{deleted text} shows text that was in HB0495 but was deleted in HB0495S01.

inserted text shows text that was not in HB0495 but was inserted into HB0495S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

**VULNE Representative Kaffane** Lisonbee proposes the following substitute bill:

### **HEALTH CARE FACILITY BACKGROUND CHECK AMENDMENTS**

2024 GENERAL SESSION STATE OF UTAH

Chief Sponsor: \{ Karianne Lisonbee

Senate Sponsor: <del>{ } </del>

#### **LONG TITLE**

### **General Description:**

This bill concerns {protections for vulnerable populations} health care facility background checks.

#### **Highlighted Provisions:**

This bill:

- defines terms;
- requires {criminal} fingerprint background checks for certain individuals who will have direct access to patients {, children, or vulnerable adults;
- requires the Division of Professional Licensing to create and maintain a registry of individuals who have committed certain offenses involving children or vulnerable adults;
- requires individuals with specific convictions or circumstances to register with the

registry and provides criminal penalties for failing to register} in certain health care facilities; and

makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

#### **Utah Code Sections Affected:**

#### AMENDS:

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\{\frac{26B-1-211}{26B-2-238}\}, as renumbered and amended by Laws of Utah \{\frac{2022}{2023}\},

Chapter \{\frac{255}{305}\} \( \frac{200}{200} \) as ( last arounded by Laws of Utah \( \frac{2022}{2023} \), (Chapter \( \frac{244}{2023} \), and (chapter \( \frac{202}{2023} \)).
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{26B-2-120}26B-2-240, as{ last amended by Laws of Utah 2023, Chapter 344 and} renumbered and amended by Laws of Utah 2023, Chapter 305

**58-1-106**, as last amended by Laws of Utah 2018, Chapter 318 ENACTS:

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58-1-701, Utah Code Annotated 1953
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58-1-702, Utah Code Annotated 1953

58-1-703, Utah Code Annotated 1953

**58-1-704**, Utah Code Annotated 1953

58-1-705, Utah Code Annotated 1953

58-1-706, Utah Code Annotated 1953

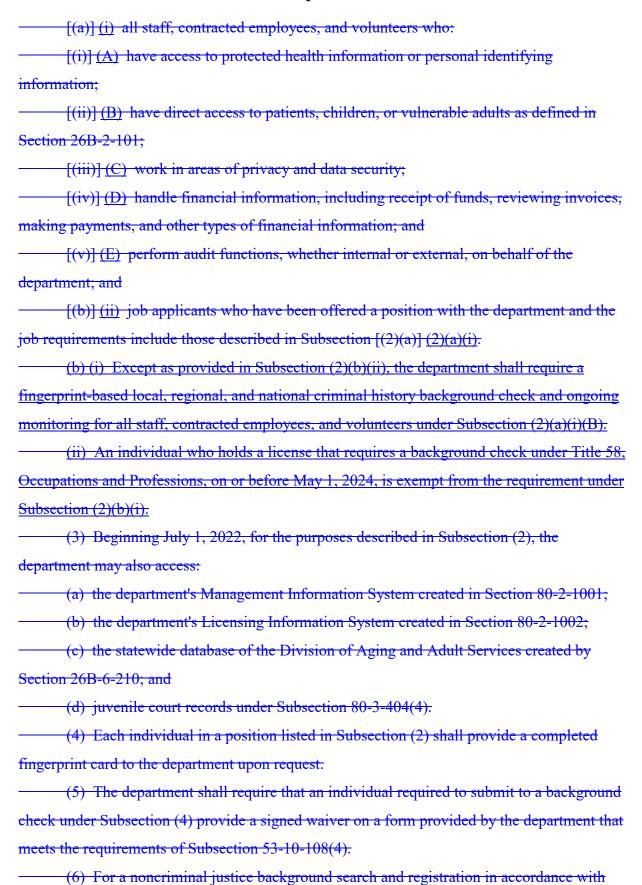
Be it enacted by the Legislature of the state of Utah:

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Section 1. Section \frac{26B-1-211}{26B-2-238} is amended to read:
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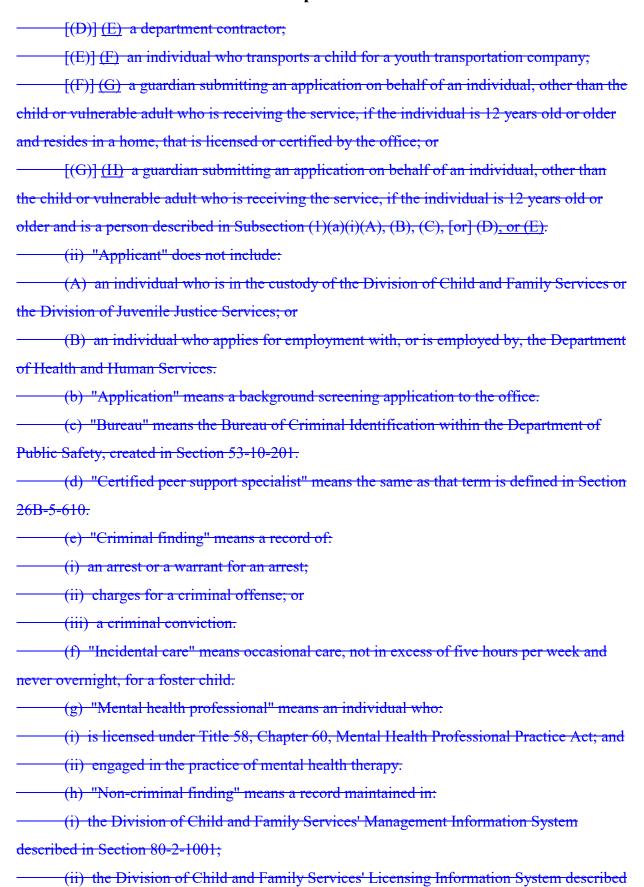
**26B-1-211.** Background checks for employees -- Access to abuse and neglect information to screen employees and volunteers.

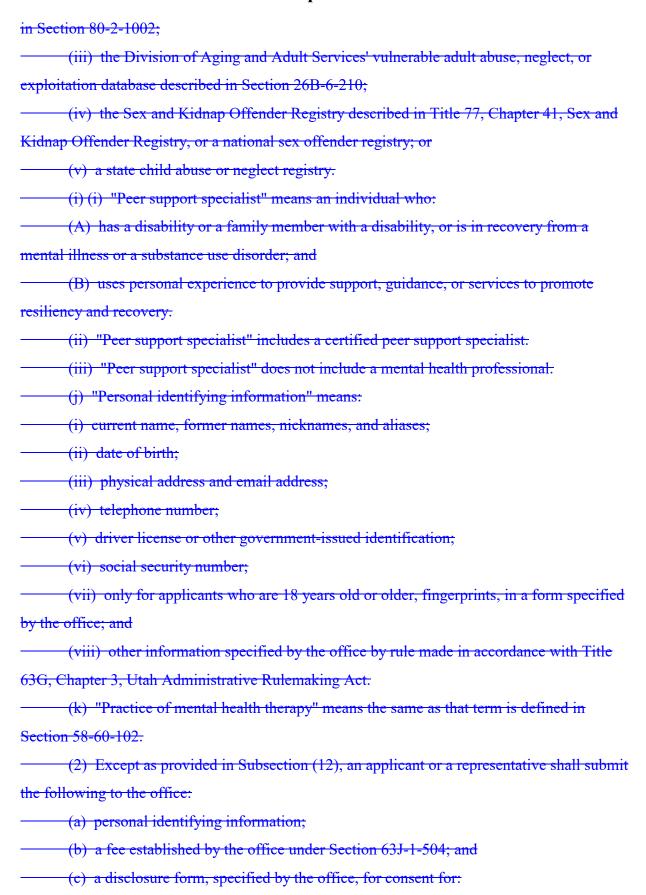
(1) As used in this section, "bureau" means the Bureau of Criminal Identification created in Section 53-10-201.

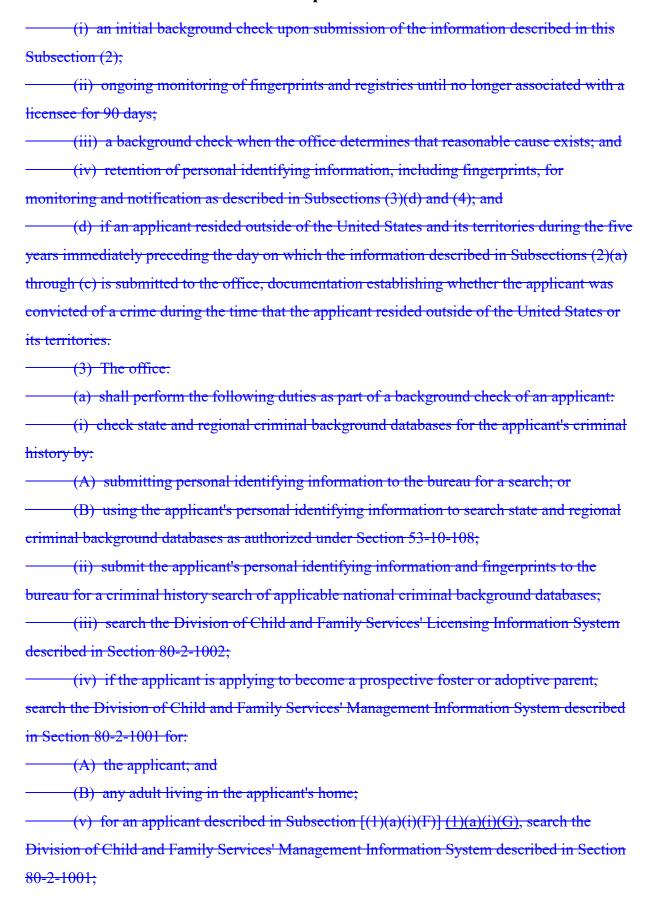
(2) (a) [Beginning] Except as provided in Subsection (2)(b), beginning July 1, 2018, the department may require a fingerprint-based local, regional, and national criminal history background check and ongoing monitoring of:

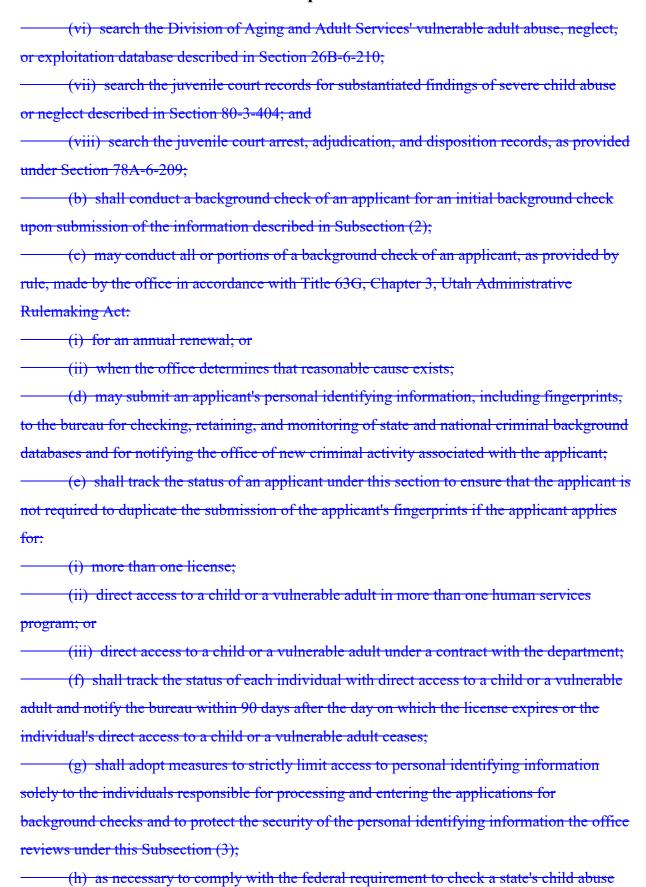


Subsection 53-10-108(13), the department shall submit to the bureau: (a) the applicant's personal identifying information and fingerprints for a criminal history search of applicable local, regional, and national databases; and (b) a request for all information received as a result of the local, regional, and nationwide background check. (7) The department is responsible for the payment of all fees required by Subsection 53-10-108(15) and any fees required to be submitted to the Federal Bureau of Investigation by the bureau. (8) The department may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that: (a) determine how the department will assess the employment status of an individual upon receipt of background information; (b) determine when an individual would be disqualified from holding a position based on: (i) the type of crimes and the severity of those crimes; or (ii) one or more substantiated or supported findings of abuse, neglect, or exploitation; and (c) identify the appropriate privacy risk mitigation strategy to be used in accordance with Subsection 53-10-108(13)(b). Section 2. Section 26B-2-120 is amended to read: 26B-2-120. Background check -- Direct access to children or vulnerable adults. (1) As used in this section: (a) (i) "Applicant" means, notwithstanding Section 26B-2-101: (A) an individual who applies for an initial license or certification or a license or certification renewal under this part; (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 is associated with a health care provider and has or will likely have direct access to a child or a vulnerable adult; [(C)] (D) an individual who provides respite care to a foster parent or an adoptive parent on more than one occasion;



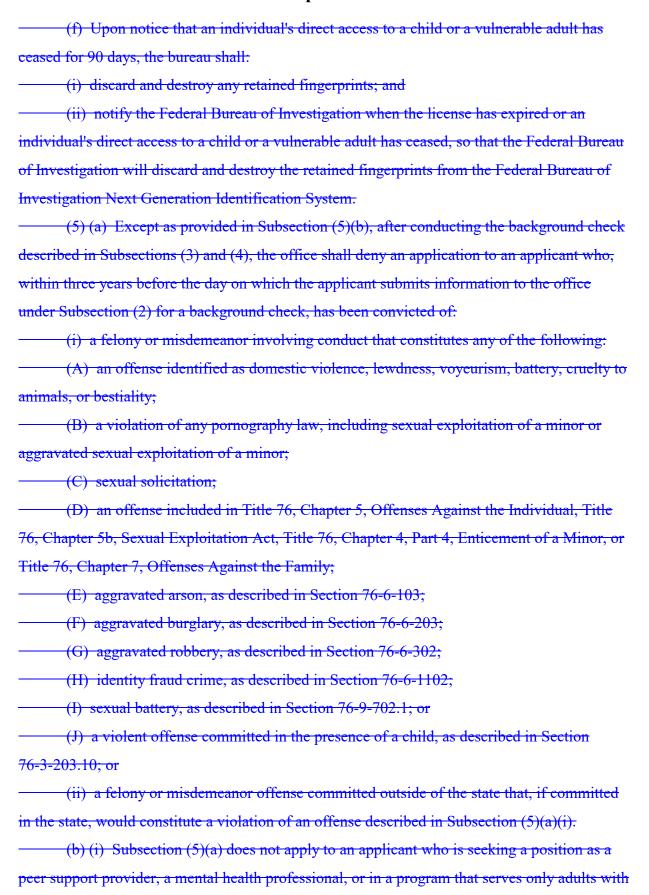


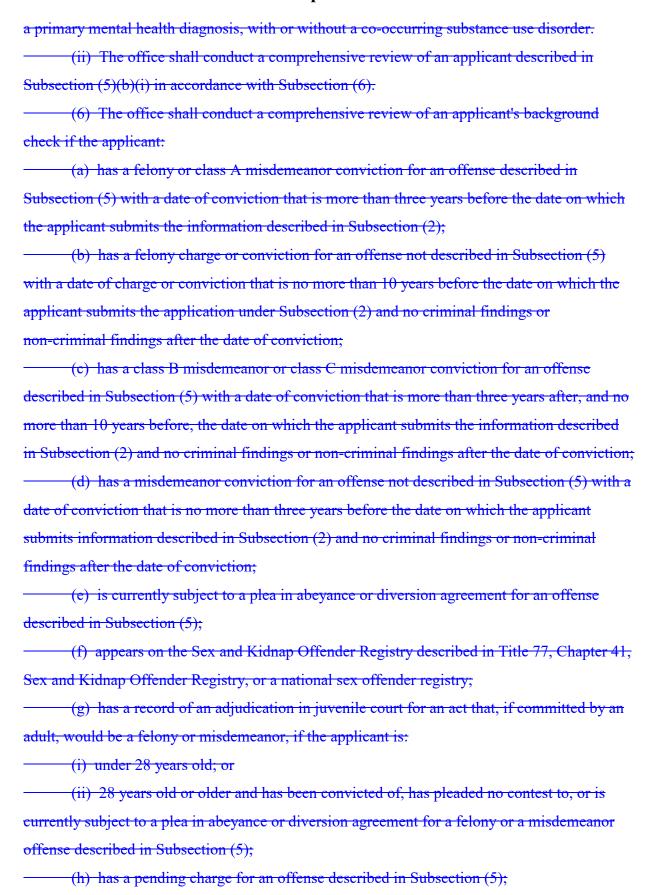


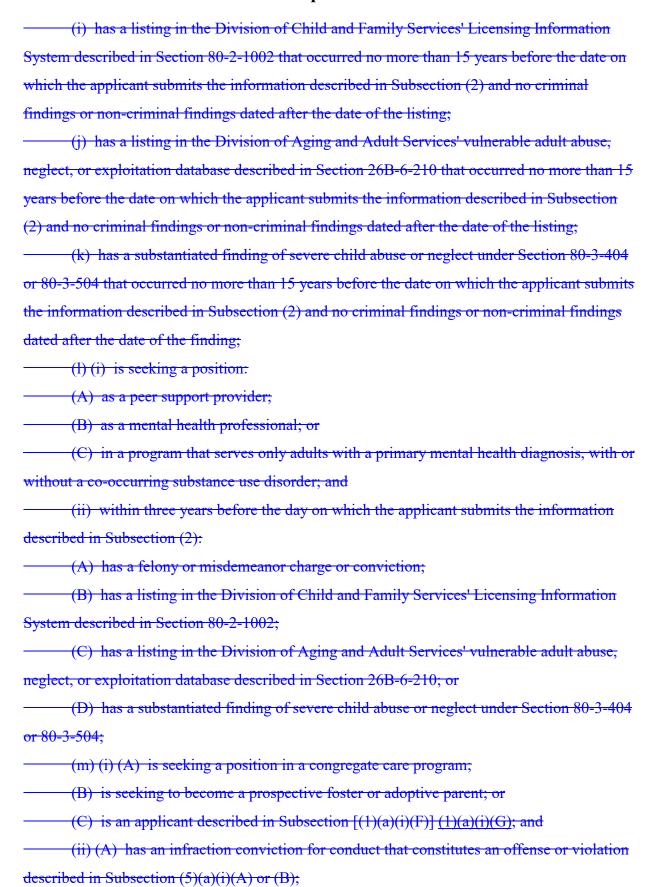


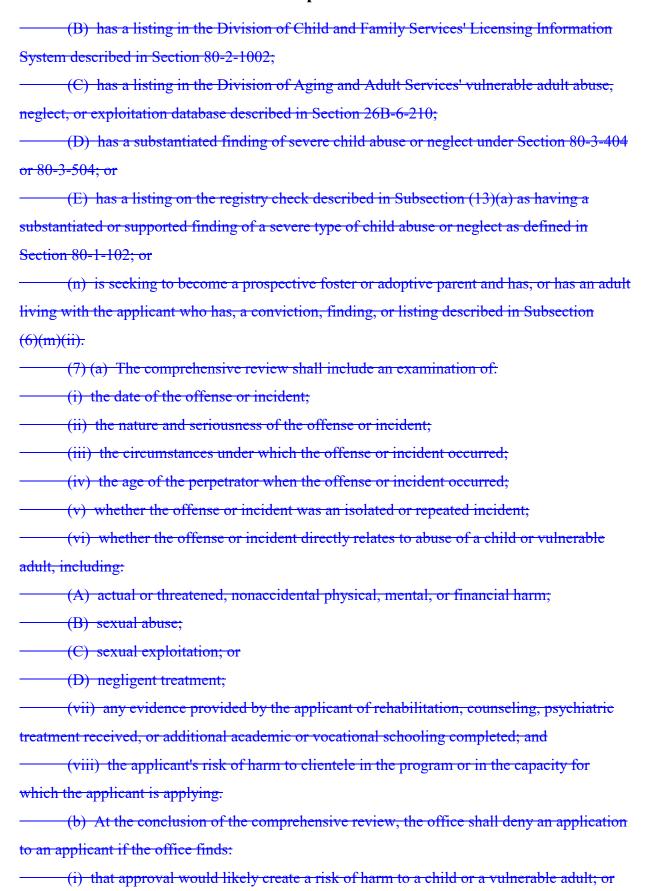
and neglect registry regarding any individual working in a congregate care program, shall: (i) search the Division of Child and Family Services' Licensing Information System described in Section 80-2-1002; and (ii) require the child abuse and neglect registry be checked in each state where an applicant resided at any time during the five years immediately preceding the day on which the applicant submits the information described in Subsection (2) 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. (e) The Bureau shall notify and release to the office all information of criminal activity

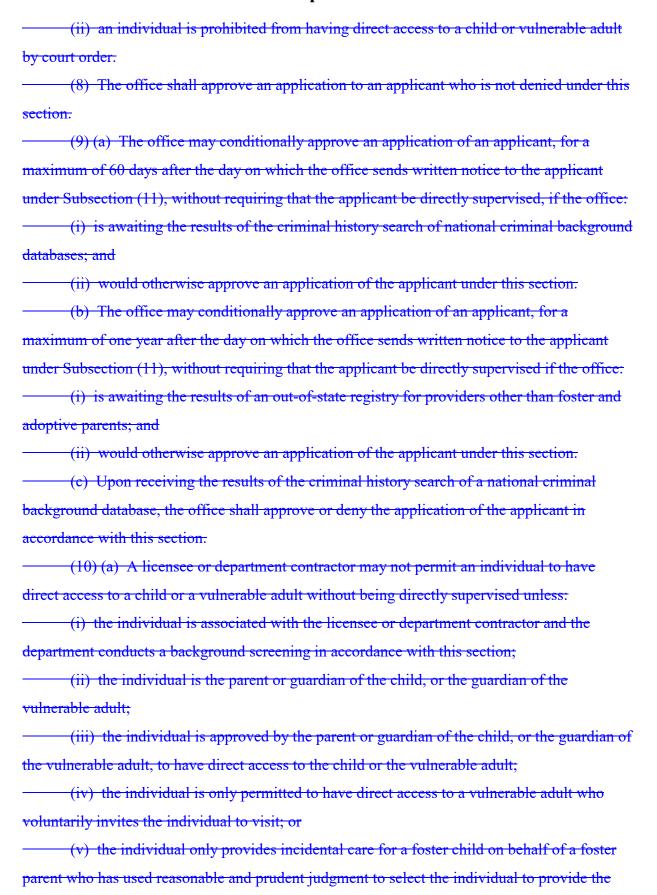
associated with the applicant.









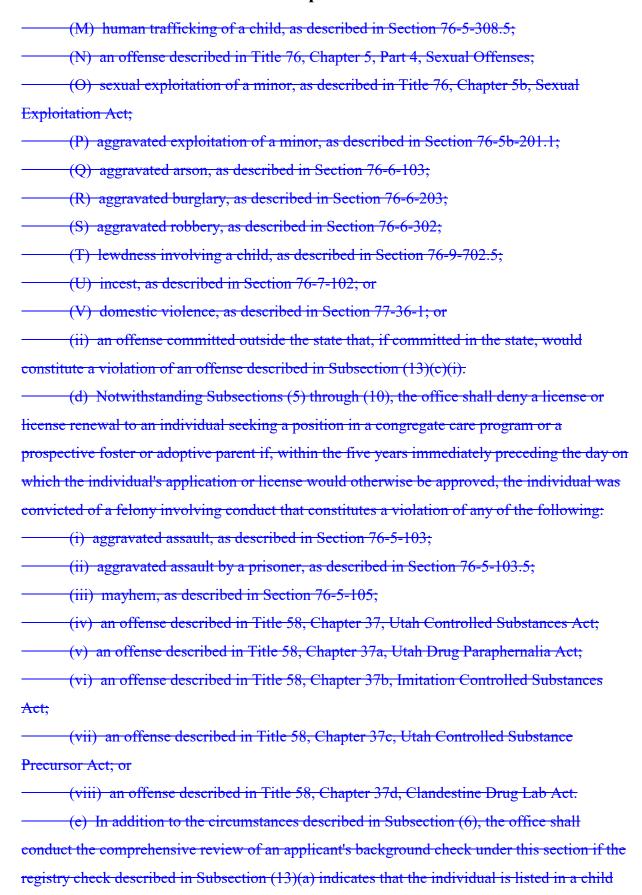


incidental care for the foster child.

- (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. (11) (a) Within 30 days after the day on which 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. (b) If the notice under Subsection (11)(a) states that the applicant's application is denied, the notice shall further advise the applicant that the applicant may, under Subsection 26B-2-111(2), request a hearing in the department's Office of Administrative Hearings, to challenge the office's decision. (c) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the office shall make rules, consistent with this part: (i) defining procedures for the challenge of the office's background check decision described in Subsection (11)(b); and (ii) expediting the process for renewal of a license under the requirements of this section and other applicable sections. (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) The exemption described in Subsection (12)(a) does not extend to a program director or a member, as defined by Section 26B-2-105, of the program. (c) An individual who would qualify as an applicant solely under Subsection (1)(a)(i)(C) is exempt from this section if the individual, on or before May 1, 2024, holds a license that requires a background check under Title 58, Occupations and Professions. (13) (a) Except as provided in Subsection (13)(b), in addition to the other requirements of this section, if the background check of an applicant is being conducted for the purpose of giving clearance status to an applicant seeking a position in a congregate care program or an applicant seeking to 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
  - 15 -

in the five years immediately preceding the day on which the applicant applied to be a foster or

adoptive parent, to determine whether the prospective foster 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 (13)(a)(i) resided in the five years immediately preceding the day on which the applicant applied to be a foster 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 (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 (10), the office shall deny a clearance to an applicant seeking a position in a congregate care program or an applicant to become a prospective foster 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 <del>76-5-114;</del> (C) abuse or neglect of a child with a disability, as described in Section 76-5-110; (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;



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 part, 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.
- **26B-2-238.** Definitions for Sections 26B-2-238 through 26B-2-241.

As used in this section and Sections 26B-2-239, 26B-2-240, and 26B-2-241:

- (1) "Clearance" means approval by the department under Section 26B-2-239 for an individual to have direct patient access.
- (2) "Covered body" means a covered provider, covered contractor, or covered employer.
- (3) "Covered contractor" means a person that supplies covered individuals, by contract, to a covered employer or covered provider.
  - (4) "Covered employer" means an individual who:
  - (a) engages a covered individual to provide services in a private residence to:
  - (i) an aged individual, as defined by department rule; or
  - (ii) a disabled individual, as defined by department rule;
  - (b) is not a covered provider; and
  - (c) is not a licensed health care facility within the state.
  - (5) "Covered individual":
  - (a) means an individual:
  - (i) whom a covered body engages; and
  - (ii) who may have direct patient access;
  - (b) includes:
  - (i) a nursing assistant, as defined by department rule;
  - (ii) a personal care aide, as defined by department rule;

- (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter 31b, Nurse Practice Act;
- (iv) a provider of medical, therapeutic, or social services, including a provider of laboratory and radiology services;
  - (v) an executive;
  - (vi) administrative staff, including a manager or other administrator;
  - (vii) dietary and food service staff;
  - (viii) housekeeping and maintenance staff; and
- (ix) any other individual, as defined by department rule, who has direct patient access; and
- (c) does not include a student, as defined by department rule, directly supervised by a member of the staff of the covered body or the student's instructor.
  - (6) "Covered provider" means:
  - (a) an end stage renal disease facility;
  - (b) a long-term care hospital;
  - (c) a nursing care facility;
  - (d) a small health care facility;
  - (e) an assisted living facility;
  - (f) a hospice;
  - (g) a home health agency; or
  - (h) a personal care agency.
- (7) "Direct patient access" means for an individual to be in a position where the individual could, in relation to a patient or resident of the covered body who engages the individual:
  - (a) cause physical or mental harm;
  - (b) commit theft; or
  - (c) view medical or financial records.
  - (8) "Engage" means to obtain one's services:
  - (a) by employment;
  - (b) by contract;
  - (c) as a volunteer; or

- (d) by other arrangement.
- (9) "Long-term care hospital":
- (a) means a hospital that is certified to provide long-term care services under the provisions of 42 U.S.C. Sec. 1395tt; and
- (b) does not include a critical access hospital, designated under 42 U.S.C. Sec. 1395i-4(c)(2).
- (10) "Patient" means an individual who receives health care services from one of the following covered providers:
  - (a) an end stage renal disease facility;
  - (b) a long-term care hospital;
  - (c) a hospice;
  - (d) a home health agency; or
  - (e) a personal care agency.
  - (11) "Personal care agency" means a health care facility defined by department rule.
- (12) "Rap back system" means a system that enables authorized entities to receive ongoing status notifications of any criminal history reported on individuals who are registered in the system.
- [(12)] (13) "Resident" means an individual who receives health care services from one of the following covered providers:
  - (a) a nursing care facility;
  - (b) a small health care facility;
  - (c) an assisted living facility; or
  - (d) a hospice that provides living quarters as part of its services.
  - [(13)] (14) "Residential setting" means a place provided by a covered provider:
  - (a) for residents to live as part of the services provided by the covered provider; and
  - (b) where an individual who is not a resident also lives.
- [(14)] (15) "Volunteer" means an individual, as defined by department rule, who provides services without pay or other compensation.

### Section 2. Section 26B-2-240 is amended to read:

26B-2-240. Department authorized to grant, deny, or revoke clearance -- Department may limit direct patient access -- Clearance.

- (1) The definitions in Section 26B-2-238 apply to this section.
- (2) (a) As provided in this section, the department may grant, deny, or revoke clearance for an individual, including a covered individual.
- (b) The department may limit the circumstances under which a covered individual granted clearance may have direct patient access, based on the relationship factors under Subsection (4) and other mitigating factors related to patient and resident protection.
- (c) The department shall determine whether to grant clearance for each applicant for whom it receives:
- (i) the personal identification information specified by the department under Subsection (4)(b); and
  - (ii) any fees established by the department under Subsection (9).
  - (d) The department shall:
- (i) establish a procedure for obtaining and evaluating relevant information concerning covered individuals, including fingerprinting the applicant and submitting the prints to the Criminal Investigations and Technical Services Division of the Department of Public Safety for checking against applicable state, regional, and national criminal records files[:-{
  }]: and
- (ii) require that a finding of clearance include a fingerprint-based criminal history background check in the databases described under Subsection (3)(a), including the inclusion of the individual's fingerprints in a rap back system.
- (3) The department may review the following sources to determine whether an individual should be granted or retain clearance, which may include:
- (a) Department of Public Safety arrest, conviction, and disposition records described in Title 53, Chapter 10, Criminal Investigations and Technical Services Act, including information in state, regional, and national records files;
- (b) juvenile court arrest, adjudication, and disposition records, as allowed under Section 78A-6-209;
  - (c) federal criminal background databases available to the state;
- (d) the Division of Child and Family Services Licensing Information System described in Section 80-2-1002;
  - (e) child abuse or neglect findings described in Section 80-3-404;

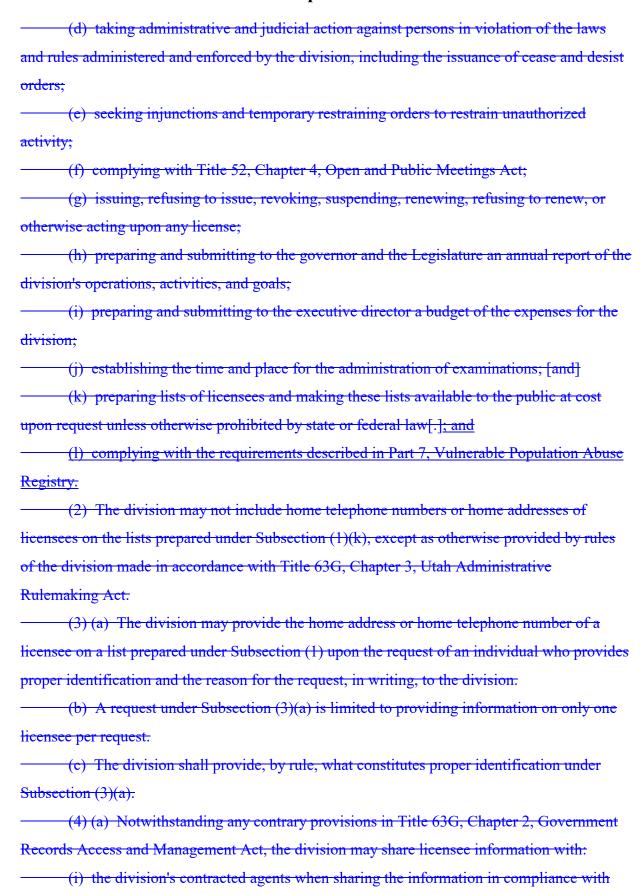
- (f) the Division of Aging and Adult Services vulnerable adult abuse, neglect, or exploitation database described in Section 26B-6-210;
  - (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;
- (h) licensing and certification records of individuals licensed or certified by the Division of Professional Licensing under Title 58, Occupations and Professions; and
- (i) the List of Excluded Individuals and Entities database maintained by the United States Department of Health and Human Services' Office of Inspector General.
  - (4) The department shall adopt rules that:
- (a) specify the criteria the department will use to determine whether an individual is granted or retains clearance:
- (i) based on an initial evaluation and ongoing review of information under Subsection (3); and
- (ii) including consideration of the relationship the following may have to patient and resident protection:
  - (A) warrants for arrest;
  - (B) arrests;
  - (C) convictions, including pleas in abeyance;
  - (D) pending diversion agreements;
- (E) adjudications by a juvenile court under Section 80-6-701 if the individual is over 28 years old and has been convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for a felony or misdemeanor, or the individual is under 28 years old; and
  - (F) any other findings under Subsection (3); and
- (b) specify the personal identification information that must be submitted by an individual or covered body with an application for clearance, including:
  - (i) the applicant's Social Security number; and
  - (ii) fingerprints.
- (5) For purposes of Subsection (4)(a), the department shall classify a crime committed in another state according to the closest matching crime under Utah law, regardless of how the crime is classified in the state where the crime was committed.
  - (6) The Department of Public Safety, the Administrative Office of the Courts, the

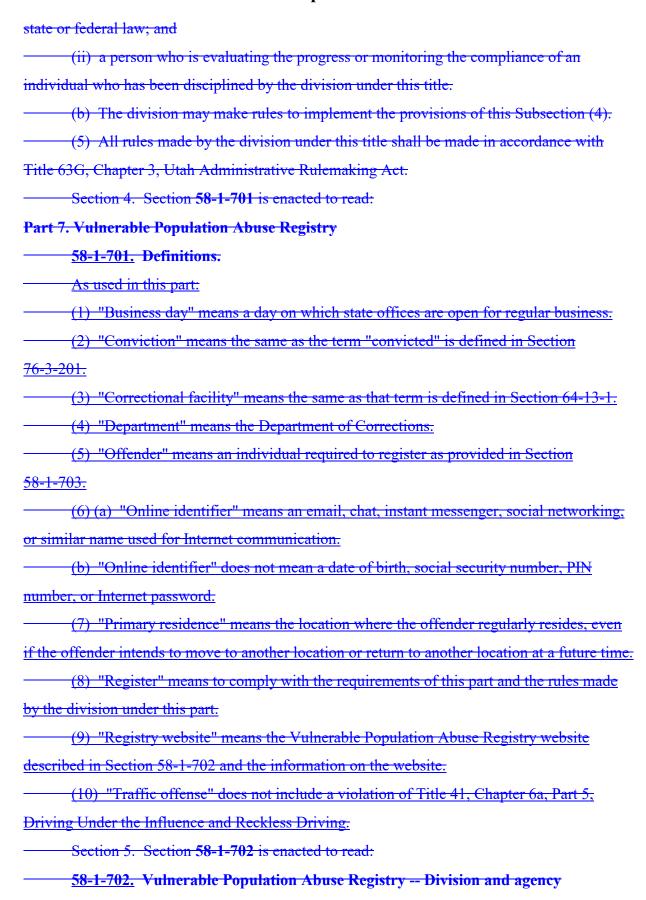
Division of Professional Licensing, and any other state agency or political subdivision of the state:

- (a) shall allow the department to review the information the department may review under Subsection (3); and
- (b) except for the Department of Public Safety, may not charge the department for access to the information.
- (7) The department shall adopt measures to protect the security of the information it reviews under Subsection (3) and strictly limit access to the information to department employees responsible for processing an application for clearance.
- (8) The department may disclose personal identification information specified under Subsection (4)(b) to other divisions and offices within the department to verify that the subject of the information is not identified as a perpetrator or offender in the information sources described in Subsections (3)(d) through (f).
- (9) The department may establish fees, in accordance with Section 63J-1-504, for an application for clearance, which may include:
  - (a) the cost of obtaining and reviewing information under Subsection (3);
- (b) a portion of the cost of creating and maintaining the Direct Access Clearance System database under Section 26B-2-241; and
- (c) other department costs related to the processing of the application and the ongoing review of information pursuant to Subsection (4)(a) to determine whether clearance should be retained.

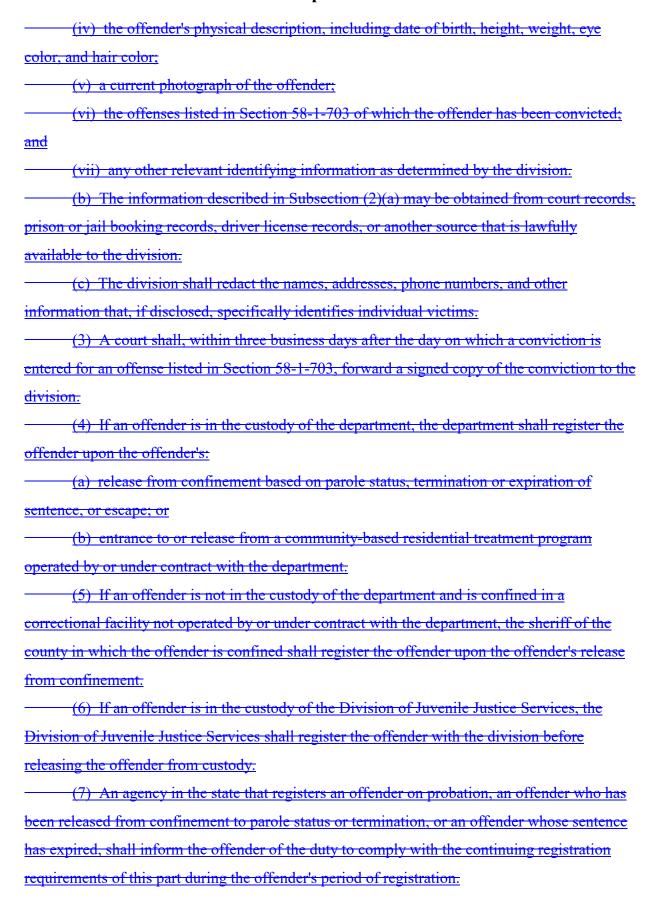
Section 3. Section 58-1-106 is amended to read:

- 58-1-106. Division -- Duties, functions, and responsibilities.
- (1) The duties, functions, and responsibilities of the division include the following:
- (a) prescribing, adopting, and enforcing rules to administer this title;
- (b) investigating the activities of any person whose occupation or profession is regulated or governed by the laws and rules administered and enforced by the division;
- (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the production of any books, papers, documents, records, contracts, recordings, tapes, correspondence, or information relevant to an investigation upon a finding of sufficient need by the director or by the director's designee;





# requirements. (1) The division shall: (a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders; (b) make information listed in Subsection (2)(a) available to the public; (c) share information provided by an offender under this part that may not be made available to the public under Subsection (2)(a): (i) for the purposes of this part; or (ii) in accordance with Section 63G-2-206; (d) ensure that information is entered into the registry in a timely manner; (e) maintain the registry website; (f) index the registry website by: (i) the surname of the offender; and (ii) postal code; (g) include on the registry website a disclaimer that informs the public that: (i) the information contained on the registry website is obtained from offenders and government records and the division does not guarantee the registry website's accuracy or completeness; (ii) members of the public are not allowed to use information from the registry website to harass or threaten an offender or a member of an offender's family; and (iii) harassment, stalking, or threats against an offender or an offender's family is prohibited and may violate Utah criminal laws; and (h) construct and maintain the registry website so that before a user may access registry website information, the user is required to indicate that the user has read and agrees to comply with the terms of the disclaimer described in Subsection (1)(g). (2) (a) Except as provided in Subsection (2)(c), the registry website shall include for each offender: (i) the offender's name; (ii) any aliases by which the offender is known, but not including any online identifiers; (iii) the postal code of the offender's primary residence;



(8) The division and any individual or entity acting at the request of or upon the direction of the division are: (a) immune from civil liability for damages; and (b) presumed to have acted in good faith by reporting, processing, and posting the information in the registry. (9) The division may make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this part. Section 6. Section 58-1-703 is enacted to read: 58-1-703. Individuals who are required to register -- Registerable offenses. (1) An individual is required to register with the division if the individual: (a) has a conviction for one or more of the following offenses: (i) Section 76-5-110, abuse or neglect of a child with a disability; (ii) Section 76-5-111, abuse of a vulnerable adult; (iii) Section 76-5-111.2, aggravated abuse of a vulnerable adult; (iv) Section 76-5-111.3, personal dignity exploitation of a vulnerable adult; (v) Section 76-5-111.4, financial exploitation of a vulnerable adult; (vi) Section 76-5-112.5, endangerment of a child or vulnerable adult; or (vii) attempting, soliciting, or conspiring to commit an offense listed in Subsections (1)(a)(i) through (vi); or (b) (i) has been convicted of a crime, or an attempt, solicitation, or conspiracy to commit a crime, in another jurisdiction, including a state, federal, or military court, that is substantially equivalent to the offenses listed in Subsection (1)(a); and (ii) (A) is a Utah resident; or (B) is not a Utah resident, but who, in any 12-month period, is in this state for a total of 30 or more days, regardless of whether the individual intends to permanently reside in this state; (c) was found not guilty by reason of insanity in this state of an offense under Subsection (1)(a) or in another jurisdiction under circumstances that would require registration under Subsection (1)(b); or (d) was adjudicated delinquent based on one or more offenses listed in Subsection (1)(a) and who has been committed to the Division of Juvenile Justice Services for that offense

and remains in the custody of the Division of Juvenile Justice Services 30 days before the individual's 21st birthday. (2) An individual who is required to register under this section shall register as an offender as described in Section 58-1-704. Section 7. Section 58-1-704 is enacted to read: 58-1-704. Registration on Vulnerable Population Abuse Registry -- Offender responsibilities. (1) An offender with a conviction for any offense listed in Section 58-1-703 shall remain on the registry for: (a) a period of 10 years after the day on which the offender completes the offender's sentence for a misdemeanor conviction; and (b) a lifetime period for a felony conviction. (2) (a) The registration requirement described in Subsection (1) is not subject to exemptions and may not be terminated or altered. (b) An offender is required to remain on the registry as described in Subsection (1) even if the offender's offense is expunged under Title 77, Chapter 40a, Expungement, or reduced to a lower degree of offense under Section 76-3-402. (3) (a) An offender who is required to register under Section 58-1-703 shall register with the division to be included on the registry in the manner prescribed by the division no later than 30 days after the day on which: (i) the offender's sentence is entered, if the offender is not subject to confinement as part of sentencing; (ii) the offender is released from confinement; or (iii) the offender is present in the state for 30 or more days. (b) For the duration that an offender is required to register under Subsection (1), the offender shall register: (i) every year during the month of the offender's date of birth, and pay a \$100 fee to the division; and (ii) within three business days of the offender's change of: (A) primary residence; or (B) place of employment.

(c) An offender shall provide the division with the following information:
(i) all names and aliases by which the offender is or has been known;
(ii) the address of the offender's primary residence;
(iii) a physical description, including the offender's date of birth, height, weight, eye
color, and hair color;
(iv) a current photograph of the offender;
(v) telephone numbers used by the offender;
(vi) a copy of the offender's passport, if a passport has been issued to the offender;
(vii) all professional licenses that authorize the offender to engage in an occupation or
carry out a trade or business, including any identifiers, such as numbers;
(viii) the name, telephone number, and address of the offender's place of employment;
(ix) the name, telephone number, and address of any place that the offender works as a
volunteer;
(x) the offender's social security number; and
(xi) if relevant to the offender's offense, the offender's online identifiers.
(4) (a) An offender may change the offender's name in accordance with Title 42,
Chapter 1, Change of Name, if the name change is not contrary to the interests of the public.
(b) Notwithstanding Section 42-1-2, an offender shall provide notice to the division at
least 30 days before the day on which the hearing for the name change is held.
(c) The court shall provide a copy of the order granting the offender's name change to
the division within 10 days after the day on which the court issues the order.
(d) If the court orders an offender's name changed, the division shall publish on the
registry website the offender's former name, and the offender's changed name as an alias.
(5) The division shall deposit fees collected from an offender under Subsection
(3)(b)(i) into the General Fund as a dedicated credit, to be used by the division for maintaining
the registry under this part and monitoring offender registration compliance, including the costs
<del>of:</del>
(a) data entry;
(b) processing registrations;
(c) updating registration information; and
(d) ensuring offender compliance with registration requirements under this part.

