

243 (1) As used in this section:

244 (a) "FBI Rap Back System" means the rap back system maintained by the Federal
245 Bureau of Investigation.

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

249 (c) "WIN Database" means the Western Identification Network Database that consists
250 of eight western states sharing one electronic fingerprint database.

251 (2) Dissemination of information from a criminal history record ~~[\or]~~, including
252 information obtained from a fingerprint background check, name check, warrant of arrest
253 information, or information from division files, is limited to:

254 (a) criminal justice agencies for purposes of administration of criminal justice and for
255 employment screening by criminal justice agencies;

256 (b) ~~§→ (i) ←§~~ agencies or individuals pursuant to a specific agreement with a criminal
256a justice

257 agency to provide services required for the administration of criminal justice;

257a ~~§→~~ **(ii) the agreement shall specifically authorize access to data, limit the use of the data**
257b **to purposes for which given, and ensure the security and confidentiality of the data; ←§**

258 (c) a qualifying entity for employment background checks for their own employees and
259 persons who have applied for employment with the qualifying entity;

260 ~~[(b)]~~ (d) noncriminal justice agencies or individuals for any purpose authorized by
261 statute, executive order, court rule, court order, or local ordinance;

262 ~~[(c)]~~ (e) agencies or individuals for the purpose of obtaining required clearances
263 connected with foreign travel or obtaining citizenship;

264 ~~[(d)]~~ (i) ~~agencies or individuals pursuant to a specific agreement with a criminal justice~~
265 ~~agency to provide services required for the administration of criminal justice; and]~~

266 ~~[(ii)]~~ ~~the agreement shall specifically authorize access to data, limit the use of the data~~
267 ~~to purposes for which given, and ensure the security and confidentiality of the data;]~~

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

270 ~~[(f)]~~ (i) ~~agencies and individuals as the commissioner authorizes for the express purpose~~
271 ~~of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice~~
272 ~~agency; and]~~

273 ~~[(i)]~~ (g) private security agencies through guidelines established by the commissioner

274 for employment background checks for their own employees and prospective employees;

275 ~~[(g) a qualifying entity for employment background checks for their own employees~~

276 ~~and persons who have applied for employment with the qualifying entity; and]~~

277 (h) state agencies for the purpose of conducting a background check for the following

278 individuals:

279 (i) employees;

280 (ii) applicants for employment;

281 (iii) volunteers; and

282 (iv) contract employees;

283 (i) governor's office for the purpose of conducting a background check on the

284 following individuals:

285 (i) cabinet members;

286 (ii) judicial applicants; and

287 (iii) members of boards, committees, and commissions appointed by the governor;

288 (j) agencies and individuals as the commissioner authorizes for the express purpose of

289 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice

290 agency; and

291 ~~[(h)]~~ (k) other agencies and individuals as the commissioner authorizes and finds

292 necessary for protection of life and property and for offender identification, apprehension, and

293 prosecution pursuant to an agreement.

294 (3) An agreement under Subsection (2)~~[(f) or (2)(h)]~~(j) shall specifically authorize

295 access to data, limit the use of data to research, evaluative, or statistical purposes, preserve the

296 anonymity of individuals to whom the information relates, and ensure the confidentiality and

297 security of the data.

298 (4) (a) Before requesting information [~~under Subsection (2)(g)~~], a qualifying entity

299 ~~[must]~~ under Subsection (2)(c), state agency, ~~§~~→ or ←~~§~~ other agency or individual described in

300 Subsections (2)(d) through (i) ~~§~~→ [~~, or the governor's office~~] ←~~§~~ shall obtain a signed waiver from

300a the

301 person whose information is requested.

302 (b) The waiver ~~[must]~~ shall notify the signee:

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

304 (ii) who will see the information; and

305 (iii) how the information will be used.

306 (c) A qualifying entity under Subsection (2)(c), state agency, ~~§~~ or ~~←§~~ other agency or
 306a individual

307 described in Subsections (2)(d) through (g) ~~§~~ or ~~←§~~ that submits a
 307a request for a
 308 noncriminal justice name based background check of local databases to the bureau shall
 309 provide to the bureau:

310 (i) personal identifying information for the subject of the background check; and

311 (ii) the fee required by Subsection (15)(a)(ii).

312 (d) A qualifying entity under Subsection (2)(c), state agency, ~~§~~ or ~~←§~~ other agency or
 312a individual

313 described in Subsections (2)(d) through (g) ~~§~~ or ~~←§~~ that submits a
 313a request for a
 314 WIN database check to the bureau shall provide to the bureau:

315 (i) personal identifying information for the subject of the background check;

316 (ii) a fingerprint card for the subject of the background check; and

317 (iii) the fee required by Subsection (15)(a)(i).

318 ~~(e)~~ (e) Information received by a qualifying entity under Subsection (2)(~~g~~)(c), state
 319 agency, ~~§~~ or ~~←§~~ other agency or individual described in Subsections (2)(d) through (i) ~~§~~ or
 319a the governor's

320 office] ~~←§~~ may only be:

321 (i) available to [persons] individuals involved in the hiring or background investigation
 322 of the job applicant or employee; [and]

323 (ii) used for the purpose of assisting in making an employment, appointment, selection,
 324 or promotion decision[-]; and

325 (iii) used for the purposes disclosed in the waiver signed in accordance with Subsection
 326 (4)(b).

327 ~~(d) A person~~ (f) An individual who disseminates or uses information obtained from
 328 the division under [Subsection (2)(g)] Subsections (2)(c) through (i) for purposes other than
 329 those specified under Subsection (4)(~~e~~)(e), in addition to any penalties provided under this
 330 section, is subject to civil liability.

331 ~~(e)~~ (g) A qualifying entity under Subsection (2)(c), state agency, ~~§~~ or ~~←§~~ other agency
 331a or

332 individual described in Subsections (2)(d) through (i) ~~§~~ or ~~←§~~ ~~←§~~

336 (ii) respond to any information received.

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

339 [(g)] (i) The division or its employees are not liable for defamation, invasion of
340 privacy, negligence, or any other claim in connection with the contents of information
341 disseminated under [Subsection (2)(g)] Subsections (2)(c) through (i).

342 (5) (a) Any criminal history record information obtained from division files may be
343 used only for the purposes for which it was provided and may not be further disseminated,
344 except under Subsection (5)(b), (c), or (d).

345 (b) A criminal history provided to an agency pursuant to Subsection (2)[(e)](f) may be
346 provided by the agency to the [person] individual who is the subject of the history, another
347 licensed child-placing agency, or the attorney for the adoptive parents for the purpose of
348 facilitating an adoption.

349 (c) A criminal history of a defendant provided to a criminal justice agency under
350 Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel,
351 upon request during the discovery process, for the purpose of establishing a defense in a
352 criminal case.

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

357 (6) The division may not disseminate criminal history record information to qualifying
358 entities under Subsection (2)[(g)](c) ~~↳ [state agencies, other agencies or individuals described in~~
359 ~~Subsection (2)(d) through (i), or the governor's office]~~ ~~↳~~ regarding employment background
360 checks if the information is related to charges:

361 (a) that have been declined for prosecution;

362 (b) that have been dismissed; or

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

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

366 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by

367 unauthorized agencies or individuals.

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

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

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

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

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

381 (10) The private security agencies as provided in Subsection (2)[~~(f)(ii)~~](g):

382 (a) shall be charged for access; and

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

385 (11) Before providing information requested under this section, the division shall give
386 priority to criminal justice agencies needs.

387 (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
388 use, disclose, or disseminate a record created, maintained, or to which access is granted by the
389 division or any information contained in a record created, maintained, or to which access is
390 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or
391 policy of a governmental entity.

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

396 (13) (a) Subject to Subsection (13)(b), a qualifying entity [~~or an entity described in~~
397 ~~Subsection (2)(b)] under Subsection (2)(c), state agency, §→ or ←§ other agency or individual
397a described~~

398 in ~~§~~ **→** [Subsections] Subsection ~~←§ (2)(d)~~ **→** [through (g), or the governor's office] ~~←§~~ may
398a request that the division register
399 fingerprints taken for the purpose of conducting current and future criminal background checks
400 under this section with:

- 401 (i) the WIN Database rap back system, or any successor system;
- 402 (ii) the FBI Rap Back System; or
- 403 (iii) a system maintained by the division.

404 (b) A qualifying entity ~~[or an entity described in Subsection (2)(b)]~~ under Subsection
405 (2)(c), state agency, other agency or individual described in ~~§~~ **→** [Subsections] Subsection ~~←§ (2)(d)~~
405a ~~§~~ **→** [through (g), or
406 the governor's office] ~~←§~~ may only make a request under Subsection (13)(a) if the entity:

- 407 (i) has the authority through state or federal statute or federal executive order;
- 408 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

409 and

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

412 (14) The division is authorized to submit fingerprints to the FBI Rap Back System to
413 be retained in the FBI Rap Back System for the purpose of being searched by future
414 submissions to the FBI Rap Back System, including latent fingerprint searches.

415 (15) (a) ~~[(i) The]~~ For a noncriminal justice applicant:

- 416 (i) the applicant fingerprint card fee under Subsection (2) is \$20[-]; and
- 417 (ii) ~~[The]~~ the name background check fee under Subsection (2) is \$15.

418 ~~[(iii)]~~ (b) The fee to register fingerprints under Subsection (13)(a)(i) is \$5.

419 ~~[(iv)]~~ (c) The fees described in [this Subsection] Subsections (15)(a) and (b) remain in
420 effect until changed by the division through the process under Section 63J-1-504.

421 ~~[(b)]~~ (d) Funds generated under this Subsection (15) shall be deposited into the General
422 Fund as a dedicated credit by the department to cover the costs incurred in providing the
423 information.

424 ~~[(e)]~~ (e) The division may collect fees charged by an outside agency for services
425 required under this section.

426 (16) For the purposes of conducting a criminal background check authorized under
427 Subsection (2)(h) or (2)(i), the Department of Human Resource Management, in accordance
428 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office