

CHILD PLACEMENT BACKGROUND CHECK LIMITS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies provisions relating to background checks performed and licenses issued by the Office of Licensing within the Department of Human Services.

Highlighted Provisions:

This bill:

- ▶ under certain circumstances, prohibits the Office of Licensing from denying a license based on certain criminal convictions that are older than 10 years;
- ▶ modifies the time frame within which the Office of Licensing is required to notify the Bureau of Criminal Identification of the status of a license;
- ▶ modifies the circumstances under which the Office of Licensing is required to conduct a comprehensive review of an applicant's background check; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-2-120, as last amended by Laws of Utah 2019, Chapter 335

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

29 Section 1. Section **62A-2-120** is amended to read:

30 **62A-2-120. Background check -- Direct access to children or vulnerable adults.**

31 (1) As used in this section:

32 (a) (i) "Applicant" means:

33 (A) the same as that term is defined in Section [62A-2-101](#);

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

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

38 (D) a department contractor;

39 (E) a guardian submitting an application on behalf of an individual, other than the child
40 or vulnerable adult who is receiving the service, if the individual is 12 years of age or older and
41 resides in a home, that is licensed or certified by the office, with the child or vulnerable adult
42 who is receiving services; or

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

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

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

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

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

53 (e) "Personal identifying information" means:

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

55 (ii) date of birth;

- 56 (iii) physical address and email address;
- 57 (iv) telephone number;
- 58 (v) driver license or other government-issued identification;
- 59 (vi) social security number;
- 60 (vii) only for applicants who are 18 years of age or older, fingerprints, in a form
- 61 specified by the office; and

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

64 (2) (a) Except as provided in Subsection (13), an applicant shall submit the following
65 to the office:

- 66 (i) personal identifying information;
- 67 (ii) a fee established by the office under Section 63J-1-504; and
- 68 (iii) a form, specified by the office, for consent for:

- 69 (A) an initial background check upon submission of the information described under
- 70 this Subsection (2)(a);
- 71 (B) a background check at the applicant's annual renewal;
- 72 (C) a background check when the office determines that reasonable cause exists; and
- 73 (D) retention of personal identifying information, including fingerprints, for
- 74 monitoring and notification as described in Subsections (3)(d) and (4).

75 (b) In addition to the requirements described in Subsection (2)(a), if an applicant spent
76 time outside of the United States and its territories during the five years immediately preceding
77 the day on which the information described in Subsection (2)(a) is submitted to the office, the
78 office may require the applicant to submit documentation establishing whether the applicant
79 was convicted of a crime during the time that the applicant spent outside of the United States or
80 its territories.

81 (3) The office:

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

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

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

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

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

90 (iii) search the Department of Human Services, Division of Child and Family Services'
91 Licensing Information System described in Section 62A-4a-1006;

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

94 (v) search the juvenile court records for substantiated findings of severe child abuse or
95 neglect described in Section 78A-6-323; and

96 (vi) search the juvenile court arrest, adjudication, and disposition records, as provided
97 under Section 78A-6-209;

98 (b) shall conduct a background check of an applicant for an initial background check
99 upon submission of the information described under Subsection (2)(a);

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

103 (i) for an annual renewal; or

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

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

108 (e) shall track the status of an approved applicant under this section to ensure that an
109 approved applicant is not required to duplicate the submission of the applicant's fingerprints if

110 the applicant applies for:

111 (i) more than one license;

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

113 program; or

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

115 (f) shall track the status of each license and each individual with direct access to a child

116 or a vulnerable adult and notify the bureau [~~when the license has expired or~~ within 90 days

117 after the day on which the license expires or the day on which the individual's direct access to a

118 child or a vulnerable adult [~~has ceased~~] ceases;

119 (g) shall adopt measures to strictly limit access to personal identifying information

120 solely to the office employees responsible for processing the applications for background

121 checks and to protect the security of the personal identifying information the office reviews

122 under this Subsection (3);

123 (h) as necessary to comply with the federal requirement to check a state's child abuse

124 and neglect registry regarding any individual working in a program under this section that

125 serves children, shall:

126 (i) search the Department of Human Services, Division of Child and Family Services'

127 Licensing Information System described in Section [62A-4a-1006](#); and

128 (ii) require the child abuse and neglect registry be checked in each state where an

129 applicant resided at any time during the five years immediately preceding the day on which the

130 applicant submits the information described in Subsection (2)(a) to the office; and

131 (i) shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative

132 Rulemaking Act, to implement the provisions of this Subsection (3) relating to background

133 checks.

134 (4) (a) With the personal identifying information the office submits to the bureau under

135 Subsection (3), the bureau shall check against state and regional criminal background databases

136 for the applicant's criminal history.

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

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

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

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

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

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

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

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

156 (f) Upon notice from the office that a license has expired or an individual's direct
157 access to a child or a vulnerable adult has ceased, the bureau shall:

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

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

163 (5) (a) After conducting the background check described in Subsections (3) and (4), the

164 office shall deny an application to an applicant who, within three years before the day on which
165 the applicant submits information to the office under Subsection (2) for a background check,
166 has been convicted of any of the following, regardless of whether the offense is a felony, a
167 misdemeanor, or an infraction:

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

170 (ii) a violation of any pornography law, including sexual exploitation of a minor;

171 (iii) prostitution;

172 (iv) an offense included in:

173 (A) Title 76, Chapter 5, Offenses Against the Person;

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

175 (C) Title 76, Chapter 7, Offenses Against the Family;

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

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

178 (vii) aggravated robbery, as described in Section 76-6-302;

179 (viii) identity fraud crime, as described in Section 76-6-1102; or

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

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

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

188 (i) has a conviction for any felony offense, not described in Subsection (5)(a),
189 regardless of the date of the conviction;

190 (ii) has a conviction for a misdemeanor offense, not described in Subsection (5)(a), and

191 designated by the office, by rule, in accordance with Title 63G, Chapter 3, Utah Administrative
192 Rulemaking Act, if the conviction is within [~~five~~] three years before the day on which the
193 applicant submits information to the office under Subsection (2) for a background check;

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

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

199 (v) has a listing in the Department of Human Services, Division of Child and Family
200 Services' Licensing Information System described in Section [62A-4a-1006](#);

201 (vi) has a listing in the Department of Human Services, Division of Aging and Adult
202 Services' vulnerable adult abuse, neglect, or exploitation database described in Section
203 [62A-3-311.1](#);

204 (vii) has a record in the juvenile court of a substantiated finding of severe child abuse
205 or neglect described in Section [78A-6-323](#);

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

208 (A) under 28 years of age; or

209 (B) 28 years of age or older and has been convicted of, has pleaded no contest to, or is
210 currently subject to a plea in abeyance or diversion agreement for a felony or a misdemeanor
211 offense described in Subsection (5)(a); or

212 (ix) has a pending charge for an offense described in Subsection (5)(a).

213 (b) The comprehensive review described in Subsection (6)(a) shall include an
214 examination of:

215 (i) the date of the offense or incident;

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

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

- 218 (iv) the age of the perpetrator when the offense or incident occurred;
- 219 (v) whether the offense or incident was an isolated or repeated incident;
- 220 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 221 adult, including:
 - 222 (A) actual or threatened, nonaccidental physical or mental harm;
 - 223 (B) sexual abuse;
 - 224 (C) sexual exploitation; or
 - 225 (D) negligent treatment;
 - 226 (vii) any evidence provided by the applicant of rehabilitation, counseling, psychiatric
 - 227 treatment received, or additional academic or vocational schooling completed; and
 - 228 (viii) any other pertinent information.
- 229 (c) ~~[At]~~ Except as provided in Subsection (15), at the conclusion of the comprehensive
- 230 review described in Subsection (6)(a), the office shall deny an application to an applicant if the
- 231 office finds that approval would likely create a risk of harm to a child or a vulnerable adult.
- 232 (d) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
- 233 office may make rules, consistent with this chapter, to establish procedures for the
- 234 comprehensive review described in this Subsection (6).
- 235 (7) Subject to Subsection (10), the office shall approve an application to an applicant
- 236 who is not denied under Subsection (5), (6), or (13).
- 237 (8) (a) The office may conditionally approve an application of an applicant, for a
- 238 maximum of 60 days after the day on which the office sends written notice to the applicant
- 239 under Subsection (12), without requiring that the applicant be directly supervised, if the office:
 - 240 (i) is awaiting the results of the criminal history search of national criminal background
 - 241 databases; and
 - 242 (ii) would otherwise approve an application of the applicant under Subsection (7).
- 243 (b) Upon receiving the results of the criminal history search of national criminal
- 244 background databases, the office shall approve or deny the application of the applicant in

245 accordance with Subsections (5) through (7).

246 (9) A licensee or department contractor may not permit an individual to have direct
247 access to a child or a vulnerable adult unless, subject to Subsection (10):

248 (a) the individual is associated with the licensee or department contractor and:

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

250 (ii) the individual's application is conditionally approved by the office under

251 Subsection (8); or

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

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

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

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

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

261 (iii) one of the following circumstances, that the office has not yet reviewed under
262 Subsection (6), applies to the individual:

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

264 (B) the individual is listed in the Licensing Information System, described in Section
265 [62A-4a-1006](#);

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

268 (D) the individual has a record in the juvenile court of a substantiated finding of severe
269 child abuse or neglect, described in Section [78A-6-323](#); or

270 (E) the individual has a record of an adjudication in juvenile court for an act that, if
271 committed by an adult, would be a felony or a misdemeanor; and

- 272 (iv) the individual is directly supervised by an individual who:
- 273 (A) has a current background screening approval issued by the office under this
- 274 section; and
- 275 (B) is associated with the licensee or department contractor;
- 276 (c) the individual:
- 277 (i) is not associated with the licensee or department contractor; and
- 278 (ii) is directly supervised by an individual who:
- 279 (A) has a current background screening approval issued by the office under this
- 280 section; and
- 281 (B) is associated with the licensee or department contractor;
- 282 (d) the individual is the parent or guardian of the child, or the guardian of the
- 283 vulnerable adult;
- 284 (e) the individual is approved by the parent or guardian of the child, or the guardian of
- 285 the vulnerable adult, to have direct access to the child or the vulnerable adult;
- 286 (f) the individual is only permitted to have direct access to a vulnerable adult who
- 287 voluntarily invites the individual to visit; or
- 288 (g) the individual only provides incidental care for a foster child on behalf of a foster
- 289 parent who has used reasonable and prudent judgment to select the individual to provide the
- 290 incidental care for the foster child.
- 291 (10) An individual may not have direct access to a child or a vulnerable adult if the
- 292 individual is prohibited by court order from having that access.
- 293 (11) Notwithstanding any other provision of this section, an individual for whom the
- 294 office denies an application may not have supervised or unsupervised direct access to a child or
- 295 vulnerable adult unless the office approves a subsequent application by the individual.
- 296 (12) (a) Within 30 days after the day on which the office receives the background
- 297 check information for an applicant, the office shall give written notice to:
- 298 (i) the applicant, and the licensee or department contractor, of the office's decision

299 regarding the background check and findings; and

300 (ii) the applicant of any convictions and potentially disqualifying charges and
301 adjudications found in the search.

302 (b) With the notice described in Subsection (12)(a), the office shall also give the
303 applicant the details of any comprehensive review conducted under Subsection (6).

304 (c) If the notice under Subsection (12)(a) states that the applicant's application is
305 denied, the notice shall further advise the applicant that the applicant may, under Subsection
306 62A-2-111(2), request a hearing in the department's Office of Administrative Hearings, to
307 challenge the office's decision.

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

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

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

314 (13) An individual or a department contractor who provides services in an adults only
315 substance use disorder program, as defined by rule, is exempt from this section. This
316 exemption does not extend to a program director or a member, as defined by Section
317 62A-2-108, of the program.

318 (14) (a) Except as provided in Subsection (14)(b), in addition to the other requirements
319 of this section, if the background check of an applicant is being conducted for the purpose of
320 licensing a prospective foster home or approving a prospective adoptive placement of a child in
321 state custody, the office shall:

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

326 abuse or neglect; and

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

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

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

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

336 (A) a noncustodial parent under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or

337 (B) a relative, other than a noncustodial parent, under Section 62A-4a-209, 78A-6-307,
338 or 78A-6-307.5, pending completion of the background check described in Subsection (5).

339 (c) Notwithstanding Subsections (5) through (9), the office shall deny a license or a
340 license renewal to a prospective foster parent or a prospective adoptive parent if the applicant
341 has been convicted of:

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

343 (A) child abuse, as described in Section 76-5-109;

344 (B) commission of domestic violence in the presence of a child, as described in Section
345 76-5-109.1;

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

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

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

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

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

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

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

- 353 (J) kidnapping, as described in Section 76-5-301;
- 354 (K) child kidnapping, as described in Section 76-5-301.1;
- 355 (L) aggravated kidnapping, as described in Section 76-5-302;
- 356 (M) human trafficking of a child, as described in Section 76-5-308.5;
- 357 (N) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;
- 358 (O) sexual exploitation of a minor, as described in Section 76-5b-201;
- 359 (P) aggravated arson, as described in Section 76-6-103;
- 360 (Q) aggravated burglary, as described in Section 76-6-203;
- 361 (R) aggravated robbery, as described in Section 76-6-302; or
- 362 (S) domestic violence, as described in Section 77-36-1; or
- 363 (ii) an offense committed outside the state that, if committed in the state, would
- 364 constitute a violation of an offense described in Subsection (14)(c)(i).
- 365 (d) Notwithstanding Subsections (5) through (9), the office shall deny a license or
- 366 license renewal to a prospective foster parent or a prospective adoptive parent if, within the
- 367 five years immediately preceding the day on which the individual's application or license would
- 368 otherwise be approved, the applicant was convicted of a felony involving conduct that
- 369 constitutes a violation of any of the following:
- 370 (i) aggravated assault, as described in Section 76-5-103;
- 371 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 372 (iii) mayhem, as described in Section 76-5-105;
- 373 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 374 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 375 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances
- 376 Act;
- 377 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
- 378 Precursor Act; or
- 379 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

380 (e) In addition to the circumstances described in Subsection (6)(a), the office shall
381 conduct the comprehensive review of an applicant's background check pursuant to this section
382 if the registry check described in Subsection (14)(a) indicates that the individual is listed in a
383 child abuse and neglect registry of another state as having a substantiated or supported finding
384 of a severe type of child abuse or neglect as defined in Section [62A-4a-1002](#).

385 (15) (a) Notwithstanding Subsection (6) and except as provided in Subsection (15)(b),
386 the office may not deny an application to an applicant solely because the applicant was
387 convicted of an offense that occurred 10 years before the day on which the applicant submitted
388 the information required under Subsection (2)(a) if the applicant has not committed another
389 misdemeanor or felony offense since the day on which the conviction occurred.

390 (b) Subsection (15)(a) does not apply to an offense described in Subsection (14)(c).