

1 **HUMAN SERVICES LICENSEE AND CONTRACTOR**

2 **SCREENING AMENDMENTS**

3 2016 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Dean Sanpei**

6 Senate Sponsor: Curtis S. Bramble

8 **LONG TITLE**

9 **General Description:**

10 This bill requires Department of Human Services contractors who have access to
11 certain vulnerable populations to pass a background screening and comply with certain
12 requirements.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ requires contractors who have access to certain vulnerable populations to:
 - 17 • submit certain information for background screening to the Office of Licensing
 - 18 within the Department of Human Services; and
 - 19 • comply with certain requirements and restrictions regarding certain vulnerable
 - 20 populations;
 - 21 ▶ requires the Office of Licensing within the Department of Human Services to follow
 - 22 certain procedures regarding contractors who have access to certain vulnerable
 - 23 populations;
 - 24 ▶ amends the Juvenile Court Act regarding records access for certain background
 - 25 screening; and
 - 26 ▶ makes technical changes.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **62A-2-101**, as last amended by Laws of Utah 2015, Chapters 67 and 255

34 **62A-2-120**, as repealed and reenacted by Laws of Utah 2015, Chapter 255

35 **78A-6-209**, as last amended by Laws of Utah 2015, Chapters 255 and 307

36

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

38 Section 1. Section **62A-2-101** is amended to read:

39 **62A-2-101. Definitions.**

40 As used in this chapter:

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

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

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

46 (2) "Applicant" means ~~[(a)]~~ a person who applies for an initial license or a license
47 renewal under this chapter~~];~~

48 ~~[(b) an individual who:]~~

49 ~~[(i) is associated with the licensee; and]~~

50 ~~[(ii) has direct access to a child or a vulnerable adult;]~~

51 ~~[(c) an individual who is 12 years of age or older, other than the child or vulnerable
52 adult who is receiving the service, who resides in a residence with the child or vulnerable adult
53 who is receiving services from the person described in Subsection (2)(a) or (b), if the child or
54 vulnerable adult is not receiving services in the child's or vulnerable adult's own residence; or]~~

55 ~~[(d) an individual who provides respite care to a foster parent or an adoptive parent on
56 more than one occasion;]~~

- 57 (3) (a) "Associated with the licensee" means that an individual is:
- 58 (i) affiliated with a licensee as an owner, director, member of the governing body,
- 59 employee, agent, provider of care, department contractor, or volunteer; or
- 60 (ii) applying to become affiliated with a licensee in a capacity described in Subsection
- 61 (3)(a)(i).
- 62 (b) "Associated with the licensee" does not include:
- 63 (i) service on the following bodies, unless that service includes direct access to a child
- 64 or a vulnerable adult:
- 65 (A) a local mental health authority described in Section 17-43-301;
- 66 (B) a local substance abuse authority described in Section 17-43-201; or
- 67 (C) a board of an organization operating under a contract to provide mental health or
- 68 substance abuse programs, or services for the local mental health authority or substance abuse
- 69 authority; or
- 70 (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised
- 71 [~~by the licensee~~] at all times.
- 72 (4) (a) "Boarding school" means a private school that:
- 73 (i) uses a regionally accredited education program;
- 74 (ii) provides a residence to the school's students:
- 75 (A) for the purpose of enabling the school's students to attend classes at the school; and
- 76 (B) as an ancillary service to educating the students at the school;
- 77 (iii) has the primary purpose of providing the school's students with an education, as
- 78 defined in Subsection (4)(b)(i); and
- 79 (iv) (A) does not provide the treatment or services described in Subsection (28)(a); or
- 80 (B) provides the treatment or services described in Subsection (28)(a) on a limited
- 81 basis, as described in Subsection (4)(b)(ii).
- 82 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for
- 83 one or more of grades kindergarten through 12th grade.
- 84 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or

85 services described in Subsection (28)(a) on a limited basis if:

86 (A) the treatment or services described in Subsection (28)(a) are provided only as an
87 incidental service to a student; and

88 (B) the school does not:

89 (I) specifically solicit a student for the purpose of providing the treatment or services
90 described in Subsection (28)(a); or

91 (II) have a primary purpose of providing the treatment or services described in
92 Subsection (28)(a).

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

94 (5) "Child" means a person under 18 years of age.

95 (6) "Child placing" means receiving, accepting, or providing custody or care for any
96 child, temporarily or permanently, for the purpose of:

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

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

99 (c) foster home placement.

100 (7) "Client" means an individual who receives or has received services from a licensee.

101 (8) "Day treatment" means specialized treatment that is provided to:

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

103 (b) four or more persons who:

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

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

107 (9) "Department" means the Department of Human Services.

108 (10) "Department contractor" means an individual who:

109 (a) provides services under a contract with the department; and

110 (b) due to the contract with the department, has or will likely have direct access to a
111 child or vulnerable adult.

112 [~~(10)~~] (11) "Direct access" means that an individual has, or likely will have:

113 (a) contact with or access to a child or vulnerable adult that provides the individual
114 with an opportunity for personal communication or touch; or

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

117 ~~[(11)]~~ (12) "Directly supervised" means that an individual is being supervised under
118 the uninterrupted visual and auditory surveillance of another individual who has a current
119 background screening approval issued by the office.

120 ~~[(12)]~~ (13) "Director" means the director of the Office of Licensing.

121 ~~[(13)]~~ (14) "Domestic violence" means the same as that term is defined in Section
122 77-36-1.

123 ~~[(14)]~~ (15) "Domestic violence treatment program" means a nonresidential program
124 designed to provide psychological treatment and educational services to perpetrators and
125 victims of domestic violence.

126 ~~[(15)]~~ (16) "Elder adult" means a person 65 years of age or older.

127 ~~[(16)]~~ (17) "Executive director" means the executive director of the department.

128 ~~[(17)]~~ (18) "Foster home" means a temporary residential living environment for the
129 care of:

130 (a) (i) fewer than five foster children in the home of a licensed foster parent; or

131 (ii) five or more foster children in the home of a licensed foster parent if there are no
132 foster children or if there is one foster child in the home at the time of the placement of a
133 sibling group; or

134 (b) (i) fewer than four foster children in the home of a certified foster parent; or

135 (ii) four or more foster children in the home of a certified foster parent if there are no
136 foster children or if there is one foster child in the home at the time of the placement of a
137 sibling group.

138 ~~[(18)]~~ (19) (a) "Human services program" means a:

139 (i) foster home;

140 (ii) therapeutic school;

- 141 (iii) youth program;
- 142 (iv) resource family home;
- 143 (v) recovery residence; or
- 144 (vi) facility or program that provides:
 - 145 (A) secure treatment;
 - 146 (B) inpatient treatment;
 - 147 (C) residential treatment;
 - 148 (D) residential support;
 - 149 (E) adult day care;
 - 150 (F) day treatment;
 - 151 (G) outpatient treatment;
 - 152 (H) domestic violence treatment;
 - 153 (I) child placing services;
 - 154 (J) social detoxification; or
 - 155 (K) any other human services that are required by contract with the department to be

156 licensed with the department.

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

158 [~~19~~] (20) "Licensee" means an individual or a human services program licensed by
159 the office.

160 [~~20~~] (21) "Local government" means a:

- 161 (a) city; or
- 162 (b) county.

163 [~~21~~] (22) "Minor" has the same meaning as "child."

164 [~~22~~] (23) "Office" means the Office of Licensing within the Department of Human
165 Services.

166 [~~23~~] (24) "Outpatient treatment" means individual, family, or group therapy or
167 counseling designed to improve and enhance social or psychological functioning for those
168 whose physical and emotional status allows them to continue functioning in their usual living

169 environment.

170 ~~[(24)]~~ (25) "Recovery residence" means a home or facility, other than a residential
171 treatment or residential support program, that meets at least two of the following requirements:

172 (a) provides a supervised living environment for individuals recovering from a
173 substance abuse disorder;

174 (b) requires more than half of the individuals in the residence to be recovering from a
175 substance abuse disorder;

176 (c) provides or arranges for residents to receive services related to their recovery from a
177 substance abuse disorder, either on or off site;

178 (d) holds the home or facility out as being a recovery residence; or

179 (e) (i) receives public funding; or

180 (ii) runs the home or facility as a commercial venture for financial gain.

181 ~~[(25)]~~ (26) "Regular business hours" means:

182 (a) the hours during which services of any kind are provided to a client; or

183 (b) the hours during which a client is present at the facility of a licensee.

184 ~~[(26)]~~ (27) (a) "Residential support" means arranging for or providing the necessities of
185 life as a protective service to individuals or families who have a disability or who are
186 experiencing a dislocation or emergency that prevents them from providing these services for
187 themselves or their families.

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

190 (i) emotional;

191 (ii) psychological;

192 (iii) developmental; or

193 (iv) behavioral.

194 (c) Treatment is not a necessary component of residential support.

195 (d) "Residential support" does not include:

196 (i) a recovery residence; or

197 (ii) residential services that are performed:

198 (A) exclusively under contract with the Division of Services for People with
199 Disabilities; or

200 (B) in a facility that serves fewer than four individuals.

201 [~~27~~] (28) (a) "Residential treatment" means a 24-hour group living environment for
202 four or more individuals unrelated to the owner or provider that offers room or board and
203 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or
204 habilitation services for persons with emotional, psychological, developmental, or behavioral
205 dysfunctions, impairments, or chemical dependencies.

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

207 (i) boarding school;

208 (ii) foster home; or

209 (iii) recovery residence.

210 [~~28~~] (29) "Residential treatment program" means a human services program that
211 provides:

212 (a) residential treatment; or

213 (b) secure treatment.

214 [~~29~~] (30) (a) "Secure treatment" means 24-hour specialized residential treatment or
215 care for persons whose current functioning is such that they cannot live independently or in a
216 less restrictive environment.

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

220 [~~30~~] (31) "Social detoxification" means short-term residential services for persons
221 who are experiencing or have recently experienced drug or alcohol intoxication, that are
222 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care
223 Facility Licensing and Inspection Act, and that include:

224 (a) room and board for persons who are unrelated to the owner or manager of the

225 facility;

226 (b) specialized rehabilitation to acquire sobriety; and

227 (c) aftercare services.

228 [~~(31)~~] (32) "Substance abuse treatment program" means a program:

229 (a) designed to provide:

230 (i) specialized drug or alcohol treatment;

231 (ii) rehabilitation; or

232 (iii) habilitation services; and

233 (b) that provides the treatment or services described in Subsection [~~(31)~~] (32)(a) to

234 persons with:

235 (i) a diagnosed substance abuse disorder; or

236 (ii) chemical dependency disorder.

237 [~~(32)~~] (33) "Therapeutic school" means a residential group living facility:

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

239 (i) the owner of the facility; or

240 (ii) the primary service provider of the facility;

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

242 (i) at home;

243 (ii) in a public school; or

244 (iii) in a nonresidential private school; and

245 (c) that offers:

246 (i) room and board; and

247 (ii) an academic education integrated with:

248 (A) specialized structure and supervision; or

249 (B) services or treatment related to:

250 (I) a disability;

251 (II) emotional development;

252 (III) behavioral development;

253 (IV) familial development; or

254 (V) social development.

255 [~~(33)~~] (34) "Unrelated persons" means persons other than parents, legal guardians,
256 grandparents, brothers, sisters, uncles, or aunts.

257 [~~(34)~~] (35) "Vulnerable adult" means an elder adult or an adult who has a temporary or
258 permanent mental or physical impairment that substantially affects the person's ability to:

259 (a) provide personal protection;

260 (b) provide necessities such as food, shelter, clothing, or mental or other health care;

261 (c) obtain services necessary for health, safety, or welfare;

262 (d) carry out the activities of daily living;

263 (e) manage the adult's own resources; or

264 (f) comprehend the nature and consequences of remaining in a situation of abuse,
265 neglect, or exploitation.

266 [~~(35)~~] (36) (a) "Youth program" means a nonresidential program designed to provide
267 behavioral, substance abuse, or mental health services to minors that:

268 (i) serves adjudicated or nonadjudicated youth;

269 (ii) charges a fee for its services;

270 (iii) may or may not provide host homes or other arrangements for overnight
271 accommodation of the youth;

272 (iv) may or may not provide all or part of its services in the outdoors;

273 (v) may or may not limit or censor access to parents or guardians; and

274 (vi) prohibits or restricts a minor's ability to leave the program at any time of the
275 minor's own free will.

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

278 Section 2. Section **62A-2-120** is amended to read:

279 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

280 (1) As used in this section:

281 (a) "Applicant" means:
282 (i) a person described in Section [62A-2-101](#);
283 (ii) an individual who:
284 (A) is associated with a licensee; and
285 (B) has or will likely have direct access to a child or a vulnerable adult;
286 (iii) an individual who provides respite care to a foster parent or an adoptive parent on
287 more than one occasion;
288 (iv) a department contractor; or
289 (v) a guardian submitting an application on behalf of an individual, other than the child
290 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older
291 and:
292 (A) resides in a home, that is licensed or certified by the office, with the child or
293 vulnerable adult who is receiving services; or
294 (B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).
295 (b) "Application" means a background screening application to the office.
296 [~~(a)~~] (c) "Bureau" means the Bureau of Criminal Identification within the Department
297 of Public Safety, created in Section [53-10-201](#).
298 [~~(b)~~] (d) "Personal identifying information" means:
299 (i) current name, former names, nicknames, and aliases;
300 (ii) date of birth;
301 (iii) physical address and email address;
302 (iv) telephone number;
303 (v) driver license number or other government-issued identification number;
304 (vi) social security number;
305 (vii) only for applicants who are 18 years of age or older, fingerprints, [~~except for~~
306 applicants under the age of 18,] in a form specified by the office; and
307 (viii) other information specified by the office by rule made in accordance with Title
308 63G, Chapter 3, Utah Administrative Rulemaking Act.

309 (2) (a) Except as provided in Subsection [~~(13)~~] (14), an applicant shall submit the
310 following to the office:

311 (i) personal identifying information;

312 (ii) a fee established by the office under Section 63J-1-504; and

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

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

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

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

318 (D) retention of personal identifying information, including fingerprints, for
319 monitoring and notification as described in Subsections (3)(d) and (4).

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

326 (3) The office:

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

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

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

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

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

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

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

339 (v) search the juvenile court records for substantiated findings of severe child abuse or
340 neglect described in Section 78A-6-323; and

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

343 (b) shall conduct a background check of an applicant for an initial background check
344 upon submission of the information described under Subsection (2)(a);

345 (c) may conduct all or portions of a background check of an applicant, as provided by
346 rule, made by the office in accordance with Title 63G, Chapter 3, Utah Administrative
347 Rulemaking Act:

348 (i) for an annual renewal; or

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

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

353 (e) shall track the status of an approved applicant under this section to ensure that an
354 approved applicant ~~[who applies for]~~ is not required to duplicate the submission of the
355 applicant's fingerprints if the applicant applies for:

356 (i) more than one license ~~[or for]~~;

357 (ii) direct access to a child or a vulnerable adult in more than one human services
358 program ~~[is not required to duplicate the submission of the applicant's fingerprints]; or~~

359 (iii) direct access to a child or a vulnerable adult under a contract with the department;

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

363 (g) shall adopt measures to strictly limit access to personal identifying information
364 solely to the office employees responsible for processing the applications for background

365 checks and to protect the security of the personal identifying information the office reviews
366 under this Subsection (3); and

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

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

373 (b) With the personal identifying information and fingerprints the office submits to the
374 Bureau under Subsection (3), the Bureau shall check against national criminal background
375 databases for the applicant's criminal history.

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

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

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

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

385 (i) being searched by future submissions to the national criminal records databases,
386 including the Federal Bureau of Investigation Next Generation Identification System and latent
387 prints; and

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

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

392 (f) Upon notice from the office that a license has expired or an individual's direct

393 access to a child or a vulnerable adult has ceased, the Bureau shall:

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

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

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

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

406 (ii) a violation of any pornography law, including sexual exploitation of a minor;

407 (iii) prostitution;

408 (iv) an offense included in:

409 (A) Title 76, Chapter 5, Offenses Against the Person;

410 (B) Section 76-5b-201, Sexual Exploitation of a Minor; or

411 (C) Title 76, Chapter 7, Offenses Against the Family;

412 (v) aggravated arson, as described in Section 76-6-103;

413 (vi) aggravated burglary, as described in Section 76-6-203;

414 (vii) aggravated robbery, as described in Section 76-6-302;

415 (viii) identity fraud crime, as described in Section 76-6-1102; or

416 (ix) a conviction for a felony or misdemeanor offense committed outside of the state

417 that, if committed in the state, would constitute a violation of an offense described in

418 Subsections (5)(a)(i) through (viii).

419 (b) If the office denies an application to an applicant based on a conviction described in
420 Subsection (5)(a), the applicant is not entitled to a comprehensive review described in

421 Subsection (6).

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

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

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

430 (iii) a conviction for any offense described in Subsection (5)(a) that occurred more than
431 10 years before the day on which the applicant submitted information under Subsection (2)(a);

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

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

436 (vi) a listing in the Department of Human Services, Division of Aging and Adult
437 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
438 [62A-3-311.1](#);

439 (vii) a record in the juvenile court of a substantiated finding of severe child abuse or
440 neglect described in Section [78A-6-323](#); [~~or~~]

441 (viii) a record of an adjudication in juvenile court for an act that, if committed by an
442 adult, would be a felony or misdemeanor, if the applicant is:

443 (A) under 28 years of age; or

444 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
445 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
446 offense described in Subsection (5)(a)[~~;~~]; or

447 (ix) a pending charge for an offense described in Subsection (5)(a).

448 (b) The comprehensive review described in Subsection (6)(a) shall include an

449 examination of:

- 450 (i) the date of the offense or incident;
- 451 (ii) the nature and seriousness of the offense or incident;
- 452 (iii) the circumstances under which the offense or incident occurred;
- 453 (iv) the age of the perpetrator when the offense or incident occurred;
- 454 (v) whether the offense or incident was an isolated or repeated incident;
- 455 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable

456 adult, including:

- 457 (A) actual or threatened, nonaccidental physical or mental harm;
- 458 (B) sexual abuse;
- 459 (C) sexual exploitation; or
- 460 (D) negligent treatment;
- 461 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
- 462 treatment received, or additional academic or vocational schooling completed; and
- 463 (viii) any other pertinent information.

464 (c) At the conclusion of the comprehensive review described in Subsection (6)(a), the
465 office shall deny an application to an applicant if the office finds that approval would likely
466 create a risk of harm to a child or a vulnerable adult.

467 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
468 office may make rules, consistent with this chapter, to establish procedures for the
469 comprehensive review described in this Subsection (6).

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

472 (8) (a) The office may conditionally approve an application of an applicant, for a
473 maximum of 60 days after the day on which the office sends written notice to the applicant
474 under Subsection [~~(11)~~] (12), without requiring that the applicant be directly supervised, if the
475 office:

- 476 (i) is awaiting the results of the criminal history search of national criminal background

477 databases; and

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

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

482 (9) A licensee or department contractor may not permit an individual to have direct
483 access to a child or a vulnerable adult unless, subject to Subsection (10)~~[, the individual is]~~:

484 (a) the individual is associated with the licensee or department contractor and:

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

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

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

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

491 (C) the individual is directly supervised by an individual who ~~[is licensed]~~ has a current
492 background screening approval issued by the office under this section and is associated with
493 the licensee or department contractor;

494 (b) (i) the individual is associated with the licensee or department contractor;

495 (ii) the individual has a current background screening approval issued by the office
496 under this section;

497 (iii) one of the following circumstances, that the office has not yet reviewed under
498 Subsection (6), applies to the individual:

499 (A) the individual was charged with an offense described in Subsection (5)(a);

500 (B) the individual is listed in the Licensing Information System, described in Section
501 62A-4a-1006;

502 (C) the individual is listed in the vulnerable adult abuse, neglect, or exploitation
503 database, described in Section 62A-3-311.1;

504 (D) the individual has a record in the juvenile court of a substantiated finding of severe

505 child abuse or neglect, described in Section 78A-6-323; or
 506 (E) the individual has a record of an adjudication in juvenile court for an act that, if
 507 committed by an adult, would be a felony or a misdemeanor; and
 508 (iv) the individual is directly supervised by an individual who:
 509 (A) has a current background screening approval issued by the office under this
 510 section; and
 511 (B) is associated with the licensee or department contractor;
 512 (c) the individual:
 513 (i) is not associated with the licensee or department contractor; and
 514 (ii) is directly supervised by an individual who [is licensed]:
 515 (A) has a current background screening approval issued by the office under this
 516 section; and
 517 (B) is associated with the licensee or department contractor;
 518 [(c)] (d) the individual is the parent or guardian of the child, or the guardian of the
 519 vulnerable adult; [or]
 520 [(d) an individual] (e) the individual is approved by the parent or guardian of the child,
 521 or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable
 522 adult[-]; or
 523 (f) the individual is only permitted to have direct access to a vulnerable adult who
 524 voluntarily invites the individual to visit.
 525 (10) An individual may not have direct access to a child or a vulnerable adult if the
 526 individual is prohibited by court order from having that access.
 527 (11) Notwithstanding any other provision of this section, an individual for whom the
 528 office denies an application may not have supervised or unsupervised direct access to a child or
 529 vulnerable adult unless the office approves a subsequent application by the individual.
 530 [(11)] (12) (a) Within 30 days after the day on which the office receives the
 531 background check information for an applicant, the office shall give written notice to:
 532 (i) the applicant, and the licensee or department contractor, of[-(i)] the office's decision

533 regarding ~~[its]~~ the background check and findings; and

534 (ii) ~~[a list]~~ the applicant of any convictions and potentially disqualifying charges and
535 adjudications found in the search.

536 (b) With the notice described in Subsection ~~[(11)]~~ (12)(a), the office shall also give the
537 applicant the details of any comprehensive review conducted under Subsection (6).

538 (c) If the notice under Subsection ~~[(11)]~~ (12)(a) states that the applicant's application is
539 denied, the notice shall further advise the applicant that the applicant may, under Subsection
540 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
541 challenge the office's decision.

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

544 (i) defining procedures for the challenge of its background check decision described in
545 Subsection ~~[(11)]~~ (12)(c); and

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

548 ~~[(12)]~~ (13) This section does not apply to a department contractor, or an applicant for
549 an initial license, or license renewal, [to operate] regarding a substance abuse program that
550 provides services to adults only.

551 ~~[(13)]~~ (14) (a) Except as provided in Subsection ~~[(13)]~~ (14)(b), in addition to the other
552 requirements of this section, if the background check of an applicant is being conducted for the
553 purpose of licensing a prospective foster home or approving a prospective adoptive placement
554 of a child in state custody, the office shall:

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

560 (ii) check the child abuse and neglect registry in each state where each adult living in

561 the home of the applicant described in Subsection [~~(13)~~] (14)(a)(i) resided in the five years
562 immediately preceding the day on which the applicant applied to be a foster parent or adoptive
563 parent, to determine whether the adult is listed in the registry as having a substantiated or
564 supported finding of child abuse or neglect.

565 (b) The requirements described in Subsection [~~(13)~~] (14)(a) do not apply to the extent
566 that:

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

568 (ii) the requirements would prohibit the Division of Child and Family Services or a
569 court from placing a child with:

570 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

571 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
572 or 78A-6-307.5, pending completion of the background check described in Subsection (5).

573 (c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a
574 license renewal to a prospective foster parent or a prospective adoptive parent if the applicant
575 has been convicted of:

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

577 (A) child abuse, as described in Section 76-5-109;

578 (B) commission of domestic violence in the presence of a child, as described in Section
579 76-5-109.1;

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

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

582 (E) aggravated murder, as described in Section 76-5-202;

583 (F) murder, as described in Section 76-5-203;

584 (G) manslaughter, as described in Section 76-5-205;

585 (H) child abuse homicide, as described in Section 76-5-208;

586 (I) homicide by assault, as described in Section 76-5-209;

587 (J) kidnapping, as described in Section 76-5-301;

588 (K) child kidnapping, as described in Section 76-5-301.1;

- 589 (L) aggravated kidnapping, as described in Section 76-5-302;
- 590 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 591 (N) sexual exploitation of a minor, as described in Section 76-5b-201;
- 592 (O) aggravated arson, as described in Section 76-6-103;
- 593 (P) aggravated burglary, as described in Section 76-6-203;
- 594 (Q) aggravated robbery, as described in Section 76-6-302; or
- 595 (R) domestic violence, as described in Section 77-36-1; or
- 596 (ii) an offense committed outside the state that, if committed in the state, would
- 597 constitute a violation of an offense described in Subsection [~~13~~] (14)(c)(i).
- 598 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 599 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 600 five years immediately preceding the day on which the individual's application or license would
- 601 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 602 constitutes a violation of any of the following:
- 603 (i) aggravated assault, as described in Section 76-5-103;
- 604 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 605 (iii) mayhem, as described in Section 76-5-105;
- 606 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 607 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 608 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 609 Act;
- 610 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 611 Precursor Act; or
- 612 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
- 613 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
- 614 conduct the comprehensive review of an applicant's background check pursuant to this section
- 615 if the registry check described in Subsection [~~13~~] (14)(a) indicates that the individual is listed
- 616 in a child abuse and neglect registry of another state as having a substantiated or supported

617 finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

618 Section 3. Section 78A-6-209 is amended to read:

619 **78A-6-209. Court records -- Inspection.**

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

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

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

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

634 (c) the Criminal Investigations and Technical Services Division, established in Section
635 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm
636 and establishing good character for issuance of a concealed firearm permit as provided in
637 Section 53-5-704;

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

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

643 (f) for information related to a juvenile offender who has committed a sexual offense, a
644 felony, or an offense that if committed by an adult would be a misdemeanor, the Department of

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

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

657 (h) for information related to a juvenile offender who has committed a sexual offense,
658 a felony, or an offense that if committed by an adult would be a misdemeanor, the Department
659 of Health to determine whether to grant, deny, or revoke background clearance under Section
660 26-8a-310 for an individual who is seeking or who has obtained emergency medical service
661 personnel certification under Section 26-8a-302, with the understanding that the department
662 must provide the individual who committed the offense an opportunity to respond to any
663 information gathered from the department's inspection of records before it makes a
664 determination.

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

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

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

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

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

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