:

313 **26-21-206. Covered providers and covered contractors required to apply for**  
314 **clearance of certain individuals.**

315 (1) As provided in Subsection (2), each covered provider and covered contractor  
316 operating in this state shall:

317 (a) collect from each covered individual it engages, and each individual it intends to  
318 engage as a covered individual, the personal identification information specified by the  
319 department under Subsection 26-21-204(4)(b); and

320 (b) submit to the department an application for clearance for the individual, including:

321 (i) the personal identification information; and

322 (ii) any fees established by the department under Subsection 26-21-204(9).

323 (2) Clearance granted for an individual pursuant to an application submitted by a  
324 covered provider or a covered contractor is valid until the later of:

325 (a) two years after the individual is no longer engaged as a covered individual; or

326 (b) the covered provider's or covered contractor's next license renewal date.

327 Section 9. Section **26-21-207** is enacted to read:

328 **26-21-207. Covered providers required to apply for clearance for certain**  
329 **individuals other than residents residing in residential settings -- Certain individuals**  
330 **other than residents prohibited from residing in residential settings without clearance.**

331 (1) A covered provider that provides services in a residential setting shall:

332 (a) collect the personal identification information specified by the department under  
333 Subsection 26-21-204(4)(b) for each individual 12 years of age or older, other than a resident,  
334 who resides in the residential setting; and

335 (b) submit to the department an application for clearance for the individual, including:

- 336 (i) the personal identification information; and
- 337 (ii) any fees established by the department under Subsection 26-21-204(9).
- 338 (2) A covered provider that provides services in a residential setting may allow an
- 339 individual 12 years of age or older, other than a resident, to reside in the residential setting only
- 340 if the individual has clearance.

341 Section 10. Section **26-21-208** is enacted to read:

342 **26-21-208. Application for clearance by individuals.**

343 (1) An individual may apply for clearance by submitting to the department an

344 application, including:

345 (a) the personal identification information specified by the department under

346 Subsection 26-21-204(4)(b); and

347 (b) any fees established by the department under Subsection 26-21-204(9).

348 (2) Clearance granted to an individual who makes application under Subsection (1) is

349 valid for two years unless the department determines otherwise based on its ongoing review

350 under Subsection 26-21-204(4)(a).

351 Section 11. Section **26-21-209** is enacted to read:

352 **26-21-209. Direct Access database -- Contents -- Use.**

353 (1) The department shall create and maintain a Direct Access Clearance System

354 database, which:

355 (a) includes the names of individuals for whom the department has received an

356 application for clearance; and

357 (b) indicates for each applicant whether an application is pending and whether

358 clearance has been granted and retained.

359 (2) (a) The department shall allow covered providers and covered contractors to access

360 the database electronically.

361 (b) Data accessible to a covered provider or covered contractor is limited to the

362 information under Subsection (1) for:

363 (i) covered individuals engaged by the covered provider or covered contractor; and

364 (ii) individuals:

365 (A) who the covered provider or covered contractor could engage as covered

366 individuals; and

367 (B) who have provided the covered provider or covered contractor with sufficient  
368 personal identification information to uniquely identify the individual in the database.

369 (c) (i) The department may establish fees, in accordance with Section 63J-1-504, for  
370 use of the database by a covered contractor.

371 (ii) The fees may include, in addition to any fees established by the department under  
372 Subsection 26-21-204(9), an initial set-up fee, an ongoing access fee, and a per-use fee.

373 Section 12. Section **26-21-210** is enacted to read:

374 **26-21-210. No civil liability.**

375 A covered body is not civilly liable for submitting to the department information  
376 required under this part or refusing to employ an individual who does not have clearance to  
377 have direct patient access under Section 26-21-203.

378 Section 13. Section **26-21-211** is enacted to read:

379 **26-21-211. Transition of clearance for direct access to patients.**

380 (1) A covered provider or covered contractor who engages a covered individual  
381 beginning on or after May 8, 2012 must obtain clearance for the covered individual under this  
382 part.

383 (2) For a covered individual engaged to perform services prior to May 8, 2012, the  
384 covered provider or covered contractor does not have to obtain clearance for the covered  
385 individual under this part:

386 (a) until the date the covered contractor or covered provider renews its license under  
387 this chapter; or

388 (b) if the license renewal under Subsection (2)(a) is prior to January 1, 2013, within six  
389 months after the date of the license renewal.

390 Section 14. Section **62A-3-305** is amended to read:

391 **62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation --**  
392 **Penalty -- Nonmedical healing.**

393 (1) ~~[Any]~~ A person who has reason to believe that ~~[any]~~ a vulnerable adult has been the  
394 subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services  
395 intake or the nearest law enforcement agency. When the initial report is made to law  
396 enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult  
397 Protective Services and law enforcement shall coordinate, as appropriate, their efforts to

398 provide protection to the vulnerable adult.

399 (2) When the initial report or subsequent investigation by Adult Protective Services  
400 indicates that a criminal offense may have occurred against a vulnerable adult:

401 (a) Adult Protective Services shall notify the nearest local law enforcement agency  
402 regarding the potential offense; and

403 (b) the law enforcement agency may initiate an investigation in cooperation with Adult  
404 Protective Services.

405 (3) [~~Anyone~~] A person who in good faith makes a report or otherwise notifies a law  
406 enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is  
407 immune from civil and criminal liability in connection with the report or other notification.

408 (4) (a) [~~Any~~] A person who willfully fails to report suspected abuse, neglect, or  
409 exploitation of a vulnerable adult is guilty of a class B misdemeanor.

410 (b) A covered [~~health care facility~~] provider or covered contractor, as defined in  
411 Section [~~26-21-9.5~~] 26-21-201, that knowingly fails to report suspected abuse or neglect, as  
412 required by this section, is subject to a private right of action and liability for the abuse or  
413 neglect of another person that is committed by the individual who was not reported to Adult  
414 Protective Services in accordance with this section.

415 (5) Under circumstances not amounting to a violation of Section 76-8-508, a person  
416 who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a  
417 report, a witness, the person who made the report, or any other person cooperating with an  
418 investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

419 (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason  
420 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of  
421 medical care.

422 Section 15. Section **63I-1-226** is amended to read:

423 **63I-1-226. Repeal dates, Title 26.**

424 (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July  
425 1, 2015.

426 (2) Section 26-18-12, Expansion of 340B drug pricing programs, is repealed July 1,  
427 2013.

428 (3) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed

429 July 1, 2016.

430 (4) Section 26-21-211 is repealed July 1, 2013.

431 [~~(4)~~] (5) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1,  
432 2014.

433 [~~(5)~~] (6) Title 26, Chapter 36a, Hospital Provider Assessment Act, is repealed July 1,  
434 2013.

435 Section 16. Section **78A-6-209** is amended to read:

436 **78A-6-209. Court records -- Inspection.**

437 (1) The court and the probation department shall keep records as required by the board  
438 and the presiding judge.

439 (2) Court records shall be open to inspection by:

440 (a) the parents or guardian of a child, a minor who is at least 18 years of age, other  
441 parties in the case, the attorneys, and agencies to which custody of a minor has been  
442 transferred;

443 (b) for information relating to adult offenders alleged to have committed a sexual  
444 offense, a felony or class A misdemeanor drug offense, or an offense against the person under  
445 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose  
446 of evaluating whether an individual should be permitted to obtain or retain a license as an  
447 educator or serve as an employee or volunteer in a school, with the understanding that the  
448 office must provide the individual with an opportunity to respond to any information gathered  
449 from its inspection of the records before it makes a decision concerning licensure or  
450 employment;

451 (c) the Criminal Investigations and Technical Services Division, established in Section  
452 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm  
453 and establishing good character for issuance of a concealed firearm permit as provided in  
454 Section 53-5-704;

455 (d) the Division of Child and Family Services for the purpose of Child Protective  
456 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and  
457 administrative hearings in accordance with Section 62A-4a-1009; [~~and~~]

458 (e) for information related to a juvenile offender who has committed a sexual offense, a  
459 felony, or an offense [~~which~~] that if committed by an adult would be a misdemeanor, the

460 Department of Health[;] for the purpose of evaluating under the provisions of Subsection  
461 26-39-404(3) whether a licensee should be permitted to obtain or retain a license to provide  
462 child care, with the understanding that the department must provide the individual who  
463 committed the offense with an opportunity to respond to any information gathered from its  
464 inspection of records before it makes a decision concerning licensure[;]; and

465 (f) for information related to a juvenile offender who has committed a sexual offense, a  
466 felony, or an offense that if committed by an adult would be a misdemeanor, the Department of  
467 Health to determine whether an individual meets the background screening requirements of  
468 Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access, with the understanding that  
469 the department must provide the individual who committed the offense an opportunity to  
470 respond to any information gathered from its inspection of records before it makes a decision  
471 under that part.

472 (3) With the consent of the judge, court records may be inspected by the child, by  
473 persons having a legitimate interest in the proceedings, and by persons conducting pertinent  
474 research studies.

475 (4) If a petition is filed charging a minor 14 years of age or older with an offense that  
476 would be a felony if committed by an adult, the court shall make available to any person upon  
477 request the petition, any adjudication or disposition orders, and the delinquency history  
478 summary of the minor charged unless the records are closed by the court upon findings on the  
479 record for good cause.

480 (5) Probation officers' records and reports of social and clinical studies are not open to  
481 inspection, except by consent of the court, given under rules adopted by the board.

482 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency  
483 history summary of any person charged as an adult with a felony offense shall be made  
484 available to any person upon request.

485 (b) This provision does not apply to records that have been destroyed or expunged in  
486 accordance with court rules.

487 (c) The court may charge a reasonable fee to cover the costs associated with retrieving  
488 a requested record that has been archived.

489 Section 17. Section **78A-6-323** is amended to read:

490 **78A-6-323. Additional finding at adjudication hearing -- Petition -- Court**



491 **records.**

492 (1) Upon the filing with the court of a petition under Section 78A-6-304 by the  
493 Division of Child and Family Services or any interested person informing the court, among  
494 other things, that the division has made a supported finding that a person committed a severe  
495 type of child abuse or neglect as defined in Section 62A-4a-1002, the court shall:

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

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

- 500 (a) as part of the adjudication hearing;  
501 (b) at the conclusion of the adjudication hearing; or  
502 (c) as part of a court order entered pursuant to a written stipulation of the parties.

503 (3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with  
504 the court a petition for removal of the person's name from the Licensing Information System.

- 505 (b) At the conclusion of the hearing on the petition, the court shall:  
506 (i) make a finding of substantiated, unsubstantiated, or without merit;  
507 (ii) include the finding described in Subsection (1)(a) in a written order; and  
508 (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.

509 (4) A proceeding for adjudication of a supported finding under this section of a type of  
510 abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined  
511 in the juvenile court with an adjudication of a severe type of child abuse or neglect.

512 (5) If a person whose name appears on the Licensing Information system prior to May  
513 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to  
514 work with children or vulnerable adults is pending, the court shall hear the matter and enter a  
515 final decision no later than 60 days after the filing of the petition.

516 (6) For the purposes of licensing under Sections [~~26-21-9.5;~~] 26-39-402[;] and  
517 62A-1-118, and for the purposes described in Section 62A-2-121 and Title 26, Chapter 21, Part  
518 2, Clearance for Direct Patient Access:

- 519 (a) the court shall make available records of its findings under Subsections (1) and (2);  
520 (i) for [~~licensing~~] those purposes[;]; and  
521 (ii) only to those with statutory authority to access also the Licensing Information

522 System created under Section 62A-4a-1006; and

523 (b) any appellate court shall make available court records of appeals from juvenile

524 court decisions under Subsections (1), (2), (3), and (4);

525 (i) for [~~licensing~~] those purposes[~~;~~]; and

526 (ii) only to those with statutory authority to access also the Licensing Information

527 System.

528 Section 18. **Repealer.**

529 This bill repeals:

530 Section **26-21-9.5, Criminal background check and Licensing Information System**

531 **check.**