

HB0153S02 compared with HB0153S01

~~text~~ shows text that was in HB0153S01 but was deleted in HB0153S02.

text shows text that was not in HB0153S01 but was inserted into HB0153S02.

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Representative Susan Pulsipher proposes the following substitute bill:

CHILD CARE REVISIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: {}Susan Pulsipher

Senate Sponsor: {}_____

LONG TITLE

General Description:

This bill modifies provisions related to caring for children.

Highlighted Provisions:

This bill:

- ▶ makes optional the requirement to obtain a certificate from the Department of Health and Human Services to provide residential child care;
- ▶ requires a residential child care provider operating without a license or a certificate to submit to criminal history check requirements;
- ▶ authorizes the Department of Health and Human Services to make rules regarding submission to criminal history checks;
- ▶ raises the age of a child dependent for whom an individual taxpayer may claim a child tax credit; and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

26B-2-402, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-404, as renumbered and amended by Laws of Utah 2023, Chapter 305

26B-2-405, as renumbered and amended by Laws of Utah 2023, Chapter 305

~~{59-10-1047}~~ 26B-2-406, as renumbered and amended by Laws of Utah 2023, Chapter 305

59-10-1047 (Effective 01/01/25), as enacted by Laws of Utah 2023, Chapter 462

78A-6-209 (Superseded 07/01/24), as last amended by Laws of Utah 2023, Chapters 115, 330

78A-6-209 (Effective 07/01/24), as last amended by Laws of Utah 2023, Chapters 115, 310 and 330

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

Section 1. Section 26B-2-402 is amended to read:

26B-2-402. Duties of the department -- Enforcement of part -- Licensing committee requirements.

(1) With regard to residential child care licensed ~~[or]~~, certified, or subject to criminal background checks under this part, the department may:

(a) make and enforce rules to implement this part and, as necessary to protect qualifying children's common needs for a safe and healthy environment, to provide for:

(i) adequate facilities and equipment; and

(ii) competent caregivers, considering the age of the children and the type of program offered by the licensee; and

(b) make and enforce rules necessary to carry out the purposes of this part, in the following areas:

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(i) requirements for applications, the application process, and compliance with other applicable statutes and rules;

(ii) documentation and policies and procedures that providers shall have in place in order to be licensed, in accordance with Subsection (1)(a);

(iii) categories, classifications, and duration of initial and ongoing licenses;

(iv) changes of ownership or name, changes in licensure status, and changes in operational status;

(v) license expiration and renewal, contents, and posting requirements;

(vi) procedures for inspections, complaint resolution, disciplinary actions, and other procedural measures to encourage and assure compliance with statute and rule; and

(vii) guidelines necessary to assure consistency and appropriateness in the regulation and discipline of licensees.

(2) The department shall enforce the rules established by the licensing committee, with the concurrence of the department, for center based child care.

(3) The department shall make rules that allow a regulated provider to provide after school child care for a reasonable number of qualifying children in excess of the regulated provider's capacity limit, without requiring the regulated provider to obtain a waiver or new license from the department.

(4) Rules made under this part by the department, or the licensing committee, with the concurrence of the department, shall be made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(5) (a) The licensing committee and the department may not regulate educational curricula, academic methods, or the educational philosophy or approach of the provider.

(b) The licensing committee and the department shall allow for a broad range of educational training and academic background in certification or qualification of child day care directors.

(6) In licensing and regulating child care programs, the licensing committee and the department shall reasonably balance the benefits and burdens of each regulation and, by rule, provide for a range of licensure, depending upon the needs and different levels and types of child care provided.

(7) Notwithstanding the definition of "qualifying child" in Section 26B-2-401, the

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licensing committee and the department shall count children through age 12 and children with disabilities through age 18 toward the minimum square footage requirement for indoor and outdoor areas, including the child of:

- (a) a licensed residential child care provider; or
- (b) an owner or employee of a licensed child care center.

(8) Notwithstanding Subsection (1)(a)(i), the licensing committee and the department may not exclude floor space used for furniture, fixtures, or equipment from the minimum square footage requirement for indoor and outdoor areas if the furniture, fixture, or equipment is used:

- (a) by qualifying children;
- (b) for the care of qualifying children; or
- (c) to store classroom materials.

(9) (a) A child care center constructed prior to January 1, 2004, and licensed and operated as a child care center continuously since January 1, 2004, is exempt from the licensing committee's and the department's group size restrictions, if the child to caregiver ratios are maintained, and adequate square footage is maintained for specific classrooms.

(b) An exemption granted under Subsection (9)(a) is transferrable to subsequent licensed operators at the center if a licensed child care center is continuously maintained at the center.

(10) The licensing committee, with the concurrence of the department, shall develop, by rule, a five-year phased-in compliance schedule for playground equipment safety standards.

(11) The department shall set and collect licensing and other fees in accordance with Section 26B-1-209.

Section ~~26B-2-402~~2. Section **26B-2-404** is amended to read:

26B-2-404. Residential Child Care Certificate.

(1) Except as provided in Section 26B-2-405, a person [~~shall obtain~~] may request a Residential Child Care Certificate from the department if[:] the person provides residential child care for eight or fewer qualifying children.

~~[(a) the person provides residential child care for seven or eight qualifying children; or]~~

~~[(b) the person:]~~

~~[(i) provides residential child care for six or less qualifying children; and]~~

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~~[(ii) requests to be certified.]~~

(2) The minimum qualifications for a Residential Child Care Certificate are:

(a) the submission of:

(i) an application in the form prescribed by the department;

(ii) a certification and criminal background fee established in accordance with Section 26B-1-209; and

(iii) in accordance with Section 26B-2-406, identifying information for each adult person and each juvenile age 12 through 17 years old who resides in the provider's home:

(A) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime;

(B) to screen for a substantiated finding of child abuse or neglect by a juvenile court; and

(C) to discover whether the person is listed in the Licensing Information System described in Section 80-2-1002;

(b) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:

(i) check the immunization record, as defined in Section 53G-9-301, of each qualifying child who receives child care in the provider's home;

(ii) identify serious sanitation, fire, and health hazards to qualifying children; and

(iii) make appropriate recommendations; and

(c) annual training consisting of 10 hours of department-approved training as specified by the department by administrative rule, including a current department-approved CPR and first aid course.

(3) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (2)(b), the department shall require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance.

(4) In addition to an inspection conducted pursuant to Subsection (2)(b), the department may inspect the home of a certified provider in response to a complaint of:

(a) child abuse or neglect;

(b) serious health hazards in or around the provider's home; or

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(c) providing residential child care without the appropriate certificate or license.

(5) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

Section ~~(2)~~3. Section **26B-2-405** is amended to read:

26B-2-405. Exclusions from part -- Criminal background checks by an excluded person.

(1) (a) Except as provided in ~~[Subsection (1)(b)]~~ Subsections (1)(b) and (1)(c), the provisions and requirements of this part do not apply to:

(i) a facility or program owned or operated by an agency of the United States government;

(ii) group counseling provided by a mental health therapist, as defined in Section 58-60-102, who is licensed to practice in this state;

(iii) a health care facility licensed under Part 2, Health Care Facility Licensing and Inspection;

(iv) care provided to a qualifying child by or in the home of a parent, legal guardian, grandparent, brother, sister, uncle, or aunt;

(v) care provided to a qualifying child, in the home of the provider, for less than four hours a day or on a sporadic basis, unless that child care directly affects or is related to a business licensed in this state;

(vi) care provided at a residential support program that is licensed by the department;

(vii) center based child care for four or ~~[less]~~ fewer qualifying children, unless the provider requests to be licensed under Section 26B-2-403; or

(viii) residential child care for ~~[six or less]~~ eight or fewer qualifying children, unless the provider requests to be licensed under Section 26B-2-403 or certified under Section 26B-2-404.

(b) ~~[Notwithstanding Subsection (1)(a), a person who]~~ A person that does not hold a license or certificate from the department under this part may not, at any given time, provide child care in the person's home for more than 10 children in total under the age of 13, or under the age of 18 if a child has a disability, regardless of whether a child is related to the person providing child care.

(c) A person described in Subsection (1)(a)(viii) that is not a certified provider or a

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licensed provider under this part shall submit to the department the information required for a criminal history check under Subsections 26B-2-406(1) and (2) and is subject to disqualification as provided in Subsection 26B-2-406(3).

(2) The licensing and certification requirements of this part do not apply to:

(a) care provided to a qualifying child as part of a course of study at or a program administered by an educational institution that is regulated by the boards of education of this state, a private education institution that provides education in lieu of that provided by the public education system, or by a parochial education institution;

(b) care provided to a qualifying child by a public or private institution of higher education, if the care is provided in connection with a course of study or program, relating to the education or study of children, that is provided to students of the institution of higher education;

(c) care provided to a qualifying child at a public school by an organization other than the public school, if:

(i) the care is provided under contract with the public school or on school property; or

(ii) the public school accepts responsibility and oversight for the care provided by the organization;

(d) care provided to a qualifying child as part of a summer camp that operates on federal land pursuant to a federal permit;

(e) care provided by an organization that:

(i) qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code;

(ii) provides care pursuant to a written agreement with:

(A) a municipality, as defined in Section 10-1-104, that provides oversight for the program; or

(B) a county that provides oversight for the program; and

(iii) provides care to a child who is over the age of four and under the age of 13; or

(f) care provided to a qualifying child at a facility where:

(i) the parent or guardian of the qualifying child is at all times physically present in the building where the care is provided and the parent or guardian is near enough to reach the child within five minutes if needed;

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(ii) the duration of the care is less than four hours for an individual qualifying child in any one day;

(iii) the care is provided on a sporadic basis;

(iv) the care does not include diapering a qualifying child; and

(v) the care does not include preparing or serving meals to a qualifying child.

(3) An exempt provider shall submit to the department:

(a) the information required under Subsections 26B-2-406(1) and (2); and

(b) of the children receiving care from the exempt provider:

(i) the number of children who are less than two years old;

(ii) the number of children who are at least two years old and less than five years old;

and

(iii) the number of children who are five years old or older.

(4) An exempt provider shall post, in a conspicuous location near the entrance of the exempt provider's facility, a notice prepared by the department that:

(a) states that the facility is exempt from licensure and certification; and

(b) provides the department's contact information for submitting a complaint.

(5) (a) Except as provided in Subsection (5)(b), the department may not release the information the department collects from exempt providers under Subsection (3).

(b) The department may release an aggregate count of children receiving care from exempt providers, without identifying a specific provider.

Section 4. Section 26B-2-406 is amended to read:

26B-2-406. Disqualified individuals -- Criminal history checks -- Payment of costs.

(1) (a) Each exempt provider, except as provided in Subsection (1)(c), each person described in Subsection 26B-2-405(1)(a)(viii) that is not a certified provider or a licensed provider, and each person requesting a residential certificate or to be licensed or to renew a license under this part shall submit to the department the name and other identifying information, which shall include fingerprints, of existing, new, and proposed:

(i) owners;

(ii) directors;

(iii) members of the governing body;

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- (iv) employees;
- (v) providers of care;
- (vi) volunteers, except parents of children enrolled in the programs; and
- (vii) all adults residing in a residence where child care is provided.

(b) (i) The Utah Division of Criminal Investigation and Technical Services within the Department of Public Safety shall process the information required under Subsection (1)(a) to determine whether the individual has been convicted of any crime.

(ii) The Utah Division of Criminal Investigation and Technical Services shall submit fingerprints required under Subsection (1)(a) to the FBI for a national criminal history record check.

(iii) A person required to submit information to the department under Subsection (1) shall pay the cost of conducting the record check described in this Subsection (1)(b).

(c) An exempt provider who provides care to a qualifying child as part of a program administered by an educational institution that is regulated by the State Board of Education is not subject to this Subsection (1), unless required by the Child Care and Development Block Grant, 42 U.S.C. Secs. 9857-9858r.

(2) (a) (i) Each person requesting a residential certificate or to be licensed or to renew a license under this part and each person described in Subsection 26B-2-405(1)(a)(viii) that is not a certified provider or a licensed provider shall submit to the department the name and other identifying information of any person age 12 through 17 who resides in the residence where the child care is provided.

(ii) The identifying information required for a person age 12 through 17 does not include fingerprints.

(b) The department shall access the juvenile court records to determine whether a person described in Subsection (1) or (2)(a) has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or misdemeanor if:

- (i) the person described in Subsection (1) is under the age of 28; or
- (ii) the person described in Subsection (1) is:

(A) over the age of 28; and

(B) has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

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(3) Except as provided in Subsections (4) and (5), a licensee under this part, a person described in Subsection 26B-2-405(1)(a)(viii) that is not a certified provider or a licensed provider, or an exempt provider may not permit a person who has been convicted, has pleaded no contest, or is currently subject to a plea in abeyance or diversion agreement for any felony or misdemeanor, or if the provisions of Subsection (2)(b) apply, who has been adjudicated in juvenile court of committing an act which if committed by an adult would be a felony or a misdemeanor, to:

- (a) provide child care;
- (b) provide volunteer services for a child care program or an exempt provider;
- (c) reside at the premises where child care is provided; or
- (d) function as an owner, director, or member of the governing body of a child care program or an exempt provider.

(4) (a) The department may, by rule, exempt the following from the restrictions of Subsection (3):

- (i) specific misdemeanors; and
- (ii) specific acts adjudicated in juvenile court, which if committed by an adult would be misdemeanors.

(b) In accordance with criteria established by rule, the executive director may consider and exempt individual cases not otherwise exempt under Subsection (4)(a) from the restrictions of Subsection (3).

(5) The restrictions of Subsection (3) do not apply to the following:

- (a) a conviction or plea of no contest to any nonviolent drug offense that occurred on a date 10 years or more before the date of the criminal history check described in this section; or
- (b) if the provisions of Subsection (2)(b) apply, any nonviolent drug offense adjudicated in juvenile court on a date 10 years or more before the date of the criminal history check described in this section.

(6) The department may retain background check information submitted to the department for up to one year after the day on which the covered individual is no longer associated with a Utah child care provider.

Section ~~33~~5. Section **59-10-1047** (Effective 01/01/25) is amended to read:

59-10-1047 (Effective 01/01/25). **Nonrefundable child tax credit.**

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(1) As used in this section:

(a) "Joint filing status" means the same as that term is defined in Section 59-10-1018.

(b) "Head of household filing status" means the same as that term is defined in Section 59-10-1018.

(c) "Married filing separately status" means a married individual who:

(i) does not file a single federal individual income tax return jointly with that married individual's spouse for the taxable year; and

(ii) files a single federal individual income tax return for the taxable year.

(d) "Modified adjusted gross income" means the sum of the following for a claimant or, if the claimant's federal individual income tax return is allowed a joint filing status, the claimant and the claimant's spouse:

(i) adjusted gross income for the taxable year for which a tax credit is claimed under this section;

(ii) any interest income that is not included in adjusted gross income for the taxable year described in Subsection (1)(d)(i); and

(iii) any addition to adjusted gross income required by Section 59-10-114 for the taxable year described in Subsection (1)(d)(i).

(e) "Qualifying child" means an individual:

(i) with respect to whom the claimant is allowed to claim a tax credit under Section 24, Internal Revenue Code, on the claimant's federal individual income tax return for the taxable year; and

(ii) who is at least one year old and younger than [~~four~~] six years old on the last day of the claimant's taxable year.

(f) "Single filing status" means a single individual who files a single federal individual income tax return for the taxable year.

(2) Subject to Subsection 59-10-1002.2, a claimant may claim a nonrefundable tax credit of \$1,000 for each qualifying child.

(3) A claimant may not carry forward or carry back the amount of the tax credit that exceeds the claimant's tax liability.

(4) The tax credit allowed by Subsection (2) claimed on a return filed under this part shall be reduced by \$.10 for each dollar by which modified adjusted gross income for purposes

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of the return exceeds:

(a) for a federal individual income tax return that is allowed a married filing separately status, \$27,000;

(b) for a federal individual income tax return that is allowed a single filing status or head of household filing status, \$43,000; and

(c) for a federal individual income tax return [~~under this chapter~~] that is allowed a joint filing status, \$54,000.

Section ~~{4}~~6. Section 78A-6-209 (Superseded 07/01/24) is amended to read:

78A-6-209 (Superseded 07/01/24). Court records -- Inspection.

(1) The juvenile court and the juvenile court's probation department shall keep records as required by the board and the presiding judge.

(2) A court record shall be open to inspection by:

(a) the parents or guardian of a child, a minor who is at least 18 years old, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Individual, the State Board of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the State Board of Education must provide the individual with an opportunity to respond to any information gathered from the State Board of Education's inspection of the records before the State Board of Education makes a decision concerning licensure or employment;

(c) the Criminal Investigations and Technical Services Division, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704;

(d) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 80-2-602 and 80-2-701 and administrative hearings in accordance with Section 80-2-707;

(e) the Division of Licensing and Background Checks for the purpose of conducting a background check in accordance with Section 26B-2-120;

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(f) for information related to a minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health and Human Services for the purpose of evaluating under the provisions of Subsection 26B-2-406(3) whether a [licensee] person should be permitted to operate a residential child care without a license or a certificate or to obtain or retain a license to provide or to operate child care, with the understanding that the department must provide the individual who committed the offense with an opportunity to respond to any information gathered from the Department of Health and Human Services' inspection of records before the Department of Health and Human Services makes a decision concerning licensure;

(g) for information related to a minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health and Human Services to determine whether an individual meets the background screening requirements of Sections 26B-2-238 through 26B-2-241, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from the Department of Health and Human Services' inspection of records before the Department of Health and Human Services makes a decision under that part;
and

(h) for information related to a minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health and Human Services to determine whether to grant, deny, or revoke background clearance under Section 26B-4-124 for an individual who is seeking or who has obtained an emergency medical service personnel license under Section 26B-4-116, with the understanding that the Department of Health and Human Services' must provide the individual who committed the offense an opportunity to respond to any information gathered from the Department of Health and Human Services' inspection of records before the Department of Health and Human Services makes a determination.

(3) With the consent of the juvenile court, a court record may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) (a) Except as provided in Subsection (4)(b), if a petition is filed charging a minor who is 14 years old or older with an offense that would be a felony if committed by an adult,

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the juvenile court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary for the minor.

(b) A juvenile court may close the records described in Subsection (4)(a) to the public if the juvenile court finds, on the record, that the records are closed for good cause.

(5) A juvenile probation officer's records and reports of social and clinical studies are not open to inspection, except by consent of the juvenile court, given under rules adopted by the board.

(6) The juvenile court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 7. Section 78A-6-209 (Effective 07/01/24) is amended to read:

78A-6-209 (Effective 07/01/24). Court records -- Inspection.

(1) The juvenile court and the juvenile court's probation department shall keep records as required by the board and the presiding judge.

(2) A court record shall be open to inspection by:

(a) the parents or guardian of a child, a minor who is at least 18 years old, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Individual, the State Board of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the State Board of Education must provide the individual with an opportunity to respond to any information gathered from the State Board of Education's inspection of the records before the State Board of Education makes a decision concerning licensure or employment;

(c) the Criminal Investigations and Technical Services Division, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704;

(d) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 80-2-602 and 80-2-701 and administrative hearings in accordance with Section 80-2-707;

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(e) the Division of Licensing and Background Checks for the purpose of conducting a background check in accordance with Section 26B-2-120;

(f) for information related to a minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health and Human Services for the purpose of evaluating under the provisions of Subsection 26B-2-406(3) whether a [licensee] person should be permitted to operate a residential child care without a license or a certificate or to obtain or retain a license to provide child care, with the understanding that the department must provide the individual who committed the offense with an opportunity to respond to any information gathered from the Department of Health and Human Services' inspection of records before the Department of Health and Human Services makes a decision concerning licensure;

(g) for information related to a minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Department of Health and Human Services to determine whether an individual meets the background screening requirements of Sections 26B-2-238 through 26B-2-241, with the understanding that the department must provide the individual who committed the offense an opportunity to respond to any information gathered from the Department of Health and Human Services' inspection of records before the Department of Health and Human Services makes a decision under that part; and

(h) for information related to a minor who has committed a sexual offense, a felony, or an offense that if committed by an adult would be a misdemeanor, the Bureau of Emergency Medical Services to determine whether to grant, deny, or revoke background clearance under Section 53-2d-410 for an individual who is seeking or who has obtained an emergency medical service personnel license under Section 53-2d-402, with the understanding that the Bureau of Emergency Medical Services must provide the individual who committed the offense an opportunity to respond to any information gathered from the inspection of records before the Bureau of Emergency Medical Services makes a determination.

(3) With the consent of the juvenile court, a court record may be inspected by the child, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) (a) Except as provided in Subsection (4)(b), if a petition is filed charging a minor

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who is 14 years old or older with an offense that would be a felony if committed by an adult, the juvenile court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary for the minor.

(b) A juvenile court may close the records described in Subsection (4)(a) to the public if the juvenile court finds, on the record, that the records are closed for good cause.

(5) A juvenile probation officer's records and reports of social and clinical studies are not open to inspection, except by consent of the juvenile court, given under rules adopted by the board.

(6) The juvenile court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 8. Effective date.

(1) Except as provided in Subsection (2), this bill takes effect on May 1, 2024.

(2) (a) Section 78A-6-209 (Effective 07/01/24) takes effect on July 1, 2024.

(~~2~~)b) The actions affecting Section 59-10-1047 take effect for a taxable year beginning on or after January 1, 2025.