

CHILD CARE BACKGROUND CHECK MODIFICATIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jacob L. Anderegg

House Sponsor: _____

LONG TITLE

General Description:

This bill authorizes the sharing of criminal history information between certain state agencies for specific purposes.

Highlighted Provisions:

This bill:

- ▶ defines terms; and
- ▶ authorizes the sharing of 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.

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



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

30 (1) As used in this section:

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

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

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

36 (ii) the State Board of Education described in Section [53E-3-201](#); or

37 (iii) the Department of Health created in Section [26-1-4](#).

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

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

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

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

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

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

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

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

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

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

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

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

65 (i) employees;

66 (ii) applicants for employment;

67 (iii) volunteers; and

68 (iv) contract employees;

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

71 (i) cabinet members;

72 (ii) judicial applicants; and

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

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

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

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

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

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

89 (b) The waiver shall notify the signee:

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

91 (ii) who will see the information; and

92 (iii) how the information will be used.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120 (ii) respond to any information received.

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

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

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

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

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

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

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

144 (a) that have been declined for prosecution;

145 (b) that have been dismissed; or

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

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

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

151 (8) Direct access through remote computer terminals to criminal history record

152 information in the division's files is limited to those agencies authorized by the commissioner
153 under procedures designed to prevent unauthorized access to this information.

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

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

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

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

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

165 (a) shall be charged for access; and

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

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

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

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

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

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

183 (ii) the FBI Rap Back System; or
184 (iii) a system maintained by the division.

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

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

189 and

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

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

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

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

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

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

208 (17) (a) Upon request from another qualifying child care entity, a qualifying child care
209 entity may share information from an individual's criminal history record, including
210 information obtained from a national fingerprint background check, with the requesting
211 qualifying child care entity if:

212 (i) the requesting qualifying child care entity requests the information for the purpose
213 of evaluating whether an individual should be permitted to obtain or retain a license for, or

214 serve as an employee or volunteer in a position where the individual is responsible for, the
215 care, custody, or control of children;

216 (ii) the requesting qualifying child care entity is expressly authorized by statute to
217 obtain criminal history record information for the individual who is the subject of the request;

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

221 (iv) the requesting qualifying child care entity complies with the requirements
222 described in Subsection (4)(g).

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

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

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

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