

CHILD CARE BACKGROUND CHECK MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill modifies background check requirements for individuals who are responsible for the care, custody, or control of children.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ authorizes the Criminal Investigations and Technical Services Division to share criminal history information between specific state entities for the purpose of qualifying an individual to work or volunteer in a position that is responsible for the care, custody, or control of children, with certain preconditions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-108, as last amended by Laws of Utah 2019, Chapters 136, 192, and 404

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

Section 1. Section **53-10-108** is amended to read:

53-10-108. Restrictions on access, use, and contents of division records -- Limited

29 use of records for employment purposes -- Challenging accuracy of records -- Usage fees
30 -- Missing children records -- Penalty for misuse of records.

31 (1) As used in this section:

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

34 (b) "Qualifying child care entity" means:

35 (i) the Office of Licensing within the Department of Human Services, created in
36 Section 62A-2-103;

37 (ii) the State Board of Education described in Section 53E-3-201; or

38 (iii) the Department of Health created in Section 26-1-4.

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

42 ~~(c)~~ (d) "WIN Database" means the Western Identification Network Database that
43 consists of eight western states sharing one electronic fingerprint database.

44 (2) ~~[Dissemination]~~ Except as provided in Subsection (17), dissemination of
45 information from a criminal history record, including information obtained from a fingerprint
46 background check, name check, warrant of arrest information, or information from division
47 files, is limited to:

48 (a) criminal justice agencies for purposes of administration of criminal justice and for
49 employment screening by criminal justice agencies;

50 (b) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
51 agency to provide services required for the administration of criminal justice;

52 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
53 purposes for which given, and ensure the security and confidentiality of the data;

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

56 (d) noncriminal justice agencies or individuals for any purpose authorized by statute,
57 executive order, court rule, court order, or local ordinance;

58 (e) agencies or individuals for the purpose of obtaining required clearances connected
59 with foreign travel or obtaining citizenship;

60 (f) agencies or individuals for the purpose of a preplacement adoptive study, in
61 accordance with the requirements of Sections 78B-6-128 and 78B-6-130;

62 (g) private security agencies through guidelines established by the commissioner for
63 employment background checks for their own employees and prospective employees;

64 (h) state agencies for the purpose of conducting a background check for the following
65 individuals:

66 (i) employees;

67 (ii) applicants for employment;

68 (iii) volunteers; and

69 (iv) contract employees;

70 (i) governor's office for the purpose of conducting a background check on the
71 following individuals:

72 (i) cabinet members;

73 (ii) judicial applicants; and

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

75 (j) the office of the lieutenant governor for the purpose of conducting a background
76 check on an individual applying to be a notary public under Section 46-1-3[-];

77 (k) agencies and individuals as the commissioner authorizes for the express purpose of
78 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
79 agency; and

80 (l) other agencies and individuals as the commissioner authorizes and finds necessary
81 for protection of life and property and for offender identification, apprehension, and
82 prosecution pursuant to an agreement.

83 (3) An agreement under Subsection (2)(k) shall specifically authorize access to data,
84 limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of
85 individuals to whom the information relates, and ensure the confidentiality and security of the
86 data.

87 (4) (a) Before requesting information, a qualifying entity under Subsection (2)(c), state
88 agency, or other agency or individual described in Subsections (2)(d) through (j) shall obtain a
89 signed waiver from the person whose information is requested.

90 (b) The waiver shall notify the signee:

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

92 (ii) who will see the information; and

93 (iii) how the information will be used.

94 (c) A qualifying entity under Subsection (2)(c), state agency, or other agency or
95 individual described in Subsections (2)(d) through (g) that submits a request for a noncriminal
96 justice name based background check of local databases to the bureau shall provide to the
97 bureau:

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

99 (ii) the fee required by Subsection (15).

100 (d) A qualifying entity under Subsection (2)(c), state agency, or other agency or
101 individual described in Subsections (2)(d) through (g) that submits a request for a WIN
102 database check and a nationwide background check shall provide to the bureau:

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

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

105 (iii) the fee required by Subsection (15).

106 (e) Information received by a qualifying entity under Subsection (2)(c), state agency, or
107 other agency or individual described in Subsections (2)(d) through (j) may only be:

108 (i) available to individuals involved in the hiring or background investigation of the job
109 applicant, employee, or notary applicant;

110 (ii) used for the purpose of assisting in making an employment appointment, selection,
111 or promotion decision or for considering a notary applicant under Section 46-1-3; and

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

114 (f) An individual who disseminates or uses information obtained from the division
115 under Subsections (2)(c) through (j) for purposes other than those specified under Subsection
116 (4)(e), in addition to any penalties provided under this section, is subject to civil liability.

117 (g) A qualifying entity under Subsection (2)(c), state agency, or other agency or
118 individual described in Subsections (2)(d) through (j) that obtains background check
119 information shall provide the subject of the background check an opportunity to:

120 (i) review the information received as provided under Subsection (9); and

121 (ii) respond to any information received.

122 (h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
123 division may make rules to implement this Subsection (4).

124 (i) The division or its employees are not liable for defamation, invasion of privacy,
125 negligence, or any other claim in connection with the contents of information disseminated
126 under Subsections (2)(c) through (j).

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

130 (b) A criminal history provided to an agency pursuant to Subsection (2)(f) may be
131 provided by the agency to the individual who is the subject of the history, another licensed
132 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
133 adoption.

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

137 criminal case.

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

142 (6) The division may not disseminate criminal history record information to qualifying
143 entities under Subsection (2)(c) regarding employment background checks if the information is
144 related to charges:

145 (a) that have been declined for prosecution;

146 (b) that have been dismissed; or

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

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

150 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
151 unauthorized agencies or individuals.

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

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

157 (b) A processing fee for the right of access service, including obtaining a copy of the
158 individual's criminal history report under Subsection (9)(a) shall be set in accordance with
159 Section 63J-1-504.

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

163 (ii) These procedures shall include provisions for amending any information found to

164 be inaccurate or incomplete.

165 (10) The private security agencies as provided in Subsection (2)(g):

166 (a) shall be charged for access; and

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

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

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

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

180 (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in
181 Subsection (2) may request that the division register fingerprints taken for the purpose of
182 conducting current and future criminal background checks under this section with:

183 (i) the WIN Database rap back system, or any successor system;

184 (ii) the FBI Rap Back System; or

185 (iii) a system maintained by the division.

186 (b) A qualifying entity or an entity described in Subsection (2) may only make a
187 request under Subsection (13)(a) if the entity:

188 (i) has the authority through state or federal statute or federal executive order;

189 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

190 and

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

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

196 (15) (a) The division shall impose fees set in accordance with Section [63J-1-504](#) for
197 the applicant fingerprint card, name check, and to register fingerprints under Subsection
198 (13)(a).

199 (b) Funds generated under this Subsection (15) shall be deposited into the General
200 Fund as a dedicated credit by the department to cover the costs incurred in providing the
201 information.

202 (c) The division may collect fees charged by an outside agency for services required
203 under this section.

204 (16) For the purposes of conducting a criminal background check authorized under
205 Subsection (2)(h),(i), or (j), the Department of Human Resource Management, in accordance
206 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office
207 shall have direct access to criminal background information maintained under Title 53, Chapter
208 10, Part 2, Bureau of Criminal Identification.

209 (17) (a) Except as provided in Subsection (18), if an individual has an active FBI Rap
210 Back System subscription with a qualifying child care entity, the division may, upon request
211 from another qualifying child care entity, transfer the subscription to the requesting qualifying
212 child care entity if:

213 (i) the requesting qualifying child care entity requests the transfer for the purpose of
214 evaluating whether the individual should be permitted to obtain or retain a license for, or serve
215 as an employee or volunteer in a position where the individual is responsible for, the care,
216 custody, or control of children;

217 (ii) the requesting qualifying child care entity is expressly authorized by statute to

218 obtain criminal history record information for the individual who is the subject of the request;

219 (iii) before requesting the transfer, the requesting qualifying child care entity obtains a
220 signed waiver, containing the information described in Subsection (4)(b), from the individual
221 who is the subject of the request;

222 (iv) the requesting qualifying child care entity or the individual pays any applicable
223 fees set by the division in accordance with Section [63J-1-504](#); and

224 (v) the requesting qualifying child care entity complies with the requirements described
225 in Subsection (4)(g).

226 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
227 division may make rules regulating the process described in this Subsection (17).

228 (18) (a) Subsection (17) does not apply unless the Federal Bureau of Investigation
229 approves the use of the FBI Rap Back System for the purpose described in Subsection
230 (17)(a)(i) under the conditions described in Subsection (17).

231 (b) Subsection (17) does not apply to the extent that implementation of the provisions
232 of Subsection (17) are contrary to the requirements of the Child Care and Development Block
233 Grant, 42 U.S.C. Secs. 9857-9858r or any other federal grant.

234 (19) (a) Information received by a qualifying child care entity under Subsection (17)
235 may only be disclosed and used as described in Subsection (4)(e).

236 (b) A person who disseminates or uses information received under Subsection (17) for
237 a purpose other than those described in Subsection (4)(e) is subject to the penalties described in
238 this section and is also subject to civil liability.

239 (c) A qualifying child care entity is not liable for defamation, invasion of privacy,
240 negligence, or any other claim in connection with the contents of information disseminated
241 under Subsection (17).