BACKGROUND CHECKS FOR BOARDING SCHOOLS
2005 GENERAL SESSION
STATE OF UTAH
Sponsor: Bradley G. Last

LONG TITLE
General Description:
This bill amends the Utah Human Services Code to provide for a background check on a boarding school employee or an applicant for employment at a boarding school.

Highlighted Provisions:
This bill:
- defines terms;
- provides the Department of Human Services with access to records to determine whether a boarding school employee or an applicant for employment at a boarding school is listed in the:
  - Licensing Information System of the Division of Child and Family Services;
  - juvenile court records as having a substantiated finding of severe child abuse or neglect; or
  - statewide database of the Division of Aging and Adult Services as having a substantiated finding of abuse, neglect, or exploitation of a vulnerable adult;
- provides that the Department of Human Services shall provide a boarding school with a statement of the status of a boarding school employee or an applicant for employment at the boarding school in the records described above if the boarding school:
  - provides the Department of Human Services with a release signed by the boarding school employee or applicant for employment at the boarding school;
provides the Department of Human Services with the required identifying
information; and
  • pays a fee to the Department of Human Services to cover the cost of processing
and providing the statement;
    ▪ grants rulemaking authority to the Department of Human Services to implement the
provisions of this bill;
    ▪ requires the Department of Human Services to establish a fee for a boarding school
to reimburse the Department of Human Services for the cost of processing and
providing the statement regarding the status of a boarding school employee or an
applicant for employment at the boarding school in the records described above; and
    ▪ makes technical changes.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected:
AMENDS:
  62A-2-101, as last amended by Chapter 22, Laws of Utah 2003
  62A-2-121, as last amended by Chapter 86, Laws of Utah 2004
  62A-2-122, as enacted by Chapter 300, Laws of Utah 2002
  62A-4a-116.2, as last amended by Chapter 86, Laws of Utah 2004
ENACTS:
  62A-2-123, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 62A-2-101 is amended to read:

  As used in this chapter:
  (1) "Adult day care" means continuous care and supervision for three or more adults
for at least four but less than 24 hours a day, that meets the needs of functionally impaired
adults through a comprehensive program that provides a variety of health, social, recreational,
and related support services in a protective setting.

(2) (a) "Boarding school" means a private school that:

(i) uses a regionally accredited education program;

(ii) provides a residence to the school's students:

(A) for the purpose of enabling the school's students to attend classes at the school; and

(B) as an ancillary service to educating the students at the school;

(iii) has the primary purpose of providing the school's students with an education, as defined in Subsection (2)(b)(i); and

(iv) (A) does not provide the treatment or services described in Subsection (20); or

(B) provides the treatment or services described in Subsection (20) on a limited basis,

as described in Subsection (2)(b)(ii).

(b) (i) For purposes of Subsection (2)(a)(iii), "education" means a course of study for one or more of grades kindergarten through 12th grade.

(ii) For purposes of Subsection (2)(a)(iv)(B), a private school provides the treatment or services described in Subsection (20) on a limited basis if:

(A) the treatment or services described in Subsection (20) are provided only as an incidental service to a student; and

(B) the school does not:

(I) specifically solicit a student for the purpose of providing the treatment or services described in Subsection (20); or

(II) have a primary purpose of providing the services described in Subsection (20).

(3) "Boarding school applicant" means a person who:

(a) is an employee of a boarding school; or

(b) has applied for employment with a boarding school.

[(2)] (4) "Child" means a person under 18 years of age.

[(3)] (5) "Child placing" means receiving, accepting, or providing custody or care for any child [under 18 years of age], temporarily or permanently, for the purpose of:

(a) finding a person to adopt the child;

(b) placing the child [temporarily or permanently] in a home for adoption; or

(c) foster home placement.

[(4)] (6) "Client" means an individual who receives or has received services from a
human services licensee [under this chapter].

[(5)] (7) (a) "Day treatment" means specialized treatment for less than 24 hours a day for four or more persons who are unrelated to the owner or provider and who have emotional, psychological, developmental, physical, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) Day treatment is provided in lieu of, or in coordination with, a more restrictive residential or inpatient environment or service.

[(6)] (8) "Department" means the Department of Human Services.

[(7)] (9) "Direct access" means that an individual has, or likely will have, contact with or access to a child or vulnerable adult that provides the individual with an opportunity for personal communication or touch.

[(8)] (10) "Director" means the director of the Office of Licensing.

[(9)] (11) "Domestic violence treatment program" means a nonresidential program designed to provide psychological treatment and educational services to perpetrators and victims of domestic violence.

[(10)] (12) "Elder adult" means a person 65 years of age or older.

[(11)] (13) "Executive director" means the executive director of the department.

[(12)] (14) "Human services licensee" or "licensee" means a youth program, resource family home, or a facility or program, licensed by the department, that provides care, secure treatment, inpatient treatment, residential treatment, residential support, adult day care, day treatment, outpatient treatment, domestic violence treatment, child placing services, or social detoxification.

[(13)] (15) "Licensing board" means the Human Services Licensing Board.

[(14)] (16) "Minor" has the same meaning as "child."

[(15)] (17) "Office" means the Office of Licensing within the Department of Human Services.

[(16)] (18) "Outpatient treatment" means individual, family, or group therapy or counseling designed to improve and enhance social or psychological functioning for those whose physical and emotional status allows them to continue functioning in their usual living environment.

[(17)] (19) (a) "Person associated with the licensee" means an owner, director, member
of the governing body, employee, provider of care, or volunteer of:

(i) a human services licensee; or [of]

(ii) an applicant to become a licensee.

(b) Notwithstanding Subsection [(17) (19)] (a), "person associated with the licensee" does not include an individual serving on [either of] the following bodies unless that individual has direct access to children or vulnerable adults:

(i) a local mental health authority under Section 17-43-301 [or]

(ii) a local substance abuse authority under Section 17-43-201; or

[(ii) (iii) a board of an organization operating under a contract to provide

comprehensive:

(A) mental health or substance abuse programs; or

(B) services for the local mental health authority or substance abuse authority.

[(18) (20) (a) "Residential support" means arranging for or providing the necessities of life as a protective service to individuals or families who are disabled or who are experiencing a dislocation or emergency which prevents them from providing these services for themselves or their families.

(b) Treatment is not a necessary component of residential support.

[(19) (21) (a) "Residential treatment" means a 24-hour group living environment for four or more individuals unrelated to the owner or provider that offers room or board and specialized treatment, rehabilitation, or habilitation services for persons with emotional, psychological, developmental, or behavioral dysfunctions, impairments, or chemical dependencies.

(b) In residential treatment, individuals are assisted in acquiring the social and behavioral skills necessary for living independently in the community.

[(20) (22) "Resource family home" means a home licensed to provide services to a child in the custody of the state and includes a foster care home and a legal risk home.

[(21) (23) (a) "Secure treatment" means 24-hour specialized residential treatment or care for persons whose current functioning is such that they cannot live independently or in a less restrictive environment.

(b) Secure treatment differs from residential treatment to the extent that it requires intensive supervision, locked doors, and other security measures which are imposed on
residents with neither their consent nor control.

[(22) (24)] "Social detoxification" means short-term residential services for persons who are intoxicated, that are provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and that include:

(a) room and board for persons who are unrelated to the owner or manager of the facility;

(b) specialized rehabilitation to acquire sobriety; and

(c) aftercare services.

[(23) (25)] "Unrelated persons" means persons other than parents, legal guardians, grandparents, brothers, sisters, uncles, or aunts.

[(24) (26)] "Vulnerable adult" means an elder adult or an adult who has a mental or physical impairment that substantially affects the person's ability to:

(a) provide personal protection;

(b) provide necessities such as food, shelter, clothing, or mental or other health care;

(c) obtain services necessary for health, safety, or welfare;

(d) carry out the activities of daily living;

(e) manage the adult's own resources; or

(f) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

[(25) (27)] (a) "Youth program" means a nonresidential program, designed to provide behavioral, substance abuse or mental health services to minors that:

(i) serves [either] adjudicated or nonadjudicated youth;

(ii) charges a fee for its services;

(iii) may or may not provide host homes or other arrangements for overnight accommodation of the youth;

(iv) may or may not provide all or part of its services in the outdoors;

(v) may or may not limit or censor access to parents or guardians; and

(vi) prohibits or restricts a minor's ability to leave the program at any time of his own free will.

(b) "Youth program" does not include recreational programs such as Boy Scouts, Girl Scouts, 4-H, and other such organizations.
Section 2. Section 62A-2-121 is amended to read:

62A-2-121. Access to abuse and neglect information for licensing purposes.

(1) With respect to a human services [licensees] licensee or a boarding school applicant, the department may access only the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320(4)(6), for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to children:[;]

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

(ii) informing a licensee that a person associated with the licensee:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); or

(b) (i) determining whether a boarding school applicant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

(ii) informing a boarding school that a boarding school applicant:

(A) is listed in the Licensing Information System; or

(B) has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2).

(2) Notwithstanding Subsection (1), the department may access the Division of Child and Family Service's Management Information System under Section 62A-4a-116 for the purpose of licensing and monitoring foster parents.

(3) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection (1).

(4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
[who has] may have direct access to children [and who] when:

(a) the person is listed in the Licensing Information System [or has] of the Division of Child and Family Services created by Section 62A-4a-116.2; or

(b) juvenile court records show that a court made a substantiated finding [by a court of] under Section 78-3a-320, that the person committed a severe type of child abuse or neglect [under Subsections 78-3a-320(1) and (2) may provide services to children].

Section 3. Section 62A-2-122 is amended to read:


(1) With respect to a human services [licensees] licensee, or a boarding school applicant, the department may access the data base created by Section 62A-3-311.1 for the purpose of:

(a) (i) determining whether a person associated with a licensee, with direct access to vulnerable adults, has a substantiated finding of:

   (A) abuse;
   (B) neglect; or
   (C) exploitation; and

[(b) (ii) informing a licensee that a person associated with the licensee has a substantiated finding of:]

(A) abuse;
(B) neglect; or
(C) exploitation; or

(b) (i) determining whether a boarding school applicant has a substantiated finding of:

(A) abuse;
(B) neglect; or
(C) exploitation; and

(ii) informing a boarding school that a boarding school applicant has a substantiated finding of:

(A) abuse;
(B) neglect; or
(C) exploitation.
(2) After receiving identifying information for a person under Subsection 62A-2-120(1), the department shall process the information for the purposes described in Subsection (1).

(3) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter and consistent with Section 62A-3-311.1, defining the circumstances under which a person may have direct access or provide services to vulnerable adults when the person is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation.

Section 4. Section 62A-2-123 is enacted to read:

62A-2-123. Background check on a boarding school applicant -- Rulemaking authority -- Establishment of fee to pay for background check.

(1) Consistent with Subsection (2), the department shall provide to a boarding school a written statement regarding whether:

   (a) a boarding school applicant is listed in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation;

   (b) a boarding school applicant is listed in the Licensing Information System of the Division of Child and Family Services created by Section 62A-4a-116.2; or

   (c) juvenile court records show that a court made a substantiated finding under Section 78-3a-320, that a boarding school applicant committed a severe type of child abuse or neglect.

(2) To receive the written statement described in Subsection (1), a boarding school must submit to the department:

   (a) on a form prepared by the department, a release signed by the boarding school applicant, authorizing the department to release the information described in Subsection (1) to the boarding school;

   (b) the boarding school applicant's:

      (i) name;

      (ii) fingerprints, if required by the department; and

      (iii) other identifying information required by the department; and
(c) a fee to reimburse the department for the cost of processing and providing the statement described in Subsection (1).

(3) The department shall:

(a) make rules pursuant to Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to implement the provisions of this section; and

(b) establish a fee amount for a boarding school to reimburse the department for the cost of processing and providing the statement described in Subsection (1).

Section 5. Section 62A-4a-116.2 is amended to read:


(1) (a) The division shall maintain a sub-part of the Management Information System established pursuant to Section 62A-4a-116, to be known as the Licensing Information System, to be used [solely]:

(i) for licensing purposes[; or]

(ii) as otherwise specifically provided for by law.

(b) The Licensing Information System shall include only the following information:

[(a) (i) the information described in Subsections 62A-4a-116.1(1)(a) and (6)(b);]

[(b) (ii) consented-to supported findings by alleged perpetrators under Subsection 62A-4a-116.1(6)(a)(iii); and]

[(c) (iii) the information in the licensing part of the division's Management Information System as of May 6, 2002.]

(2) Notwithstanding Subsection (1), the department's access to information in the Management Information System for the licensure and monitoring of foster parents is governed by Sections 62A-4a-116 and 62A-2-121.

(3) (a) [The] Subject to Subsection (3)(b), upon receipt of a finding from the juvenile court under Section 78-3a-320, the division shall:

(i) promptly amend the Licensing Information System[; upon receipt of a finding from the juvenile court under Section 78-3a-320]; and [shall]

(ii) enter the [same] information in the Management Information System. [However]

(b) Notwithstanding Subsection (3)(a), if a finding of unsubstantiated or without merit is appealed, the supported finding shall not be amended until the appeal is concluded.
(4) (a) Information contained in the Licensing Information System is classified as a protected record under Title 63, Chapter 2, Government Records Access and Management Act.

(b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government Records Access and Management Act, the information contained in the Licensing Information System may only be used or disclosed as specifically provided in this chapter and Section 62A-2-121 [and].

(c) The information described in Subsection (4)(b) is accessible only to:

[(a) (i)] the Office of Licensing within the department:[;]

(A) for licensing purposes [only]; or

(B) as otherwise specifically provided for by law;

[(b) (ii)] the division[; for the following purposes] to:

[(i) (A)] to screen a person at the request of the Office of the Guardian Ad Litem Director:

(I) at the time that person seeks a paid or voluntary position with the Office of the Guardian Ad Litem Director; and

(II) each year [thereafter that] after the person described in Subsection (4)(c)(ii)(A)(I)
remains with that office; and

[(iii) (B)] respond to a request for information from a person whose name is listed in the Licensing Information System;

[(c) (iii)] two persons designated by and within the Department of Health, only for the following purposes:

[(i) (A)] licensing a child care program or provider; or

[(ii) (B)] determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child, has a supported finding of severe child abuse or neglect; and

[(d) (iv)] the department, as specifically provided in this chapter.

(5) The two persons designated by the Department of Health under Subsection (4)(c)(iii) shall adopt measures to:

(a) protect the security of the Licensing Information System; and

(b) strictly limit access to the Licensing Information System to those persons designated by statute.
(6) All persons designated by statute as having access to information contained in the Licensing Information System shall receive training from the department with respect to:
(a) accessing the Licensing Information System;
(b) maintaining strict security; and
(c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the improper release of information.

(7) (a) No person, except those authorized by this chapter, may request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of child abuse or neglect.
(b) A person who requests information knowing that it is a violation of this Subsection to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

Legislative Review Note
as of 2-11-05 4:33 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel