

Representative Dan N. Johnson proposes the following substitute bill:

PUBLIC LIBRARY BACKGROUND CHECK REQUIREMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan N. Johnson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill provides for criminal background checks of librarians and employees of public libraries.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires criminal background checks for librarians and employees of public libraries who have access to children;
- ▶ grants rulemaking authority to the State Library Board in relation to the criminal background checks;
- ▶ provides for the due process of individuals subject to a criminal background check;
- ▶ provides for fiscal assistance to smaller counties and municipalities to conduct background checks; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **9-7-101**, as last amended by Laws of Utah 2019, Chapter 221

29 **9-7-205**, as last amended by Laws of Utah 2017, Chapter 48

30 **9-7-407**, as last amended by Laws of Utah 2019, Chapter 221

31 **9-7-507**, as last amended by Laws of Utah 2019, Chapter 221

32 ENACTS:

33 **9-7-205.5**, Utah Code Annotated 1953

34 **9-7-205.6**, Utah Code Annotated 1953



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

37 Section 1. Section **9-7-101** is amended to read:

38 **9-7-101. Definitions.**

39 As used in this chapter:

40 (1) "Authorized entity" means a person who has authority to hire or fire a librarian or a
41 library employee.

42 ~~(1)~~ (2) "Board" means the State Library Board created in Section 9-7-204.

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

45 ~~(2)~~ (4) "Division" means the State Library Division.

46 ~~(3)~~ (5) "Library board" means the library board of directors appointed locally as
47 authorized by Section 9-7-402 or 9-7-502 and which exercises general policy authority for
48 library services within a city or county of the state, regardless of the title by which the board is
49 known locally.

50 (6) "Personal identifying information" includes:

51 (a) current name;

52 (b) former names;

53 (c) nicknames;

54 (d) aliases;

55 (e) date of birth;

56 (f) address;

- 57 (g) telephone number;
- 58 (h) driver license number or other government-issued identification number;
- 59 (i) social security number; and
- 60 (j) fingerprints.

61 [~~(4)~~] (7) "Physical format" means a transportable medium in which analog or digital
62 information is published, such as print, microform, magnetic disk, or optical disk.

63 [~~(5)~~] (8) "Policy" means the public library online access policy adopted by a library
64 board to meet the requirements of Section 9-7-215.

65 [~~(6)~~] (9) "Political subdivision" means a county, city, town, school district, public
66 transit district, redevelopment agency, or special improvement or taxing district.

67 [~~(7)~~] (10) "State agency" means:

- 68 (a) the state; or
- 69 (b) an office, department, agency, authority, commission, board, institution, hospital,
70 college, university, or other instrumentality of the state.

71 [~~(8)~~] (11) (a) "State publication" means a book, compilation, directory, document,
72 contract or grant report, hearing memorandum, journal, law, legislative bill, magazine, map,
73 monograph, order, ordinance, pamphlet, periodical, proceeding, public memorandum,
74 resolution, register, rule, report, statute, audiovisual material, electronic publication,
75 micrographic form and tape or disc recording regardless of format or method of reproduction,
76 issued or published by a state agency or political subdivision for distribution.

77 (b) "State publication" does not include correspondence, internal confidential
78 publications, office memoranda, university press publications, or publications of the state
79 historical society.

80 Section 2. Section 9-7-205 is amended to read:

81 **9-7-205. Duties of board and director.**

82 (1) The board shall:

- 83 (a) promote, develop, and organize a state library and make provisions for its housing;
- 84 (b) promote and develop library services throughout the state in cooperation with other
85 state or municipal libraries, schools, or other agencies wherever practical;
- 86 (c) promote the establishment of district, regional, or multicounty libraries as
87 conditions within particular areas of the state may require;

88 (d) supervise the books and materials of the state library and require the keeping of
89 careful and complete records of the condition and affairs of the state library;

90 (e) establish policies for the administration of the division and for the control,
91 distribution, and lending of books and materials to those libraries, institutions, groups, or
92 individuals entitled to them under this chapter;

93 (f) serve as the agency of the state for the administration of state or federal funds that
94 may be appropriated to further library development within the state;

95 (g) aid and provide general advisory assistance in the development of statewide school
96 library service and encourage contractual and cooperative relations between school and public
97 libraries;

98 (h) give assistance, advice, and counsel to all tax-supported libraries within the state
99 and to all communities or persons proposing to establish a tax-supported library and conduct
100 courses and institutes on the approved methods of operation, selection of books, or other
101 activities necessary to the proper administration of a library;

102 (i) furnish or contract for the furnishing of library or information service to state
103 officials, state departments, or any groups that in the opinion of the director warrant the
104 furnishing of those services, particularly through the facilities of traveling libraries to those
105 parts of the state otherwise inadequately supplied by libraries;

106 (j) where sufficient need exists and if the director considers it advisable, establish and
107 maintain special departments in the state library to provide services for the blind, visually
108 impaired, persons with disabilities, and professional, occupational, and other groups;

109 (k) administer a depository library program by collecting state publications, and
110 providing a bibliographic information system;

111 (l) require the collection of information and statistics necessary to the work of the state
112 library and the distribution of findings and reports;

113 (m) make any report concerning the activities of the state library to the governor as the
114 governor may require; ~~and~~

115 (n) develop standards for public libraries[-]; and

116 (o) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative
117 Rulemaking Act, regarding:

118 (i) procedures for gathering, submitting, and reviewing criminal background checks of

119 librarians and library employees of city and county libraries;

120 (ii) criteria for disqualifying an individual based on the individual's criminal history;

121 (iii) the process for complying with the due process requirements described in Section

122 9-7-205.6; and

123 (iv) procedures for a librarian or library employee to self-report a conviction, an arrest,
124 or offense information.

125 (2) The director shall, under the policy direction of the board, carry out the
126 responsibilities under Subsection (1).

127 Section 3. Section 9-7-205.5 is enacted to read:

128 **9-7-205.5. Background checks for librarians and library employees -- Bureau**
129 **responsibilities.**

130 The bureau shall:

131 (1) upon request from an authorized entity, register the fingerprints submitted by the
132 authorized entity as part of a background check with:

133 (a) the WIN Database rap back system, or any successor system; and

134 (b) the rap back system maintained by the Federal Bureau of Investigation;

135 (2) notify an authorized entity when a new entry is made against an individual whose
136 fingerprints are registered with the rap back systems described in Subsection (1)(a) regarding:

137 (a) an alleged offense; or

138 (b) a conviction, including a plea in abeyance;

139 (3) assist authorized entities to identify the appropriate privacy risk mitigation strategy
140 that is to be used to ensure that the authorized entity only receives notifications for individuals
141 with whom the authorized entity maintains an authorizing relationship; and

142 (4) collaborate with the board to provide training to authorized entities on notification
143 procedures and privacy risk mitigation strategies.

144 Section 4. Section 9-7-205.6 is enacted to read:

145 **9-7-205.6. Due process -- Review of criminal history information -- Financial**
146 **assistance.**

147 (1) (a) In accordance with Section 53-10-108, an authorized entity shall provide an
148 individual an opportunity to review and respond to any criminal history information received
149 under this chapter.

150 (b) If an authorized entity disqualifies an individual as a result of criminal history
151 information received under this chapter, an individual may request a review of:
152 (i) the information received; and
153 (ii) the reasons for the disqualification.
154 (c) An authorized entity shall provide an individual described in Subsection (1)(b) with
155 written notice of:
156 (i) the reasons for the disqualification; and
157 (ii) the individual's right to request a review of the disqualification.
158 (2) An authorized entity shall make decisions regarding criminal history information
159 for the individuals subject to the background check requirements in accordance with:
160 (a) Subsection (3);
161 (b) administrative procedures established by the authorized entity; and
162 (c) rules established by the state board.
163 (3) When making decisions regarding individuals subject to background checks under
164 this chapter, an authorized entity shall consider:
165 (a) any convictions, including pleas in abeyance;
166 (b) any matters involving a felony; and
167 (c) any matters involving an alleged:
168 (i) sexual offense;
169 (ii) class A misdemeanor drug offense;
170 (iii) offense against the individual under Title 76, Chapter 5, Offenses Against the
171 Person;
172 (iv) class A misdemeanor property offense that is alleged to have occurred within the
173 previous three years; and
174 (v) any other type of criminal offense, if more than one occurrence of the same type of
175 offense is alleged to have occurred within the previous eight years.
176 (4) Within appropriations made by the Legislature for this purpose, the State Library
177 Board shall reimburse a county of the fifth or sixth class, and a city of the fifth or sixth class,
178 for the costs of conducting a background check required under this chapter.
179 Section 5. Section 9-7-407 is amended to read:
180 **9-7-407. Librarian and other personnel.**

181 (1) The library board of directors shall appoint a competent ~~[person]~~ individual as
182 librarian to have immediate charge of the library with those duties and compensation for
183 services that ~~[it]~~ the library board of directors determines.

184 ~~(2)~~ The librarian shall act as the executive officer for the library board.

185 ~~[(2)]~~ (3) The library board shall appoint, upon the recommendation of the librarian,
186 other personnel as needed.

187 (4) (a) An authorized entity shall require the librarian, and each employee of the library
188 who has access to children at the library, to submit to a nationwide criminal background check
189 and ongoing monitoring as required in this section.

190 (b) A librarian or library employee described in Subsection (4)(a) who began
191 employment before May 4, 2022, shall comply with Subsection (4)(a) before July 1, 2022.

192 (c) Except as provided in Subsection (4)(d), an individual who will begin employment
193 as a librarian or a library employee described in Subsection (4)(a) on or after May 4, 2022,
194 shall comply with Subsection (4)(a) before beginning employment.

195 (d) An individual described in Subsection (4)(c) may begin employment before the
196 results of the criminal background check are received if the individual is visually monitored by
197 an individual who has passed the criminal background check while the individual awaiting the
198 results of the criminal background check is present in the library during hours of operation.

199 (5) To conduct a background check under this section, an authorized entity shall:

200 (a) collect from the individual the individual's personal identifying information, and
201 consent, on a form specified by the State Library Board, for:

202 (i) an initial fingerprint-based background check by the FBI and bureau upon
203 submission of the application;

204 (ii) retention of personal identifying information for ongoing monitoring through
205 registration with the systems described in Section [9-7-205.5](#); and

206 (iii) disclosure of any criminal history information to the authorized entity;

207 (b) submit the individual's personal identifying information to the bureau for:

208 (i) an initial fingerprint-based background check by the FBI and bureau; and

209 (ii) ongoing monitoring through registration with the systems described in Section
210 [9-7-205.5](#) if the results of the initial background check do not contain disqualifying criminal
211 history information as determined by the authorized entity in accordance with Section

212 9-7-205.6 and rules made by the State Library Board under Subsection 9-7-205(1)(o);

213 (c) identify the appropriate privacy risk mitigation strategy that will be used to ensure
214 that an authorized entity only receives notifications for individuals with whom the authorized
215 entity maintains an authorizing relationship; and

216 (d) notify the authorized entity upon receipt of any criminal history information
217 reported on the individual.

218 (6) An individual subject to the background check requirements under this section shall
219 self-report conviction, arrest, or offense information in accordance with rules made by the State
220 Library Board under Subsection 9-7-205(1)(o).

221 Section 6. Section 9-7-507 is amended to read:

222 **9-7-507. Librarian and other personnel.**

223 (1) (a) The library board of directors shall recommend to the county executive for
224 appointment a competent person to serve as librarian.

225 (b) The county executive shall, within 30 days of the recommendation, either make the
226 appointment or request that the library board submit another recommendation.

227 (c) The librarian shall be an employee of the county subject to the personnel policies,
228 procedures, and compensation plans approved by the county executive and county legislative
229 body.

230 (d) The librarian shall act as the executive officer for the library board.

231 (2) (a) All library personnel are employees of the county.

232 (b) The librarian or the librarian's designee shall hire library personnel in accordance
233 with the county merit system, personnel policies and procedures, and compensation plans
234 approved by the county executive and county legislative body.

235 (3) As used in this section "librarian" means the county library director.

236 (4) Except as provided in Subsection (7):

237 (a) an authorized entity shall require the librarian, and each employee of the library
238 who has access to children at the library, to submit to a nationwide criminal background check
239 and ongoing monitoring as required in this section;

240 (b) a librarian or library employee described in Subsection (4)(a) who began
241 employment before May 4, 2022, shall comply with Subsection (4)(a) before July 1, 2022;

242 (c) except as provided in Subsection (4)(d), an individual who will begin employment

243 as a librarian or a library employee described in Subsection (4)(a) on or after May 4, 2022,
244 shall comply with Subsection (4)(a) before beginning employment; and

245 (d) an individual described in Subsection (4)(c) may begin employment before the
246 results of the criminal background check are received if the individual is visually monitored by
247 an individual who has passed the criminal background check while the individual awaiting the
248 results of the criminal background check is present in the library during hours of operation.

249 (5) Except as provided in Subsection (7), to conduct a background check under this
250 section, an authorized entity shall:

251 (a) collect from the individual the individual's personal identifying information, and
252 consent, on a form specified by the State Library Board, for:

253 (i) an initial fingerprint-based background check by the FBI and bureau upon
254 submission of the application;

255 (ii) retention of personal identifying information for ongoing monitoring through
256 registration with the systems described in Section [9-7-205.5](#); and

257 (iii) disclosure of any criminal history information to the authorized entity;

258 (b) submit the individual's personal identifying information to the bureau for:

259 (i) an initial fingerprint-based background check by the FBI and bureau; and

260 (ii) ongoing monitoring through registration with the systems described in Section
261 [9-7-205.5](#) if the results of the initial background check do not contain disqualifying criminal
262 history information as determined by the authorized entity in accordance with Section
263 [9-7-205.6](#) and rules made by the State Library Board under Subsection [9-7-205\(1\)\(o\)](#);

264 (c) identify the appropriate privacy risk mitigation strategy that will be used to ensure
265 that the authorized entity only receives notifications for individuals with whom the authorized
266 entity maintains an authorizing relationship; and

267 (d) notify the authorized entity upon receipt of any criminal history information
268 reported on the individual.

269 (6) Except as provided in Subsection (7), an individual subject to the background
270 check requirements under this section shall self-report conviction, arrest, or offense
271 information in accordance with rules made by the State Library Board under Subsection
272 [9-7-205\(1\)\(o\)](#).

273 (7) Subsections (4) through (6) do not apply to an authorized entity, or the librarians or

274 employees of the authorized entity's library if, before October 1, 2022, the authorized entity
275 has, and retains, a policy for conducting criminal background checks of librarians and of library
276 employees who have access to children at the library.

277 Section 7. **Effective date.**

278 This bill takes effect on October 1, 2022.