Performance Audit No. 15-02

A Performance Audit of Sex Offender Access to Vulnerable Populations

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April 8, 2015

The Office of the Utah State Auditor conducted *A Performance Audit of Sex Offender Access to Vulnerable Populations* and presents its findings herewith. Auditors in several other states noted serious concerns with inadequate controls to prevent registered sex offenders from having unsupervised access to vulnerable populations residing or cared for in state operated or state licensed/approved facilities. The purpose of this performance audit was to review the adequacy of similar controls in Utah.

Generally, the agencies reviewed appear to prevent registered sex offenders from gaining employment in public service careers that require regular interaction with vulnerable populations. However, state licensors do not regularly independently verify that registered sex offenders do not live in homes licensed or approved for foster care, proctor care, or child care. In each agency, licensors rely on the statements regarding home residents from those licensed or approved to provide the care.

While a control weakness exists in Utah to verify the presence of registered sex offenders in homes licensed or approved for child care, the state had far fewer actual registered sex offenders in such homes than other states. Additionally, at the time of the test work, registered sex offenders were not employed by any sampled local education agencies, the state's Developmental Center, or the State Hospital. However, we are concerned that two registered sex offenders lived in homes licensed or approved by the state to provide child care.

We are also concerned that, unless immediately corrected, such a control weakness could place future children at risk. Recommendations made in this report provide straightforward solutions to strengthen controls to prevent registered sex offenders from having unsupervised access to vulnerable populations in state operated or state licensed/approved facilities.

Finding 1 cites two examples in which registered sex offenders lived in homes licensed or approved by the state to provide child care. **Finding 2** expresses concerns that registered sex offenders may have unsupervised access to residences wherein child care is provided. **Finding 3** shows that, at the time of our testing, registered sex offenders were not employed in sampled school districts and charter schools. **Finding 4** shows that no registered sex offenders lived in homes licensed for foster care or certified for proctor care or work at the State Hospital or State Developmental Center at the time of the test.

We appreciate the cooperation from the Department of Corrections, Department of Human Services, Department of Health, Department of Workforce Services, State Board of Education and its office, and sampled local education agencies during the course of this performance audit.

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Executive Summary

Finding 1: Registered Sex Offenders Lived In Two Homes Approved for Child Care. Two registered sex offenders lived in homes wherein the Department of Health's (DOH) Office of Child Care Licensing (OCCL) licensed or approved child care. Contrary to background screening and approval requirements, one Department of Workforce Services' child care assistance client did not disclose to the OCCL that the registered sex offender lived in the home. The OCCL revoked the child care provider's eligibility to provide subsidized care shortly after we notified them that a sex offender was registered at that address. Checking the child care provider's address with the state's Sex and Kidnap Offender Registry (sex offender registry) prior to authorizing or reauthorizing child care could prevent such occurrences in the future.

In another situation, the OCCL cleared an individual previously convicted of felony sexual abuse to reside at a licensed family child care facility. This individual is currently still registered as a sex offender in Utah, despite Texas setting aside his conviction. Guidance on how to address these circumstances may prevent future such situations.

Finding 2: Sex Offenders May Have Access to Some Facilities Where Child Care Is Provided. It is unclear whether at least 12 registered sex offenders, who share the same address as licensed or approved child care provider apartments but appear to reside in different units, could have unsupervised access to children in these facilities. OCCL policies require inspections that demonstrate restrictions preventing unsupervised access to the child care facility. However, such documentation does not always exist.

For example, it is unclear from the provider files whether registered sex offenders could have unsupervised access to children in two residential child care provider apartments. In both cases, it appears that the apartments were created by subdividing a single family house. Due to a lack of documentation, we were unable to verify that proper safety controls exist in either residence. Greater detail in the provider files will help to ensure that safety protocols are met prior to authorizing or reauthorizing licensed/certified child care.

Finding 3: No Registered Sex Offenders Are Employed in Selected Schools. Unlike conditions in another western state, no registered sex offenders were employed at selected school districts or charter schools at the time of our review. While testing provides only a point-in-time assessment, it appears that the local education agencies (LEA) reviewed conduct a thorough criminal background check prior to hiring an employee. The State Board of Education and its office should ensure that all LEAs comply with policies that prevent registered sex offenders from working in a licensed or non-licensed position in which they may have unsupervised access to children.

Finding 4: No Registered Sex Offenders Lived in Foster Homes nor Were Employed by USDC and State Hospital. No registered sex offenders were licensed by the Department of Human Services' Office of Licensing to provide foster care or certified to provide proctor care, nor were any registered sex offenders employed at the Utah State Developmental Center or the State Hospital at the time of our review. DHS' Office of Licensing could further ensure that registered sex offenders do not reside in foster care or proctor care homes by requiring licensors to check the addresses against the sex offender registry with each inspection.

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Background

Given the severity of concerns raised in audits conducted in other states regarding unsupervised registered sex offender access to vulnerable populations such as children in foster care, in child care facilities, and in public and charter schools, the Office of Utah State Auditor conducted a performance audit to determine whether public entities in Utah faced similar control weaknesses.

Utah Sex Offender Registration. Title I of the *Adam Walsh Child Protection and Safety Act* of 2006 enacted the *Sex Offender Registration and Notification Act* (SORNA) "[i]n order to protect the public from sex offenders and offenders against children, and in response to the vicious attacks by violent predators" against certain noted victims.[1] SORNA requires each state to maintain a current sex offender registry and to provide criminal penalties for a sex offender's failure to comply with the SORNA requirements.[2]

In Utah, the Department of Corrections (Corrections) is required to "maintain the Sex Offender and Kidnap Offender Notification and Registration website."[3] The "Sex Offender Registration Unit" within Corrections manages "the state's sex offender registration program, sex offender information files and disseminate[s] information on sex offenders."[4] *OffenderWatch®* is the management and notification tool used to "manage and monitor the whereabouts, conduct and compliance status of the registered offenders in Utah." This service is available online free to the public and is "updated instantaneously throughout the day as offender addresses and other offender information is updated."

This audit involved matching registered sex offender data against public employee and child care provider data retrieved from various state entities or groups, each of which is discussed in more detail below. While statute and administrative rule subject employees within each state agency or entity to different background screening requirements, statute generally restricts sex offenders from employment or residence within homes or facilities that serve the state's vulnerable populations. At a minimum, background criminal investigations are required to be conducted on all prospective public school employees, child care providers, foster and proctor care providers, State Hospital employees, and Utah State Developmental Center employees prior to beginning employment. At the time of test work, 7,149 individuals were registered as sex offenders in Utah.

Department of Human Services (DHS). DHS seeks to "provide Utahns assistance to live safe, healthy and successful lives" by "providing children, youth, families and adults care, services and treatment to thrive in their homes and communities." Within DHS, the Division of Child and Family Services (DCFS) provides "a temporary, safe living arrangement for a child placed" in DCFS or DHS custody "by court order or through voluntary placement by the child's parent or legal guardian."[5] These "out-of-home

[1] 42 U.S.C. § 16901.
[2] 42 U.S.C. §§ 16912, 16913(e).
[3] Utah Code § 77-41-103(4)(b).
[4] Utah Admin. Code R251-110-2(1)(c).
[5] Utah Admin. Code R512-300-1(1)(a).

services" living arrangements are facilitated by foster families[6] licensed by the DHS Office of Licensing,[7] which outlines "compliance standards for licensed and certified foster parents."[8]

Department of Health (DOH). DOH "provides access to health care services for Utah's most vulnerable populations." The DOH Office of Child Care Licensing's (OCCL) vision is to ensure "[a]ccess to safe, healthy child care for Utah families." OCCL licenses, certifies, or approves the following:

- Residential Certificate Child Care (care for one to eight children in the home)[9]
- Hourly Child Care Centers[10]
- Out of School Time Child Care Programs[11]
- Licensed Family Child Care (care for one to 16 children in the home) [12]
- Child Care Centers [13]
- DWS Family, Friend, and Neighbor (FFN) Providers[14]

State Employees with Access to Vulnerable Populations. State employees have access to a number of vulnerable populations within the Utah State Developmental Center, the Utah State Hospital, and other entities affiliated with the aforementioned agencies.

The State Board of Education and its office (USOE). The USOE licenses thousands of educators across the state. The individual districts and charter schools employ thousands more individuals that are not licensed, but still may have unsupervised access to children. In the past, local education agencies (LEAs) have required new licensed teachers to obtain a background check prior to being hired, and to submit to periodic background checks thereafter. House Bill 124 from the 2015 Legislative General Session will allow licensed educators and employees or volunteers of LEAs to be included in the Federal Bureau of Investigation (FBI) Rap Back System which will provide the LEAs with continuous monitoring of criminal behavior and alert capabilities.

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[6] Utah Admin. Code R512-302-2(1). A foster family "may also include a licensed kin provider or a foster family certified by a contract provider that is licensed as a child placing agency." Utah Admin. Code R512-302-2(1). Within DCFS, providers certified by child placing agencies are known as "proctor" families. DCFS policy notes that "[c]hildren with severe emotional or behavioral difficulties that cannot be managed in traditional family settings because of a need for more intensive supervision and treatment may be placed in higher levels of care through contracts with licensed providers."

[7] Utah Code § 62A-2-103(1).

[8] Utah Admin. Code R501-12-2(3).

[9] Utah Admin. Code R430-50-1, -3.

[10] Utah Admin. Code R430-60-1, -3.

[11] Utah Admin. Code R430-70-1, -3.

[12] Utah Admin. Code R430-90-1, -3.

[13] Utah Admin. Code R430-100-1, -3.

[14] Utah Admin. Code R986-700-705(3). The Department of Workforce Services (DWS) administers Child Care Assistance, which is provided to support employment for clients that qualify for child care services paid for with available funding (Utah Admin. Code R986-700-701(1), -702). One of the eligible providers includes FFN providers approved by OCCL (Utah Admin. Code R986-700-705(1)(b)(ii)).

Finding 1 Registered Sex Offenders Lived in Two Homes Approved for Child Care

Two registered sex offenders lived in homes wherein the Department of Health's (DOH) Office of Child Care Licensing (OCCL) licensed or approved child care. Contrary to background screening and approval requirements, one Department of Workforce Services' (DWS) child care assistance client did not disclose to the OCCL that the registered sex offender lived in the home. The OCCL revoked the child care provider's eligibility to provide subsidized care shortly after we notified them that a sex offender was registered at that address. Checking the child care provider's address with the state's Sex and Kidnap Offender Registry (sex offender registry) prior to authorizing or reauthorizing child care could prevent such occurrences in the future.

In another situation, the OCCL cleared an individual previously convicted of felony sexual abuse to reside at a licensed family child care facility. This individual is currently still registered as a sex offender in Utah, despite Texas setting aside his conviction. Guidance on how to address these circumstances may prevent future such situations.

A Residential Child Care Provider Did Not Notify the OCCL that a Registered Sex Offender Lived in Home

Unbeknownst to the OCCL, a registered sex offender lived in the home where a Family, Friend, and Neighbor (FFN) provider[15] cared for the children of a DWS client. This offender was convicted of lewdness with a child, which statute classifies as a non-excludable Class A misdemeanor that disqualifies the offender from residing in the home where child care is provided for children of DWS clients.[16]

After receiving notification from our office about the presence of the sex offender, the OCCL promptly deactivated the child care provider from the DOH database, which in turn closed the FFN approval. As a result, the DWS client lost her ability to receive any further child care subsidy from DWS until she found an approved child care provider.

Given the potential risk that FFN or other home-based child care providers may fail to disclose all individuals living at the home where child care will be provided, we recommend that the OCCL check the address of any licensed or approved child care facility against the sex offender registry prior to issuing or reissuing a child care license, certificate, or approval.

[15] The Background section of this report (pages 9-10) explains some differences between the various provider types.
[16] Utah Admin. Code R986-700-754(2)(k)(v).

Contrary to Statute, an Individual Convicted of Felony Sexual Abuse Resided in a Licensed Residential Child Care Facility

After licensing a home-based family child care provider, the OCCL later cleared an individual convicted in Texas of felony sexual abuse to live in the licensed provider's home. Although Texas public criminal records show this individual's felony sexual abuse conviction, additional Texas documentation shows that the sentencing court later set aside the conviction and dismissed the indictment after the offender completed his sentence. However, any covered individual with a "background finding"[17] may not be involved in child care in Utah, and, "[i]f such a covered individual resides in a home where child care is provided, [DOH] shall revoke an existing license or certificate or refuse to issue a new license or certificate."[18]

Although this individual's conviction was "set aside" in Texas, upon moving to Utah the state required him to register as a sex offender at the instruction of the Texas Sex Offender Compliance Unit. Regardless of the offender's classification within any state's registry, the underlying conviction appears to constitute a background finding that would preclude the OCCL from clearing him to reside in a licensed child care facility. OCCL statutes and rules do not define the term "conviction" or provide guidance regarding how to treat a conviction—out-of-state or otherwise—that was later set aside or expunged. Thus, absent additional guidance, statute appears to prohibit this individual from residing in a home wherein child care is provided because of the initial conviction—set aside or otherwise.[19]

Given the lack of statutory or procedural guidance for scenarios such as this, and the public nature of the Utah sex offender registry within which this individual is still currently registered, we recommend that the OCCL establish policies governing how it will treat convictions that have been set aside, expunged, or treated in a similar manner. In addition, regardless of any OCCL interpretation of prior convictions, we recommend that the OCCL forgo granting child care licenses until it confirms that covered individuals listed as sex offenders on the Utah registry do not reside at licensed or approved child care facilities.

[17] Among other determinations, a "background finding" includes a DOH determination that an individual "has been convicted of, has pleaded no contest to, or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor." (Utah Admin. Code R430-6-2(2)(a))
[18] Utah Admin. Code R430-6-4(2).
[19] Utah Code § 77-27-21.7(2).

Statute Prohibits Sex Offender Access to Children

Under statute, sex offenders[20] are generally prohibited from being in a "protected area"[21] or in the presence of a child.[22] A "protected area" is defined as the "premises occupied by

> (i) any licensed day care or preschool facility;
>
> (ii) a swimming pool that is open to the public;
>
> (iii) a public or private primary or secondary school that is not on the grounds of a correctional facility;
>
> (iv) a community park that is open to the public; and
>
> (v) a playground that is open to the public, including those areas designed to provide children space, recreational equipment, or other amenities intended to allow children to engage in physical activity."[23]

Except for in limited circumstances, it is a Class A misdemeanor for a sex offender to be in a protected area, such as a child care facility.[24]

Other Western States Require a Sex Offender Registry Check Prior to Approving a Child Care Provider

Some western states require a sex offender registry check as part of the criminal background screening procedures required of personnel affiliated with certain state programs. For instance, Colorado requires child care licensors to check the state's sex offender registry for all adult residents of all child care facilities.[25]

Figure 1, below, highlights the states surrounding Utah that include a sex offender registry check for one or more of the criminal background checks required of a state-administered program involving access to children within licensed child or foster care facilities within the state.

[20] A "sex offender" is defined in this section of the code as "an adult or juvenile who is required to register in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry, due to a conviction for any offense that is committed against a person younger than 18 years of age." Utah Code § 77-27-21.7(1)(c).
[21] Utah Code § 77-27-21.7(2).
[22] Utah Code § 77-27-21.8(2).
[23] Utah Code § 77-27-21.7(1)(a).
[24] Utah Code § 77-27-21.7(2).
[25] Colorado Code of Regulations § 2509-8-7.701.33(A)(1)(b), (H) (2015).

Figure 1 **Some Western States Include a Sex Offender Registry Check Prior to Licensing a Child Care Provider**

State	Sex Offender Check Included?
Arizona	No
Colorado	Yes
Idaho	Yes
Nevada	No
New Mexico	No
Utah	*No*
Wyoming	No[26]

Source: OSA Analysis of State Laws and Administrative Rules of Six Surrounding States

Reviewing the sex offender registry before each licensing inspection will help to detect sex offenders residing in homes where child care is provided, reducing risks to children and the state.

Recommendations

1. We recommend that the Department of Health's Office of Child Care Licensing check the address of any child care facility against the Sex and Kidnap Offender Registry prior to issuing or reissuing a child care license, certificate, or approval.

2. We recommend that the Department of Health's Office of Child Care Licensing develop a policy that addresses scenarios in which a conviction for a covered individual may have been set aside, expunged, or treated in a similar manner and determine whether a statutory change is required.

3. We recommend that the Department of Health's Office of Child Care Licensing forgo granting child care licenses or approvals until it confirms that covered individuals listed as sex offenders on the Utah registry that do not reside at licensed or approved child care facilities.

4. We recommend that the Department of Health's Office of Child Care Licensing deny a child care license, certificate, or approval to facilities wherein a registered sex offender lives.

[26] Although Wyoming requires that all substance abuse treatment programs conduct background checks that include the state sex offender registry, substance abuse treatment programs are not analogous to the programs and entities we reviewed in Utah for the purposes of this audit. Code of Wyoming Rules, Department of Health, Substance Abuse § 2-7(h).

Finding 2 Sex Offenders May Have Access to Some Facilities Where Child Care Is Provided

It is unclear whether at least 12 registered sex offenders, who share the same address as licensed or approved child care provider apartments but appear to reside in different units, could have unsupervised access to children in these facilities. The Department of Health's Office of Child Care Licensing (OCCL) policies require inspections that demonstrate restrictions preventing unsupervised access to the child care facility. However, such documentation does not always exist.

For example, it is unclear from the provider files whether registered sex offenders could have unsupervised access to children in two residential child care provider apartments. In both cases, it appears that the apartments were created by subdividing a single family house. Due to a lack of documentation, we were unable to verify that proper safety controls exist in either residence. Greater detail in the provider files will help to ensure that safety protocols are met prior to authorizing or reauthorizing licensed/certified child care.

Family, Friend, and Neighbor (FFN) Child Care Provider Shares Rented House with Four Sex Offenders

One OCCL-approved provider cares for children living in an apartment of a house divided into five apartments. Registered sex offenders—all whom committed sex offenses against children—live in the four other apartments in the divided house.[27] Even though each apartment in the building appears to have its own separate entrance, case file documentation is unclear as to whether there are any interior doors that may grant access to adjacent units. Offenses committed by the sex offenders registered at this house include:

- Aggravated sexual abuse of a child (First degree felony)
- Sodomy on a child (First degree felony)
- Rape of a child (First degree felony)
- Rape of a child-attempted (First degree felony)
- Sexual abuse of a child (Second degree felony)

Though current guidance may allow such an arrangement for a child care provider if certain conditions exist, it is unclear from the provider file that these conditions are met in this building. In situations where approved providers care for children that live in a multi-unit house, certain inspections and requirements help ensure that children are protected from potential dangers that

[27] At the time of the initial review, three of the five apartments in this building were occupied by registered sex offenders. Since conducting the initial test, however, a fourth registered sex offender moved into the other apartment. Four of the five apartments in this 4,500 square foot house are now occupied by registered sex offenders, each of whom committed sex offenses against children. The FFN provider cares for children in the fifth apartment.

may be present in other units of the building. With defined exceptions, all residents 12 years old or older must successfully complete a background criminal investigation (BCI) prior to approval to provide child care in the home. Figure 2 shows exceptions for homes licensed for child care and FFN provider homes.

Figure 2 Child Care Licensing Background Screenings Requirements[28]

DOH Background Screening	FFN Background Screening
Background check is necessary for home residents who: 1. Are 12 years old or older 2. Live in dwellings that: a. Do not have a separate entrance b. Share interior doorway c. Do not have a signed rental/lease agreement d. Do not have a separate mailing address, and e. Have potential for unsupervised access to children in care (inside or outside)	Background check is necessary for home residents who: 1. Are 12 years old or older 2. Are not a parent or guardian 3. Live in the home for 2 weeks or longer 4. Share any of the following: a. Kitchen b. Bathroom c. Living area d. Entrance e. Address 5. Have potential for unsupervised access to children in care

Source: DOH and DWS policies and procedures

Even though each apartment in the building appears to have its own separate entrance, case file documentation is inadequate to determine whether there are any: 1) interior doors that may grant access to adjacent units, 2) shared or common areas that would disqualify the provider, or 3) registered sex offenders living in this building who are landlords or who may have unrestricted access to other apartments.

The OCCL documents a provider's level of compliance with other potentially hazardous situations in the provider file. For example, the DWS FFN Approval Inspection record requires the licensor to document the level of compliance ("C" for "compliance," "O" for "noncompliance," "NA" for "not applicable," and "NO" for "not observed") for each of the following indoor hazards:

- Accessible firearms
- Accessible prescription medications
- Accessible exposed live electrical wires
- Accessible open containers of alcohol
- Accessible poisonous plants

[28] In addition to DWS FFN requirements ("FFN Background Screening Exclusions" in Figure 2, above) listed on the OCCL website, DWS contracts with OCCL to conduct its criminal background screenings. Utah Admin. Code R986-700-753(1). While OCCL criminal background screening procedure is outlined in administrative rule (Utah Admin. Code R430-6), OCCL also publishes a "Background Screening Rule Interpretation Manual" based on these rules from which the "DOH Background Screening Exclusions" are drawn in Figure 2, above. Therefore, both sets of policies in Figure 2 appear to govern the administration of the DWS FFN program.

However, nowhere in the inspection is a licensor required to document the level of compliance for the items listed within Figure 2. This documentation is particularly important in this situation because, as indicated above, the other residents of this building committed sex offenses against a child.

This example demonstrates the importance of ensuring the security of access to facilities providing child care and illustrates the risk of failing to notice potential threats to children's safety. The OCCL was unaware that four registered sex offenders lived at the same address as this child care provider because (1) they did not check the address against the Sex and Kidnap Offender Registry and (2) none of the sex offenders were listed on the application as "covered individuals."

As mentioned in Finding 1, checking child care provider addresses against the Utah Sex and Kidnap Offender Registry prior to licensing or approving a child care provider would alert the licensor to any additional risks with the facility in question. We recommend that the OCCL perform adequate checks before approving or licensing child care facilities to ensure that individuals residing in a multi-unit dwelling do not qualify as "covered individuals" defined in the state's Administrative Code.

Sex Offender's Access to Child Care Provider in Duplex Is Unclear

In another FFN case, we found a sex offender that appeared to share the same address as children receiving care from an approved FFN provider. Although the listed address for the offender and the listed address for the children include the designations of "Front" and "Rear," respectively, and the OCCL claims that the FFN provider lives in a separate structure behind the main address, it appears that mail from the OCCL was sent to the DWS client parent at the main address without any designation.

Similar to the first example, the provider file maintained by the OCCL does not contain any documentation demonstrating that the apartments in the house are completely separate, with no unsupervised access to the children from one apartment to the other. The confusing nature of this address combined with the lack of documentation in the provider file causes some concern for the safety of children in care.

Recommendations

1. We recommend that the Department of Health's Office of Child Care Licensing perform adequate checks to ensure that each resident approved for providing child care is adequately checked to ensure that all "covered individuals," as defined in the state's Administrative Code, receive a background criminal investigation.

2. We recommend that the Department of Health's Office of Child Care Licensing document in the provider file the access that someone residing at the same address, but in a different apartment, could have to a licensed or approved child care facility.

Finding 3 No Registered Sex Offenders Are Employed in Selected Schools

Unlike conditions in another western state, no registered sex offenders were employed at selected school districts or charter schools at the time of our review. While testing provides only a point-in-time assessment, it appears that the local education agencies (LEAs) reviewed conduct a thorough criminal background check prior to hiring an employee. The State Board of Education and its office (USOE) should ensure that all LEAs comply with policies that prevent registered sex offenders from working in a licensed or non-licensed position in which they may have unsupervised access to children.

Sampled School Districts Did Not Employ Registered Sex Offenders

No employees from the five school districts and four charter schools selected were on the Sex and Kidnap Offender Registry (sex offender registry) at the time of the test. Our sample included the largest school districts and charter schools by number of students, two randomly selected school districts, and one randomly selected charter school.[29]

Additionally, no licensed teacher reported by the USOE was a registered sex offender when tested. Figure 3 shows the results of our tests.

Figure 3 Sex Offender Registry Matches with School Employees

School	# of Employees	# of Students	# of Matches with Utah Sex Offender Registry
Licensed Teachers (Statewide)	38,213	622,153	0
Sampled School Districts (Licensed and Non-licensed Staff)	30,257	227,094	0
Sampled Charter Schools (Licensed and Non-licensed)	1,122	8,266	0

Source: OSA analysis of USOE, school district, and charter school data

While testing provides only a point-in-time assessment, it appears that the local education agencies (LEAs) reviewed employ controls to prevent registered sex offenders from working in

[29] We excluded from our analysis one of the largest charter schools by students because it is an online school and therefore does not demonstrate the same level of risk as the traditional schools.

schools. In addition to these controls, we recommend that the USOE review the policies and procedures used by all LEAs to determine whether the procedures can ensure that no registered sex offender is employed in any public school. We also recommend that the USOE regularly audit LEA practices to ensure that LEAs do not employ registered sex offenders.

Idaho Statute Requires the Department of Education To Conduct a Sex Offender Registry Check

Idaho law requires the Idaho Department of Education to conduct a criminal history check on school employees, including a check of the statewide sex offender registry.[30] Consequently, official background investigation check policies and procedures for the Idaho Department of Education require Local Education Agencies "to develop a system that cross-checks all contractors, volunteers, or other persons who have irregular contact with students against the statewide sex offender register."

Recommendations

1. We recommend that the Utah State Board of Education review the policies and procedures that local education agencies use to ensure that no registered sex offender is employed in any public school.

2. We recommend that the Utah State Office of Education occasionally audit local education agency practices to ensure that the agencies do not employ registered sex offenders.

[30] Idaho Code § 33-130(3) (2015).

Finding 4 No Registered Sex Offenders Lived in Foster Homes nor Were Employed by USDC and State Hospital

No registered sex offenders were licensed by the Department of Human Services' (DHS) Office of Licensing to provide foster care or certified to provide proctor care, nor were any registered sex offenders employed at the Utah State Developmental Center (USDC) or the State Hospital at the time of our review. DHS' Office of Licensing could further ensure that registered sex offenders do not reside in foster care or proctor care homes by requiring licensors to check the addresses against the Sex and Kidnap Offender Registry (sex offender registry) with each inspection.

No Registered Sex Offenders Lived in Homes of Licensed/Certified Foster Care Parents at Time of Testing

DHS's Office of Licensing does not check a provider's address against the sex offender registry prior to approving, renewing, or reapproving a license or certificate to verify that sex offenders do not live in a home where foster care or proctor care is provided. We performed this check as part of our review and found that, at the time of our review, no registered sex offenders lived in the homes of licensed foster care or certified proctor care parents. We tested all foster home and proctor home addresses against addresses of registered sex offenders and found no matches. For those sex offenders that are out of compliance with the registry requirements and have no known address, we matched names with the foster parent and spouse, using birthdays to verify matches. This also resulted in no matches with the state sex offender registry.

Due to the changing nature of the sex offender registry, we recommend that DHS's Office of Licensing verify that sex offenders do not live in a home where foster care or proctor care is provided by checking the provider's address against the sex offender registry prior to approving, renewing, or reapproving a license or certificate. The Colorado Administrative Code already requires such a review for foster homes.[31]

Neither the USDC nor the State Hospital Employ Registered Sex Offenders

Two state-operated centers that care for the disabled and mentally ill did not employ registered sex offenders at the time of our review. While testing provides only a point-in-time assessment, it appears that the USDC and State Hospital employ other controls to prevent registered sex offenders from being hired as employees. The USDC cares for individuals with "complex or acute needs"[32] while the State Hospital provides care for persons with mental illness.

[31] Colorado Code of Regulations § 2509-8-7.701.33(A)(1)(c), (H) (2015).
[32] USDC Mission Statement

Recommendation

1. We recommend that the Department of Human Services' Office of Licensing verify that sex offenders do not live in a home where foster care or proctor care is provided by checking the provider's address against the state's Sex and Kidnap Offender Registry prior to approving or reapproving a license or certificate.

Appendix A Audit Scope, Methodology, and Limitations

A Performance Audit of Sex Offender Access to Vulnerable Populations was conducted in an effort to ensure that adequate controls exist to protect vulnerable populations from unsupervised contact with registered sex offenders in Utah. The scope of the audit, which was narrowed based on a risk assessment conducted as part of the initial phases of the audit, included an evaluation of registered sex offender access to the following populations:

- Foster children and homes
- Child care facilities
- Disabled individuals in state-operated facilities
- A sample of children in public and charter schools

To this end, field work for this audit—which occurred from December 2014 to February 2015—included but was not limited to the following:

- A review of applicable federal and state statute, administrative rules, and program policies and procedures
- Review of similar concerns detected in other states
- Analysis of matches between public entity-provided data and the Utah Sex and Kidnap Offender Registry (sex offender registry)

Our analysis was conducted with point-in-time data that had current information at the time of request for:

- Licensed foster parents
- Certified proctor parents
- Licensed, certified, and approved child care providers
- Licensed teachers
- Employees of selected local education agencies (LEAs)
- Employees of the Developmental Center and the State Hospital
- Individuals listed within the Utah sex offender registry

Due to the nature of this data, we recognize the possibility of change in data due to regular updates by each public entity reviewed. Recommendations made in this report will help to ensure an ongoing review by those charged with safeguarding vulnerable populations. We also recognize the possibility of errors in the sex offender registry as we did not evaluate the accuracy of this database.

We informed the appropriate entity of any sex offenders who may have unsupervised access to vulnerable populations within 48 hours. This was done to allow the entity to take appropriate action to protect vulnerable populations from potentially dangerous situations.

Three of the five school districts did not immediately provide access to the requested information, delaying some of our test work. Each school district allowed full access to necessary information after the office issued subpoenas.

During our analysis, we discovered three public employees who shared the same Social Security numbers as registered sex offenders. However, we determined that none of these employees were the same persons registered on the sex offender registry. The offenders' incorrectly recorded Social Security numbers could be due to data entry error or identity theft. In all three cases, the individuals as well as the Sex Offender Registry Unit were notified about the incorrect numbers.

Due to the sensitive nature of personal information, all Social Security numbers were deleted upon completion of our analysis and are not retained in our working papers.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Agency Responses

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State of Utah

GARY R HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Utah Department of Health
Executive Director's Office

W. David Patton, Ph.D
Executive Director

Robert T. Rolfs, M.D. M.P.H.
Deputy Director
Chief Medical Officer

Michael Hales, M.P.A.
Deputy Director, Medicaid and Health Finance

David S. Pulsipher, CIA, CFE
Performance Audit Director
Office of the Utah State Auditor
East Office Building, Suite E310
Utah State Capitol Complex
Salt Lake City, UT 84114

April 6, 2015

Dear Mr. Pulsipher,

RE: Performance Audit No. 15-02: A Performance Audit of Sex Offender Access to Vulnerable Populations Dated March 25, 2015

The Utah Department of Health (the Department) appreciates this opportunity to review and strengthen our policies related to background screenings. We support the protection of vulnerable children in all of the ways available to us under the current statute. As a result of Performance Audit 15-02, we have implemented the following measures:

1. If a licensed provider's address appears on the sex offender registry, but the Department determines that either:

   A) The individual listed on the registry no longer resides at the address, or
   B) The address in a multi-unit dwelling and the individual whose name appears on the registry lives in a separate unit with no access to the unit in which licensed care is provided;

   then the Department we will note this in our database before proceeding to issue a license, to verify that these steps were taken.

2. Before each annual announced inspection, the licensor will check the sex offender registry for the immediate area around the facility, and share the list of names with the provider. The licensor will take necessary steps including asking the provider to verify that any individuals whose names appear on the list do not have access to children in care.

Please contact me at 801-538-6111 or dpatton@utah.gov if you have any questions.

Sincerely,

W. David Patton, Ph.D.
Executive Director

UTAH DEPARTMENT OF HEALTH

288 North 1460 West, Box 141000 • Salt Lake City, UT 84114-1000 • phone (801) 538-6111 • fax (801) 538-6306
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State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES

ANN SILVERBERG WILLIAMSON
Executive Director

OFFICE OF LICENSING

DIANE MOORE
Director

April 2, 2015

David Pulsipher
Performance Audit Director
Office of the Utah State Auditor
P.O. Box 142310
Salt Lake City, UT 84114-2310

Dear Mr. Pulsipher,

Thank you for providing us with draft copies of Audit No. 15-02, A Performance Audit of Sex Offender Access to Vulnerable Populations. On behalf of Ann Williamson and the Department of Human Services (DHS), I have been asked to respond to the following audit recommendation:

> **Finding 4: No Registered Sex Offenders Living in Foster Homes nor are Employed by USDC and State Hospital**. . . . DHS' Office of Licensing could further ensure that registered sex offenders do not reside in foster care or proctor care homes by requiring licensors to check the addresses against the sex offender registry with each inspection.

The DHS Office of Licensing provides the following response to the recommendation:

> The Department of Human Services' Office of Licensing concurs with the Utah State Auditor's recommendation that our staff check licensed foster home addresses against the Utah Sex Offender Registry. We will incorporate this step into our standard licensing and renewal processes. Any information gathered from the registry will be utilized in our overall assessment of the foster parent's ability to provide safe and appropriate care to foster children.

Thank you for your feedback in helping us achieve optimal safety for those we serve.

Kindest Regards,

Diane Moore

Diane Moore
DHS Office of Licensing Director

Office of Licensing, 195 North 1950 West, Salt Lake City, Utah 84116
telephone (801)538-4242 facsimile (801)538-4553 www.hslic.utah.gov

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April 2, 2015

David Pulsipher, Performance Audit Director
Office of the Utah State Auditor
Utah State Capitol Complex
East Office Building, Suite E310
Salt Lake City, UT 84114-2310

Dear Mr. Pulsipher:

Re: Management Response to Performance Audit No. 15-02, Sex Offender Access to Vulnerable Populations

I appreciated the opportunity to review the above referenced audit. It is certainly gratifying to see the findings indicate that we do not have any sex offenders employed in Utah's school system.

I certainly recognize that the audit represents a sampling and accordingly continued vigilance is required. The Utah State Office of Education (USOE) will implement the two recommendations by establishing a periodic review of local education agency policies on this topic as well as periodic audits of our office and local education agencies for compliance.

I appreciate your attention to this matter.

Respectfully,

Brad C. Smith
State Superintendent of Public Instruction