

## HB0371S01 compared with HB0371

~~text~~ shows text that was in HB0371 but was deleted in HB0371S01.

Inserted text shows text that was not in HB0371 but was inserted into HB0371S01.

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Representative Dean Sanpei proposes the following substitute bill:

### HUMAN SERVICES LICENSEE AND CONTRACTOR

#### SCREENING AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Dean Sanpei**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires contractors who have access to certain vulnerable populations to:
  - submit certain information for background screening to the Office of Licensing within the Department of Human Services; and

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- comply with certain requirements and restrictions regarding certain vulnerable populations;
- ▶ requires the Office of Licensing within the Department of Human Services to follow certain procedures regarding contractors who have access to certain vulnerable populations;
- ▶ amends the Juvenile Court Act regarding records access for certain background screening; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

**62A-2-120**, as repealed and reenacted by Laws of Utah 2015, Chapter 255

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

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

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

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

As used in this chapter:

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

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

(b) that meets the needs of functionally impaired adults through a comprehensive

program that provides a variety of health, social, recreational, and related support services in a protective setting.

(2) "Applicant" means ~~[(a)]~~ ~~[(b)]~~

~~[(a)]~~ a person who applies for an initial license or a license renewal under this chapter ~~[(b)]~~.

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

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

~~[(ii) has { or will likely have} direct access to a child or a vulnerable adult;]~~

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

~~[(d) { (c)} an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion { (c)} { (c)}]~~

~~{ (d) a department contractor; or~~

~~(e) a guardian submitting an application on behalf of an individual, other than the child or vulnerable adult who is receiving the service, if the individual:~~

~~(i) is 12 years of age or older; and~~

~~(ii) (A) resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or~~

~~(B) is a person or individual described in Subsection (2)(a), (b), (c), or (d);~~

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

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

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

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

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

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

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

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

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

(4) (a) "Boarding school" means a private school that:

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(i) uses a regionally accredited education program;

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

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

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

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

(iv) (A) does not provide the treatment or services described in Subsection (28)(a); or

(B) provides the treatment or services described in Subsection (28)(a) on a limited basis, as described in Subsection (4)(b)(ii).

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

(ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or services described in Subsection (28)(a) on a limited basis if:

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

(B) the school does not:

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

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

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

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

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

(a) finding a person to adopt the child;

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

(c) foster home placement.

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

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

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

(b) four or more persons who:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) foster home;
- (ii) therapeutic school;
- (iii) youth program;
- (iv) resource family home;
- (v) recovery residence; or
- (vi) facility or program that provides:
  - (A) secure treatment;
  - (B) inpatient treatment;
  - (C) residential treatment;
  - (D) residential support;
  - (E) adult day care;
  - (F) day treatment;
  - (G) outpatient treatment;
  - (H) domestic violence treatment;
  - (I) child placing services;
  - (J) social detoxification; or
  - (K) any other human services that are required by contract with the department to be licensed with the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

- (i) emotional;
  - (ii) psychological;
  - (iii) developmental; or
  - (iv) behavioral.
- (c) Treatment is not a necessary component of residential support.
- (d) "Residential support" does not include:
- (i) a recovery residence; or

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(ii) residential services that are performed:

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

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

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

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

(i) boarding school;

(ii) foster home; or

(iii) recovery residence.

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

(a) residential treatment; or

(b) secure treatment.

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

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

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

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

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.



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

(a) designed to provide:

- (i) specialized drug or alcohol treatment;
- (ii) rehabilitation; or
- (iii) habilitation services; and

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

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

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

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

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

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

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

(c) that offers:

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

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

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

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- (a) provide personal protection;
- (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- (c) obtain services necessary for health, safety, or welfare;
- (d) carry out the activities of daily living;
- (e) manage the adult's own resources; or
- (f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

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

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

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

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

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

(1) As used in this section:

(a) "Applicant" means:

(i) a person described in Section 62A-2-101;

(ii) an individual who:

(A) is associated with a licensee; and

(B) has or will likely have direct access to a child or a vulnerable adult;

(iii) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;

(iv) a department contractor; or

(v) a guardian submitting an application on behalf of an individual, other than the child

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or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and:

(A) resides in a home, that is licensed or certified by the office, with the child or vulnerable adult who is receiving services; or

(B) is a person or individual described in Subsection (1)(a)(i), (ii), (iii), or (iv).

(b) "Application" means a background screening application to the office.

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

~~[(b)]~~ (d) "Personal identifying information" means:

(i) current name, former names, nicknames, and aliases;

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

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

(vi) social security number;

(vii) only for applicants who are 18 years of age or older, fingerprints, [except for applicants under the age of 18,] in a form specified by the office; and

(viii) other information specified by the office by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(i) personal identifying information;

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

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

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

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

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

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

(b) In addition to the requirements described in Subsection (2)(a), if an applicant spent

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time outside of the United States and its territories during the five years immediately preceding the day on which the information described in Subsection (2)(a) is submitted to the office, the office may require the applicant to submit documentation establishing whether the applicant was convicted of a crime during the time that the applicant spent outside of the United States or its territories.

(3) The office:

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

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

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

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

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

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

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

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

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

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

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

(i) for an annual renewal; or

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

(d) may submit an applicant's personal identifying information, including fingerprints, to the Bureau for checking, retaining, and monitoring of state and national criminal background

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databases and for notifying the office of new criminal activity associated with the applicant;

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

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

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

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

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

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

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

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

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

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

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

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

(d) The Bureau is authorized to submit the fingerprints to the Federal Bureau of

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Investigation Next Generation Identification System, to be retained in the Federal Bureau of Investigation Next Generation Identification System for the purpose of:

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

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

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

(iii) prostitution;

(iv) an offense included in:

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

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

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

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

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

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

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

(ix) a conviction for a felony or misdemeanor offense committed outside of the state that, if committed in the state, would constitute a violation of an offense described in Subsections (5)(a)(i) through (viii).

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

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

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

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

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

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

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

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

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

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

(A) under 28 years of age; or

(B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is

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currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor offense described in Subsection (5)(a)~~[-]; or~~

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

(b) The comprehensive review described in Subsection (6)(a) shall include an examination of:

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

adult, including:

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) the individual has a record in the juvenile court of a substantiated finding of severe child abuse or neglect, described in Section 78A-6-323; or

(E) the individual has a record of an adjudication in juvenile court for an act that, if

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committed by an adult, would be a felony or a misdemeanor; and

(iv) the individual is directly supervised by an individual who:

(A) has a current background screening approval issued by the office under this

section; and

(B) is associated with the licensee or department contractor;

(c) the individual:

(i) is not associated with the licensee or department contractor; and

(ii) is directly supervised by an individual who [is licensed]:

(A) has a current background screening approval issued by the office under this

section; and

(B) is associated with the licensee or department contractor;

[(e)] (d) the individual is the parent or guardian of the child, or the guardian of the vulnerable adult; [or]

[(d) an individual] (e) the individual is approved by the parent or guardian of the child, or the guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult[-]; or

(f) the individual is only permitted to have direct access to a vulnerable adult who voluntarily invites the individual to visit.

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

(11) Notwithstanding any other provision of this section, an individual **for whom the office denies an application** may not have ~~+~~

~~(a) + supervised or unsupervised direct access to a child or vulnerable adult ~~after the office denies the individual's background screening; and~~~~

~~(b) unsupervised direct access to a child or vulnerable adult before~~ **unless** the office approves ~~the individual's current~~ **a subsequent application by the individual.**

~~[(11)]~~ (12) (a) Within 30 days after the day on which the office receives the background check information for an applicant, the office shall give written notice to:

(i) the applicant, and the licensee or department contractor, of ~~[-(i)]~~ the office's decision regarding ~~its~~ the background check and findings; and

(ii) ~~a list~~ the applicant of any convictions and potentially disqualifying charges and

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adjudications found in the search.

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

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

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

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

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

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

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

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

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

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

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that:

- (i) federal law or rule permits otherwise; or
- (ii) the requirements would prohibit the Division of Child and Family Services or a

court from placing a child with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (L) aggravated kidnapping, as described in Section 76-5-302;

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

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

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

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

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

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

- (ii) an offense committed outside the state that, if committed in the state, would

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constitute a violation of an offense described in Subsection [~~(13)~~] (14)(c)(i).

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

- (i) aggravated assault, as described in Section 76-5-103;
- (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- (iii) mayhem, as described in Section 76-5-105;
- (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
- (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or
- (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

(e) In addition to the circumstances described in Subsection (6)(a), the office shall conduct the comprehensive review of an applicant's background check pursuant to this section if the registry check described in Subsection [~~(13)~~] (14)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 62A-4a-1002.

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

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

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

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

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

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under

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Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the office must provide the individual with an opportunity to respond to any information gathered from its inspection of the records before it makes a decision concerning licensure or employment;

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

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

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

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

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

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

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of Health to determine whether to grant, deny, or revoke background clearance under Section 26-8a-310 for an individual who is seeking or who has obtained emergency medical service personnel certification under Section 26-8a-302, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from the department's inspection of records before it makes a determination.

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

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

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

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

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

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

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**Legislative Review Note**

**~~Office of Legislative Research and General Counsel~~**