

**CLEARANCE FOR DIRECT PATIENT ACCESS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Bradley G. Last**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill amends the Health Care Facility Licensing and Inspection Act within the Utah Health Code, the Utah Human Services Code, and the Juvenile Court Act of 1996.

**Highlighted Provisions:**

This bill:

- ▶ amends Department of Health duties;
- ▶ repeals provisions requiring a background check of:
  - certain individuals who provide direct patient care in certain health care facilities and other settings; and
  - certain other individuals residing in a residential setting where care is provided;
- ▶ creates a new part, "Clearance for Direct Patient Access," in the Health Care Facility Licensing and Inspection Act;
- ▶ provides definitions;
- ▶ requires the department to grant, deny, or revoke clearance for an individual to have direct patient access;
- ▶ authorizes the department to limit the circumstances under which a covered individual granted clearance may have direct patient access;
- ▶ requires the department to adopt rules:
  - specifying the information sources the department reviews to determine whether an individual should be granted or retain clearance;



- 28           • specifying criteria to evaluate the information it reviews initially and on an
- 29 ongoing basis; and
- 30           • specifying the personal identification information that must be submitted to the
- 31 department;
- 32           ▶ requires the Department of Public Safety, the Administrative Office of the Courts,
- 33 the Department of Human Services, the Division of Occupational and Professional
- 34 Licensing, and any other state agency or political subdivision of the state to allow
- 35 the Department of Health to review at no charge the information it is required to
- 36 review to grant, deny, or revoke clearance;
- 37           ▶ authorizes the Department of Health to establish fees;
- 38           ▶ requires the Department of Public Safety to notify the Department of Health of
- 39 information that becomes available about any individual who has applied for
- 40 clearance;
- 41           ▶ requires certain providers and contractors to apply for clearance of individuals they
- 42 engage who may have direct patient access;
- 43           ▶ requires a residential setting provider to apply for clearance for certain individuals,
- 44 other than residents, residing in the residential setting;
- 45           ▶ prohibits a residential setting provider from allowing certain individuals without
- 46 clearance, other than residents, to reside in the residential setting;
- 47           ▶ allows individuals to apply for clearance to have direct patient access;
- 48           ▶ requires the Department of Health to create a database that allows certain providers
- 49 and contractors to determine whether an individual has clearance to have direct
- 50 patient access;
- 51           ▶ authorizes the department to establish fees for use of the database by certain
- 52 contractors;
- 53           ▶ provides an exemption from civil liability;
- 54           ▶ makes conforming changes; and
- 55           ▶ makes technical corrections.

56 **Money Appropriated in this Bill:**

57           None

58 **Other Special Clauses:**

59 None

60 **Utah Code Sections Affected:**

61 AMENDS:

62 **26-21-6**, as last amended by Laws of Utah 1998, Chapter 169

63 **62A-3-305**, as last amended by Laws of Utah 2009, Chapter 267

64 **78A-6-209**, as last amended by Laws of Utah 2008, Chapter 111 and renumbered and  
65 amended by Laws of Utah 2008, Chapter 3

66 **78A-6-323**, as last amended by Laws of Utah 2008, Chapter 111 and renumbered and  
67 amended by Laws of Utah 2008, Chapter 3

68 ENACTS:

69 **26-21-100**, Utah Code Annotated 1953

70 **26-21-201**, Utah Code Annotated 1953

71 **26-21-202**, Utah Code Annotated 1953

72 **26-21-203**, Utah Code Annotated 1953

73 **26-21-204**, Utah Code Annotated 1953

74 **26-21-205**, Utah Code Annotated 1953

75 **26-21-206**, Utah Code Annotated 1953

76 **26-21-207**, Utah Code Annotated 1953

77 **26-21-208**, Utah Code Annotated 1953

78 **26-21-209**, Utah Code Annotated 1953

79 **26-21-210**, Utah Code Annotated 1953

80 REPEALS:

81 **26-21-9.5**, as last amended by Laws of Utah 2011, Chapters 297 and 366



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

84 Section 1. Section **26-21-6** is amended to read:

85 **26-21-6. Duties of department.**

86 (1) The department shall:

87 (a) enforce rules established pursuant to this chapter;

88 (b) authorize an agent of the department to conduct inspections of health care facilities  
89 pursuant to this chapter;

90 (c) collect information authorized by the committee that may be necessary to ensure  
91 that adequate health care facilities are available to the public;

92 (d) collect and credit fees for licenses as free revenue;

93 (e) collect and credit fees for conducting plan reviews and fees established under  
94 Chapter 21, Part 2, Clearance for Direct Patient Access, as dedicated credits;

95 (f) designate an executive secretary from within the department to assist the committee  
96 in carrying out its powers and responsibilities;

97 (g) establish reasonable standards for criminal background checks by public and  
98 private entities;

99 (h) recognize those public and private entities [~~which~~] that meet the standards  
100 established [~~in~~] pursuant to Subsection (1)(g); and

101 (i) provide necessary administrative and staff support to the committee.

102 (2) The department may:

103 (a) exercise all incidental powers necessary to carry out the purposes of this chapter;

104 (b) review architectural plans and specifications of proposed health care facilities or  
105 renovations of health care facilities to ensure that the plans and specifications conform to rules  
106 established by the committee; and

107 (c) make rules as necessary to implement the provisions of this chapter, except as  
108 authority is specifically delegated to the committee.

109 Section 2. Section **26-21-100** is enacted to read:

110 **26-21-100. Reserved.**

111 Reserved

112 Section 3. Section **26-21-201** is enacted to read:

113 **Part 2. Clearance for Direct Patient Access**

114 **26-21-201. Definitions.**

115 As used in this part:

116 (1) "Clearance" means approval by the department under Section 26-21-203 for an  
117 individual to have direct patient access.

118 (2) "Covered body" means a covered provider, covered contractor, or covered  
119 employer.

120 (3) "Covered contractor" means a person that supplies covered individuals, by contract,

121 to a covered employer or covered provider.

122 (4) "Covered employer" means an individual who:

123 (a) engages a covered individual to provide services in a private residence to:

124 (i) an aged individual, as defined by department rule; or

125 (ii) a disabled individual, as defined by department rule;

126 (b) is not a covered provider; and

127 (c) is not a licensed health care facility within the state.

128 (5) "Covered individual":

129 (a) means an individual:

130 (i) whom a covered body engages; and

131 (ii) who may have direct patient access;

132 (b) includes:

133 (i) a nursing assistant, as defined by department rule;

134 (ii) a personal care aide, as defined by department rule;

135 (iii) an individual licensed to engage in the practice of nursing under Title 58, Chapter

136 31b, Nurse Practice Act;

137 (iv) a provider of medical, therapeutic, or social services, including a provider of

138 laboratory and radiology services;

139 (v) an executive;

140 (vi) administrative staff, including a manager or other administrator;

141 (vii) dietary and food service staff;

142 (viii) housekeeping and maintenance staff; and

143 (ix) any other individual, as defined by department rule, who has direct patient access;

144 and

145 (c) does not include a student, as defined by department rule, directly supervised by a

146 member of the staff of the covered body or the student's instructor.

147 (6) "Covered provider" means:

148 (a) an end stage renal disease facility;

149 (b) a long-term care hospital;

150 (c) a nursing care facility;

151 (d) a small health care facility;

152 (e) an assisted living facility;

153 (f) a hospice;

154 (g) a home health agency; or

155 (h) a personal care agency.

156 (7) "Direct patient access" means for an individual to be in a position where the  
157 individual could, in relation to a patient or resident of the covered body who engages the  
158 individual:

159 (a) cause physical or mental harm;

160 (b) commit theft; or

161 (c) view medical or financial records.

162 (8) "Engage" means to obtain one's services:

163 (a) by employment;

164 (b) by contract;

165 (c) as a volunteer; or

166 (d) by other arrangement.

167 (9) "Long-term care hospital":

168 (a) means a hospital that is certified to provide long-term care services under the  
169 provisions of 42 U.S.C. Sec. 1395tt; and

170 (b) does not include a critical access hospital, designated under 42 U.S.C. Sec.  
171 1395i-4(c)(2).

172 (10) "Patient" means an individual who receives health care services from one of the  
173 following covered providers:

174 (a) an end stage renal disease facility;

175 (b) a long-term care hospital;

176 (c) a hospice;

177 (d) a home health agency; or

178 (e) a personal care agency.

179 (11) "Personal care agency" means a health care facility defined by department rule.

180 (12) "Resident" means an individual who receives health care services from one of the  
181 following covered providers:

182 (a) a nursing care facility;

- 183 (b) a small health care facility;
- 184 (c) an assisted living facility; or
- 185 (d) a hospice that provides living quarters as part of its services.
- 186 (13) "Residential setting" means a place provided by a covered provider:
- 187 (a) for residents to live as part of the services provided by the covered provider; and
- 188 (b) where an individual who is not a resident also lives.
- 189 (14) "Volunteer" means an individual, as defined by department rule, who provides
- 190 services without pay or other compensation.

191 Section 4. Section **26-21-202** is enacted to read:

192 **26-21-202. Clearance required.**

- 193 (1) A covered provider may engage a covered individual only if the individual has
- 194 clearance.
- 195 (2) A covered contractor may supply a covered individual to a covered employer or
- 196 covered provider only if the individual has clearance.
- 197 (3) A covered employer may engage a covered individual who does not have clearance.
- 198 (4) (a) Notwithstanding Subsections (1) and (2), if a covered individual does not have
- 199 clearance, a covered provider may engage the individual or a covered contractor may supply
- 200 the individual to a covered provider or covered employer:
- 201 (i) if clearance for the individual has never been denied or revoked, or under other
- 202 circumstances specified by department rule; and
- 203 (ii) only while an application for clearance for the individual is pending.
- 204 (b) For purposes of Subsection (4)(a), an application is pending if the following have
- 205 been submitted to the department for the individual:
- 206 (i) an application for clearance;
- 207 (ii) the personal identification information specified by the department under
- 208 Subsection 26-21-204(3)(b); and
- 209 (iii) any fees established by the department under Subsection 26-21-204(8).

210 Section 5. Section **26-21-203** is enacted to read:

211 **26-21-203. Department authorized to grant, deny, or revoke clearance --**

212 **Department may limit direct patient access.**

- 213 (1) As provided in Section 26-21-204, the department may grant, deny, or revoke

214 clearance for an individual, including a covered individual.

215 (2) The department may limit the circumstances under which a covered individual  
216 granted clearance may have direct patient access, based on the relationship the factors under  
217 Subsection 26-21-204(3)(a) and other mitigating factors may have to patient and resident  
218 protection.

219 Section 6. Section **26-21-204** is enacted to read:

220 **26-21-204. Clearance.**

221 (1) The department shall determine whether to grant clearance for each applicant for  
222 whom it receives:

223 (a) the personal identification information specified by the department under  
224 Subsection 26-21-204(3)(b); and

225 (b) any fees established by the department under Subsection 26-21-204(8).

226 (2) The department shall make rules in accordance with Title 63G, Chapter 3, Utah  
227 Administrative Rulemaking Act, that specify the information sources it will review to  
228 determine whether an individual should be granted or retain clearance, which may include:

229 (a) Department of Public Safety arrest, conviction, and disposition records described in  
230 Title 53, Chapter 10, Criminal Investigations and Technical Services Act;

231 (b) Juvenile Court arrest, adjudication, and disposition records, as allowed under  
232 Section 78A-6-209;

233 (c) federal criminal background databases available to the state;

234 (d) the Department of Human Services' Division of Child and Family Services  
235 Licensing Information System described in Section 62A-4a-1006;

236 (e) child abuse or neglect findings described in Section 78A-6-323;

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

239 (g) registries of nurse aids described in 42 C.F.R. Sec. 483.156;

240 (h) licensing and certification records of individuals licensed or certified by the  
241 Division of Occupational and Professional Licensing under Title 58, Occupations and  
242 Professions;

243 (i) the List of Excluded Individuals and Entities database maintained by the United  
244 States Department of Health and Human Services' Office of Inspector General; and



245 (j) other sources.  
246 (3) The department shall adopt rules that:  
247 (a) specify the criteria the department will use to determine whether an individual is  
248 granted or retains clearance:  
249 (i) based on an initial evaluation and ongoing review of information under Subsection  
250 (2); and  
251 (ii) including consideration of the relationship the following may have to patient and  
252 resident protection:  
253 (A) warrants for arrest;  
254 (B) arrests;  
255 (C) convictions, including pleas in abeyance;  
256 (D) pending diversion agreements;  
257 (E) adjudications by a juvenile court of committing an act that if committed by an adult  
258 would be a felony or misdemeanor, if the individual is over 28 years of age and has been  
259 convicted, has pleaded no contest, or is subject to a plea in abeyance or diversion agreement for  
260 a felony or misdemeanor, or the individual is under 28 years of age; and  
261 (F) any other findings under Subsection (2); and  
262 (b) specify the personal identification information that must be submitted by an  
263 individual or covered body with an application for clearance, including:  
264 (i) the applicant's Social Security number; and  
265 (ii) except for applicants under 18 years of age, fingerprints.  
266 (4) For purposes of Subsection (3)(a), the department shall classify a crime committed  
267 in another state according to the closest matching crime under Utah law, regardless of how the  
268 crime is classified in the state where the crime was committed.  
269 (5) The Department of Public Safety, the Administrative Office of the Courts, the  
270 Department of Human Services, the Division of Occupational and Professional Licensing, and  
271 any other state agency or political subdivision of the state:  
272 (a) shall allow the department to review the information the department is required to  
273 review under Subsection (2); and  
274 (b) may not charge the department for access to the information.  
275 (6) The department shall adopt measures to protect the security of the information it

276 reviews under Subsection (2) and strictly limit access to the information to department  
277 employees responsible for processing an application for clearance.

278 (7) The department may disclose personal identification information specified under  
279 Subsection (3)(b) to the Department of Human Services to verify that the subject of the  
280 information is not identified as a perpetrator or offender in the information sources described in  
281 Subsections (2)(d) through (2)(f).

282 (8) The department may establish fees, in accordance with Section 63J-1-504, for an  
283 application for clearance, which may include:

284 (a) the cost of obtaining and reviewing information under Subsection (2);

285 (b) a portion of the cost of creating and maintaining the Direct Access Clearance  
286 System database under Section 26-21-209; and

287 (c) other department costs related to the processing of the application and the ongoing  
288 review of information pursuant to Subsection (3)(a) to determine whether clearance should be  
289 retained.

290 Section 7. Section **26-21-205** is enacted to read:

291 **26-21-205. Department of Public Safety -- Retention of information -- Notification**  
292 **of Department of Health.**

293 The Criminal Investigations and Technical Services Division within the Department of  
294 Public Safety shall:

295 (1) retain, separate from other division records, personal information, including any  
296 fingerprints, sent to it by the Department of Health pursuant to Subsection 26-21-204(2)(a);  
297 and

298 (2) notify the Department of Health upon receiving notice that an individual for whom  
299 personal information has been retained is the subject of:

300 (a) a warrant for arrest;

301 (b) an arrest;

302 (c) a conviction, including a plea in abeyance; or

303 (d) a pending diversion agreement.

304 Section 8. Section **26-21-206** is enacted to read:

305 **26-21-206. Covered providers and covered contractors required to apply for**  
306 **clearance of certain individuals.**

307 (1) As provided in Subsection (2), each covered provider and covered contractor  
308 operating in this state shall:

309 (a) collect from each covered individual it engages, and each individual it intends to  
310 engage as a covered individual, the personal identification information specified by the  
311 department under Subsection 26-21-204(3)(b); and

312 (b) submit to the department an application for clearance for the individual, including:

313 (i) the personal identification information; and

314 (ii) any fees established by the department under Subsection 26-21-204(8).

315 (2) Clearance granted for an individual pursuant to an application submitted by a  
316 covered provider or a covered contractor is valid until the later of:

317 (a) two years after the individual is no longer engaged as a covered individual; or

318 (b) the covered provider's or covered contractor's next license renewal date.

319 (3) (a) For a covered individual whom a covered provider or covered contractor  
320 engages beginning on or after May 8, 2012, Subsection (1) applies beginning May 8, 2012.

321 (b) For a covered individual whom a covered provider or covered contractor engages  
322 before May 8, 2012, Subsection (1) applies:

323 (i) beginning January 1, 2013, if the renewal date for the covered provider's or covered  
324 contractor's license under this chapter is on or after January 1, 2013; or

325 (ii) in all other cases, beginning on the 181st day after the license renewal date.

326 Section 9. Section **26-21-207** is enacted to read:

327 **26-21-207. Covered providers required to apply for clearance for certain**  
328 **individuals other than residents residing in residential settings -- Certain individuals**  
329 **other than residents prohibited from residing in residential settings without clearance.**

330 (1) A covered provider that provides services in a residential setting shall:

331 (a) collect the personal identification information specified by the department under  
332 Subsection 26-21-204(3)(b) for each individual 12 years of age or older, other than a resident,  
333 who resides in the residential setting; and

334 (b) submit to the department an application for clearance for the individual, including:

335 (i) the personal identification information; and

336 (ii) any fees established by the department under Subsection 26-21-204(8).

337 (2) A covered provider that provides services in a residential setting may allow an

338 individual 12 years of age or older, other than a resident, to reside in the residential setting only  
339 if the individual has clearance.

340 Section 10. Section **26-21-208** is enacted to read:

341 **26-21-208. Application for clearance by individuals.**

342 (1) An individual may apply for clearance by submitting to the department an  
343 application, including:

344 (a) the personal identification information specified by the department under  
345 Subsection 26-21-204(3)(b); and

346 (b) any fees established by the department under Subsection 26-21-204(8).

347 (2) Clearance granted to an individual who makes application under Subsection (1) is  
348 valid for two years unless the department determines otherwise based on its ongoing review  
349 under Subsection 26-21-204(3)(a).

350 Section 11. Section **26-21-209** is enacted to read:

351 **26-21-209. Direct Access database -- Contents -- Use.**

352 (1) The department shall create and maintain a Direct Access Clearance System  
353 database, which:

354 (a) includes the names of individuals for whom the department has received an  
355 application for clearance; and

356 (b) indicates for each applicant whether an application is pending and whether  
357 clearance has been granted and retained.

358 (2) (a) The department shall allow covered providers and covered contractors to access  
359 the database electronically.

360 (b) Data accessible to a covered provider or covered contractor is limited to the  
361 information under Subsection (1) for:

362 (i) covered individuals engaged by the covered provider or covered contractor; and

363 (ii) individuals:

364 (A) whom the covered provider or covered contractor could engage as covered  
365 individuals; and

366 (B) who have provided the covered provider or covered contractor with sufficient  
367 personal identification information to uniquely identify the individual in the database.

368 (c) (i) The department may establish fees, in accordance with Section 63J-1-504, for

369 use of the database by a covered contractor.

370 (ii) The fees may include, in addition to any fees established by the department under  
371 Subsection 26-21-204(8), an initial set-up fee, an ongoing access fee, and a per-use fee.

372 Section 12. Section **26-21-210** is enacted to read:

373 **26-21-210. No civil liability.**

374 A covered body is not civilly liable for submitting to the department information  
375 required under this part or refusing to employ an individual who does not have clearance to  
376 have direct patient access under Section 26-21-203.

377 Section 13. Section **62A-3-305** is amended to read:

378 **62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation --**  
379 **Penalty -- Nonmedical healing.**

380 (1) [~~Any~~] A person who has reason to believe that [~~any~~] a vulnerable adult has been the  
381 subject of abuse, neglect, or exploitation shall immediately notify Adult Protective Services  
382 intake or the nearest law enforcement agency. When the initial report is made to law  
383 enforcement, law enforcement shall immediately notify Adult Protective Services intake. Adult  
384 Protective Services and law enforcement shall coordinate, as appropriate, their efforts to  
385 provide protection to the vulnerable adult.

386 (2) When the initial report or subsequent investigation by Adult Protective Services  
387 indicates that a criminal offense may have occurred against a vulnerable adult:

388 (a) Adult Protective Services shall notify the nearest local law enforcement agency  
389 regarding the potential offense; and

390 (b) the law enforcement agency may initiate an investigation in cooperation with Adult  
391 Protective Services.

392 (3) [~~Anyone~~] A person who in good faith makes a report or otherwise notifies a law  
393 enforcement agency or Adult Protective Services of suspected abuse, neglect, or exploitation is  
394 immune from civil and criminal liability in connection with the report or other notification.

395 (4) (a) [~~Any~~] A person who willfully fails to report suspected abuse, neglect, or  
396 exploitation of a vulnerable adult is guilty of a class B misdemeanor.

397 (b) A covered [~~health care facility~~] provider or covered contractor, as defined in  
398 [~~Section 26-21-9.5~~] Subsection 26-21-201, that knowingly fails to report suspected abuse or  
399 neglect, as required by this section, is subject to a private right of action and liability for the

400 abuse or neglect of another person that is committed by the individual who was not reported to  
401 Adult Protective Services in accordance with this section.

402 (5) Under circumstances not amounting to a violation of Section 76-8-508, a person  
403 who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a  
404 report, a witness, the person who made the report, or any other person cooperating with an  
405 investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

406 (6) An adult is not considered abused, neglected, or a vulnerable adult for the reason  
407 that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of  
408 medical care.

409 Section 14. Section **78A-6-209** is amended to read:

410 **78A-6-209. Court records -- Inspection.**

411 (1) The court and the probation department shall keep records as required by the board  
412 and the presiding judge.

413 (2) Court records shall be open to inspection by:

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

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

425 (c) the Criminal Investigations and Technical Services Division, established in Section  
426 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm  
427 and establishing good character for issuance of a concealed firearm permit as provided in  
428 Section 53-5-704;

429 (d) the Division of Child and Family Services for the purpose of Child Protective  
430 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and

431 administrative hearings in accordance with Section 62A-4a-1009; ~~and~~

432 (e) for information related to a juvenile offender who has committed a sexual offense, a  
433 felony, or an offense ~~[which]~~ that if committed by an adult would be a misdemeanor, the  
434 Department of Health~~[-]~~ for the purpose of evaluating under the provisions of Subsection  
435 26-39-404(3) whether a licensee should be permitted to obtain or retain a license to provide  
436 child care, with the understanding that the department must provide the individual who  
437 committed the offense with an opportunity to respond to any information gathered from its  
438 inspection of records before it makes a decision concerning licensure~~[-]~~; and

439 (f) for information related to a juvenile offender who has committed a sexual offense, a  
440 felony, or an offense that if committed by an adult would be a misdemeanor, the Department of  
441 Health to determine whether an individual meets the background screening requirements of  
442 Title 26, Chapter 21, Part 2, Clearance for Direct Patient Access, with the understanding that  
443 the department must provide the individual who committed the offense an opportunity to  
444 respond to any information gathered from its inspection of records before it makes a decision  
445 under that part.

446 (3) With the consent of the judge, court records may be inspected by the child, by  
447 persons having a legitimate interest in the proceedings, and by persons conducting pertinent  
448 research studies.

449 (4) If a petition is filed charging a minor 14 years of age or older with an offense that  
450 would be a felony if committed by an adult, the court shall make available to any person upon  
451 request the petition, any adjudication or disposition orders, and the delinquency history  
452 summary of the minor charged unless the records are closed by the court upon findings on the  
453 record for good cause.

454 (5) Probation officers' records and reports of social and clinical studies are not open to  
455 inspection, except by consent of the court, given under rules adopted by the board.

456 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency  
457 history summary of any person charged as an adult with a felony offense shall be made  
458 available to any person upon request.

459 (b) This provision does not apply to records that have been destroyed or expunged in  
460 accordance with court rules.

461 (c) The court may charge a reasonable fee to cover the costs associated with retrieving

462 a requested record that has been archived.

463 Section 15. Section **78A-6-323** is amended to read:

464 **78A-6-323. Additional finding at adjudication hearing -- Petition -- Court**  
465 **records.**

466 (1) Upon the filing with the court of a petition under Section 78A-6-304 by the  
467 Division of Child and Family Services or any interested person informing the court, among  
468 other things, that the division has made a supported finding that a person committed a severe  
469 type of child abuse or neglect as defined in Section 62A-4a-1002, the court shall:

- 470 (a) make a finding of substantiated, unsubstantiated, or without merit;  
471 (b) include the finding described in Subsection (1)(a) in a written order; and  
472 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

473 (2) The judicial finding under Subsection (1) shall be made:

- 474 (a) as part of the adjudication hearing;  
475 (b) at the conclusion of the adjudication hearing; or  
476 (c) as part of a court order entered pursuant to a written stipulation of the parties.

477 (3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with  
478 the court a petition for removal of the person's name from the Licensing Information System.

- 479 (b) At the conclusion of the hearing on the petition, the court shall:  
480 (i) make a finding of substantiated, unsubstantiated, or without merit;  
481 (ii) include the finding described in Subsection (1)(a) in a written order; and  
482 (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.

483 (4) A proceeding for adjudication of a supported finding under this section of a type of  
484 abuse or neglect that does not constitute a severe type of child abuse or neglect may be joined  
485 in the juvenile court with an adjudication of a severe type of child abuse or neglect.

486 (5) If a person whose name appears on the Licensing Information system prior to May  
487 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to  
488 work with children or vulnerable adults is pending, the court shall hear the matter and enter a  
489 final decision no later than 60 days after the filing of the petition.

490 (6) For the purposes of licensing under Sections [~~26-21-9.5;~~] 26-39-402[;] and  
491 62A-1-118, and for the purposes described in Section 62A-2-121 and Title 26, Chapter 21, Part  
492 2, Clearance for Direct Patient Access:



493 (a) the court shall make available records of its findings under Subsections (1) and (2);

494 (i) for [~~licensing~~] those purposes[~~;~~]; and

495 (ii) only to those with statutory authority to access also the Licensing Information

496 System created under Section 62A-4a-1006; and

497 (b) any appellate court shall make available court records of appeals from juvenile

498 court decisions under Subsections (1), (2), (3), and (4);

499 (i) for [~~licensing~~] those purposes[~~;~~]; and

500 (ii) only to those with statutory authority to access also the Licensing Information

501 System.

502 Section 16. **Repealer.**

503 This bill repeals:

504 Section **26-21-9.5, Criminal background check and Licensing Information System**

505 **check.**

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Legislative Review Note  
as of 2-15-12 4:06 PM

Office of Legislative Research and General Counsel