

1 **VULNERABLE ADULT WORKER AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Dean Sanpei**

5 Senate Sponsor: Curtis S. Bramble

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to the Department of Human Services' background
10 check procedures.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ permits the Department of Human Services to conduct criminal background
15 screening of employees and volunteers;
- 16 ▶ amends provisions relating to when the Office of Licensing (the office) shall
17 conduct a background check;
- 18 ▶ requires each applicant 18 years of age or older to submit fingerprints to the office
19 for a national criminal history search;
- 20 ▶ clarifies which databases the office must search to conduct a background check;
- 21 ▶ provides that the office may submit an applicant's personal identifying information
22 to the Bureau of Criminal Identification (the Bureau) within the Department of
23 Public Safety for retention, monitoring, and notification of new criminal activity
24 associated with an applicant;
- 25 ▶ requires the office to conduct a comprehensive review of an applicant's background
26 check if the applicant has a record of an adjudication in juvenile court for an act
27 that, if committed by an adult, would be a felony or misdemeanor;



- 28 ▶ provides that the office may conditionally approve an applicant, other than a
- 29 prospective foster or adoptive parent, without the applicant being directly
- 30 supervised, pending the results of a national criminal history search; and
- 31 ▶ makes technical and conforming changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **53-10-108**, as last amended by Laws of Utah 2014, Chapters 79 and 377
- 39 **62A-1-118**, as last amended by Laws of Utah 2008, Chapter 382
- 40 **62A-2-101**, as last amended by Laws of Utah 2014, Chapter 240
- 41 **62A-2-121**, as last amended by Laws of Utah 2009, Chapter 75
- 42 **62A-2-122**, as last amended by Laws of Utah 2011, Chapter 366
- 43 **62A-3-104.3**, as enacted by Laws of Utah 2005, Chapter 107
- 44 **62A-4a-209**, as last amended by Laws of Utah 2013, Chapter 416
- 45 **62A-5-103.5**, as last amended by Laws of Utah 2013, Chapter 448
- 46 **78A-6-209**, as last amended by Laws of Utah 2012, Chapter 328
- 47 **78A-6-323**, as last amended by Laws of Utah 2012, Chapter 328

48 REPEALS AND REENACTS:

- 49 **62A-2-120**, as last amended by Laws of Utah 2012, Chapters 293 and 302

50 REPEALS:

- 51 **62A-2-120.5**, as last amended by Laws of Utah 2013, Chapter 468



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

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

55 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**

56 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**

57 **-- Missing children records -- Penalty for misuse of records.**

- 58 (1) Dissemination of information from a criminal history record or warrant of arrest

59 information from division files is limited to:

60 (a) criminal justice agencies for purposes of administration of criminal justice and for
61 employment screening by criminal justice agencies;

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

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

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

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

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

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

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

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

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

82 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access
83 to data, limit the use of data to research, evaluative, or statistical purposes, preserve the
84 anonymity of individuals to whom the information relates, and ensure the confidentiality and
85 security of the data.

86 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must
87 obtain a signed waiver from the person whose information is requested.

88 (b) The waiver must notify the signee:

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

90 (ii) who will see the information; and

91 (iii) how the information will be used.

92 (c) Information received by a qualifying entity under Subsection (1)(g) may only be:

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

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

96 (d) A person who disseminates or uses information obtained from the division under
97 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
98 any penalties provided under this section, is subject to civil liability.

99 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide
100 the employee or employment applicant an opportunity to:

101 (i) review the information received as provided under Subsection (8); and

102 (ii) respond to any information received.

103 (f) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
104 division may make rules to implement this Subsection (3).

105 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$20.

106 (ii) The name check fee under Subsection (1)(g) is \$15.

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

109 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
110 deposited in the General Fund as a dedicated credit by the department to cover the costs
111 incurred in providing the information.

112 (h) The division or its employees are not liable for defamation, invasion of privacy,
113 negligence, or any other claim in connection with the contents of information disseminated
114 under Subsection (1)(g).

115 (4) (a) Any criminal history record information obtained from division files may be
116 used only for the purposes for which it was provided and may not be further disseminated,
117 except under Subsection (4)(b), (c), or (d).

118 (b) A criminal history provided to an agency pursuant to Subsection (1)(e) may be
119 provided by the agency to the person who is the subject of the history, another licensed
120 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an

121 adoption.

122 (c) A criminal history of a defendant provided to a criminal justice agency under
123 Subsection (1)(a) may also be provided by the prosecutor to a defendant's defense counsel,
124 upon request during the discovery process, for the purpose of establishing a defense in a
125 criminal case.

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

130 (5) The division may not disseminate criminal history record information to qualifying
131 entities under Subsection (1)(g) regarding employment background checks if the information is
132 related to charges:

133 (a) that have been declined for prosecution;

134 (b) that have been dismissed; or

135 (c) regarding which a person has been acquitted.

136 (6) (a) This section does not preclude the use of the division's central computing
137 facilities for the storage and retrieval of criminal history record information.

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

140 (7) Direct access through remote computer terminals to criminal history record
141 information in the division's files is limited to those agencies authorized by the commissioner
142 under procedures designed to prevent unauthorized access to this information.

143 (8) (a) The commissioner shall establish procedures to allow an individual right of
144 access to review and receive a copy of the individual's criminal history report.

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

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

151 (ii) These procedures shall include provisions for amending any information found to

152 be inaccurate or incomplete.

153 (9) The private security agencies as provided in Subsection (1)(f)(ii):

154 (a) shall be charged for access; and

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

157 (10) Before providing information requested under this section, the division shall give
158 priority to criminal justice agencies needs.

159 (11) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
160 use, disclose, or disseminate a record created, maintained, or to which access is granted by the
161 division or any information contained in a record created, maintained, or to which access is
162 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or
163 policy of a governmental entity.

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

168 Section 2. Section **62A-1-118** is amended to read:

169 **62A-1-118. Access to abuse and neglect information to screen employees and**
170 **volunteers.**

171 (1) The department may conduct a background check, pursuant to Subsections
172 62A-2-120(1) through (4), of department employees and volunteers who have direct access, as
173 defined in Section 62A-2-101, to a child or a vulnerable adult.

174 (2) In addition to conducting a background check described in Subsection (1), and
175 subject to the requirements of this section, the department may search the Division of Child
176 and Family Services' Management Information System described in Section 62A-4a-1003.

177 ~~[(1)]~~ (3) With respect to department employees and volunteers, the department may
178 only access information in the systems and databases described in Subsection 62A-2-120(3)
179 and in the Division of Child and Family [Service's] Services' Management Information System
180 [created by Section 62A-4a-1003 and the Division of Aging and Adult Services database
181 created by Section 62A-3-311.1.] for the purpose of determining at the time of hire and each
182 year thereafter whether a department employee or volunteer has a criminal history, an

183 adjudication of abuse or neglect, or, since January 1, 1994, a substantiated ~~§~~ or supported ~~§~~
 183a finding of abuse ~~§~~ ~~or~~ ~~§~~
 184 neglect ~~§~~ , or exploitation ~~§~~ after notice and an opportunity for a hearing consistent with Title
 184a 63G, Chapter 4,
 185 Administrative Procedures Act, but only if a criminal history or identification as a possible
 186 perpetrator of abuse or neglect is directly relevant to the employment or volunteer activities of
 187 that person.

188 ~~(2)~~ (4) A department employee or volunteer to whom Subsection (1) applies shall
 189 submit to the department the employee or volunteer's name ~~and~~, other personal identifying
 190 information ~~upon request~~, and consent for the background check on a form specified by the
 191 department.

192 ~~[(3) The department shall process the information to determine whether the employee~~
 193 ~~or volunteer has a substantiated finding of child abuse or neglect.]~~

194 ~~(4)~~ (5) The department shall ~~adopt~~ make rules in accordance with Title 63G,
 195 Chapter 3, Utah Administrative Rulemaking Act, defining permissible and impermissible
 196 work-related activities for a department employee or volunteer with a criminal history or with
 197 one or more substantiated or supported findings of abuse ~~or~~, neglect, or exploitation.

198 Section 3. Section **62A-2-101** is amended to read:

199 **62A-2-101. Definitions.**

200 As used in this chapter:

201 (1) "Adult day care" means nonresidential care and supervision:

202 (a) for three or more adults for at least four but less than 24 hours a day; and

203 (b) that meets the needs of functionally impaired adults through a comprehensive
 204 program that provides a variety of health, social, recreational, and related support services in a
 205 protective setting.

206 (2) "Applicant" means:

207 (a) a person who applies for an initial license or a license renewal under this chapter;

208 (b) an individual who:

209 (i) is associated with the licensee; and

210 (ii) has direct access to a child or a vulnerable adult;

211 (c) an individual who is 12 years of age or older, other than the child or vulnerable
 212 adult who is receiving the service, who resides in a residence with the child or vulnerable adult
 213 who is receiving services from the person described in Subsection (2)(a) or (b), if the child or

214 vulnerable adult is not receiving services in the child's or vulnerable adult's own residence; or

215 (d) an individual who provides respite care to a foster parent or an adoptive parent on
216 more than one occasion.

217 (3) (a) "Associated with the licensee" means that an individual is:

218 (i) affiliated with a licensee as an owner, director, member of the governing body,
219 employee, agent, provider of care, or volunteer; or

220 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
221 (3)(a)(i).

222 (b) "Associated with the licensee" does not include:

223 (i) service on the following bodies, unless that service includes direct access to a child
224 or a vulnerable adult:

225 (A) a local mental health authority described in Section [17-43-301](#);

226 (B) a local substance abuse authority described in Section [17-43-201](#); or

227 (C) a board of an organization operating under a contract to provide mental health or
228 substance abuse programs, or services for the local mental health authority or substance abuse
229 authority; or

230 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
231 by the licensee at all times.

232 ~~[(2)]~~ (4) (a) "Boarding school" means a private school that:

233 (i) uses a regionally accredited education program;

234 (ii) provides a residence to the school's students:

235 (A) for the purpose of enabling the school's students to attend classes at the school; and

236 (B) as an ancillary service to educating the students at the school;

237 (iii) has the primary purpose of providing the school's students with an education, as
238 defined in Subsection ~~[(2)]~~ (4)(b)(i); and

239 (iv) (A) does not provide the treatment or services described in Subsection ~~[(26)]~~

240 ~~(28)~~(a); or

241 (B) provides the treatment or services described in Subsection ~~[(26)]~~ ~~(28)~~(a) on a
242 limited basis, as described in Subsection ~~[(2)]~~ (4)(b)(ii).

243 (b) (i) For purposes of Subsection ~~[(2)]~~ (4)(a)(iii), "education" means a course of study
244 for one or more of grades kindergarten through 12th grade.

245 (ii) For purposes of Subsection [~~(2)~~] (4)(a)(iv)(B), a private school provides the
246 treatment or services described in Subsection [~~(26)~~] (28)(a) on a limited basis if:

247 (A) the treatment or services described in Subsection [~~(26)~~] (28)(a) are provided only
248 as an incidental service to a student; and

249 (B) the school does not:

250 (I) specifically solicit a student for the purpose of providing the treatment or services
251 described in Subsection [~~(26)~~] (28)(a); or

252 (II) have a primary purpose of providing the treatment or services described in
253 Subsection [~~(26)~~] (28)(a).

254 (c) "Boarding school" does not include a therapeutic school.

255 [~~(3)~~] (5) "Child" means a person under 18 years of age.

256 [~~(4)~~] (6) "Child placing" means receiving, accepting, or providing custody or care for
257 any child, temporarily or permanently, for the purpose of:

258 (a) finding a person to adopt the child;

259 (b) placing the child in a home for adoption; or

260 (c) foster home placement.

261 [~~(5)~~] (7) "Client" means an individual who receives or has received services from a
262 licensee.

263 [~~(6)~~] (8) "Day treatment" means specialized treatment that is provided to:

264 (a) a client less than 24 hours a day; and

265 (b) four or more persons who:

266 (i) are unrelated to the owner or provider; and

267 (ii) have emotional, psychological, developmental, physical, or behavioral
268 dysfunctions, impairments, or chemical dependencies.

269 [~~(7)~~] (9) "Department" means the Department of Human Services.

270 [~~(8)~~] (10) "Direct access" means that an individual has, or likely will have[-];

271 (a) contact with or access to a child or vulnerable adult that provides the individual
272 with an opportunity for personal communication or touch[-]; or

273 (b) an opportunity to view medical, financial, or other confidential personal identifying
274 information of the child, the child's parents or legal guardians, or the vulnerable adult.

275 (11) "Directly supervised" means that an individual is being supervised under the

276 uninterrupted visual and auditory surveillance of another individual.

277 [~~(9)~~] (12) "Director" means the director of the Office of Licensing.

278 [~~(10)~~] (13) "Domestic violence" [~~is as~~] means the same as that term is defined in
279 Section 77-36-1.

280 [~~(11)~~] (14) "Domestic violence treatment program" means a nonresidential program
281 designed to provide psychological treatment and educational services to perpetrators and
282 victims of domestic violence.

283 [~~(12)~~] (15) "Elder adult" means a person 65 years of age or older.

284 [~~(13)~~] (16) "Executive director" means the executive director of the department.

285 [~~(14)~~] (17) "Foster home" means a temporary residential living environment for the
286 care of:

287 (a) fewer than four foster children in the home of a licensed or certified foster parent;

288 or

289 (b) four or more children in the home of a licensed or certified foster parent if the
290 children are siblings.

291 [~~(15)~~] (18) (a) "Human services program" means a:

292 (i) foster home;

293 (ii) therapeutic school;

294 (iii) youth program;

295 (iv) resource family home;

296 (v) recovery residence; or

297 (vi) facility or program that provides:

298 (A) secure treatment;

299 (B) inpatient treatment;

300 (C) residential treatment;

301 (D) residential support;

302 (E) adult day care;

303 (F) day treatment;

304 (G) outpatient treatment;

305 (H) domestic violence treatment;

306 (I) child placing services;

307 (J) social detoxification; or
 308 (K) any other human services that are required by contract with the department to be
 309 licensed with the department.

310 (b) "Human services program" does not include a boarding school.

311 ~~[(16)]~~ (19) "Licensee" means ~~[a person]~~ an individual or a human services program
 312 licensed by the office.

313 ~~[(17)]~~ (20) "Local government" means a:

314 (a) city; or

315 (b) county.

316 ~~[(18)]~~ (21) "Minor" has the same meaning as "child."

317 ~~[(19)]~~ (22) "Office" means the Office of Licensing within the Department of Human
 318 Services.

319 ~~[(20)]~~ (23) "Outpatient treatment" means individual, family, or group therapy or
 320 counseling designed to improve and enhance social or psychological functioning for those
 321 whose physical and emotional status allows them to continue functioning in their usual living
 322 environment.

323 ~~[(21) (a) "Person associated with the licensee" means a person:]~~

324 ~~[(i) affiliated with a licensee as an owner, director, member of the governing body,~~
 325 ~~employee, agent, provider of care, or volunteer; or]~~

326 ~~[(ii) applying to become affiliated with a licensee in any capacity listed under~~
 327 ~~Subsection (21)(a)(i).]~~

328 ~~[(b) Notwithstanding Subsection (21)(a), "person associated with the licensee" does not~~
 329 ~~include an individual serving on the following bodies unless that individual has direct access to~~
 330 ~~children or vulnerable adults:]~~

331 ~~[(i) a local mental health authority under Section [17-43-301](#);~~

332 ~~[(ii) a local substance abuse authority under Section [17-43-201](#); or]~~

333 ~~[(iii) a board of an organization operating under a contract to provide:]~~

334 ~~[(A) mental health or substance abuse programs; or]~~

335 ~~[(B) services for the local mental health authority or substance abuse authority.]~~

336 ~~[(c) "Person associated with the licensee" does not include a guest or visitor whose~~
 337 ~~access to children or vulnerable adults is directly supervised by the licensee at all times.]~~

338 [~~(22)~~] (24) "Recovery residence" means a home or facility, other than a residential
339 treatment or residential support program, that meets at least two of the following requirements:

- 340 (a) provides a supervised living environment for individuals recovering from a
341 substance abuse disorder;
- 342 (b) requires more than half of the individuals in the residence to be recovering from a
343 substance abuse disorder;
- 344 (c) provides or arranges for residents to receive services related to their recovery from a
345 substance abuse disorder, either on or off site;
- 346 (d) holds the home or facility out as being a recovery residence; or
- 347 (e) (i) receives public funding; or
348 (ii) runs the home or facility as a commercial venture for financial gain.

349 [~~(23)~~] (25) "Regular business hours" means:

- 350 (a) the hours during which services of any kind are provided to a client; or
- 351 (b) the hours during which a client is present at the facility of a licensee.

352 [~~(24)~~] (26) (a) "Residential support" means arranging for or providing the necessities of
353 life as a protective service to individuals or families who have a disability or who are
354 experiencing a dislocation or emergency that prevents them from providing these services for
355 themselves or their families.

356 (b) "Residential support" includes providing a supervised living environment for
357 persons with dysfunctions or impairments that are:

- 358 (i) emotional;
- 359 (ii) psychological;
- 360 (iii) developmental; or
- 361 (iv) behavioral.
- 362 (c) Treatment is not a necessary component of residential support.
- 363 (d) "Residential support" does not include:

- 364 (i) a recovery residence; or
- 365 (ii) residential services that are performed:
 - 366 (A) exclusively under contract with the Division of Services for People with
367 Disabilities; or
 - 368 (B) in a facility that serves fewer than four individuals.

369 ~~[(25)]~~ (27) (a) "Residential treatment" means a 24-hour group living environment for
370 four or more individuals unrelated to the owner or provider that offers room or board and
371 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
372 habilitation services for persons with emotional, psychological, developmental, or behavioral
373 dysfunctions, impairments, or chemical dependencies.

374 (b) "Residential treatment" does not include a:

375 (i) boarding school;

376 (ii) foster home; or

377 (iii) recovery residence.

378 ~~[(26)]~~ (28) "Residential treatment program" means a human services program that
379 provides:

380 (a) residential treatment; or

381 (b) secure treatment.

382 ~~[(27)]~~ (29) (a) "Secure treatment" means 24-hour specialized residential treatment or
383 care for persons whose current functioning is such that they cannot live independently or in a
384 less restrictive environment.

385 (b) "Secure treatment" differs from residential treatment to the extent that it requires
386 intensive supervision, locked doors, and other security measures that are imposed on residents
387 with neither their consent nor control.

388 ~~[(28)]~~ (30) "Social detoxification" means short-term residential services for persons
389 who are experiencing or have recently experienced drug or alcohol intoxication, that are
390 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
391 Facility Licensing and Inspection Act, and that include:

392 (a) room and board for persons who are unrelated to the owner or manager of the
393 facility;

394 (b) specialized rehabilitation to acquire sobriety; and

395 (c) aftercare services.

396 ~~[(29)]~~ (31) "Substance abuse treatment program" means a program:

397 (a) designed to provide:

398 (i) specialized drug or alcohol treatment;

399 (ii) rehabilitation; or

400 (iii) habilitation services; and
401 (b) that provides the treatment or services described in Subsection [~~(29)~~] (31)(a) to
402 persons with:

- 403 (i) a diagnosed substance abuse disorder; or
- 404 (ii) chemical dependency disorder.

405 [~~(30)~~] (32) "Therapeutic school" means a residential group living facility:

406 (a) for four or more individuals that are not related to:

- 407 (i) the owner of the facility; or
- 408 (ii) the primary service provider of the facility;

409 (b) that serves students who have a history of failing to function:

- 410 (i) at home;
- 411 (ii) in a public school; or
- 412 (iii) in a nonresidential private school; and

413 (c) that offers:

- 414 (i) room and board; and
- 415 (ii) an academic education integrated with:
 - 416 (A) specialized structure and supervision; or
 - 417 (B) services or treatment related to:
 - 418 (I) a disability;
 - 419 (II) emotional development;
 - 420 (III) behavioral development;
 - 421 (IV) familial development; or
 - 422 (V) social development.

423 [~~(31)~~] (33) "Unrelated persons" means persons other than parents, legal guardians,
424 grandparents, brothers, sisters, uncles, or aunts.

425 [~~(32)~~] (34) "Vulnerable adult" means an elder adult or an adult who has a temporary or
426 permanent mental or physical impairment that substantially affects the person's ability to:

- 427 (a) provide personal protection;
- 428 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 429 (c) obtain services necessary for health, safety, or welfare;
- 430 (d) carry out the activities of daily living;

431 (e) manage the adult's own resources; or
 432 (f) comprehend the nature and consequences of remaining in a situation of abuse,
 433 neglect, or exploitation.

434 ~~[(33)]~~ (35) (a) "Youth program" means a nonresidential program designed to provide
 435 behavioral, substance abuse, or mental health services to minors that:

436 (i) serves adjudicated or nonadjudicated youth;
 437 (ii) charges a fee for its services;
 438 (iii) may or may not provide host homes or other arrangements for overnight
 439 accommodation of the youth;
 440 (iv) may or may not provide all or part of its services in the outdoors;
 441 (v) may or may not limit or censor access to parents or guardians; and
 442 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
 443 minor's own free will.

444 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl
 445 Scouts, 4-H, and other such organizations.

446 Section 4. Section **62A-2-120** is repealed and reenacted to read:

447 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

448 (1) As used in this section:

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

451 (b) "Personal identifying information" means:

452 (i) current name, former names, nicknames, and aliases;
 453 (ii) date of birth;
 454 (iii) physical address and email address;
 455 (iv) telephone number;
 456 (v) driver license number or other government-issued identification number;
 457 (vi) Social Security number;
 458 (vii) fingerprints, except for applicants under the age of 18, in a form specified by the
 459 office; and
 460 (viii) other information specified by the office by rule made in accordance with Title
 461 63G, Chapter 3, Utah Administrative Rulemaking Act.

462 (2) (a) Except as provided in Subsection (13), an applicant shall submit the following
463 to the office:

464 (i) personal identifying information;

465 (ii) a fee established by the office under Section [63J-1-504](#); and

466 (iii) a form, specified by the office, for consent for:

467 (A) an initial background check upon submission of the information described under
468 Subsection (2)(a);

469 (B) a background check at the applicant's annual renewal;

470 (C) a background check when the office determines that reasonable cause exists; and

471 (D) retention of personal identifying information, including fingerprints, for

472 monitoring and notification as described in Subsections (3)(d) and (4).

473 (b) In addition to the requirements described in Subsection (2)(a), if an applicant spent
474 time outside of the United States and its territories during the five years immediately preceding
475 the day on which the information described in Subsection (2)(a) is submitted to the office, the
476 office may require the applicant to submit documentation establishing whether the applicant
477 was convicted of a crime during the time that the applicant spent outside of the United States or
478 its territories.

479 (3) The office:

480 (a) shall perform the following duties as part of a background check of an applicant:

481 (i) check state and regional criminal background databases for the applicant's criminal
482 history by:

483 (A) submitting personal identifying information to the Bureau for a search; or

484 (B) using the applicant's personal identifying information to search state and regional
485 criminal background databases as authorized under Section [53-10-108](#);

486 (ii) submit the applicant's personal identifying information and fingerprints to the
487 Bureau for a criminal history search of applicable national criminal background databases;

488 (iii) search the Department of Human Services, Division of Child and Family Services'
489 Licensing Information System described in Section [62A-4a-1006](#);

490 (iv) search the Department of Human Services, Division of Aging and Adult Services'
491 vulnerable adult abuse, neglect, or exploitation database described in Section [62A-3-311.1](#);

492 (v) search the juvenile court records for substantiated findings of severe child abuse or

493 neglect described in Section 78A-6-323; and

494 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
 495 under Section 78A-6-209;

496 (b) shall conduct a background check of an applicant for an initial ~~H~~→ [license]
 496a background check ←H upon
 497 submission of the information described under Subsection (2)(a);

498 (c) may conduct ~~H~~→ all or portions of ←H a background check of an applicant, as
 498a provided by rule, made by the
 499 office in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

500 (i) for an annual renewal; or

501 (ii) when the office determines that reasonable cause exists;

502 (d) may submit an applicant's personal identifying information, including fingerprints,
 503 to the Bureau for checking, retaining, and monitoring of state and national criminal background
 504 databases and for notifying the office of new criminal activity associated with the applicant;

505 (e) shall track the status of an approved applicant under this section to ensure that an
 506 approved applicant who applies for more than one license or for direct access to a child or a
 507 vulnerable adult in more than one human services program is not required to duplicate the
 508 submission of the applicant's fingerprints;

509 (f) shall track the status of each license and each individual with direct access to a child
 510 or a vulnerable adult and notify the Bureau when the license has expired or the individual's
 511 direct access to a child or a vulnerable adult has ceased;

512 (g) shall adopt measures to strictly limit access to personal identifying information
 513 solely to the office employees responsible for processing the applications for background
 514 checks and to protect the security of the personal identifying information the office reviews
 515 under this Subsection (3); and

516 (h) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
 517 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background
 518 checks.

519 (4) (a) With the personal identifying information the office submits to the Bureau
 520 under Subsection (3), the Bureau shall check against state and regional criminal background
 521 databases for the applicant's criminal history.

522 (b) With the personal identifying information and fingerprints the office submits to the
 523 Bureau under Subsection (3), the Bureau shall check against national criminal background

524 databases for the applicant's criminal history.

525 (c) Upon direction from the office, and with the personal identifying information and
526 fingerprints the office submits to the Bureau under Subsection (3)(d), the Bureau shall:

527 (i) maintain a separate file of the fingerprints for search by future submissions to the
528 local and regional criminal records databases, including latent prints; and

529 (ii) monitor state and regional criminal background databases and identify criminal
530 activity associated with the applicant.

531 (d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of
532 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
533 Investigation Next Generation Identification System for the purpose of:

534 (i) being searched by future submissions to the national criminal records databases,
535 including the Federal Bureau of Investigation Next Generation Identification system and latent
536 prints; and

537 (ii) monitoring national criminal background databases and identifying criminal
538 activity associated with the applicant.

539 (e) The Bureau shall notify and release to the office all information of criminal activity
540 associated with the applicant.

541 (f) Upon notice from the office that a license has expired or an individual's direct
542 access to a child or a vulnerable adult has ceased, the Bureau shall:

543 (i) discard and destroy any retained fingerprints; and

544 (ii) notify the Federal Bureau of Investigation when the license has expired or an
545 individual's direct access to a child or a vulnerable adult has ceased, so that the Federal Bureau
546 of Investigation will discard and destroy the retained fingerprints from the Federal Bureau of
547 Investigation Next Generation Identification System.

548 (5) (a) After conducting the background check described in Subsections (3) and (4), the
549 office shall deny an application to an applicant who, within 10 years before the day on which
550 the applicant submits information to the office under Subsection (2) for a background check,
551 has been convicted of any of the following, regardless of whether the offense is a felony, a
552 misdemeanor, or an infraction:

553 (i) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
554 animals, or bestiality;

555 (ii) a violation of any pornography law, including sexual exploitation of a minor;
556 (iii) prostitution;
557 (iv) an offense included in:
558 (A) Title 76, Chapter 5, Offenses Against the Person;
559 (B) Section [76-5b-201](#), Sexual Exploitation of a Minor; or
560 (C) Title 76, Chapter 7, Offenses Against the Family;
561 (v) aggravated arson, as described in Section [76-6-103](#);
562 (vi) aggravated burglary, as described in Section [76-6-203](#);
563 (vii) aggravated robbery, as described in Section [76-6-302](#);
564 (viii) identity fraud crime, as described in Section [76-6-1102](#); or
565 (ix) a conviction for a felony or misdemeanor offense committed outside of the state
566 that, if committed in the state, would constitute a violation of an offense described in
567 Subsections (5)(a)(i) through (viii).

568 (b) If the office denies an application to an applicant based on a conviction described in
569 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in
570 Subsection (6).

571 (6) (a) The office shall conduct a comprehensive review of an applicant's background
572 check if the applicant has:

573 (i) a conviction for any felony offense, not described in Subsection (5)(a), regardless of
574 the date of the conviction;

575 (ii) a conviction for a misdemeanor offense, not described in Subsection (5)(a), and
576 designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
577 Rulemaking Act, if the conviction is within five years before the day on which the applicant
578 submits information to the office under Subsection (2) for a background check;

579 (iii) a conviction for any offense described in Subsection (5)(a) that occurred more than
580 10 years before the day on which the applicant submitted information under Subsection (2)(a);

581 (iv) pleaded no contest to or is currently subject to a plea in abeyance or diversion
582 agreement for any offense described in Subsection (5)(a);

583 (v) a listing in the Department of Human Services, Division of Child and Family
584 Services' Licensing Information System described in Section [62A-4a-1006](#);

585 (vi) a listing in the Department of Human Services, Division of Aging and Adult

586 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
587 62A-3-311.1;
588 (vii) a record in the juvenile court of a substantiated finding of severe child abuse or
589 neglect described in Section 78A-6-323; or
590 (viii) a record of an adjudication in juvenile court for an act that, if committed by an
591 adult, would be a felony or misdemeanor, if the applicant is:
592 (A) under 28 years of age; or
593 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
594 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
595 offense described in Subsection (5)(a).
596 (b) The comprehensive review described in Subsection (6)(a) shall include an
597 examination of:
598 (i) the date of the offense or incident;
599 (ii) the nature and seriousness of the offense or incident;
600 (iii) the circumstances under which the offense or incident occurred;
601 (iv) the age of the perpetrator when the offense or incident occurred;
602 (v) whether the offense or incident was an isolated or repeated incident;
603 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
604 adult, including:
605 (A) actual or threatened, nonaccidental physical or mental harm;
606 (B) sexual abuse;
607 (C) sexual exploitation; or
608 (D) negligent treatment;
609 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
610 treatment received, or additional academic or vocational schooling completed; and
611 (viii) any other pertinent information.
612 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
613 office shall deny an application to an applicant if the office finds that approval would likely
614 create a risk of harm to a child or a vulnerable adult.
615 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
616 office may make rules, consistent with this chapter, to establish procedures for the

617 comprehensive review described in this Subsection (6).

618 (7) Subject to Subsection (10), the office shall approve an application to an applicant
619 who is not denied under Subsection (5), (6), or (13).

620 (8) (a) The office may conditionally approve an application of an applicant, for a
621 maximum of 60 days after the day on which the office sends written notice to the applicant
622 under Subsection (11), without requiring that the applicant be directly supervised, if the office:

623 (i) is awaiting the results of the criminal history search of national criminal background
624 databases; and

625 (ii) would otherwise approve an application of the applicant under Subsection (7).

626 (b) Upon receiving the results of the criminal history search of national criminal
627 background databases, the office shall approve or deny the application of the applicant in
628 accordance with Subsections (5) through (7).

629 (9) A licensee may not permit an individual to have direct access to a child or a
630 vulnerable adult unless, subject to Subsection (10), the individual is:

631 (a) associated with the licensee and:

632 (i) the individual's application is approved by the office under this section;

633 (ii) the individual's application is conditionally approved by the office under
634 Subsection (8); or

635 (iii) (A) the individual has submitted the background check information described in
636 Subsection (2) to the office;

637 (B) the office has not determined whether to approve the applicant's application; and

638 (C) the individual is directly supervised by an individual who is licensed by the office
639 under this section and is associated with the licensee;

640 (b) (i) not associated with the licensee; and

641 (ii) directly supervised by an individual who is licensed by the office under this section
642 and is associated with the licensee;

643 (c) the parent or guardian of the child or the guardian of the vulnerable adult; or

644 (d) an individual approved by the parent or guardian of the child or the guardian of the
645 vulnerable adult to have direct access to the child or the vulnerable adult.

646 (10) An individual may not have direct access to a child or a vulnerable adult if the
647 individual is prohibited by court order from having that access.

648 (11) (a) Within 30 days after the day on which the office receives the background
649 check information for an applicant, the office shall give written notice to the applicant of:

650 (i) the office's decision regarding its background check and findings; and

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

652 (b) With the notice described in Subsection (11)(a), the office shall also give the
653 applicant the details of any comprehensive review conducted under Subsection (6).

654 (c) If the notice under Subsection (11)(a) states that the applicant's application is
655 denied, the notice shall further advise the applicant that the applicant may, under Subsection
656 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
657 challenge the office's decision.

658 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
659 office shall make rules, consistent with this chapter:

660 (i) defining procedures for the challenge of its background check decision described in
661 Subsection (11)(c); and

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

664 (12) This section does not apply to an applicant for an initial license, or license
665 renewal, to operate a substance abuse program that provides services to adults only.

666 (13) (a) Except as provided in Subsection (13)(b), in addition to the other requirements
667 of this section, if the background check of an applicant is being conducted for the purpose of
668 licensing a prospective foster home or approving a prospective adoptive placement of a child in
669 state custody, the office shall:

670 (i) check the child abuse and neglect registry in each state where each applicant resided
671 in the five years immediately preceding the day on which the applicant applied to be a foster
672 parent or adoptive parent, to determine whether the prospective foster parent or prospective
673 adoptive parent is listed in the registry as having a substantiated or supported finding of child
674 abuse or neglect; and

675 (ii) check the child abuse and neglect registry in each state where each adult living in
676 the home of the applicant described in Subsection (13)(a)(i) resided in the five years
677 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
678 parent, to determine whether the adult is listed in the registry as having a substantiated or

679 supported finding of child abuse or neglect.

680 (b) The requirements described in Subsection (13)(a) do not apply to the extent that:

681 (i) federal law or rule permits otherwise; or

682 (ii) the requirements would prohibit the Division of Child and Family Services or a

683 court from placing a child with:

684 (A) a noncustodial parent under Section [62A-4a-209](#), [78A-6-307](#), or [78A-6-307.5](#); or

685 (B) a relative, other than a noncustodial parent, under Section [62A-4a-209](#), [78A-6-307](#),

686 or [78A-6-307.5](#), pending completion of the background check described in Subsection (5).

687 (c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a

688 license renewal to a prospective foster parent or a prospective adoptive parent if the applicant

689 has been convicted of:

690 (i) a felony involving conduct that constitutes any of the following:

691 (A) child abuse, as described in Section [76-5-109](#);

692 (B) commission of domestic violence in the presence of a child, as described in Section

693 [76-5-109.1](#);

694 (C) abuse or neglect of a child with a disability, as described in Section [76-5-110](#);

695 (D) endangerment of a child or vulnerable adult, as described in Section [76-5-112.5](#);

696 (E) aggravated murder, as described in Section [76-5-202](#);

697 (F) murder, as described in Section [76-5-203](#);

698 (G) manslaughter, as described in Section [76-5-205](#);

699 (H) child abuse homicide, as described in Section [76-5-208](#);

700 (I) homicide by assault, as described in Section [76-5-209](#);

701 (J) kidnapping, as described in Section [76-5-301](#);

702 (K) child kidnapping, as described in Section [76-5-301.1](#);

703 (L) aggravated kidnapping, as described in Section [76-5-302](#);

704 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

705 (N) sexual exploitation of a minor, as described in Section [76-5b-201](#);

706 (O) aggravated arson, as described in Section [76-6-103](#);

707 (P) aggravated burglary, as described in Section [76-6-203](#);

708 (Q) aggravated robbery, as described in Section [76-6-302](#); or

709 (R) domestic violence, as described in Section [77-36-1](#); or

710 (ii) an offense committed outside the state that, if committed in the state, would
711 constitute a violation of an offense described in Subsection (13)(c)(i).

712 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
713 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
714 five years immediately preceding the day on which the individual's application or license would
715 otherwise be approved, the applicant was convicted of a felony involving conduct that
716 constitutes a violation of any of the following:

717 (i) aggravated assault, as described in Section [76-5-103](#);

718 (ii) aggravated assault by a prisoner, as described in Section [76-5-103.5](#);

719 (iii) mayhem, as described in Section [76-5-105](#);

720 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

721 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

722 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
723 Act;

724 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
725 Precursor Act; or

726 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

727 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
728 conduct the comprehensive review of an applicant's background check pursuant to this section
729 if the registry check described in Subsection (13)(a) indicates that the individual is listed in a
730 child abuse and neglect registry of another state as having a substantiated or supported finding
731 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

732 Section 5. Section **62A-2-121** is amended to read:

733 **62A-2-121. Access to abuse and neglect information.**

734 (1) For purposes of this section:

735 (a) "Direct service worker" [~~is~~ as] means the same as that term is defined in Section
736 [62A-5-101](#).

737 (b) "Personal care attendant" [~~is~~ as] means the same as that term is defined in Section
738 [62A-3-101](#).

739 (2) With respect to a licensee, a certified local inspector applicant, a direct service
740 worker, or a personal care attendant, the department may access only the Licensing Information

741 System of the Division of Child and Family Services created by Section 62A-4a-1006 and
742 juvenile court records under Subsection 78A-6-323(6), for the purpose of:

743 (a) (i) determining whether a person associated with a licensee, with direct access to
744 children:

745 (A) is listed in the Licensing Information System; or
746 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
747 neglect under Subsections 78A-6-323(1) and (2); and

748 (ii) informing a licensee that a person associated with the licensee:

749 (A) is listed in the Licensing Information System; or
750 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
751 neglect under Subsections 78A-6-323(1) and (2);

752 (b) (i) determining whether a certified local inspector applicant:

753 (A) is listed in the Licensing Information System; or
754 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
755 neglect under Subsections 78A-6-323(1) and (2); and

756 (ii) informing a local government that a certified local inspector applicant:

757 (A) is listed in the Licensing Information System; or
758 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
759 neglect under Subsections 78A-6-323(1) and (2);

760 (c) (i) determining whether a direct service worker:

761 (A) is listed in the Licensing Information System; or
762 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
763 neglect under Subsections 78A-6-323(1) and (2); and

764 (ii) informing a direct service worker or the direct service worker's employer that the
765 direct service worker:

766 (A) is listed in the Licensing Information System; or
767 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
768 neglect under Subsections 78A-6-323(1) and (2); or

769 (d) (i) determining whether a personal care attendant:

770 (A) is listed in the Licensing Information System; or
771 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or

772 neglect under Subsections [78A-6-323](#)(1) and (2); and

773 (ii) informing a person described in Subsections [62A-3-101](#)~~(8)~~(9)(a)(i) through (iv)

774 that a personal care attendant:

775 (A) is listed in the Licensing Information System; or

776 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or

777 neglect under Subsections [78A-6-323](#)(1) and (2).

778 (3) Notwithstanding Subsection (2), the department may access the Division of Child
779 and Family ~~Service's~~ Services' Management Information System under Section [62A-4a-1003](#):

780 (a) for the purpose of licensing and monitoring foster parents; ~~and~~

781 (b) for the purposes described in Subsection [62A-4a-1003](#)(1)(d); and

782 (c) for the purpose described in Section [62A-1-118](#).

783 (4) ~~[After receiving identifying information for a person under Subsection~~

784 [62A-2-120](#)(1), ~~the~~ The department shall ~~[process the information]~~ receive and process

785 personal identifying information under Subsection [62A-2-120](#)(1) for the purposes described in

786 Subsection (2).

787 (5) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
788 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
789 may have direct access or provide services to children when:

790 (a) the person is listed in the Licensing Information System of the Division of Child
791 and Family Services created by Section [62A-4a-1006](#); or

792 (b) juvenile court records show that a court made a substantiated finding under Section
793 [78A-6-323](#), that the person committed a severe type of child abuse or neglect.

794 Section 6. Section [62A-2-122](#) is amended to read:

795 **[62A-2-122](#). Access to vulnerable adult abuse and neglect information.**

796 (1) For purposes of this section:

797 (a) "Direct service worker" ~~[is as]~~ means the same as that term is defined in Section
798 [62A-5-101](#).

799 (b) "Personal care attendant" ~~[is as]~~ means the same as that term is defined in Section
800 [62A-3-101](#).

801 (2) With respect to a licensee, a certified local inspector applicant, a direct service
802 worker, or a personal care attendant, the department may access the database created by Section

803 62A-3-311.1 for the purpose of:

804 (a) (i) determining whether a person associated with a licensee, with direct access to
805 vulnerable adults, has a supported or substantiated finding of:

- 806 (A) abuse;
- 807 (B) neglect; or
- 808 (C) exploitation; and

809 (ii) informing a licensee that a person associated with the licensee has a supported or
810 substantiated finding of:

- 811 (A) abuse;
- 812 (B) neglect; or
- 813 (C) exploitation;

814 (b) (i) determining whether a certified local inspector applicant has a supported or
815 substantiated finding of:

- 816 (A) abuse;
- 817 (B) neglect; or
- 818 (C) exploitation; and

819 (ii) informing a local government that a certified local inspector applicant has a
820 supported or substantiated finding of:

- 821 (A) abuse;
- 822 (B) neglect; or
- 823 (C) exploitation;

824 (c) (i) determining whether a direct service worker has a supported or substantiated
825 finding of:

- 826 (A) abuse;
- 827 (B) neglect; or
- 828 (C) exploitation; and

829 (ii) informing a direct service worker or the direct service worker's employer that the
830 direct service worker has a supported or substantiated finding of:

- 831 (A) abuse;
- 832 (B) neglect; or
- 833 (C) exploitation; or

834 (d) (i) determining whether a personal care attendant has a supported or substantiated
835 finding of:

836 (A) abuse;

837 (B) neglect; or

838 (C) exploitation; and

839 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
840 personal care attendant has a supported or substantiated finding of:

841 (A) abuse;

842 (B) neglect; or

843 (C) exploitation.

844 (3) [~~After receiving identifying information for a person under Subsection~~
845 ~~62A-2-120(1), the~~] The department shall [process the information] receive and process
846 personal identifying information under Subsection 62A-2-120(1) for the purposes described in
847 Subsection (2).

848 (4) The department shall adopt rules under Title 63G, Chapter 3, Utah Administrative
849 Rulemaking Act, consistent with this chapter and Title 62A, Chapter 3, Part 3, Abuse, Neglect,
850 or Exploitation of a Vulnerable Adult, defining the circumstances under which a person may
851 have direct access or provide services to vulnerable adults when the person is listed in the
852 statewide database of the Division of Aging and Adult Services created by Section
853 62A-3-311.1 as having a supported or substantiated finding of abuse, neglect, or exploitation.

854 Section 7. Section 62A-3-104.3 is amended to read:

855 **62A-3-104.3. Disbursal of public funds -- Background check of a personal care**
856 **attendant.**

857 (1) For purposes of this section, "office" [~~is as~~] means the same as that term is defined
858 in Section 62A-2-101.

859 (2) [~~Subject to Subsection (4),~~] Public funds may not be disbursed to a personal care
860 attendant as payment for personal services rendered to an aged person or high risk adult[;]
861 unless the office approves the personal care attendant [is approved by the office] to have direct
862 access and provide services to children or vulnerable adults pursuant to Section 62A-2-120.

863 (3) For purposes of Subsection (2), the office shall conduct a background check of a
864 personal care attendant:

865 (a) who desires to receive public funds as payment for the personal services described
866 in Subsection (2); and

867 (b) using the same procedures established for a background check of an applicant for
868 ~~[an initial]~~ a license under Section 62A-2-120.

869 ~~[(4) The background check and the approval determination described in this section
870 shall be conducted for a personal care attendant on an annual basis.]~~

871 Section 8. Section 62A-4a-209 is amended to read:

872 **62A-4a-209. Emergency placement.**

873 (1) As used in this section:

874 (a) "Nonrelative" means an individual, other than a noncustodial parent or a relative.

875 (b) "Relative" ~~[is as]~~ means the same as that term is defined in Subsection
876 78A-6-307(1)(b).

877 (2) The division may use an emergency placement under Subsection
878 62A-4a-202.1(4)(b)(ii) when:

879 (a) the case worker has made the determination that:

880 (i) the child's home is unsafe;

881 (ii) removal is necessary under the provisions of Section 62A-4a-202.1; and

882 (iii) the child's custodial parent or guardian will agree to not remove the child from the
883 home of the person that serves as the placement and not have any contact with the child until
884 after the shelter hearing required by Section 78A-6-306;

885 (b) a person, with preference being given in accordance with Subsection (4), can be
886 identified who has the ability and is willing to provide care for the child who would otherwise
887 be placed in shelter care, including:

888 (i) taking the child to medical, mental health, dental, and educational appointments at
889 the request of the division; and

890 (ii) making the child available to division services and the guardian ad litem; and

891 (c) the person described in Subsection (2)(b) agrees to care for the child on an
892 emergency basis under the following conditions:

893 (i) the person meets the criteria for an emergency placement under Subsection (3);

894 (ii) the person agrees to not allow the custodial parent or guardian to have any contact
895 with the child until after the shelter hearing unless authorized by the division in writing;

896 (iii) the person agrees to contact law enforcement and the division if the custodial
897 parent or guardian attempts to make unauthorized contact with the child;

898 (iv) the person agrees to allow the division and the child's guardian ad litem to have
899 access to the child;

900 (v) the person has been informed and understands that the division may continue to
901 search for other possible placements for long-term care, if needed;

902 (vi) the person is willing to assist the custodial parent or guardian in reunification
903 efforts at the request of the division, and to follow all court orders; and

904 (vii) the child is comfortable with the person.

905 (3) Except as otherwise provided in Subsection (5), before the division places a child
906 in an emergency placement, the division:

907 (a) may request the name of a reference and may contact the reference to determine the
908 answer to the following questions:

909 (i) would the person identified as a reference place a child in the home of the
910 emergency placement; and

911 (ii) are there any other relatives or friends to consider as a possible emergency or
912 long-term placement for the child;

913 (b) shall have the custodial parent or guardian sign an emergency placement agreement
914 form during the investigation;

915 (c) (i) if the emergency placement will be with a relative of the child, shall comply with
916 the background check provisions described in Subsection (7); or

917 (ii) if the emergency placement will be with a person other than a noncustodial parent
918 or a relative, shall comply with the criminal background check provisions described in Section
919 78A-6-308 for adults living in the household where the child will be placed;

920 (d) shall complete a limited home inspection of the home where the emergency
921 placement is made; and

922 (e) shall have the emergency placement approved by a family service specialist.

923 (4) (a) The following order of preference shall be applied when determining the person
924 with whom a child will be placed in an emergency placement described in this section,
925 provided that the person is willing, and has the ability, to care for the child:

926 (i) a noncustodial parent of the child in accordance with Section 78A-6-307;

927 (ii) a relative of the child;

928 (iii) subject to Subsection (4)(b), a friend designated by the custodial parent or
929 guardian of the child, if the friend is a licensed foster parent; and

930 (iv) a shelter facility, former foster placement, or other foster placement designated by
931 the division.

932 (b) Unless the division agrees otherwise, the custodial parent or guardian described in
933 Subsection (4)(a)(iii) may designate up to two friends as a potential emergency placement.

934 (5) (a) The division may, pending the outcome of the investigation described in
935 Subsections (5)(b) and (c), place a child in emergency placement with the child's noncustodial
936 parent if, based on a limited investigation, prior to making the emergency placement, the
937 division:

938 (i) determines that the noncustodial parent has regular, unsupervised visitation with the
939 child that is not prohibited by law or court order;

940 (ii) determines that there is not reason to believe that the child's health or safety will be
941 endangered during the emergency placement; and

942 (iii) has the custodial parent or guardian sign an emergency placement agreement.

943 (b) Either before or after making an emergency placement with the noncustodial parent
944 of the child, the division may conduct the investigation described in Subsection (3)(a) in
945 relation to the noncustodial parent.

946 (c) Before, or within one day, excluding weekends and holidays, after a child is placed
947 in an emergency placement with the noncustodial parent of the child, the division shall conduct
948 a limited:

949 (i) background check of the noncustodial parent, pursuant to Subsection (7); and

950 (ii) inspection of the home where the emergency placement is made.

951 (6) After an emergency placement, the division caseworker must:

952 (a) respond to the emergency placement's calls within one hour if the custodial parents
953 or guardians attempt to make unauthorized contact with the child or attempt to remove the
954 child;

955 (b) complete all removal paperwork, including the notice provided to the custodial
956 parents and guardians under Section [78A-6-306](#);

957 (c) contact the attorney general to schedule a shelter hearing;

958 (d) complete the placement procedures required in Section [78A-6-307](#); and
 959 (e) continue to search for other relatives as a possible long-term placement, if needed.

960 (7) (a) The background check described in Subsection (3)(c)(i) shall include:

961 (i) completion of a nonfingerprint-based, Utah Bureau of Criminal Identification
 962 background check; and

963 (ii) a completed search of the Management Information System described in Section
 964 [62A-4a-1003](#).

965 (b) The division shall determine whether a person passes the background check
 966 described in this Subsection (7) pursuant to the provisions of [~~Subsections~~] Subsection
 967 [62A-2-120](#)~~[(2), (3), and (8)]~~(13).

968 (c) Notwithstanding Subsection (7)(b), the division may not place a child with an
 969 individual who is prohibited by court order from having access to that child.

970 Section 9. Section **62A-5-103.5** is amended to read:

971 **62A-5-103.5. Disbursal of public funds -- Background check of a direct service**
 972 **worker.**

973 (1) For purposes of this section [~~:(a) "directly supervised" means that the person being~~
 974 ~~supervised is under the uninterrupted visual and auditory surveillance of the person doing the~~
 975 ~~supervising; and (b)]₂ "office" [~~is as~~] means the same as that term is defined in Section
 976 [62A-2-101](#).~~

977 (2) [~~Subject to Subsection (4);~~] Public funds may not be disbursed to pay a direct
 978 service worker for personal services rendered to a person~~;~~ unless~~;~~ the office approves the
 979 direct service worker to have direct access and provide services to a child or a vulnerable adult
 980 pursuant to Section [62A-2-120](#).

981 [~~(a) subject to Subsections (5) and (7), the direct service worker is approved by the~~
 982 ~~office to have direct access and provide services to children or vulnerable adults pursuant to~~
 983 ~~Section [62A-2-120](#);~~]

984 [~~(b) except as provided in Subsection (5):~~]

985 [~~(i) during the time that the direct service worker renders the services described in this~~
 986 ~~Subsection (2), the direct service worker who renders the services is directly supervised by a~~
 987 ~~direct service worker who is approved by the office to have direct access and provide services~~
 988 ~~to children or vulnerable adults pursuant to Section [62A-2-120](#);~~]

989 ~~[(ii) the direct service worker who renders the services described in this Subsection (2)~~
990 ~~has submitted the information required for a background check pursuant to Section 62A-2-120;~~
991 ~~and]~~

992 ~~[(iii) the office has not determined whether to approve the direct service worker~~
993 ~~described in Subsection (2)(b)(ii) to have direct access and provide services to children or~~
994 ~~vulnerable adults; or]~~

995 ~~[(c) except as provided in Subsection (5), the direct service worker:]~~

996 ~~[(i) (A) is a direct ancestor or descendent of the person to whom the services are~~
997 ~~rendered, but is not the person's parent;]~~

998 ~~[(B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or]~~

999 ~~[(C) (I) has submitted the information required for a background check pursuant to~~
1000 ~~Section 62A-2-120; and]~~

1001 ~~[(H) the office has not determined whether to approve the direct service worker to have~~
1002 ~~direct access and provide services to children or vulnerable adults; and]~~

1003 ~~[(ii) is not listed in:]~~

1004 ~~[(A) the Licensing Information System of the Division of Child and Family Services~~
1005 ~~created by Section 62A-4a-1006;]~~

1006 ~~[(B) the statewide database of the Division of Aging and Adult Services created by~~
1007 ~~Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or]~~

1008 ~~[(C) juvenile court records as having a substantiated finding under Section 78A-6-323~~
1009 ~~that the direct service worker committed a severe type of child abuse or neglect.]~~

1010 (3) For purposes of Subsection (2), the office shall conduct a background check of a
1011 direct service worker:

1012 (a) ~~[except as provided in Subsection (2)(b) or (c);]~~ before public funds are disbursed
1013 to pay the direct service worker for the personal services described in Subsection (2); and

1014 (b) using the same procedures established for a background check of an applicant for
1015 ~~[an initial]~~ a license under Section 62A-2-120.

1016 ~~[(4) The background check and the approval determination described in this section~~
1017 ~~shall be conducted for a direct service worker on an annual basis.]~~

1018 ~~[(5) Notwithstanding Subsections (1) through (4), and except as provided in Subsection~~
1019 ~~(6), a]~~

1020 (4) A child who is in the legal custody of the department or any of the department's
1021 divisions may not be placed with a direct service worker unless, before the child is placed with
1022 the direct service worker, the direct service worker passes a background check, pursuant to the
1023 requirements of [~~Section 62A-2-120, that includes:~~] Subsection 62A-2-120(13).

1024 ~~[(a) submitting the direct service worker's fingerprints for an FBI national criminal
1025 history records check, through the Criminal Investigations and Technical Services Division;]~~

1026 ~~[(b) checking the child abuse and neglect registry in each state where the direct service
1027 worker resided in the five years immediately preceding the day on which the direct service
1028 worker applied to be a direct service worker; and]~~

1029 ~~[(c) checking the child abuse and neglect registry in each state where each adult living
1030 in the home where the child will be placed resided in the five years immediately preceding the
1031 day on which the direct service worker applied to be a direct service worker.]~~

1032 ~~[(6) The requirements under Subsection (5) do not apply to the extent that federal law
1033 or rule permits otherwise.]~~

1034 ~~[(7)]~~ (5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public
1035 Transit District Act, contracts with the division to provide services:

1036 (a) the provisions of [~~Subsections (2) through (5)] this section are not applicable to a
1037 direct service worker employed by the public transit district; and~~

1038 (b) the division may not reimburse the public transit district for services provided
1039 unless a direct service worker hired or transferred internally after July 1, 2013, by the public
1040 transit district to drive a paratransit route:

1041 (i) is approved by the office to have direct access to children and vulnerable adults in
1042 accordance with Section 62A-2-120; and

1043 (ii) is subject to a background check established in a statute or rule governing a public
1044 transit district or other public transit district policy.

1045 Section 10. Section **78A-6-209** is amended to read:

1046 **78A-6-209. Court records -- Inspection.**

1047 (1) The court and the probation department shall keep records as required by the board
1048 and the presiding judge.

1049 (2) Court records shall be open to inspection by:

1050 (a) the parents or guardian of a child, a minor who is at least 18 years of age, other

1051 parties in the case, the attorneys, and agencies to which custody of a minor has been
1052 transferred;

1053 (b) for information relating to adult offenders alleged to have committed a sexual
1054 offense, a felony or class A misdemeanor drug offense, or an offense against the person under
1055 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose
1056 of evaluating whether an individual should be permitted to obtain or retain a license as an
1057 educator or serve as an employee or volunteer in a school, with the understanding that the
1058 office must provide the individual with an opportunity to respond to any information gathered
1059 from its inspection of the records before it makes a decision concerning licensure or
1060 employment;

1061 (c) the Criminal Investigations and Technical Services Division, established in Section
1062 [53-10-103](#), for the purpose of a criminal history background check for the purchase of a firearm
1063 and establishing good character for issuance of a concealed firearm permit as provided in
1064 Section [53-5-704](#);

1065 (d) the Division of Child and Family Services for the purpose of Child Protective
1066 Services Investigations in accordance with Sections [62A-4a-403](#) and [62A-4a-409](#) and
1067 administrative hearings in accordance with Section [62A-4a-1009](#);

1068 (e) the Office of Licensing for the purpose of conducting a background check of an
1069 applicant for an initial license or a license renewal in accordance with Section [62A-2-120](#);

1070 [~~(e)~~] (f) for information related to a juvenile offender who has committed a sexual
1071 offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the
1072 Department of Health for the purpose of evaluating under the provisions of Subsection
1073 [26-39-404\(3\)](#) whether a licensee should be permitted to obtain or retain a license to provide
1074 child care, with the understanding that the department must provide the individual who
1075 committed the offense with an opportunity to respond to any information gathered from its
1076 inspection of records before it makes a decision concerning licensure; and

1077 [~~(f)~~] (g) for information related to a juvenile offender who has committed a sexual
1078 offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the
1079 Department of Health to determine whether an individual meets the background screening
1080 requirements of Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access, with the
1081 understanding that the department must provide the individual who committed the offense an

1082 opportunity to respond to any information gathered from its inspection of records before it
1083 makes a decision under that part.

1084 (3) With the consent of the judge, court records may be inspected by the child, by
1085 persons having a legitimate interest in the proceedings, and by persons conducting pertinent
1086 research studies.

1087 (4) If a petition is filed charging a minor 14 years of age or older with an offense that
1088 would be a felony if committed by an adult, the court shall make available to any person upon
1089 request the petition, any adjudication or disposition orders, and the delinquency history
1090 summary of the minor charged unless the records are closed by the court upon findings on the
1091 record for good cause.

1092 (5) Probation officers' records and reports of social and clinical studies are not open to
1093 inspection, except by consent of the court, given under rules adopted by the board.

1094 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency
1095 history summary of any person charged as an adult with a felony offense shall be made
1096 available to any person upon request.

1097 (b) This provision does not apply to records that have been destroyed or expunged in
1098 accordance with court rules.

1099 (c) The court may charge a reasonable fee to cover the costs associated with retrieving
1100 a requested record that has been archived.

1101 Section 11. Section **78A-6-323** is amended to read:

1102 **78A-6-323. Additional finding at adjudication hearing -- Petition -- Court**
1103 **records.**

1104 (1) Upon the filing with the court of a petition under Section **78A-6-304** by the
1105 Division of Child and Family Services or any interested person informing the court, among
1106 other things, that the division has made a supported finding that a person committed a severe
1107 type of child abuse or neglect as defined in Section **62A-4a-1002**, the court shall:

- 1108 (a) make a finding of substantiated, unsubstantiated, or without merit;
- 1109 (b) include the finding described in Subsection (1)(a) in a written order; and
- 1110 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

1111 (2) The judicial finding under Subsection (1) shall be made:

- 1112 (a) as part of the adjudication hearing;

- 1113 (b) at the conclusion of the adjudication hearing; or
1114 (c) as part of a court order entered pursuant to a written stipulation of the parties.
- 1115 (3) (a) Any person described in Subsection [62A-4a-1010](#)(1) may at any time file with
1116 the court a petition for removal of the person's name from the Licensing Information System.
- 1117 (b) At the conclusion of the hearing on the petition, the court shall:
1118 (i) make a finding of substantiated, unsubstantiated, or without merit;
1119 (ii) include the finding described in Subsection (1)(a) in a written order; and
1120 (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- 1121 (4) A proceeding for adjudication of a supported finding under this section of a type of
1122 abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined
1123 in the juvenile court with an adjudication of a severe type of child abuse or neglect.
- 1124 (5) If a person whose name appears on the Licensing Information system prior to May
1125 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
1126 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
1127 final decision no later than 60 days after the filing of the petition.
- 1128 (6) For the purposes of licensing under Sections [26-39-402](#) [~~and~~], [62A-1-118](#), and
1129 [62A-2-120](#), and for the purposes described in Section [62A-2-121](#) and Title 26, Chapter 21, Part
1130 2, Clearance for Direct Patient Access:
- 1131 (a) the court shall make available records of its findings under Subsections (1) and (2):
1132 (i) for those purposes; and
1133 (ii) only to those with statutory authority to access also the Licensing Information
1134 System created under Section [62A-4a-1006](#); and
- 1135 (b) any appellate court shall make available court records of appeals from juvenile
1136 court decisions under Subsections (1), (2), (3), and (4):
1137 (i) for those purposes; and
1138 (ii) only to those with statutory authority to access also the Licensing Information
1139 System.
- 1140 **Section 12. Repealer.**
1141 This bill repeals:
1142 Section [62A-2-120.5](#), **Pilot program for expedited background check of a qualified**
1143 **human services applicant.**

Legislative Review Note
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Office of Legislative Research and General Counsel