

EMPLOYMENT SCREENING REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: Michael S. Kennedy

LONG TITLE

General Description:

This bill addresses employment background screening requirements.

Highlighted Provisions:

This bill:

- ▶ creates and modifies definitions;
- ▶ when hiring a mental health professional, prohibits certain public employers and public employer contractors from:
 - considering certain arrests or criminal convictions; or
 - denying employment based on certain criminal convictions or participation in substance use treatment;
- ▶ when hiring a mental health professional, prohibits a private employer from excluding an applicant from an interview for a juvenile adjudication, certain arrests, or an expunged criminal offense;
- ▶ modifies the Office of Licensing's (office) background and screening processes for an individual applying to work in a program with direct access to a child or vulnerable adult;
- ▶ exempts certain individuals employed by the Department of Health and Human Services from the office's background and screening processes;
- ▶ requires the office to conduct a comprehensive review of an applicant's background check if the applicant is applying to work in a program as a peer support provider or



28 mental health professional;

29 ▶ requires the office to deny an applicant's application upon certain background check
30 findings;

31 ▶ provides administrative rulemaking authority; and

32 ▶ makes technical and conforming changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **34-52-102**, as last amended by Laws of Utah 2019, Chapter 371

40 **34-52-201**, as last amended by Laws of Utah 2022, Chapter 447

41 **62A-2-120**, as last amended by Laws of Utah 2022, Chapters 185, 335, 430, and 468

42 **62A-5-103.5**, as last amended by Laws of Utah 2017, Chapter 181

43 ENACTS:

44 **34-52-302**, Utah Code Annotated 1953



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

47 Section 1. Section **34-52-102** is amended to read:

48 **34-52-102. Definitions.**

49 As used in this chapter:

50 (1) "Applicant" means an individual who provides information to a public employer or
51 private employer for the purpose of obtaining employment.

52 (2) (a) "Criminal conviction" means a verdict or finding of guilt after a criminal trial or
53 a plea of guilty or nolo contendere to a criminal charge.

54 (b) "Criminal conviction" does not include an expunged criminal conviction.

55 (3) "Juvenile adjudication" means:

56 (a) a finding by a court that the facts in a petition or criminal information alleging an
57 individual committed an offense when the individual was younger than 18 years old have been
58 proved; or

59 (b) an admission or plea of no contest under Section 80-6-306.

60 (4) "Mental health professional applicant" means an individual who:

61 (a) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and

62 (b) provides information to a public employer or private employer for the purpose of

63 obtaining employment that requires a license under Title 58, Chapter 60, Mental Health

64 Professional Practice Act.

65 [~~3~~] (5) (a) "Private employer" means a person who has one or more employees

66 employed in the same business, or in or about the same establishment, under any contract of

67 hire, express or implied, oral or written.

68 (b) "Private employer" does not include a public employer.

69 [~~4~~] (6) "Public employer" means an employer that is:

70 (a) the state or any administrative subunit of the state, including a department, division,

71 board, council, committee, institution, office, bureau, or other similar administrative unit of

72 state government;

73 (b) a state institution of higher education; or

74 (c) a municipal corporation, county, municipality, school district, local district, special

75 service district, or other political subdivision of the state.

76 Section 2. Section 34-52-201 is amended to read:

77 **34-52-201. Public employer requirements.**

78 (1) [A] Except as provided in Subsections (3) and (6), a public employer may not:

79 (a) exclude an applicant from an initial interview because of:

80 (i) a past criminal conviction[-]; or

81 (ii) if the applicant is a mental health professional applicant, an arrest for an offense

82 that occurred before the applicant was 18 years old or a past juvenile adjudication;

83 (b) make an inquiry related to an applicant's expunged criminal history;

84 (c) when making a hiring decision regarding a mental health professional applicant,

85 consider:

86 (i) an arrest for an offense that occurred before the mental health professional applicant

87 was 18 years old;

88 (ii) an arrest not followed by a criminal conviction or juvenile adjudication;

89 (iii) a juvenile adjudication; or

90 (iv) a past criminal conviction if:
91 (A) the sentence for the criminal conviction is terminated; and
92 (B) the mental health professional applicant was not incarcerated for the past criminal
93 conviction or the mental health professional applicant's incarceration for the past criminal
94 conviction ended at least three years before the day on which the mental health professional
95 applicant applied for employment; or

96 (d) deny a mental health professional applicant employment based on a past criminal
97 conviction that does not bear a direct relationship to the mental health professional applicant's
98 ability to safely or competently perform the duties of employment.

99 (2) A public employer excludes an applicant from an initial interview under Subsection
100 (1) if the public employer:

101 ~~[(a) requires an applicant to disclose, on an employment application, a criminal~~
102 ~~conviction;]~~

103 ~~[(b) requires an applicant to disclose, before an initial interview, a criminal conviction;~~
104 ~~or]~~

105 ~~[(c) if no interview is conducted, requires an applicant to disclose, before making a~~
106 ~~conditional offer of employment, a criminal conviction.]~~

107 (a) requires an applicant to disclose a criminal conviction:

108 (i) on an employment application;

109 (ii) before an initial interview; or

110 (iii) if no interview is conducted, before making a conditional offer of employment; or

111 (b) requires an applicant who is a mental health professional applicant to disclose an
112 arrest for an offense that occurred before the applicant was 18 years old or a juvenile
113 adjudication:

114 (i) on an employment application;

115 (ii) before an initial interview; or

116 (iii) if no interview is conducted, before making a conditional offer of employment.

117 (3) A public employer may not deny a mental health professional applicant
118 employment that requires the mental health professional applicant to provide substance use
119 treatment based on:

120 (a) the mental health professional applicant's participation in substance use treatment;

121 or

122 (b) a past criminal conviction for a nonviolent drug offense if:

123 (i) the sentence for the criminal conviction is terminated; and

124 (ii) (A) the mental health professional applicant was not incarcerated for the past

125 criminal conviction; or

126 (B) the mental health professional applicant's incarceration for the past criminal

127 conviction ended at least three years before the day on which the mental health professional

128 applicant applied for employment.

129 ~~[(3)(a) A public employer may not make any inquiry related to an applicant's~~
130 ~~expunged criminal history.]~~

131 ~~[(b)]~~ (4) An applicant seeking employment from a public employer may answer a
132 question related to an expunged criminal record as though the action underlying the expunged
133 criminal record never occurred.

134 ~~[(4)]~~ (5) ~~[Subject to]~~ Except as provided in Subsections (1) through (3), ~~[nothing in this~~
135 ~~section prevents]~~ this section does not prevent a public employer from:

136 (a) asking an applicant for information about an applicant's criminal conviction history
137 during an initial interview or after an initial interview; or

138 (b) considering an applicant's criminal conviction history when making a hiring
139 decision.

140 ~~[(5)]~~ (6) (a) Subsections (1) through ~~[(3)]~~ (4) do not apply:

141 ~~[(a)]~~ (i) if federal, state, or local law, including corresponding administrative rules,
142 requires the consideration of an applicant's criminal conviction history;

143 ~~[(b)]~~ (ii) to a public employer that is a law enforcement agency;

144 ~~[(c)]~~ (iii) to a public employer that is part of the criminal or juvenile justice system;

145 ~~[(d)]~~ (iv) to a public employer seeking a nonemployee volunteer;

146 ~~[(e)]~~ (v) to a public employer that works with children or vulnerable adults;

147 ~~[(f)]~~ (vi) to the Department of Alcoholic Beverage Services created in Section

148 [32B-2-203](#);

149 ~~[(g)]~~ (vii) to the State Tax Commission;

150 ~~[(h)]~~ (viii) to a public employer whose primary purpose is performing financial or
151 fiduciary functions; ~~[and]~~ or

152 [(i)] (ix) to a public transit district hiring or promoting an individual for a safety
153 sensitive position described in Section 17B-2a-825.

154 (b) Subsections (1)(c)(iv) and (1)(d) do not apply to a criminal conviction for:

155 (i) a violent felony as defined in Section 76-3-203.5; or

156 (ii) a felony related to a criminal sexual act under Title 76, Chapter 5, Part 4, Sexual
157 Offenses, or Title 76, Chapter 5b, Sexual Exploitation Act.

158 (c) Subsections (1)(a)(ii), (1)(c), (1)(d), and (3) apply to a person under contract with a
159 public employer.

160 Section 3. Section 34-52-302 is enacted to read:

161 **34-52-302. Private employer requirements when hiring a mental health**
162 **professional.**

163 (1) Except as provided in Subsection (4), a private employer may not exclude a mental
164 health professional applicant from an initial interview because of:

165 (a) an arrest for an offense that occurred before the mental health professional applicant
166 was 18 years old;

167 (b) a juvenile adjudication; or

168 (c) an expunged criminal offense.

169 (2) A private employer excludes a mental health professional applicant from an initial
170 interview under Subsection (1) if the private employer requires the mental health professional
171 applicant to disclose an arrest for an offense that occurred before the mental health professional
172 applicant was 18 years old, a juvenile adjudication, or an expunged criminal offense:

173 (a) on an employment application;

174 (b) before an initial interview; or

175 (c) if no interview is conducted, before making a conditional offer of employment.

176 (3) Except as provided in Subsections (1) and (2), this section does not prevent a
177 private employer from:

178 (a) asking a mental health professional applicant for information about the mental
179 health professional applicant's criminal conviction history during an initial interview or after an
180 initial interview; or

181 (b) considering a mental health professional applicant's criminal conviction history
182 when making a hiring decision.

- 183 (4) Subsections (1) and (2) do not apply:
 184 (a) if federal, state, or local law, including corresponding administrative rules, requires
 185 the consideration of an applicant's criminal conviction history;
 186 (b) to a private employer that is part of the criminal or juvenile justice system;
 187 (c) to a private employer seeking a nonemployee volunteer;
 188 (d) to a private employer that works with children or vulnerable adults; or
 189 (e) to a private employer whose primary purpose is performing financial or fiduciary
 190 functions.

191 Section 4. Section **62A-2-120** is amended to read:

192 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

193 (1) As used in this section:

194 (a) (i) "Applicant" means, notwithstanding Section 62A-2-101:

195 (A) ~~[the same as that term is defined in Section 62A-2-101;]~~ an individual who applies
 196 for an initial license or certification or a license or certification renewal under this chapter;

197 (B) an individual who is associated with a licensee and has or will likely have direct
 198 access to a child or a vulnerable adult;

199 (C) an individual who provides respite care to a foster parent or an adoptive parent on
 200 more than one occasion;

201 (D) a department contractor;

202 (E) an individual who transports a child for a youth transportation company;

203 (F) a guardian submitting an application on behalf of an individual, other than the child
 204 or vulnerable adult who is receiving the service, if the individual is 12 years old or older and
 205 resides in a home[;] that is licensed or certified by the office[; ~~with the child or vulnerable adult~~
 206 ~~who is receiving services]; or~~

207 (G) a guardian submitting an application on behalf of an individual, other than the
 208 child or vulnerable adult who is receiving the service, if the individual is 12 years old or older
 209 and is a person described in Subsection (1)(a)(i)(A), (B), (C), or (D).

210 (ii) "Applicant" does not ~~[mean an individual, including an adult, who is in the custody~~
 211 ~~of the Division of Child and Family Services or the Division of Juvenile Justice Services.]~~
 212 include:

213 (A) an individual who is in the custody of the Division of Child and Family Services or

214 the Division of Juvenile Justice Services; or

215 (B) an individual who applies for employment with, or is employed by, the Department
216 of Health and Human Services.

217 (b) "Application" means a background screening application to the office.

218 (c) "Bureau" means the Bureau of Criminal Identification within the Department of
219 Public Safety, created in Section [53-10-201](#).

220 (d) "Certified peer support specialist" means the same as that term is defined in Section
221 [62A-15-1301](#).

222 (e) "Criminal finding" means a record of:

223 (i) an arrest or a warrant for an arrest;

224 (ii) charges for a criminal offense; or

225 (iii) a criminal conviction.

226 ~~(f)~~ (f) "Incidental care" means occasional care, not in excess of five hours per week
227 and never overnight, for a foster child.

228 (g) "Mental health professional" means an individual who:

229 (i) is licensed under Title 58, Chapter 60, Mental Health Professional Practice Act; and

230 (ii) engaged in the practice of mental health therapy.

231 (h) "Non-criminal finding" means a record maintained in:

232 (i) the Division of Child and Family Services' Management Information System
233 described in Section [80-2-1001](#);

234 (ii) the Division of Child and Family Services' Licensing Information System described
235 in Section [80-2-1002](#);

236 (iii) the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or
237 exploitation database described in Section [62A-3-311.1](#);

238 (iv) the Sex and Kidnap Offender Registry described in Title 77, Chapter 41, Sex and
239 Kidnap Offender Registry, or a national sex offender registry; or

240 (v) a state child abuse or neglect registry.

241 (i) (i) "Peer support specialist" means an individual who:

242 (A) has a disability or a family member with a disability, or is in recovery from a
243 mental illness or a substance use disorder; and

244 (B) uses personal experience to provide support, guidance, or services to promote

245 resiliency and recovery.

246 (ii) "Peer support specialist" includes a certified peer support specialist.

247 (iii) "Peer support specialist" does not include a mental health professional.

248 ~~(e)~~ (j) "Personal identifying information" means:

249 (i) current name, former names, nicknames, and aliases;

250 (ii) date of birth;

251 (iii) physical address and email address;

252 (iv) telephone number;

253 (v) driver license or other government-issued identification;

254 (vi) social security number;

255 (vii) only for applicants who are 18 years old or older, fingerprints, in a form specified
256 by the office; and

257 (viii) other information specified by the office by rule made in accordance with Title
258 63G, Chapter 3, Utah Administrative Rulemaking Act.

259 (k) "Practice of mental health therapy" means the same as that term is defined in
260 Section 58-60-102.

261 (2) ~~(a)~~ Except as provided in Subsection ~~[(13);]~~ (12), an applicant or a representative
262 shall submit the following to the office:

263 ~~(i)~~ (a) personal identifying information;

264 ~~(ii)~~ (b) a fee established by the office under Section 63J-1-504; ~~[and]~~

265 ~~(iii)~~ (c) a disclosure form, specified by the office, for consent for:

266 ~~(A)~~ (i) an initial background check upon submission of the information described [
267 ~~under]~~ in this Subsection ~~[(2)(a)]~~ (2);

268 ~~(B)~~ (ii) ongoing monitoring of fingerprints and registries until no longer associated
269 with a licensee for 90 days;

270 ~~(C)~~ (iii) a background check when the office determines that reasonable cause exists;
271 and

272 ~~(D)~~ (iv) retention of personal identifying information, including fingerprints, for
273 monitoring and notification as described in Subsections (3)(d) and (4)~~[-]; and~~

274 ~~(b)~~ (d) ~~[In addition to the requirements described in Subsection (2)(a);]~~ if an applicant
275 resided outside of the United States and its territories during the five years immediately

276 preceding the day on which the information described in [~~Subsection (2)(a)~~] Subsections (2)(a)
277 through (c) is submitted to the office, [~~the office may require the applicant to submit~~]
278 documentation establishing whether the applicant was convicted of a crime during the time that
279 the applicant resided outside of the United States or its territories.

280 (3) The office:

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

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

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

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

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

289 (iii) search the [~~Department of Human Services,~~] Division of Child and Family
290 Services' Licensing Information System described in Section [80-2-1002](#);

291 (iv) if the applicant is applying to become a prospective foster or adoptive parent,
292 search the Division of Child and Family Services' Management Information System described
293 in Section [80-2-1001](#) for:

294 (A) the applicant; and

295 (B) any adult living in the applicant's home;

296 (v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child
297 and Family Services' Management Information System described in Section [80-2-1001](#);

298 [(iv)] (vi) search the [~~Department of Human Services,~~] Division of Aging and Adult
299 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
300 [62A-3-311.1](#);

301 [(v)] (vii) search the juvenile court records for substantiated findings of severe child
302 abuse or neglect described in Section [80-3-404](#); and

303 [(vi)] (viii) search the juvenile court arrest, adjudication, and disposition records, as
304 provided under Section [78A-6-209](#);

305 (b) shall conduct a background check of an applicant for an initial background check
306 upon submission of the information described [~~under Subsection (2)(a)~~] in Subsection (2);

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

310 (i) for an annual renewal; or

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

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

315 (e) shall track the status of an ~~[approved]~~ applicant under this section to ensure that ~~[an~~
316 ~~approved]~~ the applicant is not required to duplicate the submission of the applicant's
317 fingerprints if the applicant applies for:

318 (i) more than one license;

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

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

322 (f) shall track the status of ~~[each license and]~~ each individual with direct access to a
323 child or a vulnerable adult and notify the bureau within 90 days after the day on which the
324 license expires or the individual's direct access to a child or a vulnerable adult ceases;

325 (g) shall adopt measures to strictly limit access to personal identifying information
326 solely to the individuals responsible for processing and entering the applications for
327 background checks and to protect the security of the personal identifying information the office
328 reviews under this Subsection (3);

329 (h) as necessary to comply with the federal requirement to check a state's child abuse
330 and neglect registry regarding any individual working in a congregate care program, shall:

331 (i) search the ~~[Department of Human Services,]~~ Division of Child and Family Services'
332 Licensing Information System described in Section ~~80-2-1002~~; and

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

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

338 checks.

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

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

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

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

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

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

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

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

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

361 (f) Upon notice [~~from the office that a license has expired or an~~] that an individual's
362 direct access to a child or a vulnerable adult has ceased for 90 days, the bureau shall:

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

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

368 (5) (a) [~~After~~] Except as provided in Subsection (5)(b), after conducting the

369 background check described in Subsections (3) and (4), the office shall deny an application to
 370 an applicant who, within three years before the day on which the applicant submits information
 371 to the office under Subsection (2) for a background check, has been convicted of [~~any of the~~
 372 ~~following, regardless of whether the offense is a felony, a misdemeanor, or an infraction:~~]:

373 (i) a felony or misdemeanor involving conduct that constitutes any of the following:

374 (A) an offense identified as domestic violence, lewdness, voyeurism, battery, cruelty to
 375 animals, or bestiality;

376 [(ii)] (B) a violation of any pornography law, including sexual exploitation of a minor
 377 or aggravated sexual exploitation of a minor;

378 [(iii)] (C) [~~prostitution;~~] sexual solicitation;

379 [(iv) ~~an offense included in:~~]

380 [(A) ~~Title 76, Chapter 5, Offenses Against the Individual;~~]

381 [(B) ~~Section 76-5b-201, Sexual Exploitation of a Minor;~~]

382 [(C) ~~Section 76-5b-201.1, Aggravated Sexual Exploitation of a Minor; or~~]

383 [(D) ~~Title 76, Chapter 7, Offenses Against the Family;~~]

384 (D) an offense included in Title 76, Chapter 5, Offenses Against the Individual, Title
 385 76, Chapter 5b, Sexual Exploitation Act, Title 76, Chapter 4, Part 4, Enticement of a Minor, or
 386 Title 76, Chapter 7, Offenses Against the Family;

387 [(v)] (E) aggravated arson, as described in Section 76-6-103;

388 [(vi)] (F) aggravated burglary, as described in Section 76-6-203;

389 [(vii)] (G) aggravated robbery, as described in Section 76-6-302;

390 [(viii)] (H) identity fraud crime, as described in Section 76-6-1102; [~~or~~]

391 (I) sexual battery, as described in Section 76-9-702.1; or

392 (J) a violent offense committed in the presence of a child, as described in Section
 393 76-3-203.10; or

394 [(ix)] (ii) a felony or misdemeanor offense committed outside of the state that, if
 395 committed in the state, would constitute a violation of an offense described in [~~Subsections~~
 396 ~~(5)(a)(i) through (viii):~~] Subsection (5)(a)(i).

397 [(b) ~~If the office denies an application to an applicant based on a conviction described~~
 398 ~~in Subsection (5)(a), the applicant is not entitled to a comprehensive review described in~~
 399 ~~Subsection (6):~~]

400 ~~[(e)]~~ (b) (i) [If the applicant will be working in a program serving only adults whose
401 only impairment is a mental health diagnosis, including that of a serious mental health disorder,
402 with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a)
403 do not apply, and the office shall conduct a comprehensive review as described in Subsection
404 (6).] Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer
405 support provider, a mental health professional, or in a program that serves only adults with a
406 primary mental health diagnosis, with or without a co-occurring substance use disorder.

407 (ii) The office shall conduct a comprehensive review of an applicant described in
408 Subsection (5)(b)(i) in accordance with Subsection (6).

409 (6) ~~[(a)]~~ The office shall conduct a comprehensive review of an applicant's background
410 check if the applicant:

411 ~~[(i)]~~ (a) has a felony or class A misdemeanor conviction for an offense described in
412 Subsection (5) with a date of conviction that is more than three years before the date on which
413 the applicant submits the information described in Subsection (2);

414 ~~(b) [has an open court case or a conviction for any felony offense,]~~ has a felony charge
415 or conviction for an offense not described in Subsection [(5)(a), with a date of conviction that
416 is] (5) with a date of charge or conviction that is no more than 10 years before the date on
417 which the applicant submits the application under Subsection (2) and no criminal findings or
418 non-criminal findings after the date of conviction;

419 ~~[(ii) has an open court case or a conviction for a misdemeanor offense, not described in~~
420 ~~Subsection (5)(a), and designated by the office, by rule, in accordance with Title 63G, Chapter~~
421 ~~3, Utah Administrative Rulemaking Act, if the conviction is within three years before the day~~
422 ~~on which the applicant submits information to the office under Subsection (2) for a background~~
423 ~~check;]~~

424 ~~[(iii) has a conviction for any offense described in Subsection (5)(a) that occurred more~~
425 ~~than three years before the day on which the applicant submitted information under Subsection~~
426 ~~(2)(a);]~~

427 ~~[(iv) is currently subject to a plea in abeyance or diversion agreement for any offense~~
428 ~~described in Subsection (5)(a);]~~

429 ~~[(v) has a listing in the Department of Human Services, Division of Child and Family~~
430 ~~Services' Licensing Information System described in Section 80-2-1002;]~~

431 ~~[(vi) has a listing in the Department of Human Services, Division of Aging and Adult~~
432 ~~Services' vulnerable adult abuse, neglect, or exploitation database described in Section~~
433 ~~62A-3-311.1;]~~

434 ~~[(vii) has a record in the juvenile court of a substantiated finding of severe child abuse~~
435 ~~or neglect described in Section 80-3-404;]~~

436 ~~[(viii)] (c) has a class B misdemeanor or class C misdemeanor conviction for an~~
437 ~~offense described in Subsection (5) with a date of conviction that is more than three years after,~~
438 ~~and no more than 10 years before, the date on which the applicant submits the information~~
439 ~~described in Subsection (2) and no criminal findings or non-criminal findings after the date of~~
440 ~~conviction;~~

441 ~~(d) has a misdemeanor conviction for an offense not described in Subsection (5) with a~~
442 ~~date of conviction that is no more than three years before the date on which the applicant~~
443 ~~submits information described in Subsection (2) and no criminal findings or non-criminal~~
444 ~~findings after the date of conviction;~~

445 ~~(e) is currently subject to a plea in abeyance or diversion agreement for an offense~~
446 ~~described in Subsection (5);~~

447 ~~(f) appears on the Sex and Kidnap Offender Registry described in Title 77, Chapter 41,~~
448 ~~Sex and Kidnap Offender Registry, or a national sex offender registry;~~

449 ~~(g) has a record of an adjudication in juvenile court for an act that, if committed by an~~
450 ~~adult, would be a felony or misdemeanor, if the applicant is:~~

451 ~~[(A)] (i) under 28 years old; or~~

452 ~~[(B)] (ii) 28 years old or older and has been convicted of, has pleaded no contest to, or~~
453 ~~is currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor~~
454 ~~offense described in Subsection ~~[(5)(a);] (5);~~~~

455 ~~[(ix)] (h) has a pending charge for an offense described in Subsection ~~[(5)(a); or] (5);~~~~

456 ~~[(x) is an applicant described in Subsection (5)(c).]~~

457 ~~(i) has a listing in the Division of Child and Family Services' Licensing Information~~
458 ~~System described in Section 80-2-1002 that occurred no more than 15 years before the date on~~
459 ~~which the applicant submits the information described in Subsection (2) and no criminal~~
460 ~~findings or non-criminal findings dated after the date of the listing;~~

461 ~~(j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,~~

462 neglect, or exploitation database described in Section [62A-3-311.1](#) that occurred no more than
463 15 years before the date on which the applicant submits the information described in
464 Subsection (2) and no criminal findings or non-criminal findings dated after the date of the
465 listing;

466 (k) has a substantiated finding of severe child abuse or neglect under Section [80-3-404](#)
467 that occurred no more than 15 years before the date on which the applicant submits the
468 information described in Subsection (2) and no criminal findings or non-criminal findings
469 dated after the date of the finding;

470 (l) (i) is seeking a position:

471 (A) as a peer support provider;

472 (B) as a mental health professional; or

473 (C) in a program that serves only adults with a primary mental health diagnosis, with or
474 without a co-occurring substance use disorder; and

475 (ii) within three years before the day on which the applicant submits the information
476 described in Subsection (2):

477 (A) has a felony or misdemeanor charge or conviction;

478 (B) has a listing in the Division of Child and Family Services' Licensing Information
479 System described in Section [80-2-1002](#);

480 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
481 neglect, or exploitation database described in Section [62A-3-311.1](#); or

482 (D) has a substantial finding of severe child abuse or neglect under Section [80-3-404](#);

483 (m) (i) (A) is seeking a position in a congregate care program;

484 (B) is seeking to become a prospective foster or adoptive parent; or

485 (C) is an applicant described in Subsection (1)(a)(i)(F); and

486 (ii) (A) has an infraction conviction for conduct that constitutes an offense or violation
487 described in Subsection (5)(a)(i)(A) or (B);

488 (B) has a listing in the Division of Child and Family Services' Licensing Information
489 System described in Section [80-2-1002](#);

490 (C) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse,
491 neglect, or exploitation database described in Section [62A-3-311.1](#);

492 (D) has a substantial finding of severe child abuse or neglect under Section [80-3-404](#);

493 or

494 (E) has a listing on the registry check described in Subsection (13)(a) as having a
 495 substantiated or supported finding of a severe type of child abuse or neglect as defined in
 496 Section 80-1-1002; or

497 (n) is seeking to become a prospective foster or adoptive parent and has, or has an adult
 498 living with the applicant who has, a conviction, finding, or listing described in Subsection
 499 (6)(m)(ii).

500 ~~[(b)]~~ (7) (a) The comprehensive review ~~[described in Subsection (6)(a)]~~ shall include
 501 an examination of:

502 (i) the date of the offense or incident;
 503 (ii) the nature and seriousness of the offense or incident;
 504 (iii) the circumstances under which the offense or incident occurred;
 505 (iv) the age of the perpetrator when the offense or incident occurred;
 506 (v) whether the offense or incident was an isolated or repeated incident;
 507 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
 508 adult, including:

509 (A) actual or threatened, nonaccidental physical, mental, or financial harm;
 510 (B) sexual abuse;
 511 (C) sexual exploitation; or
 512 (D) negligent treatment;
 513 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
 514 treatment received, or additional academic or vocational schooling completed; and
 515 (viii) the applicant's risk of harm to clientele in the program or in the capacity for
 516 which the applicant is applying~~;~~ and.

517 ~~[(ix) any other pertinent information presented to or publicly available to the~~
 518 ~~committee members.]~~

519 ~~[(c)]~~ (b) At the conclusion of the comprehensive review ~~[described in Subsection~~
 520 ~~(6)(a)]~~, the office shall deny an application to an applicant if the office finds:

521 (i) that approval would likely create a risk of harm to a child or a vulnerable adult~~[-]; or~~
 522 (ii) an individual is prohibited from having direct access to a child or vulnerable adult
 523 by court order.

524 ~~[(d) At the conclusion of the comprehensive review described in Subsection (6)(a), the~~
525 ~~office may not deny an application to an applicant solely because the applicant was convicted~~
526 ~~of an offense that occurred 10 or more years before the day on which the applicant submitted~~
527 ~~the information required under Subsection (2)(a) if:]~~

528 ~~[(i) the applicant has not committed another misdemeanor or felony offense after the~~
529 ~~day on which the conviction occurred; and]~~

530 ~~[(ii) the applicant has never been convicted of an offense described in Subsection~~
531 ~~(14)(c):]~~

532 ~~[(e) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
533 ~~the office may make rules, consistent with this chapter, to establish procedures for the~~
534 ~~comprehensive review described in this Subsection (6):]~~

535 ~~[(7)] (8) [Subject to Subsection (10), the] The office shall approve an application to an~~
536 ~~applicant who is not denied under [Subsection (5), (6), or (14):] this section.~~

537 ~~[(8)] (9) (a) The office may conditionally approve an application of an applicant, for a~~
538 ~~maximum of 60 days after the day on which the office sends written notice to the applicant~~
539 ~~under Subsection [(12);] (11), without requiring that the applicant be directly supervised, if the~~
540 ~~office:~~

541 (i) is awaiting the results of the criminal history search of national criminal background
542 databases; and

543 (ii) would otherwise approve an application of the applicant ~~[under Subsection (7)]~~
544 under this section.

545 (b) The office may conditionally approve an application of an applicant, for a
546 maximum of one year after the day on which the office sends written notice to the applicant
547 under Subsection [(12)] (11), without requiring that the applicant be directly supervised if the
548 office:

549 (i) is awaiting the results of an out-of-state registry for providers other than foster and
550 adoptive parents; and

551 (ii) would otherwise approve an application of the applicant ~~[under Subsection (7)]~~
552 under this section.

553 (c) Upon receiving the results of the criminal history search of a national criminal
554 background database, the office shall approve or deny the application of the applicant in

555 accordance with ~~[Subsections (5) through (7)]~~ this section.

556 ~~[(9)]~~ (10) (a) A licensee or department contractor may not permit an individual to have
557 direct access to a child or a vulnerable adult ~~[unless, subject to Subsection (10)]~~ without being
558 directly supervised unless:

559 ~~[(a)]~~ (i) the individual is associated with the licensee or department contractor and the
560 department conducts a background screening in accordance with this section~~[:];~~

561 ~~[(i) the individual's application is approved by the office under this section;]~~

562 ~~[(ii) the individual's application is conditionally approved by the office under~~
563 ~~Subsection (8); or]~~

564 ~~[(iii) (A) the individual has submitted the background check information described in~~
565 ~~Subsection (2) to the office;]~~

566 ~~[(B) the office has not determined whether to approve the applicant's application; and]~~

567 ~~[(C) the individual is directly supervised by an individual who has a current~~
568 ~~background screening approval issued by the office under this section and is associated with~~
569 ~~the licensee or department contractor;]~~

570 ~~[(b) (i) the individual is associated with the licensee or department contractor;]~~

571 ~~[(ii) the individual has a current background screening approval issued by the office~~
572 ~~under this section;]~~

573 ~~[(iii) one of the following circumstances, that the office has not yet reviewed under~~
574 ~~Subsection (6), applies to the individual:]~~

575 ~~[(A) the individual was charged with an offense described in Subsection (5)(a);]~~

576 ~~[(B) the individual is listed in the Licensing Information System, described in Section~~
577 ~~80-2-1002;]~~

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

580 ~~[(D) the individual has a record in the juvenile court of a substantiated finding of~~
581 ~~severe child abuse or neglect, described in Section 80-3-404; or]~~

582 ~~[(E) the individual has a record of an adjudication in juvenile court for an act that, if~~
583 ~~committed by an adult, would be a felony or a misdemeanor as described in Subsection (5)(a)~~
584 ~~or (6); and]~~

585 ~~[(iv) the individual is directly supervised by an individual who:]~~

586 ~~[(A) has a current background screening approval issued by the office under this~~
587 ~~section; and]~~

588 ~~[(B) is associated with the licensee or department contractor;]~~

589 ~~[(c) the individual;]~~

590 ~~[(i) is not associated with the licensee or department contractor; and]~~

591 ~~[(ii) is directly supervised by an individual who:]~~

592 ~~[(A) has a current background screening approval issued by the office under this~~
593 ~~section; and]~~

594 ~~[(B) is associated with the licensee or department contractor;]~~

595 ~~[(d)]~~ (ii) the individual is the parent or guardian of the child, or the guardian of the
596 vulnerable adult;

597 ~~[(e)]~~ (iii) the individual is approved by the parent or guardian of the child, or the
598 guardian of the vulnerable adult, to have direct access to the child or the vulnerable adult;

599 ~~[(f)]~~ (iv) the individual is only permitted to have direct access to a vulnerable adult
600 who voluntarily invites the individual to visit; or

601 ~~[(g)]~~ (v) the individual only provides incidental care for a foster child on behalf of a
602 foster parent who has used reasonable and prudent judgment to select the individual to provide
603 the incidental care for the foster child.

604 ~~[(10) An individual may not have direct access to a child or a vulnerable adult if the~~
605 ~~individual is prohibited by court order from having that access.]~~

606 ~~[(11)]~~ (b) Notwithstanding any other provision of this section, an individual for whom
607 the office denies an application may not have direct access to a child or vulnerable adult unless
608 the office approves a subsequent application by the individual.

609 ~~[(12)]~~ (11) (a) Within 30 days after the day on which ~~[the office receives the~~
610 ~~background check information for an applicant, the office shall give notice of the clearance~~
611 ~~status to:]~~ the applicant submits the information described in Subsection (2), the office shall
612 notify the applicant of any potentially disqualifying criminal findings or non-criminal findings.

613 ~~[(i) the applicant, and the licensee or department contractor, of the office's decision~~
614 ~~regarding the background check and findings; and]~~

615 ~~[(ii) the applicant of any convictions and potentially disqualifying charges and~~
616 ~~adjudications found in the search.]~~

617 ~~[(b) With the notice described in Subsection (12)(a), the office shall also give the~~
 618 ~~applicant the details of any comprehensive review conducted under Subsection (6).]~~

619 ~~[(c)]~~ (b) If the notice under Subsection ~~[(12)(a)]~~ (11)(a) states that the applicant's
 620 application is denied, the notice shall further advise the applicant that the applicant may, under
 621 Subsection 62A-2-111(2), request a hearing in the department's Office of Administrative
 622 Hearings, to challenge the office's decision.

623 ~~[(d)]~~ (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
 624 Act, the office shall make rules, consistent with this chapter:

625 (i) defining procedures for the challenge of the office's background check decision
 626 described in Subsection ~~[(12)(c)]~~ (11)(b); and

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

629 ~~[(13)]~~ (12) (a) An individual or a department contractor who provides services in an
 630 adults only substance use disorder program, as defined by rule made in accordance with Title
 631 63G, Chapter 3, Utah Administrative Rulemaking Act, is exempt from this section.

632 (b) ~~[This]~~ The exemption described in Subsection (12)(a) does not extend to a program
 633 director or a member, as defined by Section 62A-2-108, of the program.

634 ~~[(14)]~~ (13) (a) Except as provided in Subsection ~~[(14)(b);]~~ (13)(b), in addition to the
 635 other requirements of this section, if the background check of an applicant is being conducted
 636 for the purpose of giving clearance status to an applicant seeking a position in a congregate
 637 care program~~[-, an applicant for a one-time adoption,] or an applicant seeking to [provide a~~
 638 ~~prospective foster home, or an applicant seeking to provide a prospective adoptive home]~~
 639 become a prospective or adoptive parent, the office shall:

640 (i) check the child abuse and neglect registry in each state where each applicant resided
 641 in the five years immediately preceding the day on which the applicant applied to be a foster
 642 ~~[parent]~~ or adoptive parent, to determine whether the prospective foster ~~[parent or prospective]~~
 643 or adoptive parent is listed in the registry as having a substantiated or supported finding of
 644 child abuse or neglect; and

645 (ii) check the child abuse and neglect registry in each state where each adult living in
 646 the home of the applicant described in Subsection ~~[(14)(a)(i)]~~ (13)(a)(i) resided in the five years
 647 immediately preceding the day on which the applicant applied to be a foster ~~[parent]~~ or

648 adoptive parent, to determine whether the adult is listed in the registry as having a substantiated
649 or supported finding of child abuse or neglect.

650 (b) The requirements described in Subsection ~~[(14)(a)]~~ (13)(a) do not apply to the
651 extent that:

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

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

655 (A) a noncustodial parent under Section 80-2a-301, 80-3-302, or 80-3-303; or

656 (B) a relative, other than a noncustodial parent, under Section 80-2a-301, 80-3-302, or
657 80-3-303, pending completion of the background check described in Subsection (5).

658 (c) Notwithstanding Subsections (5) through ~~[(9);]~~ (10), the office shall deny a
659 clearance to an applicant seeking a position in a congregate care program~~[, an applicant for a~~
660 ~~one-time adoption,]~~ or an applicant to become a prospective foster ~~[parent, or an applicant to~~
661 ~~become a prospective]~~ or adoptive parent if the applicant has been convicted of:

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

663 (A) child abuse, as described in Sections 76-5-109, 76-5-109.2, and 76-5-109.3;

664 (B) commission of domestic violence in the presence of a child, as described in Section
665 76-5-114;

666 (C) abuse or neglect of a child with a disability, as described in Section 76-5-110;

667 (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;

668 (E) aggravated murder, as described in Section 76-5-202;

669 (F) murder, as described in Section 76-5-203;

670 (G) manslaughter, as described in Section 76-5-205;

671 (H) child abuse homicide, as described in Section 76-5-208;

672 (I) homicide by assault, as described in Section 76-5-209;

673 (J) kidnapping, as described in Section 76-5-301;

674 (K) child kidnapping, as described in Section 76-5-301.1;

675 (L) aggravated kidnapping, as described in Section 76-5-302;

676 (M) human trafficking of a child, as described in Section 76-5-308.5;

677 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

678 (O) sexual exploitation of a minor, ~~[as described in Section 76-5b-201]~~ described in

679 Title 76, Chapter 5b, Sexual Exploitation Act;

680 (P) aggravated exploitation of a minor, as described in Section [76-5b-201.1](#);

681 (Q) aggravated arson, as described in Section [76-6-103](#);

682 (R) aggravated burglary, as described in Section [76-6-203](#);

683 (S) aggravated robbery, as described in Section [76-6-302](#); [~~or~~]

684 (T) lewdness involving a child, as described in Section [76-9-702.5](#);

685 (U) incest, as described in Section [76-7-102](#); or

686 (V) domestic violence, as described in Section [77-36-1](#); or

687 (ii) an offense committed outside the state that, if committed in the state, would
688 constitute a violation of an offense described in Subsection [~~(14)(c)(i)~~] [\(13\)\(c\)\(i\)](#).

689 (d) Notwithstanding Subsections (5) through [~~(9)~~] [\(10\)](#), the office shall deny a license
690 or license renewal to [~~a~~] an individual seeking a position in a congregate care program or a
691 prospective foster [~~parent or a prospective~~] or adoptive parent if, within the five years
692 immediately preceding the day on which the individual's application or license would otherwise
693 be approved, the [~~applicant~~] individual was convicted of a felony involving conduct that
694 constitutes a violation of any of the following:

695 (i) aggravated assault, as described in Section [76-5-103](#);

696 (ii) aggravated assault by a prisoner, as described in Section [76-5-103.5](#);

697 (iii) mayhem, as described in Section [76-5-105](#);

698 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;

699 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

700 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
701 Act;

702 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
703 Precursor Act; or

704 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

705 (e) In addition to the circumstances described in Subsection [~~(6)(a)~~] [\(6\)](#), the office shall
706 conduct the comprehensive review of an applicant's background check [~~pursuant to~~] under this
707 section if the registry check described in Subsection [~~(14)(a)~~] [\(13\)\(a\)](#) indicates that the
708 individual is listed in a child abuse and neglect registry of another state as having a
709 substantiated or supported finding of a severe type of child abuse or neglect as defined in

710 Section 80-1-102.

711 (14) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
712 the office may make rules, consistent with this chapter, to:

713 (a) establish procedures for, and information to be examined in, the comprehensive
714 review described in Subsections (6) and (7); and

715 (b) determine whether to consider an offense or incident that occurred while an
716 individual was in the custody of the Division of Child and Family Services or the Division of
717 Juvenile Justice Services for purposes of approval or denial of an application for a prospective
718 foster or adoptive parent.

719 Section 5. Section 62A-5-103.5 is amended to read:

720 **62A-5-103.5. Disbursal of public funds -- Background check of a direct service**
721 **worker.**

722 (1) For purposes of this section, "office" means the same as that term is defined in
723 Section 62A-2-101.

724 (2) Public funds may not be disbursed to pay a direct service worker for personal
725 services rendered to a person unless the office approves the direct service worker to have direct
726 access and provide services to a child or a vulnerable adult pursuant to Section 62A-2-120.

727 (3) For purposes of Subsection (2), the office shall conduct a background check of a
728 direct service worker:

729 (a) before public funds are disbursed to pay the direct service worker for the personal
730 services described in Subsection (2); and

731 (b) using the same procedures established for a background check of an applicant for a
732 license under Section 62A-2-120.

733 (4) A child who is in the legal custody of the department or any of the department's
734 divisions may not be placed with a direct service worker unless, before the child is placed with
735 the direct service worker, the direct service worker passes a background check~~[, pursuant to the~~
736 ~~requirements of Subsection 62A-2-120(14)]~~ under Section 62A-2-120.

737 (5) If a public transit district, as described in Title 17B, Chapter 2a, Part 8, Public
738 Transit District Act, contracts with the division to provide services:

739 (a) the provisions of this section are not applicable to a direct service worker employed
740 by the public transit district; and

741 (b) the division may not reimburse the public transit district for services provided
742 unless a direct service worker hired or transferred internally after July 1, 2013, by the public
743 transit district to drive a paratransit route:

744 (i) is approved by the office to have direct access to children and vulnerable adults in
745 accordance with Section [62A-2-120](#); and

746 (ii) is subject to a background check established in a statute or rule governing a public
747 transit district or other public transit district policy.