

H.B. 197

CUSTODY AND ADOPTION AMENDMENTS

Representative **Timothy D. Hawkes** proposes the following amendments:

1. *Page 1, Lines 8 through 10:*

8 General Description:
9 This bill addresses the grant of custody ~~{or}~~ and adoption , or foster parent license to
10 adults who commit certain offenses.

2. *Page 1, Lines 13 through 16:*

13 ▶ prohibits custody being granted to a person who is not a ~~{biological}~~ parent and has
14 committed certain offenses;
▶ addresses prospective foster parents or a prospective adoptive parents;
15 ▶ prohibits adoption by a person who has committed certain offenses; and
16 ▶ makes technical changes.

3. *Page 1, Lines 24 through 26:*

24 30-5a-103, as enacted by Laws of Utah 2008, Chapter 272
62A-2-120, as last amended by Laws of Utah 2016, Chapter 122
25 78B-6-117, as enacted by Laws of Utah 2008, Chapter 3
26 Utah Code Sections Affected by Revisor Instructions:

4. *Page 3, Lines 81 through 84:*

81 (10) (a) Notwithstanding the other provisions of this section, a court may not grant
82 custody of a child under this section to ~~{an individual who is not the biological parent}~~ a person
other than a parent of the
83 child and who, before a custody order is issued, is convicted, pleads guilty, or pleads no contest
84 to a felony or attempted felony involving conduct that constitutes any of the following:

5. *Page 3, Line 89 through Page 4, Line 98:*

89 ~~{(v) unlawful sexual activity with a minor, as described in Section 76-5-401;}~~
90 ~~{(vi)}~~ (v) sexual abuse of a minor, as described in Section 76-5-401.1;
91 ~~{(vii)}~~ (vi) rape of a child, as described in Section 76-5-402.1;
92 ~~{(viii)}~~ (vii) object rape of a child, as described in Section 76-5-402.3;

93 ~~{(ix)}~~ (viii) sodomy on a child, as described in Section 76-5-403.1;
94 ~~{(x)}~~ (ix) sexual abuse of a child or aggravated sexual abuse of a child, as described in
95 Section 76-5-404.1;
96 ~~{(xi)}~~ (x) sexual exploitation of a minor, as described in Section 76-5b-201; or
97 ~~{(xii)}~~ (xi) an offense in another state that, if committed in this state, would constitute an
98 offense described in this Subsection (10).

6. *Page 4, Lines 101 through 102:*

101 date of this bill.

= **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 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.

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

(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, 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 (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 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 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 is not required to duplicate the submission of the applicant's fingerprints if the applicant applies for:

- (i) more than one license;
 - (ii) direct access to a child or a vulnerable adult in more than one human services program; 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 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;
- (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;
- (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 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 (12), without requiring that the applicant be directly supervised, if the office:

(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):

(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 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 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:

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

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

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

(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 supervised or unsupervised direct access to a child or vulnerable adult unless the office approves a subsequent application by the individual.

(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 the office's decision regarding the background check and findings; and

(ii) the applicant of any convictions and potentially disqualifying charges and adjudications found in the

search.

(b) With the notice described in Subsection (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 (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 (12)(c); and

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

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

(14) (a) Except as provided in Subsection (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 (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 (14)(a) do not apply to the extent 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) human trafficking of a child, as described in Section 76-5-308.5;

- ~~{(M)}~~ **(N)** an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- ~~{(N)}~~ **(O)** sexual exploitation of a minor, as described in Section 76-5b-201;
- ~~{(O)}~~ **(P)** aggravated arson, as described in Section 76-6-103;
- ~~{(P)}~~ **(Q)** aggravated burglary, as described in Section 76-6-203;
- ~~{(Q)}~~ **(R)** aggravated robbery, as described in Section 76-6-302; or
- ~~{(R)}~~ **(S)** domestic violence, as described in Section 77-36-1; or

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

102 Section 2. Section **78B-6-117** is amended to read:

Renumber remaining sections accordingly.

7. *Page 5, Lines 140 through 149:*

- 140 ~~{(v) unlawful sexual activity with a minor, as described in Section 76-5-401;}~~
- 141 ~~{(vi)}~~ **(v)** sexual abuse of a minor, as described in Section 76-5-401.1;

- 142 ~~{(vii)}~~ (vi) rape of a child, as described in Section 76-5-402.1;
- 143 ~~{(viii)}~~ (vii) object rape of a child, as described in Section 76-5-402.3;
- 144 ~~{(ix)}~~ (viii) sodomy on a child, as described in Section 76-5-403.1;
- 145 ~~{(x)}~~ (ix) sexual abuse of a child or aggravated sexual abuse of a child, as described in
146 Section 76-5-404.1;
- 147 ~~{(xi)}~~ (x) sexual exploitation of a minor, as described in Section 76-5b-201; or
- 148 ~~{(xii)}~~ (xi) an offense in another state that, if committed in this state, would constitute an
149 offense described in this Subsection (5).