

1 **EDUCATION BACKGROUND CHECK AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen G. Handy**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions regarding criminal background checks.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ clarifies and amends background check provisions for licensed educators and
14 employees or volunteers who work at local education agencies and certain private
15 schools;
- 16 ▶ amends the Public Safety Code to allow certain qualifying entities to request that
17 the Bureau of Criminal Identification within the Department of Public Safety
18 (bureau) register fingerprints taken for the purpose of conducting a criminal
19 background check with certain systems;
- 20 ▶ amends background check provisions for charter school governing board members;
- 21 ▶ requires an entity that is authorized to request a background check under the
22 provisions of this bill (authorized entity) to register fingerprints of certain
23 individuals with certain systems for ongoing monitoring;
- 24 ▶ requires the bureau to notify an authorized entity when a new entry is made against
25 an individual whose fingerprints are registered with certain systems regarding any
26 alleged offense or a conviction, including a plea in abeyance;
- 27 ▶ removes the requirement that a local education agency or qualifying private school



- 28 require certain individuals to periodically submit to a criminal background check;
- 29 ▶ provides that authorized entities may only consider certain offenses when making
- 30 employment, appointment, or licensing decisions;
- 31 ▶ requires certain individuals to self-report criminal history information to authorized
- 32 entities in accordance with rules established by the State Board of Education;
- 33 ▶ requires the State Board of Education and the bureau to collaborate to provide
- 34 training to authorized entities;
- 35 ▶ requires the State Board of Education to update certain rules;
- 36 ▶ requires a local school board or charter school governing board to update certain
- 37 policies;
- 38 ▶ requires the Legislative Auditor General to issue a report; and
- 39 ▶ makes technical and conforming changes.

40 **Money Appropriated in this Bill:**

41 None

42 **Other Special Clauses:**

43 This bill provides a special effective date.

44 **Utah Code Sections Affected:**

45 AMENDS:

- 46 **53-10-108**, as last amended by Laws of Utah 2014, Chapters 79 and 377
- 47 **53A-1a-504**, as repealed and reenacted by Laws of Utah 2014, Chapter 363
- 48 **53A-1a-512.5**, as repealed and reenacted by Laws of Utah 2010, Chapter 362
- 49 **53A-1a-705**, as last amended by Laws of Utah 2009, Chapter 197
- 50 **53A-6-104.1**, as enacted by Laws of Utah 2008, Chapter 145
- 51 **53A-6-104.5**, as last amended by Laws of Utah 2004, Chapter 19
- 52 **53A-6-109**, as repealed and reenacted by Laws of Utah 1999, Chapter 108
- 53 **53A-6-306**, as last amended by Laws of Utah 2010, Chapter 283
- 54 **53A-6-403**, as enacted by Laws of Utah 1999, Chapter 108
- 55 **53A-6-404**, as last amended by Laws of Utah 2000, Chapter 103
- 56 **53A-29-104**, as enacted by Laws of Utah 1996, Chapter 73
- 57 **53B-16-404**, as enacted by Laws of Utah 1996, Chapter 73
- 58 **78A-6-1105**, as last amended by Laws of Utah 2009, Chapter 148

59 ENACTS:

60 **53A-15-1501**, Utah Code Annotated 1953

61 **53A-15-1502**, Utah Code Annotated 1953

62 **53A-15-1503**, Utah Code Annotated 1953

63 **53A-15-1504**, Utah Code Annotated 1953

64 **53A-15-1505**, Utah Code Annotated 1953

65 **53A-15-1506**, Utah Code Annotated 1953

66 **53A-15-1507**, Utah Code Annotated 1953

67 **53A-15-1508**, Utah Code Annotated 1953

68 **53A-15-1509**, Utah Code Annotated 1953

69 **53A-15-1510**, Utah Code Annotated 1953

70 REPEALS AND REENACTS:

71 **53A-6-401**, as last amended by Laws of Utah 2010, Chapter 362

72 REPEALS:

73 **53A-3-410**, as last amended by Laws of Utah 2010, Chapter 362



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

76 Section 1. Section **53-10-108** is amended to read:

77 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
78 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
79 **-- Missing children records -- Penalty for misuse of records.**

80 (1) As used in this section:

81 (a) "Rap back system" means a system that enables authorized entities to receive
82 ongoing status notifications of any criminal history reported on individuals whose fingerprints
83 are registered in the system.

84 (b) "WIN Database" means the Western Identification Network Database that consists
85 of eight western states sharing one electronic fingerprint database.

86 ~~(1)~~ (2) Dissemination of information from a criminal history record or warrant of
87 arrest information from division files is limited to:

88 (a) criminal justice agencies for purposes of administration of criminal justice and for
89 employment screening by criminal justice agencies;

90 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
91 executive order, court rule, court order, or local ordinance;

92 (c) agencies or individuals for the purpose of obtaining required clearances connected
93 with foreign travel or obtaining citizenship;

94 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
95 agency to provide services required for the administration of criminal justice; and

96 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
97 purposes for which given, and ensure the security and confidentiality of the data;

98 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
99 accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

100 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose
101 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
102 agency; and

103 (ii) private security agencies through guidelines established by the commissioner for
104 employment background checks for their own employees and prospective employees;

105 (g) a qualifying entity for employment background checks for their own employees and
106 persons who have applied for employment with the qualifying entity; and

107 (h) other agencies and individuals as the commissioner authorizes and finds necessary
108 for protection of life and property and for offender identification, apprehension, and
109 prosecution pursuant to an agreement.

110 [~~(2)~~] (3) An agreement under Subsection [(+) (2)(f) or [(+) (2)(h)] shall specifically
111 authorize access to data, limit the use of data to research, evaluative, or statistical purposes,
112 preserve the anonymity of individuals to whom the information relates, and ensure the
113 confidentiality and security of the data.

114 [~~(3)~~] (4) (a) Before requesting information under Subsection [(+) (2)(g)], a qualifying
115 entity must obtain a signed waiver from the person whose information is requested.

116 (b) The waiver must notify the signee:

117 (i) that a criminal history background check will be conducted;

118 (ii) who will see the information; and

119 (iii) how the information will be used.

120 (c) Information received by a qualifying entity under Subsection [(+) (2)(g)] may only

121 be:

122 (i) available to persons involved in the hiring or background investigation of the
123 employee; and

124 (ii) used for the purpose of assisting in making an employment or promotion decision.

125 (d) A person who disseminates or uses information obtained from the division under
126 Subsection ~~[(3)]~~ (2)(g) for purposes other than those specified under Subsection ~~[(3)]~~ (4)(c), in
127 addition to any penalties provided under this section, is subject to civil liability.

128 (e) A qualifying entity that obtains information under Subsection ~~[(1)]~~ (2)(g) shall
129 provide the employee or employment applicant an opportunity to:

130 (i) review the information received as provided under Subsection ~~[(8)]~~ (9); and

131 (ii) respond to any information received.

132 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
133 division may make rules to implement this Subsection ~~[(3)]~~ (4).

134 ~~[(g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.]~~

135 ~~[(ii) The name check fee under Subsection (1)(g) is \$15.]~~

136 ~~[(iii) These fees remain in effect until changed by the division through the process
137 under Section 63J-1-504.]~~

138 ~~[(iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
139 deposited in the General Fund as a dedicated credit by the department to cover the costs
140 incurred in providing the information.]~~

141 ~~[(h) (g) The division or its employees are not liable for defamation, invasion of
142 privacy, negligence, or any other claim in connection with the contents of information
143 disseminated under Subsection [(1)] (2)(g).~~

144 ~~[(4) (5) (a) Any criminal history record information obtained from division files may
145 be used only for the purposes for which it was provided and may not be further disseminated,
146 except under Subsection [(4)] (5)(b), (c), or (d).~~

147 (b) A criminal history provided to an agency pursuant to Subsection ~~[(1)]~~ (2)(e) may be
148 provided by the agency to the person who is the subject of the history, another licensed
149 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
150 adoption.

151 (c) A criminal history of a defendant provided to a criminal justice agency under

152 Subsection ~~[(1)]~~ (2)(a) may also be provided by the prosecutor to a defendant's defense
153 counsel, upon request during the discovery process, for the purpose of establishing a defense in
154 a criminal case.

155 (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public
156 Transit District Act, that is under contract with a state agency to provide services may, for the
157 purposes of complying with Subsection 62A-5-103.5(7), provide a criminal history record to
158 the state agency or the agency's designee.

159 ~~[(5)]~~ (6) The division may not disseminate criminal history record information to
160 qualifying entities under Subsection ~~[(1)]~~ (2)(g) regarding employment background checks if
161 the information is related to charges:

- 162 (a) that have been declined for prosecution;
- 163 (b) that have been dismissed; or
- 164 (c) regarding which a person has been acquitted.

165 ~~[(6)]~~ (7) (a) This section does not preclude the use of the division's central computing
166 facilities for the storage and retrieval of criminal history record information.

167 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
168 unauthorized agencies or individuals.

169 ~~[(7)]~~ (8) Direct access through remote computer terminals to criminal history record
170 information in the division's files is limited to those agencies authorized by the commissioner
171 under procedures designed to prevent unauthorized access to this information.

172 ~~[(8)]~~ (9) (a) The commissioner shall establish procedures to allow an individual right
173 of access to review and receive a copy of the individual's criminal history report.

174 (b) A processing fee for the right of access service, including obtaining a copy of the
175 individual's criminal history report under Subsection ~~[(8)]~~ (9)(a) is \$15. This fee remains in
176 effect until changed by the commissioner through the process under Section 63J-1-504.

177 (c) (i) The commissioner shall establish procedures for an individual to challenge the
178 completeness and accuracy of criminal history record information contained in the division's
179 computerized criminal history files regarding that individual.

180 (ii) These procedures shall include provisions for amending any information found to
181 be inaccurate or incomplete.

182 ~~[(9)]~~ (10) The private security agencies as provided in Subsection ~~[(1)]~~ (2)(f)(ii):

183 (a) shall be charged for access; and

184 (b) shall be registered with the division according to rules made by the division under
185 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

186 ~~[(10)]~~ (11) Before providing information requested under this section, the division
187 shall give priority to criminal justice agencies needs.

188 ~~[(11)]~~ (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally
189 access, use, disclose, or disseminate a record created, maintained, or to which access is granted
190 by the division or any information contained in a record created, maintained, or to which access
191 is granted by the division for a purpose prohibited or not permitted by statute, rule, regulation,
192 or policy of a governmental entity.

193 (b) A person who discovers or becomes aware of any unauthorized use of records
194 created or maintained, or to which access is granted by the division shall inform the
195 commissioner and the director of the Utah Bureau of Criminal Identification of the
196 unauthorized use.

197 (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in
198 Subsection (2)(b) may request that the division register fingerprints taken for the purpose of
199 conducting a criminal background check under this section with:

200 (i) the WIN Database rap back system, or any successor system;

201 (ii) the rap back system maintained by the Federal Bureau of Investigation; or

202 (iii) a system maintained by the division.

203 (b) A qualifying entity or an entity described in Subsection (2)(b) may only make a
204 request under Subsection (13)(a) if the entity:

205 (i) has the authority through state or federal statute or federal executive order;

206 (ii) obtains a signed waiver from the person whose fingerprints are being registered;

207 and

208 (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives
209 notifications for individuals with whom the entity maintains an authorizing relationship.

210 (14) (a) (i) The applicant fingerprint card fee under Subsection (2) is \$20.

211 (ii) The name check fee under Subsection (2) is \$15.

212 (iii) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.

213 (iv) The fees described in this Subsection (14)(a) remain in effect until changed by the

214 bureau through the process under Section [63J-1-504](#).

215 (b) Funds generated under this Subsection (14) shall be deposited into the General
216 Fund as a dedicated credit by the department to cover the costs incurred in providing the
217 information.

218 (c) The bureau may collect fees charged by an outside agency for services required
219 under this section.

220 Section 2. Section **53A-1a-504** is amended to read:

221 **53A-1a-504. Charter school application -- Applicants -- Contents -- Expansion.**

222 (1) (a) An application to establish a charter school may be submitted by:

223 (i) an individual;

224 (ii) a group of individuals; or

225 (iii) a nonprofit legal entity organized under Utah law.

226 (b) An authorized charter school may apply under this chapter for a charter from
227 another charter school authorizer.

228 (2) A charter school application shall include:

229 (a) the purpose and mission of the school;

230 (b) except for a charter school authorized by a local school board, a statement that,
231 after entering into a charter agreement, the charter school will be organized and managed under
232 Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act;

233 (c) a description of the governance structure of the school, including:

234 (i) a list of the governing board members that describes the qualifications of each
235 member; and

236 (ii) an assurance that the applicant shall, within 30 days of authorization, provide the
237 authorizer with the results of a background check for each member;

238 (d) a description of the target population of the school that includes:

239 (i) the projected maximum number of students the school proposes to enroll;

240 (ii) the projected school enrollment for each of the first three years of school operation;

241 and

242 (iii) the ages or grade levels the school proposes to serve;

243 (e) academic goals;

244 (f) qualifications and policies for school employees, including policies that:

- 245 (i) [~~require completion of a~~] comply with the criminal background check [~~for teachers~~]
246 requirements described in Section 53A-1a-512.5;
- 247 (ii) require employee evaluations; and
248 (iii) address employment of relatives within the charter school;
- 249 (g) a description of how the charter school will provide, as required by state and federal
250 law, special education and related services;
- 251 (h) for a public school converting to charter status, arrangements for:
252 (i) students who choose not to continue attending the charter school; and
253 (ii) teachers who choose not to continue teaching at the charter school;
- 254 (i) a statement that describes the charter school's plan for establishing the charter
255 school's facilities, including:
256 (i) whether the charter school intends to lease or purchase the charter school's facilities;
257 and
258 (ii) financing arrangements;
- 259 (j) a market analysis of the community the school plans to serve;
260 (k) a capital facility plan;
261 (l) a business plan;
262 (m) other major issues involving the establishment and operation of the charter school;
263 and
264 (n) the signatures of the governing board members of the charter school.
- 265 (3) A charter school authorizer may require a charter school application to include:
266 (a) the charter school's proposed:
267 (i) curriculum;
268 (ii) instructional program; or
269 (iii) delivery methods;
- 270 (b) a method for assessing whether students are reaching academic goals, including, at
271 a minimum, participation in the Utah Performance Assessment System for Students under
272 Chapter 1, Part 6, Achievement Tests;
273 (c) a proposed calendar;
274 (d) sample policies;
275 (e) a description of opportunities for parental involvement;

276 (f) a description of the school's administrative, supervisory, or other proposed services
277 that may be obtained through service providers; or

278 (g) other information that demonstrates an applicant's ability to establish and operate a
279 charter school.

280 (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
281 State Board of Education shall make rules regarding the expansion of a charter school,
282 including establishing a satellite campus, that provide:

283 (a) requirements for a charter school to apply and qualify for expansion; and

284 (b) procedures and deadlines for the application process.

285 Section 3. Section **53A-1a-512.5** is amended to read:

286 **53A-1a-512.5. Criminal background checks on school personnel.**

287 The following individuals are required to submit to a criminal background check and
288 ongoing monitoring as provided in Section [~~53A-3-410~~] [53A-15-1503](#):

289 (1) an employee of a charter school who does not hold a current Utah educator license
290 issued by the State Board of Education under Title 53A, Chapter 6, Educator Licensing and
291 Professional Practices Act;

292 (2) a volunteer for a charter school who is given significant unsupervised access to a
293 student in connection with the volunteer's assignment; [~~or~~]

294 (3) a contract employee, as defined in Section [~~53A-3-410~~] [53A-15-1502](#), who works
295 at a charter school[-]; and

296 (4) a charter school governing board member.

297 Section 4. Section **53A-1a-705** is amended to read:

298 **53A-1a-705. Eligible private schools.**

299 (1) To be eligible to enroll a scholarship student, a private school shall:

300 (a) have a physical location in Utah where the scholarship students attend classes and
301 have direct contact with the school's teachers;

302 (b) (i) (A) obtain an audit and report from a licensed independent certified public
303 accountant that conforms with the following requirements:

304 (I) the audit shall be performed in accordance with generally accepted auditing
305 standards;

306 (II) the financial statements shall be presented in accordance with generally accepted

307 accounting principles; and

308 (III) the audited financial statements shall be as of a period within the last 12 months;

309 or

310 (B) contract with a licensed independent certified public accountant to perform an

311 agreed upon procedure as follows:

312 (I) the agreed upon procedure shall be to determine that the private school has adequate
313 working capital to maintain operations for the first full year; and

314 (II) working capital shall be calculated by subtracting current liabilities from current
315 assets; and

316 (ii) submit the audit report or report of the agreed upon procedure to the board when
317 the private school applies to accept scholarship students;

318 (c) comply with the antidiscrimination provisions of 42 U.S.C. Sec. 2000d;

319 (d) meet state and local health and safety laws and codes;

320 (e) disclose to the parent of each prospective student, before the student is enrolled, the
321 special education services that will be provided to the student, including the cost of those
322 services;

323 (f) (i) administer an annual assessment of each scholarship student's academic
324 progress;

325 (ii) report the results of the assessment to the student's parent; and

326 (iii) make the results available to the assessment team evaluating the student pursuant
327 to Subsection [53A-1a-704\(6\)](#);

328 (g) employ or contract with teachers who:

329 (i) hold baccalaureate or higher degrees;

330 (ii) have at least three years of teaching experience in public or private schools; or

331 (iii) have the necessary special skills, knowledge, or expertise that qualifies them to
332 provide instruction:

333 (A) in the subjects taught; and

334 (B) to the special needs students taught; [~~and~~]

335 (h) require the following individuals to submit to a criminal background check and

336 ongoing monitoring, in accordance with Section [53A-15-1503](#), as a condition for employment

337 or appointment:

338 (i) an employee who does not hold a current Utah educator license issued by the board
339 under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act;

340 (ii) a contract employee; and

341 (iii) a volunteer who is given significant unsupervised access to a student in connection
342 with the volunteer's assignment; and

343 [~~h~~] (i) provide to parents the relevant credentials of the teachers who will be teaching
344 their students.

345 (2) A private school is not eligible to enroll scholarship students if:

346 (a) the audit report submitted under Subsection (1)(b) contains a going concern
347 explanatory paragraph; or

348 (b) the report of the agreed upon procedure submitted under Subsection (1)(b) shows
349 that the private school does not have adequate working capital to maintain operations for the
350 first full year, as determined under Subsection (1)(b).

351 (3) A home school is not eligible to enroll scholarship students.

352 (4) Residential treatment facilities licensed by the state are not eligible to enroll
353 scholarship students.

354 (5) A private school intending to enroll scholarship students shall submit an application
355 to the board by May 1 of the school year preceding the school year in which it intends to enroll
356 scholarship students.

357 (6) The board shall:

358 (a) approve a private school's application to enroll scholarship students, if the private
359 school meets the eligibility requirements of this section; and

360 (b) make available to the public a list of the eligible private schools.

361 (7) An approved eligible private school that changes ownership shall submit a new
362 application to the board and demonstrate that it continues to meet the eligibility requirements
363 of this section.

364 Section 5. Section **53A-6-104.1** is amended to read:

365 **53A-6-104.1. Reinstatement of a license.**

366 (1) An educator who previously held a license and whose license has expired may have
367 the license reinstated by:

368 (a) filing an application with the board on the form prescribed by the board;

369 (b) paying the fee required by Section [53A-6-105](#); and

370 (c) submitting to a criminal background check as required by Section [~~53A-6-401~~]

371 [53A-15-1504](#).

372 (2) Upon successful completion of the criminal background check and verification that
373 the applicant's previous license had not been revoked, suspended, or surrendered, the board
374 shall reinstate the license.

375 (3) An educator whose license is reinstated may not be required to obtain professional
376 development not required of other educators with the same number of years of experience,
377 except as provided in Subsection (4).

378 (4) The principal of the school at which an educator whose license is reinstated is
379 employed shall provide information and training, based on the educator's experience and
380 education, that will assist the educator in performing the educator's assigned position.

381 (5) The procedures for reinstating a license as provided in this section do not apply to
382 an educator's license that expires while the educator is employed in a position requiring the
383 license.

384 Section 6. Section **53A-6-104.5** is amended to read:

385 **53A-6-104.5. Licensing by competency.**

386 (1) A competency-based license to teach may be issued based on the demonstrated
387 competence of a teacher as provided in this section.

388 (2) A local school board or charter school may request, and the State Board of
389 Education shall grant, upon receipt of documentation from the local school board or charter
390 school verifying the person's qualifications as specified in this section, a competency-based
391 license to a person who meets the qualifications specified in this section and submits to a
392 criminal background check as required in Section [~~53A-6-401~~] [53A-15-1504](#).

393 (3) A local school board or charter school may request a competency-based license if
394 the candidate meets the following qualifications:

395 (a) a license candidate who teaches one or more core academic subjects in an
396 elementary school shall:

397 (i) hold at least a bachelor's degree; and

398 (ii) have demonstrated, by passing a rigorous state test, subject knowledge and teaching
399 skills in reading, writing, mathematics, and other areas of the basic elementary school

400 curriculum;

401 (b) a license candidate who teaches one or more core academic subjects in a middle or
402 secondary school shall:

403 (i) hold at least a bachelor's degree; and

404 (ii) have demonstrated a high level of competency in each of the academic subjects in
405 which the teacher teaches by:

406 (A) passing a rigorous state academic subject test in each of the academic subjects in
407 which the teacher teaches; or

408 (B) successful completion, in each of the academic subjects in which the teacher
409 teaches, of an academic major, a graduate degree, course work equivalent to an undergraduate
410 academic major, or advanced certification or credentialing; or

411 (c) a license candidate who teaches subjects other than a core academic subject in an
412 elementary, middle, or high school shall:

413 (i) hold a bachelor's degree, associate's degree, or skill certification; and

414 (ii) have skills, talents, or abilities, as evaluated by the employing entity, that make the
415 person suited for the teaching position.

416 (4) A school district or charter school:

417 (a) shall monitor and assess the performance of each teacher holding a
418 competency-based license; and

419 (b) may recommend that the competency-based license holder's training and
420 assessment be reviewed by the Utah State Office of Education for a level 1 license.

421 Section 7. Section **53A-6-109** is amended to read:

422 **53A-6-109. Substitute teachers.**

423 (1) A substitute teacher need not hold a license to teach, but school districts are
424 encouraged to hire licensed personnel as substitutes when available.

425 (2) A person must submit to a background check under Section [~~53A-3-410~~]
426 [53A-15-1503](#) prior to employment as a substitute teacher.

427 (3) A teacher's position in the classroom may not be filled by an unlicensed substitute
428 [~~teachers~~] teacher for more than a total of 20 days during any school year unless licensed
429 personnel are not available.

430 (4) A person who is ineligible to hold a license for any reason other than professional

431 preparation may not serve as a substitute teacher.

432 Section 8. Section **53A-6-306** is amended to read:

433 **53A-6-306. Purpose, powers, and duties of UPPAC.**

434 (1) UPPAC shall:

435 (a) adopt rules consistent with applicable law and board rules to carry out its
436 responsibilities under this chapter;

437 (b) make recommendations to the board and professional organizations of educators:

438 (i) concerning standards of professional performance, competence, and ethical conduct
439 for persons holding licenses issued by the board; and

440 (ii) for the improvement of the education profession;

441 (c) establish procedures for receiving and acting upon reports or allegations regarding
442 immoral, unprofessional, or incompetent conduct, unfitness for duty, or other violations of
443 standards of ethical conduct, performance, or professional competence;

444 (d) investigate any allegation of sexual abuse of a student or a minor by an educator;
445 and

446 (e) establish the manner in which hearings are conducted and reported, and
447 recommendations are submitted to the board for its action.

448 (2) (a) UPPAC may conduct or authorize investigations relating to any matter before
449 UPPAC.

450 (b) Those investigations shall be independent of and separate from any criminal
451 investigation.

452 (c) In conducting an investigation UPPAC or an investigator operating under UPPAC
453 authorization may:

454 (i) administer oaths and issue subpoenas which may be enforced through the state
455 district courts;

456 (ii) receive any evidence related to an alleged offense, including sealed or expunged
457 records released to the board under Section [77-40-109](#); and

458 (iii) where reasonable cause exists, initiate a criminal background check on a license
459 holder.

460 (d) (i) A license holder shall receive written notice if a fingerprint check is required as
461 a part of the background check.

462 (ii) Fingerprints of the individual shall be taken, and the Law Enforcement and
463 Technical Services Division of the Department of Public Safety shall release the individual's
464 full record, as shown on state, regional, and national records, to UPPAC.

465 (iii) UPPAC shall pay the cost of the background check except as provided under
466 Section [~~53A-6-401~~] [53A-15-1504](#), and the money collected shall be credited to the Law
467 Enforcement and Technical Services Division to offset its expenses.

468 (3) UPPAC is entitled to a rebuttable evidentiary presumption that a person has
469 committed a sexual offense against a minor child if the person has:

470 (a) after having had a reasonable opportunity to contest the allegation, been found
471 pursuant to a criminal, civil, or administrative action to have committed a sexual offense
472 against a minor child;

473 (b) pled guilty to a reduced charge in the face of a charge of having committed a sexual
474 offense against a minor child, entered a plea of no contest, entered into a plea in abeyance
475 resulting in subsequent dismissal of such a charge, or failed to defend himself against such a
476 charge when given reasonable opportunity to do so; or

477 (c) voluntarily surrendered a license or certificate or allowed a license or certificate to
478 lapse in the face of a charge of having committed a sexual offense against a minor child.

479 (4) In resolving a complaint UPPAC may:

480 (a) dismiss the complaint;

481 (b) issue a warning or reprimand;

482 (c) issue an order of probation requiring an educator to comply with specific conditions
483 in order to retain a license;

484 (d) enter into a written agreement requiring an educator to comply with certain
485 conditions;

486 (e) recommend board action such as revocation or suspension of a license or restriction
487 or prohibition of licensure; or

488 (f) take other appropriate action.

489 (5) UPPAC may not:

490 (a) participate as a party in any dispute relating to negotiations between a school
491 district or charter school and its educators;

492 (b) take action against an educator without giving the individual an opportunity for a

493 fair hearing to contest the allegations upon which the action would be based; or

494 (c) take action against an educator unless it finds that the action or the failure of the
495 educator to act impairs the educator's ability to perform the functions of the educator's position.

496 Section 9. Section **53A-6-401** is repealed and reenacted to read:

497 **53A-6-401. Background checks.**

498 In accordance with Section **53A-15-1504**, the State Board of Education shall require a
499 license applicant to submit to a criminal background check and ongoing monitoring as a
500 condition for licensing.

501 Section 10. Section **53A-6-403** is amended to read:

502 **53A-6-403. Office tie-in with the Criminal Investigations and Technical Services**
503 **Division.**

504 (1) The office shall:

505 (a) be an online terminal agency with the Department of Public Safety's Criminal
506 Investigations and Technical Services Division under Section **53-10-108**; and

507 (b) provide relevant information concerning current or prospective employees or
508 volunteers upon request to other school officials as provided in Section **53A-6-402**.

509 (2) The cost of the online service shall be borne by the entity making the inquiry[;
510 ~~using funds available to the entity, which may include funds authorized under Section~~
511 ~~**53A-6-401**].~~

512 Section 11. Section **53A-6-404** is amended to read:

513 **53A-6-404. Certification in other jurisdictions -- Impact on licensing in Utah.**

514 (1) An applicant for a license, renewal of a license, or reinstatement of a license shall
515 provide the administrator of teacher licensing with an affidavit, stating under oath the current
516 status of any certificate, license, or other authorization required for a professional position in
517 education, which the applicant holds or has held in any other jurisdiction.

518 (2) An applicant for a license who has held a teacher's license in any other jurisdiction
519 or who graduated from an institution of higher education in another state shall also provide the
520 administrator of teacher licensing with:

521 (a) a complete listing of the higher education institutions attended by the applicant,
522 whether the applicant's enrollment or eligibility for completion of a program was terminated by
523 the institution, and, if so, the reasons for termination;

524 (b) a complete list of prior school employers; and

525 (c) a release on a form provided by the administrator permitting the office to obtain
526 records from other jurisdictions and from institutions of higher education attended by the
527 applicant, including expunged or otherwise protected records, relating to any offense described
528 substantially in the same language as in [~~Subsection 53A-6-401(5)~~] Section 53A-15-1506.

529 (3) If the applicant's certificate, license, or authorization as an educator in any other
530 jurisdiction is under investigation, has expired or been surrendered, suspended or revoked, or is
531 currently not valid for any other reason, the office may not grant the requested license, renewal,
532 or reinstatement until it has received confirmation from the administrator of professional
533 certification in that jurisdiction that the applicant would be eligible for certification or licensure
534 in that jurisdiction.

535 (4) The office may not withhold a license for the sole reason that the applicant would
536 be ineligible for certification, licensure, or authorization in the jurisdiction referred to in
537 Subsection (3) because of failure to meet current requirements in that jurisdiction relating to
538 education, time in service, or residence.

539 Section 12. Section **53A-15-1501** is enacted to read:

540 **Part 15. Background Checks**

541 **53A-15-1501. Title.**

542 This part is known as "Background Checks."

543 Section 13. Section **53A-15-1502** is enacted to read:

544 **53A-15-1502. Definitions.**

545 As used in this part:

546 (1) "Authorized entity" means an LEA, qualifying private school, or the State Board of
547 Education that is authorized to request a background check and ongoing monitoring under this
548 part.

549 (2) "Bureau" means the Bureau of Criminal Identification within the Department of
550 Public Safety, created in Section [53-10-201](#).

551 (3) "Contract employee" means an employee of a staffing service who works at a
552 public or private school under a contract between the staffing service and the public or private
553 school.

554 (4) "LEA" means a school district, charter school, or the Utah Schools for the Deaf and

555 the Blind.

556 (5) (a) "License applicant" means an applicant for a license issued by the State Board
557 of Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

558 (b) "License applicant" includes an applicant for reinstatement of an expired, lapsed,
559 suspended, or revoked license.

560 (6) "Non-licensed employee" means an employee of an LEA or qualifying private
561 school that does not hold a current Utah educator license issued by the State Board of
562 Education under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

563 (7) "Personal identifying information" means:

564 (a) current name, former names, nicknames, and aliases;

565 (b) date of birth;

566 (c) address;

567 (d) telephone number;

568 (e) driver license number or other government-issued identification number;

569 (f) Social Security number; and

570 (g) fingerprints.

571 (8) "Qualifying private school" means a private school that enrolls students under Title
572 53A, Chapter 1a, Part 7, Carson Smith Scholarships for Students with Special Needs Act.

573 (9) "Rap back system" means a system that enables authorized entities to receive
574 ongoing status notifications of any criminal history reported on individuals whose fingerprints
575 are registered in the system.

576 (10) "WIN Database" means the Western Identification Network Database that consists
577 of eight western states sharing one electronic fingerprint database.

578 Section 14. Section **53A-15-1503** is enacted to read:

579 **53A-15-1503. Background checks for non-licensed employees, contract employees,**
580 **volunteers, and charter school governing board members.**

581 (1) An LEA or qualifying private school shall:

582 (a) require the following individuals to submit to a criminal background check and
583 ongoing monitoring as a condition for employment or appointment:

584 (i) a non-licensed employee;

585 (ii) a contract employee;

586 (iii) a volunteer who will be given significant unsupervised access to a student in
587 connection with the volunteer's assignment; and

588 (iv) a charter school governing board member;

589 (b) collect the following from an individual required to submit to a background check
590 under Subsection (1)(a):

591 (i) personal identifying information;

592 (ii) subject to Subsection (2), a fee described in Subsection 53-10-108(14); and

593 (iii) consent, on a form specified by the LEA or qualifying private school, for:

594 (A) an initial background check upon submission of the application; and

595 (B) retention of personal identifying information for ongoing monitoring through
596 registration with the systems described in Section 53A-15-1505;

597 (c) submit the individual's personal identifying information, including fingerprints, to
598 the bureau for:

599 (i) an initial background check; and

600 (ii) ongoing monitoring through registration with the systems described in Section
601 53A-15-1505 if the results of the initial background check do not contain disqualifying
602 criminal history information as determined by the LEA or qualifying private school in
603 accordance with Section 53A-15-1506; and

604 (d) identify the appropriate privacy risk mitigation strategy that will be used to ensure
605 that the LEA or qualifying private school only receives notifications for individuals with whom
606 the LEA or qualifying private school maintains an authorizing relationship.

607 (2) An LEA or qualifying private school may not require an individual to pay the fee
608 described in Subsection (1)(b)(ii) unless the individual:

609 (a) has passed an initial review; and

610 (b) is one of a pool of no more than five candidates for the position.

611 (3) By September 1, 2018, an LEA or qualifying private school shall:

612 (a) collect the information described in Subsection (1)(b) from individuals:

613 (i) who were employed or appointed prior to July 1, 2015; and

614 (ii) with whom the LEA or qualifying private school currently maintains an authorizing
615 relationship; and

616 (b) submit the information to the bureau for ongoing monitoring through registration

617 with the systems described in Section [53A-15-1505](#).

618 (4) An LEA or qualifying private school that receives criminal history information
619 about a licensed educator under Subsection [53A-15-1504](#)(5) shall assess the employment status
620 of the licensed educator as provided in Section [53A-15-1506](#).

621 (5) An LEA or qualifying private school may establish a policy to exempt an individual
622 described in Subsections (1)(a)(i) through (iv) from ongoing monitoring under Subsection (1) if
623 the individual is being temporarily employed or appointed.

624 Section 15. Section **53A-15-1504** is enacted to read:

625 **53A-15-1504. Background checks for licensed educators.**

626 The State Board of Education shall:

627 (1) require a license applicant to submit to a criminal background check and ongoing
628 monitoring as a condition for licensing;

629 (2) collect the following from an applicant:

630 (a) personal identifying information;

631 (b) a fee described in Subsection [53-10-108](#)(14); and

632 (c) consent, on a form specified by the State Board of Education, for:

633 (i) an initial background check upon submission of the application;

634 (ii) retention of personal identifying information for ongoing monitoring through

635 registration with the systems described in Section [53A-15-1505](#); and

636 (iii) disclosure of any criminal history information to the individual's employing LEA

637 or qualifying private school;

638 (3) submit an applicant's personal identifying information, including fingerprints, to the
639 bureau for:

640 (a) an initial background check; and

641 (b) ongoing monitoring through registration with the systems described in Section

642 [53A-15-1505](#) if the results of the initial background check do not contain disqualifying

643 criminal history information as determined by the State Board of Education in accordance with

644 Section [53A-15-1506](#);

645 (4) identify the appropriate privacy risk mitigation strategy that will be used to ensure

646 that the board only receives notifications for individuals with whom the State Board of

647 Education maintains an authorizing relationship;

648 (5) notify the employing LEA or qualifying private school upon receipt of any criminal
649 history information reported on a licensed educator employed by the LEA or qualifying private
650 school; and

651 (6) (a) collect the information described in Subsection (2) from individuals who were
652 licensed prior to July 1, 2015, by the individual's next license renewal date; and

653 (b) submit the information to the bureau for ongoing monitoring through registration
654 with the systems described in Section [53A-15-1505](#).

655 Section 16. Section **53A-15-1505** is enacted to read:

656 **53A-15-1505. Bureau responsibilities.**

657 The bureau shall:

658 (1) upon request from an authorized entity, register the fingerprints submitted by the
659 authorized entity as part of a background check with:

660 (a) the WIN Database rap back system, or any successor system; and

661 (b) the rap back system maintained by the Federal Bureau of Investigation;

662 (2) notify an authorized entity when a new entry is made against an individual whose
663 fingerprints are registered with the rap back systems described in Subsection (1) regarding:

664 (a) an alleged offense; or

665 (b) a conviction, including a plea in abeyance;

666 (3) assist authorized entities to identify the appropriate privacy risk mitigation strategy
667 that is to be used to ensure that the authorized entity only receives notifications for individuals
668 with whom the authorized entity maintains an authorizing relationship; and

669 (4) collaborate with the State Board of Education to provide training to authorized
670 entities on the notification procedures and privacy risk mitigation strategies described in this
671 part.

672 Section 17. Section **53A-15-1506** is enacted to read:

673 **53A-15-1506. Due process for accused individuals--Review of criminal history**
674 **information.**

675 (1) (a) In accordance with Section [53-10-108](#), an authorized entity shall provide an
676 individual an opportunity to review and respond to any criminal history information received
677 under this part.

678 (b) If an authorized entity decides to disqualify an individual as a result of criminal

679 history information received under this part, an individual may request a review of:

680 (i) information received; and

681 (ii) the reasons for the disqualification.

682 (c) An authorized entity shall provide an individual described in Subsection (1)(b) with

683 written notice of:

684 (i) the reasons for the disqualification; and

685 (ii) the individual's right to request a review of the disqualification.

686 (2) (a) An LEA or qualifying private school shall make decisions regarding criminal

687 history information for the individuals subject to the background check requirements under

688 Section 53A-15-1503 in accordance with:

689 (i) Subsection (3);

690 (ii) administrative procedures established by the LEA or qualifying private school; and

691 (iii) rules established by the State Board of Education.

692 (b) The State Board of Education shall make decisions regarding criminal history

693 information for licensed educators in accordance with:

694 (i) Subsection (3);

695 (ii) Title 53A, Chapter 6, Educator Licensing and Professional Practices Act; and

696 (iii) rules established by the State Board of Education.

697 (3) When making decisions regarding initial employment, initial licensing, or initial

698 appointment for the individuals subject to background checks under this part, an authorized

699 entity may only consider the following matters to the extent that they are job-related for the

700 individual:

701 (a) any convictions, including pleas in abeyance;

702 (b) any matters involving a felony; and

703 (c) any matters involving an alleged:

704 (i) sexual offense;

705 (ii) class A misdemeanor drug offense;

706 (iii) offense against the person under Title 76, Chapter 5, Offenses Against the Person;

707 (iv) class A misdemeanor property offense that is alleged to have occurred within the

708 previous three years; and

709 (v) any other type of criminal offense, if more than one occurrence of the same type of

710 offense is alleged to have occurred within the previous eight years.

711 Section 18. Section **53A-15-1507** is enacted to read:

712 **53A-15-1507. Self-reporting requirement.**

713 (1) Individuals subject to the background check requirements under this part shall
714 self-report conviction, arrest, or offense information in accordance with rules established by the
715 State Board of Education.

716 (2) An LEA shall report conviction, arrest, or offense information received from
717 licensed educators under Subsection (1) to the State Board of Education in accordance with
718 rules established by the State Board of Education.

719 Section 19. Section **53A-15-1508** is enacted to read:

720 **53A-15-1508. Update criminal background check rules and policies.**

721 On or before September 1, 2015:

722 (1) the board shall update the board's criminal background check rules consistent with
723 this part; and

724 (2) an LEA shall update the LEA's criminal background check policies consistent with
725 this part.

726 Section 20. Section **53A-15-1509** is enacted to read:

727 **53A-15-1509. Training provided to authorized entities.**

728 The board shall collaborate with the bureau to provide training to authorized entities on
729 the provisions of this part.

730 Section 21. Section **53A-15-1510** is enacted to read:

731 **53A-15-1510. Legislative audit.**

732 After the conclusion of the 2018-2019 school year, ~~H~~→ **subject to the prioritization of the**
732a **Legislative Audit Subcommittee, ←H** the Legislative Auditor General
733 shall conduct a review and issue a report on the extent to which the criminal background check
734 procedures and ongoing monitoring described in this part adequately detect and identify the
735 criminal histories of individuals who are employed by or volunteering in public schools.

736 Section 22. Section **53A-29-104** is amended to read:

737 **53A-29-104. Internship programs -- Criminal background checks.**

738 Officers and employees of a cooperating employer who will be given significant
739 unsupervised access to a student in connection with the student's activities as an intern shall be
740 considered to be a volunteer [~~school workers solely~~] for purposes of criminal background

741 checks under Section [~~53A-3-410~~] [53A-15-1503](#).

742 Section 23. Section **53B-16-404** is amended to read:

743 **53B-16-404. Internship programs -- Criminal background checks.**

744 An institution of higher education shall require an officer or employee of the institution
745 or a cooperating employer, who will be given significant unsupervised access to a minor
746 student in connection with the student's activities as an intern, to submit to a criminal
747 background check on the same basis as a volunteer [~~school district workers~~] under Section
748 [~~53A-3-410~~] [53A-15-1503](#).

749 Section 24. Section **78A-6-1105** is amended to read:

750 **78A-6-1105. Expungement of juvenile court record -- Petition -- Procedure.**

751 (1) (a) A person who has been adjudicated under this chapter may petition the court for
752 the expungement of the person's juvenile court record and any related records in the custody of
753 a state agency, if:

754 (i) the person has reached 18 years of age; and

755 (ii) one year has elapsed from the date of termination of the continuing jurisdiction of
756 the juvenile court or, if the person was committed to a secure youth corrections facility, one
757 year from the date of the person's unconditional release from the custody of the Division of
758 Juvenile Justice Services.

759 (b) The court may waive the requirements in Subsection (1)(a), if the court finds, and
760 states on the record, the reason why the waiver is appropriate.

761 (c) The petitioner shall include in the petition any agencies known or alleged to have
762 any documents related to the offense for which expungement is being sought.

763 (d) The petitioner shall include with the petition the original criminal history report
764 obtained from the Bureau of Criminal Identification in accordance with the provisions of
765 [~~Subsection~~] [Section 53-10-108](#)[(8)].

766 (e) The petitioner shall send a copy of the petition to the county attorney or, if within a
767 prosecution district, the district attorney.

768 (f) (i) Upon the filing of a petition, the court shall:

769 (A) set a date for a hearing;

770 (B) notify the county attorney or district attorney, and the agency with custody of the
771 records at least 30 days prior to the hearing of the pendency of the petition; and

772 (C) notify the county attorney or district attorney, and the agency with records the
773 petitioner is asking the court to expunge of the date of the hearing.

774 (ii) The court shall provide a victim with the opportunity to request notice of a petition
775 for expungement. A victim shall receive notice of a petition for expungement at least 30 days
776 prior to the hearing if, prior to the entry of an expungement order, the victim or, in the case of a
777 child or a person who is incapacitated or deceased, the victim's next of kin or authorized
778 representative, submits a written and signed request for notice to the court in the judicial
779 district in which the crime occurred or judgment was entered. The notice shall include a copy
780 of the petition and statutes and rules applicable to the petition.

781 (2) (a) At the hearing, the county attorney or district attorney, a victim, and any other
782 person who may have relevant information about the petitioner may testify.

783 (b) In deciding whether to grant a petition for expungement, the court shall consider
784 whether the rehabilitation of the petitioner has been attained to the satisfaction of the court,
785 taking into consideration the petitioner's response to programs and treatment, the petitioner's
786 behavior subsequent to adjudication, and the nature and seriousness of the conduct.

787 (c) The court may order sealed all petitioner's records under the control of the juvenile
788 court and any of petitioner's records under the control of any other agency or official pertaining
789 to the petitioner's adjudicated juvenile court cases, including relevant related records contained
790 in the Management Information System created by Section 62A-4a-1003 and the Licensing
791 Information System created by Section 62A-4a-1005, if the court finds that:

792 (i) the petitioner has not, since the termination of the court's jurisdiction or [his] the
793 petitioner's unconditional release from the Division of Juvenile Justice Services, been
794 convicted of a:

795 (A) felony; or

796 (B) misdemeanor involving moral turpitude;

797 (ii) no proceeding involving a felony or misdemeanor is pending or being instituted
798 against the petitioner; and

799 (iii) a judgment for restitution entered by the court on the conviction for which the
800 expungement is sought has been satisfied.

801 (3) The petitioner shall be responsible for service of the order of expungement to all
802 affected state, county, and local entities, agencies, and officials. To avoid destruction or

803 sealing of the records in whole or in part, the agency or entity receiving the expungement order
804 shall only expunge all references to the petitioner's name in the records pertaining to the
805 petitioner's adjudicated juvenile court cases.

806 (4) Upon the entry of the order, the proceedings in the petitioner's case shall be
807 considered never to have occurred and the petitioner may properly reply accordingly upon any
808 inquiry in the matter. Inspection of the records may thereafter only be permitted by the court
809 upon petition by the person who is the subject of the records, and only to persons named in the
810 petition.

811 (5) The court may not expunge a juvenile court record if the record contains an
812 adjudication of:

- 813 (a) Section 76-5-202, aggravated murder; or
- 814 (b) Section 76-5-203, murder.

815 (6) (a) A person whose juvenile court record consists solely of nonjudicial adjustments
816 as provided in Section 78A-6-602 may petition the court for expungement of the person's
817 record if the person:

- 818 (i) has reached 18 years of age; and
- 819 (ii) has completed the conditions of the nonjudicial adjustments.

820 (b) The court shall, without a hearing, order sealed all petitioner's records under the
821 control of the juvenile court and any of petitioner's records under the control of any other
822 agency or official pertaining to the petitioner's nonjudicial adjustments.

823 **Section 25. Repealer.**

824 This bill repeals:

825 Section 53A-3-410, **Criminal background checks on school personnel -- Notice --**
826 **Payment of costs -- Request for review.**

827 **Section 26. Effective date.**

828 This bill takes effect on July 1, 2015.