

## HB0497S01 compared with HB0497

~~{deleted text}~~ shows text that was in HB0497 but was deleted in HB0497S01.

inserted text shows text that was not in HB0497 but was inserted into HB0497S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

**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;

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- ▶ 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:
  - specifying the information sources the department reviews to determine whether an individual should be granted or retain clearance;
  - specifying criteria to evaluate the information it reviews initially and on an ongoing basis; and
  - specifying the personal identification information that must be submitted to the department;
- ▶ requires the Department of Public Safety, the Administrative Office of the Courts, the Department of Human Services, and the Division of Occupational and Professional Licensing ~~{, and any other state agency or political subdivision of the state}~~ to allow the Department of Health to review ~~{ at no charge the}~~ information it is required to review to grant, deny, or revoke clearance;
- ▶ authorizes the Department of Health to establish fees;
- ▶ requires the Department of Public Safety to notify the Department of Health of information that becomes available about any individual who has applied for clearance;
- ▶ requires certain providers and contractors to apply for clearance of individuals they engage who may have direct patient access;
- ▶ requires a residential setting provider to apply for clearance for certain individuals, other than residents, residing in the residential setting;
- ▶ prohibits a residential setting provider from allowing certain individuals without clearance, other than residents, to reside in the residential setting;
- ▶ allows individuals to apply for clearance to have direct patient access;
- ▶ requires the Department of Health to create a database that allows certain providers and contractors to determine whether an individual has clearance to have direct patient access;

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- ▶ authorizes the department to establish fees for use of the database by certain contractors;
- ▶ provides an exemption from civil liability;
- ▶ makes conforming changes;~~{ and }~~
- ▶ provides a period of transition for the clearance requirements;
- ▶ makes technical corrections~~{.}~~; and
- ▶ repeals the transition language on July 1, 2013.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

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

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

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

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

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

#### ENACTS:

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

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

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

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

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

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

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

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

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

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

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26-21-210, Utah Code Annotated 1953

26-21-211, Utah Code Annotated 1953

REPEALS:

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

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

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

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

(1) The department shall:

(a) enforce rules established pursuant to this chapter;

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

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

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

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

(ii) beginning ~~{plan reviews and}~~ July 1, 2013, fees established under Chapter 21, Part 2, Clearance for Direct Patient Access, as dedicated credits;

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

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

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

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

(2) The department may:

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

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

(c) make rules as necessary to implement the provisions of this chapter, except as

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authority is specifically delegated to the committee.

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

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

Reserved

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

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

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

As used in this part:

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

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

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

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

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

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

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

(b) is not a covered provider; and

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

(5) "Covered individual":

(a) means an individual:

(i) whom a covered body engages; and

(ii) who may have direct patient access;

(b) includes:

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

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

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

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

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(v) an executive;

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

(vii) dietary and food service staff;

(viii) housekeeping and maintenance staff; and

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

and

(c) does not include a student, as defined by department rule, directly supervised by a member of the staff of the covered body or the student's instructor.

(6) "Covered provider" means:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a nursing care facility;

(d) a small health care facility;

(e) an assisted living facility;

(f) a hospice;

(g) a home health agency; or

(h) a personal care agency.

(7) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:

(a) cause physical or mental harm;

(b) commit theft; or

(c) view medical or financial records.

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

(a) by employment;

(b) by contract;

(c) as a volunteer; or

(d) by other arrangement.

(9) "Long-term care hospital":

(a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and

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(b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).

(10) "Patient" means an individual who receives health care services from one of the following covered providers:

(a) an end stage renal disease facility;

(b) a long-term care hospital;

(c) a hospice;

(d) a home health agency; or

(e) a personal care agency.

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

(12) "Resident" means an individual who receives health care services from one of the following covered providers:

(a) a nursing care facility;

(b) a small health care facility;

(c) an assisted living facility; or

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

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

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

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

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

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

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

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

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

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

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

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(i) ~~if clearance for the individual has never been denied or revoked, or } under {other~~ circumstances specified by department rule; and

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

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

(i) an application for clearance;

(ii) the personal identification information specified by the department under Subsection 26-21-204(~~3~~4)(b); and

(iii) any fees established by the department under Subsection 26-21-204(~~8~~9).

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

**26-21-203. Department authorized to grant, deny, or revoke clearance -- Department may limit direct patient access.**

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

(2) The department may limit the circumstances under which a covered individual granted clearance may have direct patient access, based on the relationship the factors under Subsection 26-21-204(~~3~~4)(a) and other mitigating factors may have to patient and resident protection.

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

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

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

(a) the personal identification information specified by the department under Subsection 26-21-204(~~3~~4)(b); and

(b) any fees established by the department under Subsection 26-21-204(~~8~~9).

(2) The department shall ~~make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that specify the information sources it will review} establish a procedure for obtaining and evaluating relevant information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files.~~



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

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

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

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

(d) the Department of Human Services' Division of Child and Family Services Licensing Information System described in Section 62A-4a-1006;

(e) child abuse or neglect findings described in Section 78A-6-323;

(f) the Department of Human Services' Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1;

(g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

(h) licensing and certification records of individuals licensed or certified by the Division of Occupational and Professional Licensing under Title 58, Occupations and Professions; ~~and~~

(i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General ~~;~~ ~~and~~;

~~{~~ ~~(j) other sources:~~

~~†~~ (~~3~~4) The department shall adopt rules that:

(a) specify the criteria the department will use to determine whether an individual is granted or retains clearance:

(i) based on an initial evaluation and ongoing review of information under Subsection (~~2~~3); and

(ii) including consideration of the relationship the following may have to patient and resident protection:

(A) warrants for arrest;

(B) arrests;

(C) convictions, including pleas in abeyance;

(D) pending diversion agreements;

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(E) adjudications by a juvenile court of committing an act that if committed by an adult would be a felony or misdemeanor, if the individual is over 28 years of age and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28 years of age; and

(F) any other findings under Subsection (~~f2~~3); and

(b) specify the personal identification information that must be submitted by an individual or covered body with an application for clearance, including:

(i) the applicant's Social Security number; and

(ii) except for applicants under 18 years of age, fingerprints.

(~~f4~~5) For purposes of Subsection (~~f3~~4)(a), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.

(~~f5~~6) The Department of Public Safety, the Administrative Office of the Courts, the Department of Human Services, the Division of Occupational and Professional Licensing, and any other state agency or political subdivision of the state:

(a) shall allow the department to review the information the department ~~is required to~~may review under Subsection (~~f2~~3); and

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

(~~f6~~7) The department shall adopt measures to protect the security of the information it reviews under Subsection (~~f2~~3) and strictly limit access to the information to department employees responsible for processing an application for clearance.

(~~f7~~8) The department may disclose personal identification information specified under Subsection (~~f3~~4)(b) to the Department of Human Services to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (~~f2~~3)(d) through (~~f2~~)(f).

(~~f8~~9) The department may establish fees, in accordance with Section 63J-1-504, for an application for clearance, which may include:

(a) the cost of obtaining and reviewing information under Subsection (~~f2~~3);

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

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(c) other department costs related to the processing of the application and the ongoing review of information pursuant to Subsection (~~3~~4)(a) to determine whether clearance should be retained.

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

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

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

(1) retain, separate from other division records, personal information, including any fingerprints, sent to it by the Department of Health pursuant to Subsection 26-21-204(~~2~~3)(a); and

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

(a) a warrant for arrest;

(b) an arrest;

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

(d) a pending diversion agreement.

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

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

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

(a) collect from each covered individual it engages, and each individual it intends to engage as a covered individual, the personal identification information specified by the department under Subsection 26-21-204(~~3~~4)(b); and

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

(i) the personal identification information; and

(ii) any fees established by the department under Subsection 26-21-204(~~8~~9).

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

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

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

~~{ (3) (a) For a covered individual whom a covered provider or covered contractor engages beginning on or after May 8, 2012, Subsection (1) applies beginning May 8, 2012.~~

~~(b) For a covered individual whom a covered provider or covered contractor engages before May 8, 2012, Subsection (1) applies:~~

~~(i) beginning January 1, 2013, if the renewal date for the covered provider's or covered contractor's license under this chapter is on or after January 1, 2013; or~~

~~(ii) in all other cases, beginning on the 181st day after the license renewal date.~~

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

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

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

(a) collect the personal identification information specified by the department under Subsection 26-21-204(~~3~~4)(b) for each individual 12 years of age or older, other than a resident, who resides in the residential setting; and

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

(i) the personal identification information; and

(ii) any fees established by the department under Subsection 26-21-204(~~8~~9).

(2) A covered provider that provides services in a residential setting may allow an individual 12 years of age or older, other than a resident, to reside in the residential setting only if the individual has clearance.

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

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

(1) An individual may apply for clearance by submitting to the department an application, including:

(a) the personal identification information specified by the department under Subsection 26-21-204(~~3~~4)(b); and

(b) any fees established by the department under Subsection 26-21-204(~~8~~9).

(2) Clearance granted to an individual who makes application under Subsection (1) is valid for two years unless the department determines otherwise based on its ongoing review

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under Subsection 26-21-204(~~f3~~4)(a).

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

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

(1) The department shall create and maintain a Direct Access Clearance System database, which:

(a) includes the names of individuals for whom the department has received an application for clearance; and

(b) indicates for each applicant whether an application is pending and whether clearance has been granted and retained.

(2) (a) The department shall allow covered providers and covered contractors to access the database electronically.

(b) Data accessible to a covered provider or covered contractor is limited to the information under Subsection (1) for:

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

(ii) individuals:

(A) ~~fwhom~~who the covered provider or covered contractor could engage as covered individuals; and

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

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

(ii) The fees may include, in addition to any fees established by the department under Subsection 26-21-204(~~f8~~9), an initial set-up fee, an ongoing access fee, and a per-use fee.

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

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

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

Section 13. Section ~~f62A-3-305 is amended to read:~~

~~f~~26-21-211 is enacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A covered ~~[health care facility]~~ provider or covered contractor, as defined in

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~~{}~~Section ~~[26-21-9.5]~~ ~~{Subsection}~~26-21-201, that knowingly fails to report suspected abuse or neglect, as required by this section, is subject to a private right of action and liability for the abuse or neglect of another person that is committed by the individual who was not reported to Adult Protective Services in accordance with this section.

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

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

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

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

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

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

(3) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed July 1, 2016.

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

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

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

Section ~~{14}~~16. Section **78A-6-209** is amended to read:

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

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

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

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

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transferred;

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

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

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

(e) for information related to a juvenile offender who has committed a sexual offense, a felony, or an offense ~~[which]~~ that if committed by an adult would be a misdemeanor, the Department of Health~~;~~ for the purpose of evaluating under the provisions of Subsection 26-39-404(3) whether a licensee should be permitted to obtain or retain a license to provide child care, with the understanding that the department must provide the individual who committed the offense with an opportunity to respond to any information gathered from its inspection of records before it makes a decision concerning licensure~~[-];~~ and

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

(3) With the consent of the judge, court records may be inspected by the child, by



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persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

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

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

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

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

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

Section ~~{15}~~17. Section **78A-6-323** is amended to read:

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

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

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

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

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

(3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with

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the court a petition for removal of the person's name from the Licensing Information System.

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

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

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

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

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

(a) the court shall make available records of its findings under Subsections (1) and (2):

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

(ii) only to those with statutory authority to access also the Licensing Information System created under Section 62A-4a-1006; and

(b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), (3), and (4):

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

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

Section ~~†16~~ 18. **Repealer.**

This bill repeals:

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

†

**HB0497S01 compared with HB0497**

**Legislative Review Note**

~~as of 2-15-12 4:06 PM~~

~~Office of Legislative Research and General Counsel~~