

**Representative Stephen G. Handy** proposes the following substitute bill:

**PUBLIC SCHOOL EMPLOYEE BACKGROUND CHECKS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen G. Handy**

Senate Sponsor: Jerry W. Stevenson

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**LONG TITLE**

**General Description:**

This bill amends provisions related to public school employee background checks.

**Highlighted Provisions:**

This bill:

- ▶ requires the Criminal Investigations and Technical Services Division of the Department of Public Safety to provide notification to certain entities when a new entry is made against an employee or volunteer whose fingerprints are held on file regarding any matters involving an alleged offense against property;
- ▶ removes the time limit related to criminal offenses of the same type that the State Board of Education may consider when making licensing decisions; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53A-3-410**, as last amended by Laws of Utah 2010, Chapter 362



26 [53A-6-401](#), as last amended by Laws of Utah 2010, Chapter 362



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

29 Section 1. Section **53A-3-410** is amended to read:

30 **53A-3-410. Criminal background checks on school personnel -- Notice -- Payment**  
31 **of costs -- Request for review.**

32 (1) As used in this section:

33 (a) "Administrator" means an administrator at a school district, charter school, or  
34 private school that requests the Criminal Investigations and Technical Services Division of the  
35 Department of Public Safety to conduct a criminal background check on an applicant or  
36 employee.

37 (b) "Applicant" means a person under consideration for:

- 38 (i) an offer of employment at a school district, charter school, or private school; or
  - 39 (ii) appointment as a volunteer for a school district, charter school, or private school
- 40 who will be given significant unsupervised access to a student in connection with the  
41 volunteer's assignment.

42 (c) "Contract employee" means an employee of a staffing service who works at a  
43 public or private school under a contract between the staffing service and a school district,  
44 charter school, or private school.

45 (d) "Division" means the Criminal Investigations and Technical Services Division of  
46 the Department of Public Safety established in Section [53-10-103](#).

47 (2) A school district superintendent, the superintendent's designee, or the chief  
48 administrative officer of a charter school:

49 (a) shall require an applicant to submit to a criminal background check as a condition  
50 for employment or appointment;

51 (b) shall require an employee to periodically submit to a criminal background check in  
52 accordance with rules of the State Board of Education or policies of the local school board or  
53 charter school governing board; and

54 (c) where reasonable cause exists, may require an existing employee or volunteer to  
55 submit to a criminal background check.

56 (3) The chief administrative officer of a private school may require, and the chief

57 administrative officer of a private school that enrolls scholarship students under Chapter 1a,  
58 Part 7, Carson Smith Scholarships for Students with Special Needs Act, shall require:

59 (a) an applicant to submit to a criminal background check as a condition for  
60 employment or appointment; and

61 (b) where reasonable cause exists, an existing employee or volunteer to submit to a  
62 criminal background check.

63 (4) ~~[An]~~ A school district, charter school, or private school shall notify an applicant,  
64 volunteer, or employee [shall receive written notice], in writing, that a criminal background  
65 check has been requested.

66 (5) (a) (i) Fingerprints of the applicant, volunteer, or employee shall be taken, and the  
67 ~~[Criminal Investigations and Technical Services Division of the Department of Public Safety,~~  
68 ~~established in Section 53-10-103;]~~ division shall release the applicant's, volunteer's, or  
69 employee's full criminal history record to the administrator requesting the information.

70 (ii) The division shall maintain a separate file of fingerprints submitted under  
71 Subsection (5)(a)(i) and notify the administrator when a new entry is made against an employee  
72 or volunteer whose fingerprints are held in the file regarding:

73 (A) any matters involving an alleged sexual offense;

74 (B) any matters involving an alleged drug-related offense;

75 (C) any matters involving an alleged alcohol-related offense; ~~[or]~~

76 (D) any matters involving an alleged offense against the person under Title 76, Chapter  
77 5, Offenses Against the Person~~[-];~~ or

78 (E) any matters involving an alleged offense against property under Title 76, Chapter 6,  
79 Offenses Against Property.

80 (iii) The ~~[cost of maintaining the separate file shall be paid by the]~~ school district,  
81 charter school, or private school ~~[from fees charged to those submitting fingerprints]~~ shall pay  
82 the cost of maintaining the separate file.

83 (b) Information received by the division from entities other than agencies or political  
84 subdivisions of the state may not be released to a private school unless the release is  
85 permissible under applicable laws or regulations of the entity providing the information.

86 (6) The superintendent, local school board, or their counterparts at a charter school or  
87 private school shall consider only those convictions, pleas in abeyance, or arrests which are

88 job-related for the employee, applicant, or volunteer.

89 (7) (a) A school district, charter school, or private school may require an applicant to  
90 pay the costs of a background check as a condition for consideration for employment or  
91 appointment, if the applicant:

92 (i) has passed an initial review; and

93 (ii) is one of a pool of no more than five candidates for a position.

94 (b) A school district or charter school may require an employee to pay the cost of a  
95 periodic criminal background check required pursuant to rules of the State Board of Education  
96 or policies of the local school board or charter school governing board.

97 (8) The [~~Criminal Investigations and Technical Services Division~~] division shall, upon  
98 request, seek additional information from regional or national criminal data files in responding  
99 to inquiries under this section.

100 (9) (a) An applicant, volunteer, or employee shall have an opportunity to respond to  
101 any information received as a result of a criminal background check.

102 (b) [~~A public agency~~] The division, a school district, charter school, or private school  
103 shall resolve any request for review by an applicant, volunteer, or employee through  
104 administrative procedures established by the [~~agency~~] division, a school district, charter school,  
105 or private school.

106 (10) (a) If [~~a person~~] an individual is denied employment or is dismissed from  
107 employment because of information obtained through a criminal background check, the  
108 [~~person~~] individual shall receive written notice of the reasons for denial or dismissal and have  
109 an opportunity to respond to the reasons.

110 (b) A school district or charter school shall resolve any request for a review of a denial  
111 of<sub>2</sub> or dismissal from<sub>2</sub> employment through administrative procedures established by the school  
112 district or charter school.

113 (11) Information obtained under this part is confidential and may only be disclosed as  
114 provided in this section.

115 (12) (a) A school district, charter school, or private school that enrolls scholarship  
116 students under Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs  
117 Act, may contract with a staffing service to provide a contract employee if:

118 (i) the school district, charter school, or private school requests the [~~Criminal~~

119 ~~Investigations and Technical Services Division of the Department of Public Safety]~~ division to  
120 conduct a criminal background check on the contract employee that is placed at the school  
121 district, charter school, or private school;

122 (ii) fingerprints of the contract employee are submitted to the division;

123 (iii) the division releases the contract employee's full criminal history record to the  
124 school district, charter school, or private school requesting the criminal background check; and

125 (iv) the school district, charter school, or private school requesting the criminal  
126 background check determines whether the contract employee is suitable for employment based  
127 on the standard established in Subsection (6).

128 (b) The division shall maintain a separate file of fingerprints submitted under  
129 Subsection (12)(a) and notify the administrator when a new entry is made against a contract  
130 employee whose fingerprints are held in the file regarding a matter listed in Subsection  
131 (5)(a)(ii).

132 (c) A school district, charter school, or private school may require a contract employee  
133 to pay the costs of a criminal background check, including the costs of the division to maintain  
134 the file required under Subsection (12)(b).

135 (d) (i) A contract employee who applies for a license issued by the State Board of  
136 Education shall submit to a criminal background check as provided in Section 53A-6-401.

137 (ii) A contract employee who works at a public school and does not hold a license  
138 issued by the State Board of Education shall submit to a criminal background check every six  
139 years, or within a shorter period, if required by rules of the State Board of Education or policies  
140 of a local school board or charter school governing board.

141 Section 2. Section 53A-6-401 is amended to read:

142 **53A-6-401. Background checks.**

143 (1) (a) A license applicant shall submit to a background check as a condition for  
144 licensing.

145 (b) As used in this section, licensing includes reinstatement of a lapsed, suspended, or  
146 revoked license.

147 (2) Where reasonable cause exists, the State Board of Education may require an  
148 educator to submit to a criminal background check.

149 (3) (a) The office shall establish a procedure for obtaining and evaluating relevant

150 information concerning license applicants, including fingerprinting the applicant and  
151 submitting the prints to the Criminal Investigations and Technical Services Division of the  
152 Department of Public Safety for checking against applicable state, regional, and national  
153 criminal records files.

154 (b) The Criminal Investigations and Technical Services Division shall release to the  
155 office all information received in response to the office's request.

156 (c) The Criminal Investigations and Technical Services Division shall maintain a  
157 separate file of fingerprints submitted under Subsection (3)(a) and notify the office when a new  
158 entry is made against a person whose fingerprints are held in the file regarding any matters  
159 involving an alleged:

160 (i) sexual offense;

161 (ii) drug-related offense;

162 (iii) alcohol-related offense; [~~or~~]

163 (iv) offense against the person under Title 76, Chapter 5, Offenses Against the  
164 Person[~~;~~]; or

165 (v) offense against property under Title 76, Chapter 6, Offenses Against Property.

166 (d) The cost of maintaining the separate file shall be paid by the office from fees  
167 charged to those submitting fingerprints.

168 (4) [~~An~~] A license applicant or educator shall have an opportunity to respond to any  
169 information received by the office as a result of the background check.

170 (5) In preparing recommendations concerning licensing for submission to the board,  
171 the office shall consider only the following matters obtained through fingerprint checks to the  
172 extent that they are relevant to the license sought by the license applicant or held by the  
173 educator:

174 (a) convictions, including pleas in abeyance;

175 (b) any matters involving an alleged sexual offense;

176 (c) any matters involving an alleged felony or class A misdemeanor drug offense;

177 (d) any matters involving an alleged offense against the person under Title 76, Chapter  
178 5, Offenses Against the Person;

179 (e) any matters involving a felony;

180 (f) any matters involving a class A misdemeanor property offense alleged to have

181 occurred within the previous three years; and

182 (g) any matters involving any other type of criminal offense, if more than one  
183 occurrence of the same type of offense is alleged to have taken place [~~within the previous eight~~  
184 ~~years~~].

185 (6) If a recommendation is made for denial, suspension, or revocation of licensure  
186 because of information obtained through a background check, the person shall receive written  
187 notice of the reasons for the recommendation and have an opportunity to respond in accordance  
188 with procedures set forth under board rules.

189 (7) Information obtained under this section is confidential and may only be disclosed as  
190 provided in this part.

191 (8) The license applicant shall pay the costs of conducting the background check  
192 required pursuant to Subsection (1).

193 (9) This section applies to matters occurring both before and after the effective date of  
194 this section.