

BACKGROUND CHECK AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

General Description:

This bill requires that all background checks be processed through the Bureau of Criminal Identification.

Highlighted Provisions:

This bill:

- ▶ requires that all background checks be processed through the Bureau of Criminal Identification; and

- ▶ clarifies which entities qualify for requesting that the Criminal Investigations and Technical Services Division register fingerprints taken for a background check.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-108, as last amended by Laws of Utah 2018, Chapters 417 and 427

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

Section 1. Section **53-10-108** is amended to read:

53-10-108. Restrictions on access, use, and contents of division records -- Limited use of records for employment purposes -- Challenging accuracy of records -- Usage fees -- Missing children records -- Penalty for misuse of records.

30 (1) As used in this section:

31 (a) "FBI Rap Back System" means the rap back system maintained by the Federal
32 Bureau of Investigation.

33 (b) "Rap back system" means a system that enables authorized entities to receive
34 ongoing status notifications of any criminal history reported on individuals whose fingerprints
35 are registered in the system.

36 (c) "WIN Database" means the Western Identification Network Database that consists
37 of eight western states sharing one electronic fingerprint database.

38 (2) Dissemination of information from a criminal history record, including information
39 obtained from a fingerprint background check, name check, warrant of arrest information, or
40 information from division files, is limited to:

41 (a) criminal justice agencies for purposes of administration of criminal justice and for
42 employment screening by criminal justice agencies;

43 (b) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
44 agency to provide services required for the administration of criminal justice;

45 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
46 purposes for which given, and ensure the security and confidentiality of the data;

47 (c) a qualifying entity for employment background checks for their own employees and
48 persons who have applied for employment with the qualifying entity;

49 (d) noncriminal justice agencies or individuals for any purpose authorized by statute,
50 executive order, court rule, court order, or local ordinance;

51 (e) agencies or individuals for the purpose of obtaining required clearances connected
52 with foreign travel or obtaining citizenship;

53 (f) agencies or individuals for the purpose of a preplacement adoptive study, in
54 accordance with the requirements of Sections [78B-6-128](#) and [78B-6-130](#);

55 (g) private security agencies through guidelines established by the commissioner for
56 employment background checks for their own employees and prospective employees;

57 (h) state agencies for the purpose of conducting a background check for the following

58 individuals:

59 (i) employees;

60 (ii) applicants for employment;

61 (iii) volunteers; and

62 (iv) contract employees;

63 (i) governor's office for the purpose of conducting a background check on the

64 following individuals:

65 (i) cabinet members;

66 (ii) judicial applicants; and

67 (iii) members of boards, committees, and commissions appointed by the governor;

68 (j) agencies and individuals as the commissioner authorizes for the express purpose of

69 research, evaluative, or statistical activities pursuant to an agreement with a criminal justice

70 agency; and

71 (k) other agencies and individuals as the commissioner authorizes and finds necessary

72 for protection of life and property and for offender identification, apprehension, and

73 prosecution pursuant to an agreement.

74 (3) An agreement under Subsection (2)(j) shall specifically authorize access to data,

75 limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity of

76 individuals to whom the information relates, and ensure the confidentiality and security of the

77 data.

78 (4) (a) Before requesting information, a qualifying entity under Subsection (2)(c), state

79 agency, or other agency or individual described in Subsections (2)(d) through (i) shall obtain a

80 signed waiver from the person whose information is requested.

81 (b) The waiver shall notify the signee:

82 (i) that a criminal history background check will be conducted;

83 (ii) who will see the information; and

84 (iii) how the information will be used.

85 (c) A qualifying entity under Subsection (2)(c), state agency, or other agency or

86 individual described in Subsections (2)(d) through (g) that submits a request for a noncriminal
87 justice name based background check of local databases to the bureau shall provide to the
88 bureau:

- 89 (i) personal identifying information for the subject of the background check; and
- 90 (ii) the fee required by Subsection (15)(a)(ii).

91 (d) A qualifying entity under Subsection (2)(c), state agency, or other agency or
92 individual described in Subsections (2)(d) through (g) that submits a request for a WIN
93 database check ~~[to the bureau]~~ and a nationwide background check shall provide to the bureau:

- 94 (i) personal identifying information for the subject of the background check;
 - 95 (ii) a fingerprint card for the subject of the background check; and
 - 96 (iii) the fee required by Subsection (15)(a)(i).
- 97 (e) Information received by a qualifying entity under Subsection (2)(c), state agency, or
98 other agency or individual described in Subsections (2)(d) through (i) may only be:

- 99 (i) available to individuals involved in the hiring or background investigation of the job
100 applicant or employee;
- 101 (ii) used for the purpose of assisting in making an employment appointment, selection,
102 or promotion decision; and
- 103 (iii) used for the purposes disclosed in the waiver signed in accordance with Subsection
104 (4)(b).

105 (f) An individual who disseminates or uses information obtained from the division
106 under Subsections (2)(c) through (i) for purposes other than those specified under Subsection
107 (4)(e), in addition to any penalties provided under this section, is subject to civil liability.

108 (g) A qualifying entity under Subsection (2)(c), state agency, or other agency or
109 individual described in Subsections (2)(d) through (i) that obtains background check
110 information shall provide the subject of the background check an opportunity to:

- 111 (i) review the information received as provided under Subsection (9); and
- 112 (ii) respond to any information received.

113 (h) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

114 division may make rules to implement this Subsection (4).

115 (i) The division or its employees are not liable for defamation, invasion of privacy,
116 negligence, or any other claim in connection with the contents of information disseminated
117 under Subsections (2)(c) through (i).

118 (5) (a) Any criminal history record information obtained from division files may be
119 used only for the purposes for which it was provided and may not be further disseminated,
120 except under Subsection (5)(b), (c), or (d).

121 (b) A criminal history provided to an agency pursuant to Subsection (2)(f) may be
122 provided by the agency to the individual who is the subject of the history, another licensed
123 child-placing agency, or the attorney for the adoptive parents for the purpose of facilitating an
124 adoption.

125 (c) A criminal history of a defendant provided to a criminal justice agency under
126 Subsection (2)(a) may also be provided by the prosecutor to a defendant's defense counsel,
127 upon request during the discovery process, for the purpose of establishing a defense in a
128 criminal case.

129 (d) A public transit district, as described in Title 17B, Chapter 2a, Part 8, Public
130 Transit District Act, that is under contract with a state agency to provide services may, for the
131 purposes of complying with Subsection [62A-5-103.5\(5\)](#), provide a criminal history record to
132 the state agency or the agency's designee.

133 (6) The division may not disseminate criminal history record information to qualifying
134 entities under Subsection (2)(c) regarding employment background checks if the information is
135 related to charges:

136 (a) that have been declined for prosecution;

137 (b) that have been dismissed; or

138 (c) regarding which a person has been acquitted.

139 (7) (a) This section does not preclude the use of the division's central computing
140 facilities for the storage and retrieval of criminal history record information.

141 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by

142 unauthorized agencies or individuals.

143 (8) Direct access through remote computer terminals to criminal history record
144 information in the division's files is limited to those agencies authorized by the commissioner
145 under procedures designed to prevent unauthorized access to this information.

146 (9) (a) The commissioner shall establish procedures to allow an individual right of
147 access to review and receive a copy of the individual's criminal history report.

148 (b) A processing fee for the right of access service, including obtaining a copy of the
149 individual's criminal history report under Subsection (9)(a) shall be set in accordance with
150 Section [63J-1-504](#).

151 (c) (i) The commissioner shall establish procedures for an individual to challenge the
152 completeness and accuracy of criminal history record information contained in the division's
153 computerized criminal history files regarding that individual.

154 (ii) These procedures shall include provisions for amending any information found to
155 be inaccurate or incomplete.

156 (10) The private security agencies as provided in Subsection (2)(g):

157 (a) shall be charged for access; and

158 (b) shall be registered with the division according to rules made by the division under
159 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

160 (11) Before providing information requested under this section, the division shall give
161 priority to criminal justice agencies needs.

162 (12) (a) It is a class B misdemeanor for a person to knowingly or intentionally access,
163 use, disclose, or disseminate a record created, maintained, or to which access is granted by the
164 division or any information contained in a record created, maintained, or to which access is
165 granted by the division for a purpose prohibited or not permitted by statute, rule, regulation, or
166 policy of a governmental entity.

167 (b) A person who discovers or becomes aware of any unauthorized use of records
168 created or maintained, or to which access is granted by the division shall inform the
169 commissioner and the director of the Utah Bureau of Criminal Identification of the

170 unauthorized use.

171 (13) (a) Subject to Subsection (13)(b), a qualifying entity or an entity described in
172 Subsection (2)[(b)] may request that the division register fingerprints taken for the purpose of
173 conducting current and future criminal background checks under this section with:

174 (i) the WIN Database rap back system, or any successor system;

175 (ii) the FBI Rap Back System; or

176 (iii) a system maintained by the division.

177 (b) A qualifying entity or an entity described in Subsection (2)[(b)] may only make a
178 request under Subsection (13)(a) if the entity:

179 (i) has the authority through state or federal statute or federal executive order;

180 (ii) obtains a signed waiver from the individual whose fingerprints are being registered;

181 and

182 (iii) establishes a privacy risk mitigation strategy to ensure that the entity only receives
183 notifications for individuals with whom the entity maintains an authorizing relationship.

184 (14) The division is authorized to submit fingerprints to the FBI Rap Back System to
185 be retained in the FBI Rap Back System for the purpose of being searched by future
186 submissions to the FBI Rap Back System, including latent fingerprint searches.

187 (15) (a) The division shall impose fees set in accordance with Section [63J-1-504](#) for
188 the applicant fingerprint card, name check, and to register fingerprints under Subsection
189 (13)(a).

190 (b) Funds generated under this Subsection (15) shall be deposited into the General
191 Fund as a dedicated credit by the department to cover the costs incurred in providing the
192 information.

193 (c) The division may collect fees charged by an outside agency for services required
194 under this section.

195 (16) For the purposes of conducting a criminal background check authorized under
196 Subsection (2)(h) or (2)(i), the Department of Human Resource Management, in accordance
197 with Title 67, Chapter 19, Utah State Personnel Management Act, and the governor's office

198 shall have direct access to criminal background information maintained under Title 53, Chapter
199 10, Part 2, Bureau of Criminal Identification.