

HB0468S01 compared with HB0468

~~deleted text~~ shows text that was in HB0468 but was deleted in HB0468S01.

inserted text shows text that was not in HB0468 but was inserted into HB0468S01.

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Representative Marsha Judkins proposes the following substitute bill:

EMPLOYMENT SCREENING REQUIREMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: _____

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,

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- 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 mental health professional;
- ▶ requires the office to deny an applicant's application upon certain background check findings;
- ▶ provides administrative rulemaking authority; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

34-52-302, Utah Code Annotated 1953

Utah Code Sections Affected by Coordination Clause:

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

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

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

34-52-102. Definitions.

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As used in this chapter:

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

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

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

(3) "Juvenile adjudication" means:

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

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

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

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

(b) provides information to a public employer or private employer for the purpose of obtaining employment that requires a license under Title 58, Chapter 60, Mental Health Professional Practice Act.

~~[(3)]~~ (5) (a) "Private employer" means a person who has one or more employees employed in the same business, or in or about the same establishment, under any contract of hire, express or implied, oral or written.

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

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

(a) the state or any administrative subunit of the state, including a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of state government;

(b) a state institution of higher education; or

(c) a municipal corporation, county, municipality, school district, local district, special service district, or other political subdivision of the state.

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

34-52-201. Public employer requirements.

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

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

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

(ii) if the applicant is a mental health professional applicant, an arrest for an offense that occurred before the applicant was 18 years old or a past juvenile adjudication;

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

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

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

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

(iii) a juvenile adjudication; or

(iv) a past criminal conviction if:

(A) the sentence for the criminal conviction is terminated; and

(B) the mental health professional applicant was not incarcerated for the past criminal conviction or the mental health professional applicant's incarceration for the past criminal conviction ended at least three years before the day on which the mental health professional applicant applied for employment; or

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

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

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

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

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

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

(i) on an employment application;

(ii) before an initial interview; or

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

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

(i) on an employment application;

(ii) before an initial interview; or

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

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

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

or

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

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

(ii) (A) the mental health professional applicant was not incarcerated for the past criminal conviction; or

(B) the mental health professional applicant's incarceration for the past criminal conviction ended at least three years before the day on which the mental health professional applicant applied for employment.

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

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

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

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

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

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

~~[(a)] (i) if federal, state, or local law, including corresponding administrative rules,~~

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requires the consideration of an applicant's criminal conviction history;

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

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

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

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

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

32B-2-203;

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

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

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

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

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

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

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

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

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

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

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

(b) a juvenile adjudication; or

(c) an expunged criminal offense.

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

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- (a) on an employment application;
- (b) before an initial interview; or
- (c) if no interview is conducted, before making a conditional offer of employment.

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

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

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

(4) Subsections (1) and (2) do not apply:

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

(b) to a private employer that is part of the criminal or juvenile justice system;

(c) to a private employer seeking a nonemployee volunteer;

(d) to a private employer that works with children or vulnerable adults; or

(e) to a private employer whose primary purpose is performing financial or fiduciary functions.

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

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

(1) As used in this section:

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

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

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

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

(D) a department contractor;

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

(F) a guardian submitting an application on behalf of an individual, other than the child

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or vulnerable adult who is receiving the service, if the individual is 12 years old or older and resides in a home[;] that is licensed or certified by the office[~~;~~ with the child or vulnerable adult who is receiving services]; or

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

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

include:

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

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

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

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

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

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

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

(ii) charges for a criminal offense; or

(iii) a criminal conviction.

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

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

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

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

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

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

(ii) the Division of Child and Family Services' Licensing Information System described

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in Section 80-2-1002;

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

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

(v) a state child abuse or neglect registry.

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

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

(B) uses personal experience to provide support, guidance, or services to promote resiliency and recovery.

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

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

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

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

(ii) date of birth;

(iii) physical address and email address;

(iv) telephone number;

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

(vi) social security number;

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

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

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

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

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

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

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

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

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

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

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

~~[(b)]~~ (d) ~~[In addition to the requirements described in Subsection (2)(a);]~~ if an applicant
resided outside of the United States and its territories during the five years immediately
preceding the day on which the information described in ~~[Subsection (2)(a)]~~ Subsections (2)(a)
through (c) is submitted to the office, ~~[the office may require the applicant to submit]~~
documentation establishing whether the applicant was convicted of a crime during the time that
the applicant resided outside of the United States or its territories.

(3) The office:

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

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

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

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

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

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

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

(A) the applicant; and

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

(v) for an applicant described in Subsection (1)(a)(i)(F), search the Division of Child

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and Family Services' Management Information System described in Section 80-2-1001;

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

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

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

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

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

(i) for an annual renewal; or

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

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

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

(i) more than one license;

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

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

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

(g) shall adopt measures to strictly limit access to personal identifying information solely to the individuals responsible for processing and entering the applications for background checks and to protect the security of the personal identifying information the office

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reviews under this Subsection (3);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) discard and destroy any retained fingerprints; and

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

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

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

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

~~(ii)~~ (B) a violation of any pornography law, including sexual exploitation of a minor or aggravated sexual exploitation of a minor;

~~(iii)~~ ~~(C)~~ ~~{~~ prostitution; ~~}~~ sexual solicitation;

~~(iv)~~ an offense included in:

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

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

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

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

(C) sexual solicitation;

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

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

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

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

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

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

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

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

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

~~[(c) ~~[(b)(i)]~~ ~~{}~~ If the applicant will be working in a program serving only adults whose only impairment is a mental health diagnosis, including that of a serious mental health disorder, with or without co-occurring substance use disorder, the denial provisions of Subsection (5)(a) do not apply, and the office shall conduct a comprehensive review as described in Subsection (6).] ~~{}~~~~

~~(b)(i)~~ Subsection (5)(a) does not apply to an applicant who is seeking a position as a peer support provider, a mental health professional, or in a program that serves only adults with a primary mental health diagnosis, with or without a co-occurring substance use disorder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(g) has a record of an adjudication in juvenile court for an act that, if committed by an~~

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adult, would be a felony or misdemeanor, if the applicant is:

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

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

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

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

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

(j) has a listing in the Division of Aging and Adult Services' vulnerable adult abuse, neglect, or exploitation database described in Section 62A-3-311.1 that occurred no more than 15 years before the date on which the applicant submits the information described in Subsection (2) and no criminal findings or non-criminal findings dated after the date of the listing;

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

(l) (i) is seeking a position:

(A) as a peer support provider;

(B) as a mental health professional; or

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

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

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

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

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

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neglect, or exploitation database described in Section 62A-3-311.1; or

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

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

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

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

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

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

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

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

or

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

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

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

(i) the date of the offense or incident;

(ii) the nature and seriousness of the offense or incident;

(iii) the circumstances under which the offense or incident occurred;

(iv) the age of the perpetrator when the offense or incident occurred;

(v) whether the offense or incident was an isolated or repeated incident;

(vi) whether the offense or incident directly relates to abuse of a child or vulnerable

adult, including:

(A) actual or threatened, nonaccidental physical, mental, or financial harm;

(B) sexual abuse;

(C) sexual exploitation; or

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(D) negligent treatment;

(vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric treatment received, or additional academic or vocational schooling completed; and

(viii) the applicant's risk of harm to clientele in the program or in the capacity for which the applicant is applying~~[-and]~~.

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

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

(i) that approval would likely create a risk of harm to a child or a vulnerable adult[-]; or

(ii) an individual is prohibited from having direct access to a child or vulnerable adult by court order.

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

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

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

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

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

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

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

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

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

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

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

(c) Upon receiving the results of the criminal history search of a national criminal background database, the office shall approve or deny the application of the applicant in accordance with [~~Subsections (5) through (7)~~] this section.

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

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

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

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

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

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

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

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

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

[(iii) one of the following circumstances, that the office has not yet reviewed under

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Subsection (6), applies to the individual:]

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

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

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

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

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

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

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

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

~~[(c) the individual:]~~

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

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

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

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

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

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

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

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

~~[(10) An individual may not have direct access to a child or a vulnerable adult if the~~

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~~individual is prohibited by court order from having that access.]~~

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

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

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

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

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

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

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

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

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

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

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

~~[(14)] (13) (a)~~ Except as provided in Subsection ~~[(14)(b)]~~ (13)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted

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for the purpose of giving clearance status to an applicant seeking a position in a congregate care program[, an applicant for a one-time adoption,] ~~{ }~~ or an applicant seeking to [provide a prospective foster home, or an applicant seeking to provide a prospective adoptive home] become a prospective foster or adoptive parent, the office shall:

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

(ii) check the child abuse and neglect registry in each state where each adult living in the home of the applicant described in Subsection [(14)(a)(i)] (13)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster [parent] or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect.

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

(i) federal law or rule permits otherwise; or

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

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

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

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

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

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

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

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

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- (D) endangerment of a child or vulnerable adult, as described in Section 76-5-112.5;
- (E) aggravated murder, as described in Section 76-5-202;
- (F) murder, as described in Section 76-5-203;
- (G) manslaughter, as described in Section 76-5-205;
- (H) child abuse homicide, as described in Section 76-5-208;
- (I) homicide by assault, as described in Section 76-5-209;
- (J) kidnapping, as described in Section 76-5-301;
- (K) child kidnapping, as described in Section 76-5-301.1;
- (L) aggravated kidnapping, as described in Section 76-5-302;
- (M) human trafficking of a child, as described in Section 76-5-308.5;
- (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- (O) sexual exploitation of a minor, [~~as described in Section 76-5b-201~~] described in Title 76, Chapter 5b, Sexual Exploitation Act;

- (P) aggravated exploitation of a minor, as described in Section 76-5b-201.1;
- (Q) aggravated arson, as described in Section 76-6-103;
- (R) aggravated burglary, as described in Section 76-6-203;
- (S) aggravated robbery, as described in Section 76-6-302; [~~or~~]
- (T) lewdness involving a child, as described in Section 76-9-702.5;
- (U) incest, as described in Section 76-7-102; or
- (V) domestic violence, as described in Section 77-36-1; or
- (ii) an offense committed outside the state that, if committed in the state, would constitute a violation of an offense described in Subsection [~~(14)(c)(i)~~] (13)(c)(i).

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

- (i) aggravated assault, as described in Section 76-5-103;
- (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- (iii) mayhem, as described in Section 76-5-105;

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(iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
(v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
(vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;

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

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

(e) In addition to the circumstances described in Subsection [~~(6)(a)~~] (6), the office shall conduct the comprehensive review of an applicant's background check [~~pursuant to~~] under this section if the registry check described in Subsection [~~(14)(a)~~] (13)(a) indicates that the individual is listed in a child abuse and neglect registry of another state as having a substantiated or supported finding of a severe type of child abuse or neglect as defined in Section 80-1-102.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6. Coordinating H.B. 468 with H.B. 60 -- Technical and substantive amendments.

If this H.B. 468 and H.B. 60, Juvenile Justice Modifications, both pass and become law, it is the intent of the Legislature that when the Office of Legislative Research and General Counsel prepares the Utah Code database for publication on October 1, 2023, Section 34-52-201 be amended to read:

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

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

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

(ii) if the applicant is a mental health professional applicant, an arrest for an offense that occurred before the applicant was 18 years old;

(b) make an inquiry related to an applicant's expunged criminal or juvenile delinquency

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history:

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

consider:

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

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

(iii) a juvenile adjudication; or

(iv) a past criminal conviction if:

(A) the sentence for the criminal conviction is terminated; and

(B) the mental health professional applicant was not incarcerated for the past criminal conviction or the mental health professional applicant's incarceration for the past criminal conviction ended at least three years before the day on which the mental health professional applicant applied for employment; or

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

(2) A public employer excludes an applicant from an initial interview under Subsection

(1) if the public employer:

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

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

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

(a) requires an applicant to disclose a criminal conviction or juvenile adjudication:

(i) on an employment application;

(ii) before an initial interview; or

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

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

(i) on an employment application;

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(ii) before an initial interview; or

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

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

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

or

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

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

(ii) (A) the mental health professional applicant was not incarcerated for the past criminal conviction; or

(B) the mental health professional applicant's incarceration for the past criminal conviction ended at least three years before the day on which the mental health professional applicant applied for employment.

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

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

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

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

(b) considering an applicant's criminal conviction or juvenile delinquency history when making a hiring decision.

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

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

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

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

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

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

~~(f)~~ (vi) to the Department of Alcoholic Beverage Services created in Section 32B-2-203;

~~(g)~~ (vii) to the State Tax Commission;

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

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

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

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

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

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