

CHILD PLACEMENT BACKGROUND CHECK LIMITS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to background checks performed by the Office of Licensing within the Department of Human Services.

Highlighted Provisions:

This bill:

- ▶ under certain circumstances, prohibits the Office of Licensing from denying a license based on certain criminal convictions that are older than 10 years; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-2-120, as last amended by Laws of Utah 2019, Chapter 335

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

Section 1. 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:



- 28 (a) (i) "Applicant" means:
- 29 (A) the same as that term is defined in Section [62A-2-101](#);
- 30 (B) an individual who is associated with a licensee and has or will likely have direct
- 31 access to a child or a vulnerable adult;
- 32 (C) an individual who provides respite care to a foster parent or an adoptive parent on
- 33 more than one occasion;
- 34 (D) a department contractor;
- 35 (E) a guardian submitting an application on behalf of an individual, other than the child
- 36 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and
- 37 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
- 38 who is receiving services; or
- 39 (F) a guardian submitting an application on behalf of an individual, other than the child
- 40 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and
- 41 is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).
- 42 (ii) "Applicant" does not mean an individual, including an adult, who is in the custody
- 43 of the Division of Child and Family Services or the Division of Juvenile Justice Services.
- 44 (b) "Application" means a background screening application to the office.
- 45 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
- 46 Public Safety, created in Section [53-10-201](#).
- 47 (d) "Incidental care" means occasional care, not in excess of five hours per week and
- 48 never overnight, for a foster child.
- 49 (e) "Personal identifying information" means:
- 50 (i) current name, former names, nicknames, and aliases;
- 51 (ii) date of birth;
- 52 (iii) physical address and email address;
- 53 (iv) telephone number;
- 54 (v) driver license or other government-issued identification;
- 55 (vi) social security number;
- 56 (vii) only for applicants who are 18 years of age or older, fingerprints, in a form
- 57 specified by the office; and
- 58 (viii) other information specified by the office by rule made in accordance with Title

59 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

62 (i) personal identifying information;

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

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

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

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

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

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

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

77 (3) The office:

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

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

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

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

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

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

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

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

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

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

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

99 (i) for an annual renewal; or

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

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

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

107 (i) more than one license;

108 (ii) direct access to a child or a vulnerable adult in more than one human services
109 program; or

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

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

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

118 (h) as necessary to comply with the federal requirement to check a state's child abuse
119 and neglect registry regarding any individual working in a program under this section that
120 serves children, shall:

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

123 (ii) require the child abuse and neglect registry be checked in each state where an
124 applicant resided at any time during the five years immediately preceding the day on which the
125 applicant submits the information described in Subsection (2)(a) to the office; and

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

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

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

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

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

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

141 (d) The bureau is authorized to submit the fingerprints to the Federal Bureau of
142 Investigation Next Generation Identification System, to be retained in the Federal Bureau of
143 Investigation Next Generation Identification System for the purpose of:

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

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

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

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

152 access to a child or a vulnerable adult has ceased, the bureau shall:

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

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

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

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

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

166 (iii) prostitution;

167 (iv) an offense included in:

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

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

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

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

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

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

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

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

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

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

- 183 (i) has a conviction for any felony offense, not described in Subsection (5)(a),
184 regardless of the date of the conviction;
- 185 (ii) has a conviction for a misdemeanor offense, not described in Subsection (5)(a), and
186 designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
187 Rulemaking Act, if the conviction is within five years before the day on which the applicant
188 submits information to the office under Subsection (2) for a background check;
- 189 (iii) has a conviction for any offense described in Subsection (5)(a) that occurred more
190 than three years before the day on which the applicant submitted information under Subsection
191 (2)(a);
- 192 (iv) is currently subject to a plea in abeyance or diversion agreement for any offense
193 described in Subsection (5)(a);
- 194 (v) has a listing in the Department of Human Services, Division of Child and Family
195 Services' Licensing Information System described in Section [62A-4a-1006](#);
- 196 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
197 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
198 [62A-3-311.1](#);
- 199 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
200 or neglect described in Section [78A-6-323](#);
- 201 (viii) has a record of an adjudication in juvenile court for an act that, if committed by
202 an adult, would be a felony or misdemeanor, if the applicant is:
- 203 (A) under 28 years of age; or
- 204 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
205 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
206 offense described in Subsection (5)(a); or
- 207 (ix) has a pending charge for an offense described in Subsection (5)(a).
- 208 (b) The comprehensive review described in Subsection (6)(a) shall include an
209 examination of:
- 210 (i) the date of the offense or incident;
- 211 (ii) the nature and seriousness of the offense or incident;
- 212 (iii) the circumstances under which the offense or incident occurred;
- 213 (iv) the age of the perpetrator when the offense or incident occurred;

- 214 (v) whether the offense or incident was an isolated or repeated incident;
- 215 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 216 adult, including:
 - 217 (A) actual or threatened, nonaccidental physical or mental harm;
 - 218 (B) sexual abuse;
 - 219 (C) sexual exploitation; or
 - 220 (D) negligent treatment;
- 221 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
- 222 treatment received, or additional academic or vocational schooling completed; and
- 223 (viii) any other pertinent information.
- 224 (c) ~~[At]~~ Except as provided in Subsection (15), at the conclusion of the comprehensive
- 225 review described in Subsection (6)(a), the office shall deny an application to an applicant if the
- 226 office finds that approval would likely create a risk of harm to a child or a vulnerable adult.
- 227 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 228 office may make rules, consistent with this chapter, to establish procedures for the
- 229 comprehensive review described in this Subsection (6).
- 230 (7) Subject to Subsection (10), the office shall approve an application to an applicant
- 231 who is not denied under Subsection (5), (6), or (13).
- 232 (8) (a) The office may conditionally approve an application of an applicant, for a
- 233 maximum of 60 days after the day on which the office sends written notice to the applicant
- 234 under Subsection (12), without requiring that the applicant be directly supervised, if the office:
 - 235 (i) is awaiting the results of the criminal history search of national criminal background
 - 236 databases; and
 - 237 (ii) would otherwise approve an application of the applicant under Subsection (7).
- 238 (b) Upon receiving the results of the criminal history search of national criminal
- 239 background databases, the office shall approve or deny the application of the applicant in
- 240 accordance with Subsections (5) through (7).
- 241 (9) A licensee or department contractor may not permit an individual to have direct
- 242 access to a child or a vulnerable adult unless, subject to Subsection (10):
 - 243 (a) the individual is associated with the licensee or department contractor and:
 - 244 (i) the individual's application is approved by the office under this section;

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

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

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

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

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

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

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

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

259 (B) the individual is listed in the Licensing Information System, described in Section
260 [62A-4a-1006](#);

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

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

265 (E) the individual has a record of an adjudication in juvenile court for an act that, if
266 committed by an adult, would be a felony or a misdemeanor; and

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

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

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

271 (c) the individual:

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

273 (ii) is directly supervised by an individual who:

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

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

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

279 (e) the individual is approved by the parent or guardian of the child, or the guardian of
280 the vulnerable adult, to have direct access to the child or the vulnerable adult;

281 (f) the individual is only permitted to have direct access to a vulnerable adult who
282 voluntarily invites the individual to visit; or

283 (g) the individual only provides incidental care for a foster child on behalf of a foster
284 parent who has used reasonable and prudent judgment to select the individual to provide the
285 incidental care for the foster child.

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

288 (11) Notwithstanding any other provision of this section, an individual for whom the
289 office denies an application may not have supervised or unsupervised direct access to a child or
290 vulnerable adult unless the office approves a subsequent application by the individual.

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

293 (i) the applicant, and the licensee or department contractor, of the office's decision
294 regarding the background check and findings; and

295 (ii) the applicant of any convictions and potentially disqualifying charges and
296 adjudications found in the search.

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

299 (c) If the notice under Subsection (12)(a) states that the applicant's application is
300 denied, the notice shall further advise the applicant that the applicant may, under Subsection
301 [62A-2-111\(2\)](#), request a hearing in the department's Office of Administrative Hearings, to
302 challenge the office's decision.

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

305 (i) defining procedures for the challenge of ~~[its]~~ the office's background check decision
306 described in Subsection (12)(c); and

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

309 (13) An individual or a department contractor who provides services in an adults only
310 substance use disorder program, as defined by rule, is exempt from this section. This
311 exemption does not extend to a program director or a member, as defined by Section
312 [62A-2-108](#), of the program.

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

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

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

327 (b) The requirements described in Subsection (14)(a) do not apply to the extent that:

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

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

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

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

334 (c) ~~[Notwithstanding]~~ Except as provided in Subsection (15) and notwithstanding
335 Subsections (5) through (9), the office shall deny a license or a license renewal to a prospective
336 foster parent or a prospective adoptive parent if the applicant has been convicted of:

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

- 338 (A) child abuse, as described in Section 76-5-109;
- 339 (B) commission of domestic violence in the presence of a child, as described in Section
- 340 76-5-109.1;
- 341 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;
- 342 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
- 343 (E) aggravated murder, as described in Section 76-5-202;
- 344 (F) murder, as described in Section 76-5-203;
- 345 (G) manslaughter, as described in Section 76-5-205;
- 346 (H) child abuse homicide, as described in Section 76-5-208;
- 347 (I) homicide by assault, as described in Section 76-5-209;
- 348 (J) kidnapping, as described in Section 76-5-301;
- 349 (K) child kidnapping, as described in Section 76-5-301.1;
- 350 (L) aggravated kidnapping, as described in Section 76-5-302;
- 351 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 352 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 353 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 354 (P) aggravated arson, as described in Section 76-6-103;
- 355 (Q) aggravated burglary, as described in Section 76-6-203;
- 356 (R) aggravated robbery, as described in Section 76-6-302; or
- 357 (S) domestic violence, as described in Section 77-36-1; or
- 358 (ii) an offense committed outside the state that, if committed in the state, would
- 359 constitute a violation of an offense described in Subsection (14)(c)(i).
- 360 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 361 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 362 five years immediately preceding the day on which the individual's application or license would
- 363 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 364 constitutes a violation of any of the following:
 - 365 (i) aggravated assault, as described in Section 76-5-103;
 - 366 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
 - 367 (iii) mayhem, as described in Section 76-5-105;
 - 368 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

369 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
370 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
371 Act;
372 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
373 Precursor Act; or
374 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.
375 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
376 conduct the comprehensive review of an applicant's background check pursuant to this section
377 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
378 child abuse and neglect registry of another state as having a substantiated or supported finding
379 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).
380 (15) (a) Notwithstanding Subsections (6) and (14) and subject to Subsection (15)(b),
381 the office may not deny an application to an applicant solely because the applicant was
382 convicted of:
383 (i) a nonviolent drug or alcohol-related offense;
384 (ii) except for an offense described in Title 76, Chapter 6, Part 1, Property Destruction,
385 Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass, or Title 76, Chapter 6, Part 3,
386 Robbery, a nonviolent offense against property described in Title 76, Chapter 6, Offenses
387 Against Property; or
388 (iii) an offense committed outside the state that, if committed in the state, would be a
389 violation of an offense described in Subsection (15)(a)(i) or (ii).
390 (b) Subsection (15)(a) applies to an applicant if:
391 (i) the conviction described in Subsection (15)(a) occurred 10 years before the day on
392 which the applicant submitted the information required under Subsection (2)(a); and
393 (ii) the applicant has not committed another misdemeanor or felony offense since the
394 day on which the conviction described in Subsection (15)(a) occurred.