

Senator D. Chris Buttars proposes the following substitute bill:

1 **DCFS MANAGEMENT INFORMATION SYSTEM**

2 **AMENDMENTS**

3 2002 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: D. Chris Buttars**

6 **This act amends the Human Services Code. The act adds definitions of various terms used**
7 **in the Management Information System and Licensing Information System provisions. The**
8 **act reorganizes and clarifies statutes governing the Division of Child and Family Services**
9 **Management Information System. The act eliminates the inclusion of substantiated**
10 **occurrences of child abuse or neglect in the Licensing Information System. The act provides**
11 **that only information with respect to an alleged perpetrator who is the subject of a court**
12 **adjudication of child abuse or neglect or a criminal conviction or a plea of guilty, guilty and**
13 **mentally ill, or no contest related to neglect, physical abuse, or sexual abuse of any person**
14 **is included in the Licensing Information System. The act clarifies the right of judicial review**
15 **of final agency action. The act clarifies that information contained in the Management**
16 **Information System and Licensing Information System is a protected record. The act makes**
17 **technical changes.**

18 This act affects sections of Utah Code Annotated 1953 as follows:

19 AMENDS:

20 **26-21-9.5**, as last amended by Chapter 276, Laws of Utah 1999

21 **26-39-105.5**, as last amended by Chapter 86, Laws of Utah 2000

22 **62A-1-118**, as enacted by Chapter 358, Laws of Utah 1998

23 **62A-2-121**, as last amended by Chapter 164, Laws of Utah 1999

24 **62A-4a-101**, as last amended by Chapter 134, Laws of Utah 2001

25 **62A-4a-116**, as last amended by Chapters 153 and 184, Laws of Utah 2001



- 26 **62A-4a-116.5**, as last amended by Chapter 153, Laws of Utah 2001
- 27 **62A-4a-202.7**, as enacted by Chapter 228, Laws of Utah 2000
- 28 **62A-4a-412**, as last amended by Chapter 9, Laws of Utah 2001
- 29 **63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000

30 ENACTS:

- 31 **62A-4a-116.1**, Utah Code Annotated 1953
- 32 **62A-4a-116.2**, Utah Code Annotated 1953
- 33 **62A-4a-116.3**, Utah Code Annotated 1953

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

35 Section 1. Section **26-21-9.5** is amended to read:

36 **26-21-9.5. Criminal background check and Licensing Information System check.**

37 (1) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered
38 health care facility, as defined in Subsection (10), at the time of initial application for a license and
39 license renewal shall:

40 (a) submit the name and other identifying information of each person associated with the
41 facility who:

- 42 (i) provides direct care to a patient; and
- 43 (ii) has been the subject of a criminal background check within the preceding three-year
44 period by a public or private entity recognized by the department; and

45 (b) submit the name and other identifying information, which may include fingerprints,
46 of each person associated with the facility who:

- 47 (i) provides direct care to a patient; and
- 48 (ii) has not been the subject of a criminal background check in accordance with Subsection
49 (1)(a)(ii).

50 (2) (a) The department shall forward the information received under Subsection (1)(b) to
51 the Criminal Investigations and Technical Services Division of the Department of Public Safety
52 for processing to determine whether an individual has been convicted of any crime.

53 (b) If an individual has not had residency in Utah for the last five years, the individual shall
54 submit fingerprints for an FBI national criminal history record check. The fingerprints shall be
55 submitted to the FBI through the Criminal Investigations and Technical Services Division. The
56 individual or licensee is responsible for the cost of the fingerprinting and national criminal history

57 check.

58 (3) The department may determine whether:

59 (a) an individual whose name and other identifying information has been submitted
60 pursuant to Subsection (1) and who provides direct care to children [~~has a substantiated finding~~
61 ~~of child abuse or neglect~~] is the subject of an adjudication, conviction, or plea under Subsection
62 62A-4a-116.1(1) by accessing the Licensing Information System in accordance with [~~Subsection~~
63 ~~(4) the licensing part of the management information system created in~~] Section [~~62A-4a-116~~]
64 62A-4a-116.1, if identification as a possible perpetrator of child abuse or neglect is relevant to the
65 employment activities of that individual; or

66 (b) an individual whose name and other identifying information has been submitted
67 pursuant to Subsection (1) and who provides direct care to disabled or elder adults has a
68 substantiated finding of abuse, neglect, or exploitation of a disabled or elder adult by accessing in
69 accordance with Subsection (4) the database created in Section 62A-3-311.1 if identification as
70 a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to the
71 employment activities of that person.

72 (4) (a) The department shall:

73 (i) designate two persons within the department to access the [~~licensing part of the~~
74 ~~management information system~~] Licensing Information System described in Section
75 62A-4a-116.1 and two persons to access the database described in Subsection (3)(b); and

76 (ii) adopt measures to:

77 (A) protect the security of the [~~management information system~~] Licensing Information
78 System and the database; and

79 (B) strictly limit access to the [~~management information system~~] Licensing Information
80 System and the database to those designated under Subsection (4)(a)(i).

81 (b) Those designated under Subsection (4)(a)(i) shall receive training from the Department
82 of Human Services with respect to:

83 (i) accessing the [~~management information system~~] Licensing Information System and the
84 database;

85 (ii) maintaining strict security; and

86 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of information.

87 (c) Those designated under Subsection (4)(a)(i):

88 (i) are the only ones in the department with the authority to access the [~~management~~
89 ~~information system~~] Licensing Information System and database; and

90 (ii) may only access the [~~management information system~~] Licensing Information System
91 and the database for the purpose of licensing and in accordance with the provisions of Subsection
92 (3).

93 (5) Within ten days of initially hiring an individual, a covered health care facility shall
94 submit the individual's information to the department in accordance with Subsection (1).

95 (6) The department shall adopt rules under Title 63, Chapter 46a, Administrative
96 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
97 who [~~has been convicted of a criminal offense or has a substantiated report of child abuse or~~
98 ~~neglect~~] is the subject of an adjudication, conviction, or guilty plea described in Subsection
99 62A-4a-116.1(1) or disabled or elder adult abuse, neglect, or exploitation may provide direct care
100 to a patient in a covered health care facility, taking into account the nature of the [~~criminal~~
101 ~~adjudication, conviction, plea,~~ or substantiated finding and its relation to patient care.

102 (7) The department may, in accordance with Section 26-1-6, assess reasonable fees for a
103 criminal background check processed pursuant to this section.

104 (8) The department may inform the covered health care facility of [~~the criminal conviction~~
105 ~~or substantiated finding of child abuse or neglect of an individual associated with the facility~~]
106 information discovered under Subsection (3) with respect to an individual associated with the
107 facility.

108 (9) A covered health care facility is not civilly liable for submitting information to the
109 department as required by Subsection (1).

110 (10) For purposes of this section, "covered health care facility" only includes:

- 111 (a) home health care agencies;
- 112 (b) hospices;
- 113 (c) nursing care facilities;
- 114 (d) assisted-living facilities;
- 115 (e) small health care facilities; and
- 116 (f) end stage renal disease facilities.

117 Section 2. Section **26-39-105.5** is amended to read:

118 **26-39-105.5. Residential child care certificate.**

119 (1) (a) A residential child care provider of five to eight children shall obtain a Residential
120 Child Care Certificate from the department unless Section 26-39-106 applies.

121 (b) The qualifications for a Residential Child Care Certificate are limited to:

122 (i) the submission of:

123 (A) an application in the form prescribed by the department;

124 (B) a certification and criminal background fee established in accordance with Section
125 26-1-6; and

126 (C) identifying information described in Subsection 26-39-107(1) for each adult person
127 who resides in the provider's home:

128 (I) for processing by the Department of Public Safety to determine whether any such
129 person has been convicted of a crime; and

130 (II) to screen for ~~[a substantiated finding of child abuse or neglect pursuant to Section~~
131 ~~62A-4a-116]~~ an adjudication, conviction, or plea described in Subsection 62A-4a-116.1(1);

132 (ii) an initial and annual inspection of the provider's home within 90 days of sending an
133 intent to inspect notice to:

134 (A) check the immunization record of each child who receives child care in the provider's
135 home;

136 (B) identify serious sanitation, fire, and health hazards to children; and

137 (C) make appropriate recommendations; and

138 (iii) for new providers, completion of:

139 (A) five hours of department-approved training; and

140 (B) a department-approved CPR and first aid course.

141 (c) If a serious sanitation, fire, or health hazard has been found during an inspection
142 conducted pursuant to Subsection (1)(b)(ii), the department may, at the option of the residential
143 care provider:

144 (i) require corrective action for the serious hazards found and make an unannounced
145 follow up inspection to determine compliance; or

146 (ii) inform the parents of each child in the care of the provider of the results of the
147 department's inspection and the failure of the provider to take corrective action.

148 (d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the department
149 may inspect the home of a residential care provider of five to eight children in response to a

150 complaint of:

- 151 (i) child abuse or neglect;
- 152 (ii) serious health hazards in or around the provider's home; or
- 153 (iii) providing residential child care without the appropriate certificate or license.

154 (2) Notwithstanding this section:

155 (a) a license under Section 26-39-105 is required of a residential child care provider who
156 cares for nine or more children;

157 (b) a certified residential child care provider may not provide care to more than two
158 children under the age of two; and

159 (c) an inspection may be required of a residential child care provider in connection with
160 a federal child care program.

161 (3) With respect to residential child care, the department may only make and enforce rules
162 necessary to implement this section.

163 Section 3. Section **62A-1-118** is amended to read:

164 **62A-1-118. Access to abuse and neglect information to screen employees and**
165 **volunteers.**

166 (1) With respect to department employees and volunteers, the department may only access
167 information in the Division of Child and Family Service's [~~management information system~~]
168 Management Information System created by Section 62A-4a-116 and the Division of Aging and
169 Adult Services database created by Section 62A-3-311.1 for the purpose of determining at the time
170 of hire and each year thereafter whether a department employee or volunteer has an adjudication
171 of abuse or neglect or since January 1, 1994, a substantiated finding of abuse or neglect after notice
172 and an opportunity for a hearing consistent with Title 63, Chapter 46b, Administrative Procedures
173 Act, but only if identification as a possible perpetrator of abuse or neglect is directly relevant to
174 the employment or volunteer activities of that person.

175 (2) A department employee or volunteer to whom Subsection (1) applies shall submit to
176 the department his name and other identifying information upon request.

177 (3) The department shall process the information to determine whether the employee or
178 volunteer has a substantiated finding of child abuse or neglect.

179 (4) The department shall adopt rules defining permissible and impermissible work-related
180 activities for a department employee or volunteer with one or more substantiated findings of abuse

181 or neglect.

182 Section 4. Section **62A-2-121** is amended to read:

183 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

184 (1) With respect to human services licensees, the department may access only the
185 ~~[licensing part]~~ Licensing Information System of the Division of Child and Family ~~[Service's~~
186 ~~management information system]~~ Services created by ~~[Section 62A-4a-116]~~ Sections
187 62A-4a-116.1 through 62A-4a-116.5 for the purpose of:

188 (a) determining whether a person associated with a licensee, who provides care described
189 in Subsection (2), has ~~[a substantiated finding of abuse or neglect]~~ an adjudication, conviction, or
190 plea described in Subsection 62A-4a-116.1(1);

191 (b) informing a licensee, who provides care described in Subsection (2), that a person
192 associated with the licensee has ~~[a substantiated finding of child abuse or neglect]~~ an adjudication,
193 conviction, or plea described in Subsection 62A-4a-116.1(1).

194 (2) (a) A licensee or individual applying for or renewing a license to provide child-placing
195 services, youth programs, substitute care, foster care, or institutionalized care to children shall
196 submit to the department the name and other identifying information of a person associated with
197 the licensee.

198 (b) The office shall process the information to determine whether the licensee or a person
199 associated with a licensee has ~~[a substantiated finding of child abuse or neglect]~~ an adjudication,
200 conviction, or plea described in Subsection 62A-4a-116.1(1).

201 (3) The office shall adopt rules under Title 63, Chapter 46a, Administrative Rulemaking
202 Act, consistent with this chapter, defining the circumstances under which a person who has ~~[a~~
203 ~~substantiated finding of child abuse or neglect]~~ an adjudication, conviction, or plea described in
204 Subsection 62A-4a-116.1(1) may provide child-placing services, foster care, youth programs,
205 substitute care, or institutionalized care for children in a facility licenced by the department.

206 Section 5. Section **62A-4a-101** is amended to read:

207 **62A-4a-101. Definitions.**

208 As used in this chapter:

209 (1) "Abuse" means:

210 (a) actual or threatened nonaccidental physical or mental harm;

211 (b) negligent treatment;

212 (c) sexual exploitation; or

213 (d) any sexual abuse.

214 (2) "Adoption services" means placing children for adoption, subsidizing adoptions under
215 Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court,
216 conducting adoption studies, preparing adoption reports upon request of the court, and providing
217 postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible
218 disruptive placement.

219 (3) "Board" means the Board of Child and Family Services established in accordance with
220 Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

221 (4) "Child" has the same meaning as "minor," as defined in this section.

222 [~~(4)~~] (5) "Consumer" means a person who receives services offered by the division in
223 accordance with this chapter.

224 [~~(5)~~] (6) "Custody," with regard to the division, means the custody of a child in the
225 division as of the date of disposition.

226 [~~(6)~~] (7) "Day-care services" means care of a child for a portion of the day which is less
227 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care
228 center, family group home, or family child care home.

229 [~~(7)~~] (8) "Dependent child" or "dependency" means a child, or the condition of a child,
230 who is homeless or without proper care through no fault of [~~his~~] the child's parent, guardian, or
231 custodian.

232 [~~(8)~~] (9) "Director" means the director of the Division of Child and Family Services.

233 [~~(9)~~] (10) "Division" means the Division of Child and Family Services.

234 [~~(10)~~] (11) (a) "Domestic violence services" means temporary shelter, treatment, and
235 related services to persons who are victims of abuse and their dependent children and treatment
236 services for domestic violence perpetrators.

237 (b) As used in this Subsection [~~(10)~~] (11) "abuse" means the same as that term is defined
238 in Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have
239 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in
240 Subsection 77-36-1(2).

241 [~~(11)~~] (12) "Homemaking service" means the care of individuals in their domiciles, and
242 help given to individual caretaker relatives to achieve improved household and family management

243 through the services of a trained homemaker.

244 ~~[(12)]~~ (13) "Minor" means a person under 18 years of age. "Minor" may also include a
245 person under 21 years of age for whom the division has been specifically ordered by the juvenile
246 court to provide services.

247 ~~[(13)]~~ (14) "Natural parent" means a ~~[child's]~~ minor's biological or adoptive parent, and
248 includes a ~~[child's]~~ minor's noncustodial parent.

249 ~~[(14)]~~ (15) (a) "Neglect" means:

250 (i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe
251 Relinquishment of a Newborn Child;

252 (ii) subjecting a child to mistreatment or abuse;

253 (iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or
254 custodian;

255 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
256 subsistence, education, or medical care, including surgery or psychiatric services when required,
257 or any other care necessary for his health, safety, morals, or well-being; or

258 (v) a child at risk of being neglected or abused because another child in the same home is
259 neglected or abused.

260 (b) The aspect of neglect relating to education, described in Subsection ~~[(14)]~~ (15)(a)(iv),
261 means that, after receiving notice that a child has been frequently absent from school without good
262 cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a
263 parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate
264 education.

265 (c) A parent or guardian legitimately practicing religious beliefs and who, for that reason,
266 does not provide specified medical treatment for a child, is not guilty of neglect.

267 ~~[(15)]~~ (16) "Protective custody," with regard to the division, means the shelter of a child
268 by the division from the time ~~[he]~~ the child is removed from ~~[his]~~ the child's home until the shelter
269 hearing, or ~~[his]~~ the child's return home, whichever occurs earlier.

270 ~~[(16)]~~ (17) "Protective services" means expedited services that are provided:

271 (a) in response to evidence of neglect, abuse, or ~~[exploitation]~~ dependency of a minor;

272 (b) in an effort to substantiate evidence of neglect, abuse, or ~~[exploitation]~~ dependency;

273 (c) to a cohabitant who is neglecting or abusing a child, in order to help ~~[him]~~ the

274 cohabitant develop recognition of [~~his~~] the cohabitant's duty of care and of the causes of neglect
275 or abuse, and to strengthen [~~his~~] the cohabitant's ability to provide safe and acceptable care; and

276 (d) in cases where the child's welfare is endangered:

277 (i) to bring the situation to the attention of the appropriate juvenile court and law
278 enforcement agency;

279 (ii) to cause a protective order to be issued for the protection of the [~~child~~] minor, when
280 appropriate; and

281 (iii) to protect the child from the circumstances that endanger [~~his~~] the child's welfare
282 including, when appropriate, removal from [~~his~~] the child's home, placement in substitute care, and
283 petitioning the court for termination of parental rights.

284 [~~(17)~~] (18) "Services to unwed parents" means social, educational, and medical services
285 arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

286 [~~(18)~~] (19) "Shelter care" means the temporary care of minors in nonsecure facilities.

287 [~~(19)~~] (20) "State" means a state of the United States, the District of Columbia, the
288 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
289 Mariana Islands, or a territory or possession administered by the United States.

290 [~~(20)~~] (21) "State plan" means the written description of the programs for children, youth,
291 and family services administered by the division in accordance with federal law.

292 [~~(21)~~] (22) "Status offender" means a minor who has been declared a runaway or
293 ungovernable.

294 (23) "Substantiated" or "substantiation" means a finding based on a preponderance of the
295 evidence available at the completion of an investigation that abuse, neglect, or dependency
296 occurred. If more than one allegation is made or identified during the course of the investigation,
297 any allegation determined to meet the criteria for substantiation requires a case finding of
298 substantiated. A case that has been adjudicated by a court finding of abuse, neglect, or dependency
299 is a substantiated case whether or not the division has investigated the case.

300 [~~(22)~~] (24) "Substitute care" means:

301 (a) the placement of a minor in a family home, group care facility, or other placement
302 outside the minor's own home, either at the request of a parent or other responsible relative, or
303 upon court order, when it is determined that continuation of care in the child's own home would
304 be contrary to the child's welfare;

305 (b) services provided for a child awaiting placement; and

306 (c) the licensing and supervision of a substitute care facility.

307 [~~(23)~~] (25) "Temporary custody," with regard to the division, means the custody of a child
308 in the division from the date of the shelter hearing until disposition.

309 [~~(24)~~] (26) "Transportation services" means travel assistance given to an individual with
310 escort service, if necessary, to and from community facilities and resources as part of a service
311 plan.

312 (27) "Unsubstantiated" means a finding at the completion of an investigation that there is
313 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding
314 of unsubstantiated means also that the division worker did not conclude that the allegation was
315 without merit.

316 (28) "Without merit" means a finding at the completion of an investigation that the alleged
317 abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for
318 the abuse, neglect, or dependency.

319 [~~(25)~~] (29) "Youth services" means services provided to families in crisis when a minor
320 is ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family
321 conflict, maintain or reunite minors with their families, and to divert minors from the juvenile
322 justice system. Those services may include crisis intervention, short-term shelter, time-out
323 placement, and family counseling.

324 Section 6. Section **62A-4a-116** is amended to read:

325 **62A-4a-116. Management Information System -- Requirements.**

326 (1) The division shall develop and implement a Management Information System that
327 meets the requirements of this section and the requirements of federal law and regulation. The
328 information and records contained in the Management Information System are protected records
329 under Title 63, Chapter 2, Government Records Access and Management Act, and except for the
330 limited, specific, and narrow provisions relating to licensing, contained in Section 62A-4a-116.1,
331 and those provisions relating to contract providers, described in Subsection (6), they are available
332 only to those with statutory authorization to review under that law. They are also available to those
333 who have a specific statutory authorization to access the record for the purpose of assisting the
334 state with state and federal requirements to maintain information solely for the purpose of
335 protecting minors and providing services to families in need.

336 (2) With regard to all child welfare cases, the Management Information System shall~~[-(a)]~~
337 provide each caseworker with a complete history of each child in ~~[his]~~ that worker's caseload,
338 including the following information:

339 ~~[(i)]~~ (a) a record of all past action taken by the division with regard to that child and ~~[his]~~
340 the child's siblings;

341 (b) the complete case history and all reports and information in the control or keeping of
342 the division regarding that child and ~~[his]~~ the child's siblings;

343 ~~[(ii)]~~ (c) the number of times the child has been in ~~[foster care]~~ the custody of the division;

344 ~~[(iii)]~~ (d) the cumulative period of time the child has been in ~~[foster care]~~ the custody of
345 the division;

346 ~~[(iv)]~~ (e) a record of all reports of abuse or neglect received by the division with regard to
347 that child's parent, ~~[or]~~ parents, or guardian including documentation ~~[regarding whether each~~
348 ~~report was]~~ of the latest status or the final outcome or determination regarding each report,
349 including whether each report was found to be substantiated, unsubstantiated, or without merit;

350 ~~[(v)]~~ (f) the number of times the child's parent or parents have failed any treatment plan;
351 and

352 ~~[(vi)]~~ (g) the number of different caseworkers who have been assigned to that child in the
353 past;

354 (3) The division's Management Information System shall also:

355 ~~[(b)]~~ (a) contain all key elements of each family's current treatment plan, including the
356 dates and number of times the plan has been administratively or judicially reviewed, the number
357 of times the parent or parents have failed that treatment plan, and the exact length of time that
358 treatment plan has been in effect; and

359 ~~[(c)]~~ (b) alert caseworkers regarding deadlines for completion of and compliance with
360 treatment plans;

361 ~~[(d) unless the executive director determines that there is good cause for keeping the report~~
362 ~~on the system based on standards established by rule, delete any reference to:]~~

363 ~~[(i) a report that is without merit if no subsequent report involving the same alleged~~
364 ~~perpetrator has occurred within one year; or]~~

365 ~~[(ii) a report that is unsubstantiated if no subsequent report involving the same alleged~~
366 ~~perpetrator has occurred within five years; and]~~

367 ~~[(e) maintain a separation of reports that are without merit in the system to identify the~~
368 ~~cases apart from substantiated cases and, where necessary, provide restricted access to the without~~
369 ~~merit cases.]~~

370 ~~[(3)] (4)~~ With regard to all child protective services cases, the Management Information
371 System shall ~~[, in addition to the information required in Subsection (2),]~~ also:

372 (a) monitor the compliance of each case with [the policy of the] division[, the laws of this]
373 rule and policy, state law, and federal law and regulation[-]; and

374 ~~[(4)] (b) [With regard to all child welfare and protective services cases,]~~ include the age
375 and date of birth of the alleged perpetrator[-] at the time the abuse or neglect is alleged to have
376 occurred[-, shall be included in the management information system], in order to ensure accuracy
377 regarding the identification of the alleged perpetrator.

378 ~~[(5) (a) The division shall develop and maintain a part of the information management~~
379 ~~system for licensing purposes, which shall be:]~~

380 ~~[(i) limited to:]~~

381 ~~[(A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and~~
382 ~~an opportunity to challenge has been provided under Section 62A-4a-116.5;]~~

383 ~~[(B) the name of a person who was not sent a notice of agency action under Section~~
384 ~~62A-4a-116.5 because his location was not available on the management information system or~~
385 ~~who was sent a notice of agency action that was returned to the division as undelivered for the sole~~
386 ~~purpose of alerting the division of the need to afford the person an opportunity to challenge the~~
387 ~~finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond~~
388 ~~delaying the person's licensing application to provide an opportunity for challenge, may be taken;]~~

389 ~~[(C) an adjudication of child abuse or neglect by a court of competent jurisdiction if~~
390 ~~Subsection 62A-4a-116.5(5) has been met, and]~~

391 ~~[(D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual~~
392 ~~abuse of any person; and]~~

393 ~~[(ii) accessible by:]~~

394 ~~[(A) the Office of Licensing for licensing purposes only;]~~

395 ~~[(B) the division:]~~

396 ~~[(F) to screen a person at the request of the Office of the Guardian Ad Litem Director,~~
397 ~~created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the~~

398 ~~Office of the Guardian Ad Litem and each year thereafter that the person remains with the office;~~
399 ~~and]~~

400 ~~[(H) to respond to a request for information from the person who is identified as a~~
401 ~~perpetrator in the report, after advising the person of the screening prohibition in Subsection~~
402 ~~(4)(d)(iii);]~~

403 ~~[(C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure~~
404 ~~within the Department of Health only for the purpose of licensing a child care program or provider,~~
405 ~~or for determining whether a person associated with a covered health care facility, as defined by~~
406 ~~the Department of Health by rule, who provides direct care to a child has a substantiated finding~~
407 ~~of child abuse or neglect; and]~~

408 ~~[(D) the department as provided in Subsection (6) and Section 62A-1-118:]~~

409 ~~[(b) For the purpose of Subsection (5)(a), "substantiated":]~~

410 ~~[(i) means a finding that there is a reasonable basis to conclude that:]~~

411 ~~[(A) a person 18 years of age or older committed one or more of the following types of~~
412 ~~child abuse or neglect:]~~

413 ~~[(I) physical abuse;]~~

414 ~~[(H) sexual abuse;]~~

415 ~~[(III) sexual exploitation;]~~

416 ~~[(IV) abandonment;]~~

417 ~~[(V) medical neglect resulting in death, disability, or serious illness; or]~~

418 ~~[(VI) chronic or severe neglect; and]~~

419 ~~[(B) a person under the age of 18:]~~

420 ~~[(F) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another~~
421 ~~child which indicates a significant risk to other children; or]~~

422 ~~[(H) engaged in sexual behavior with or upon another child which indicates a significant~~
423 ~~risk to other children; and]~~

424 ~~[(ii) does not include:]~~

425 ~~[(A) the use of reasonable and necessary physical restraint or force by an educator in~~
426 ~~accordance with Subsection 53A-11-802(2) or Section 76-2-401;]~~

427 ~~[(B) a person's conduct that:]~~

428 ~~[(I) is justified under Section 76-2-401; or]~~

429 ~~[(H) constituted the use of reasonable and necessary physical restraint or force in~~
430 ~~self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or~~
431 ~~other dangerous object in the possession or under the control of a child or to protect the child or~~
432 ~~another person from physical injury; or]~~

433 ~~[(C) (I) failure to administer prescribed or recommended medication or to follow a course~~
434 ~~of treatment prescribed or recommended by a health care provider as defined in Section 78-14-3,~~
435 ~~if the division has not provided the legal guardian or parent notice of the opportunity to obtain, at~~
436 ~~the parent's or guardian's expense, a physical examination of the minor by a health care~~
437 ~~professional licensed under Title 58, Chapter 67, Utah Medical Practice Act, Chapter 68, Utah~~
438 ~~Osteopathic Medical Practices Act, Chapter 70a, Physician Assistant Act, or licensed as an~~
439 ~~advance practice registered nurse under Chapter 31b, Nurse Practices Act, to determine if the~~
440 ~~course of treatment chosen by the legal guardian or parent is a medically acceptable alternative and~~
441 ~~is in the best interest of the minor under the circumstances;]~~

442 ~~[(H) Subsection (5)(b)(ii)(C)(I) does not apply in circumstances where a delay in the~~
443 ~~prescribed or recommended medical treatment may result in death, permanent loss of a body~~
444 ~~function, or significant physical or mental impairment of the minor; and]~~

445 ~~[(H) for purposes of this Subsection (5)(b)(ii)(C), if the division has reason to believe that~~
446 ~~an individual is making medical recommendations concerning the administration of medication,~~
447 ~~and the individual is not licensed as a health care provider, as defined in Section 78-14-3, the~~
448 ~~division may report that individual to the appropriate licensing authority.]~~

449 ~~[(iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined~~
450 ~~in accordance with risk assessment tools and policies established by the division that focus on age,~~
451 ~~social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other~~
452 ~~related considerations;]~~

453 ~~[(B) The division shall train its child protection workers to apply the risk assessment tools~~
454 ~~and policies established under Subsection (5)(b)(iii)(A).]~~

455 ~~[(c) (i) The Department of Health shall:]~~

456 ~~[(A) designate two persons within the Department of Health to access the licensing part~~
457 ~~of the management information system; and]~~

458 ~~[(B) adopt measures to:]~~

459 ~~[(I) protect the security of the licensing part of the management information system; and]~~

460 ~~[(H) strictly limit access to the licensing part of the management information system to~~
461 ~~those designated under Subsection (5)(c)(i)(A).]~~

462 ~~[(ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the~~
463 ~~department with respect to:]~~

464 ~~[(A) accessing the licensing part of the management information system;]~~

465 ~~[(B) maintaining strict security; and]~~

466 ~~[(C) the criminal provisions in Section 62A-4a-412 for the improper release of~~
467 ~~information.]~~

468 ~~[(iii) Those designated under Subsection (5)(c)(i)(A):]~~

469 ~~[(A) are the only ones in the Department of Health with the authority to access the~~
470 ~~licensing part of the management information system; and]~~

471 ~~[(B) may only access the licensing part of the management information system in~~
472 ~~accordance with the provisions of Subsection (5)(a)(ii).]~~

473 ~~[(iv) The Department of Health may obtain information in the possession of the division~~
474 ~~that relates to a substantiated finding of abuse or neglect of a person screened under this~~
475 ~~Subsection (5)(c).]~~

476 ~~[(d) (i) Information in the licensing part of the management information system is~~
477 ~~confidential and may only be used or disclosed as specifically provided in this section, Section~~
478 ~~62A-2-121, and Section 62A-4a-116.5.]~~

479 ~~[(ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain~~
480 ~~or release a report or any other information in the possession of the division obtained as a result~~
481 ~~of the report that is available under Subsection (5)(a)(ii)(A)(H) to screen for potential perpetrators~~
482 ~~of child abuse or neglect.]~~

483 ~~[(iii) A person who requests information knowing that it is a violation of Subsection~~
484 ~~(5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.]~~

485 ~~[(6) AH] (5) Except as provided in Subsection (6) regarding contract providers and~~
486 ~~Section 62A-4a-116.1 regarding limited access to the Licensing Information System, all~~
487 ~~information contained in the division's Management Information System [shall be] is available to~~
488 ~~the department, upon the approval of the executive director, on a need-to-know basis.~~

489 ~~[(7)] (6) (a) The division may allow its contract providers to have limited access to the~~
490 ~~Management Information System. [~~The division shall limit that~~] A division contract provider has~~

491 access only to information about persons who are currently receiving services from ~~[the]~~ that
492 specific contract provider.

493 (b) Each contract provider who requests access to information contained in the
494 Management Information System shall:

495 (i) take all necessary precautions to safeguard the security of the information contained in
496 the Management Information System;

497 (ii) train its employees regarding requirements for ~~[confidentiality]~~ protecting the
498 information contained in the Management Information System as required by this chapter and
499 under Title 63, Chapter 2, Government Records Access and Management Act, and the criminal
500 penalties under ~~[Sections]~~ Section 62A-4a-412 and Section 63-2-801 for improper release of
501 information; and

502 (iii) monitor its employees to ensure that they ~~[comply with the confidentiality~~
503 ~~requirements related to the Management Information System]~~ protect the information contained
504 in the Management Information System as required by law.

505 (c) The division shall take reasonable precautions to ensure that its contract providers ~~[are~~
506 ~~complying]~~ comply with the requirements of this Subsection ~~[(7)(b)]~~ (6).

507 ~~[(8)]~~ (7) The division shall take all necessary precautions, including password protection
508 and other appropriate and available technological techniques, to prevent unauthorized access to
509 ~~[the]~~ or release of information contained in the Management Information System.

510 ~~[(9) (a) The division shall send a certified letter to a person who submitted a report of child~~
511 ~~abuse or neglect that is put onto any part of the management information system if the division~~
512 ~~determines, at the conclusion of its investigation, that:]~~

513 ~~[(i) the report is false;]~~

514 ~~[(ii) it is more likely than not that the person knew that the report was false at the time the~~
515 ~~person submitted the report; and]~~

516 ~~[(iii) the person's address is known or reasonably available.]~~

517 ~~[(b) The letter shall inform the person of:]~~

518 ~~[(i) the determination made under Subsection (9)(a);]~~

519 ~~[(ii) the penalty for submitting false information under Section 76-8-506 and other~~
520 ~~applicable laws;]~~

521 ~~[(iii) the obligation of the division to inform law enforcement and the alleged perpetrator:]~~

522 ~~[(A) in the present instance if an immediate referral is justified by the facts; or]~~
523 ~~[(B) if the person submits a subsequent false report involving the same alleged perpetrator~~
524 ~~or victim.]~~
525 ~~[(c) (i) The division may inform law enforcement and the alleged perpetrator of a report~~
526 ~~for which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified~~
527 ~~by the facts.]~~
528 ~~[(ii) The division shall inform law enforcement and the alleged perpetrator of a report for~~
529 ~~which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the~~
530 ~~person involving the same alleged perpetrator or victim.]~~
531 ~~[(iii) The division shall determine, in consultation with law enforcement:]~~
532 ~~[(A) the information to be given to an alleged perpetrator about a false claim; and]~~
533 ~~[(B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator~~
534 ~~about a false claim.]~~
535 ~~[(d) Nothing in this Subsection (9) may be construed as requiring the division to conduct~~
536 ~~an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report~~
537 ~~is false.]~~

538 Section 7. Section **62A-4a-116.1** is enacted to read:

539 **62A-4a-116.1. Licensing Information System.**

540 (1) The division shall maintain a sub-part of the Management Information System
541 established pursuant to Section 62A-4a-116, to be known as the Licensing Information System,
542 to be used solely for licensing purposes. The Licensing Information System shall include only
543 information related to the adjudication, conviction, or plea of a person:

544 (a) with respect to whom there has been an adjudication of child abuse or neglect by a
545 court of competent jurisdiction; or

546 (b) who has any criminal conviction with regard to, or has entered any of the following
547 pleas related to, neglect, physical abuse, or sexual abuse of any person:

548 (i) plea of guilty;

549 (ii) plea of guilty and mentally ill; or

550 (ii) plea of no contest.

551 (2) Information contained in the Licensing Information System is classified as a protected
552 record under Title 63, Chapter 2, Government Records Access and Management Act.

553 Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government Records Access and
554 Management Act, the information contained in the Licensing Information System may only be
555 used or disclosed as specifically provided in Section 62A-2-121 and Section 62A-4a-116.5 and is
556 only accessible to:

557 (a) the Office of Licensing within the department, for licensing purposes only;

558 (b) the division, for the following purposes:

559 (i) to screen a person at the request of the Office of the Guardian Ad Litem Director, at the
560 time that person seeks a paid or voluntary position with the Office of the Guardian Ad Litem
561 Director and each year thereafter that the person remains with that office; and

562 (ii) to respond to a request for information from a person who is identified as a perpetrator
563 in an adjudication, conviction, or plea described in Subsection (1), after advising the person of the
564 licensing and screening process described in this section and Sections 62A-4a-116.2 through
565 62A-4a-116.5;

566 (c) two specifically designated persons within the Department of Health, in accordance
567 with Subsection (4)(a), only for the following purposes:

568 (i) licensing a child care program or provider; or

569 (ii) determining whether a person associated with a covered health care facility, as defined
570 by the Department of Health by rule, who provides direct care to a child, has a substantiated
571 finding of child abuse or neglect; and

572 (d) the department, as specifically provided in this section, Section 62A-4a-116, and
573 Sections 62A-4a-116.2 through 62A-1-116.5.

574 (3) (a) The Department of Health shall specifically designate two persons within the
575 Department of Health who shall have access to the Licensing Information System and shall adopt
576 measures to:

577 (i) protect the security of the Licensing Information System; and

578 (ii) strictly limit access to the Licensing Information System to those persons designated
579 by statute.

580 (b) The Department of Health may obtain information in the possession of the division that
581 relates to an adjudication, conviction, or guilty plea described in Subsection (1), with regard to a
582 person who is being screened for licensing purposes in accordance with the provisions of this
583 chapter and other related statutory provisions.

584 (4) All other persons designated by statute as having access to information contained in
585 the Licensing Information System shall receive training from the department with respect to:
586 (a) accessing the Licensing Information System;
587 (b) maintaining strict security; and
588 (c) the criminal provisions of Section 62A-4a-412 and Section 63-2-801 pertaining to the
589 improper release of information.

590 (5) The two persons designated by the Department of Health pursuant to this section:
591 (a) are the only persons within the Department of Health who have the authority to access
592 the Licensing Information System; and
593 (b) may only access the Licensing Information System in accordance with the provisions
594 of this chapter.

595 (6) No person, except those authorized by this chapter, may request another person to
596 obtain or release any other information in the Licensing Information System to screen for potential
597 perpetrators of child abuse or neglect. A person who requests information knowing that it is a
598 violation of this subsection to do so is subject to the criminal penalty described in Section
599 62A-4a-412 and Section 63-2-801.

600 Section 8. Section **62A-4a-116.2** is enacted to read:

601 **62A-4a-116.2. False reports -- Penalties.**

602 (1) The division shall send a certified letter to any person who submits a report of child
603 abuse or neglect that is placed into or included in any part of the Management Information System,
604 if the division determines, at the conclusion of its investigation, that:

- 605 (a) the report is false;
606 (b) it is more likely than not that the person knew the report was false at the time that
607 person submitted the report; and
608 (c) the reporting person's address is known or reasonably available.

609 (2) The letter shall inform the reporting person of:

- 610 (a) the division's determination made under Subsection (1);
611 (b) the penalty for submitting false information under Section 76-8-506 and other
612 applicable laws; and

613 (c) the obligation of the division to inform law enforcement and the person alleged to have
614 committed abuse or neglect;

615 (i) in the present instance if law enforcement considers an immediate referral of the
616 reporting person to law enforcement to be justified by the facts; or

617 (ii) if the reporting person submits a subsequent false report involving the same alleged
618 perpetrator or victim.

619 (3) The division may inform law enforcement and the alleged perpetrator of a report for
620 which a letter is required to be sent under Subsection (1), if an immediate referral is justified by
621 the facts.

622 (4) The division shall inform law enforcement and the alleged perpetrator of a report for
623 which a letter is required to be sent under Subsection (1) if a second letter is sent to the reporting
624 person involving the same alleged perpetrator or victim.

625 (5) The division shall determine, in consultation with law enforcement:

626 (a) what information should be given to an alleged perpetrator relating to a false report;
627 and

628 (b) whether good cause exists, as defined by the division by rule, for not informing an
629 alleged perpetrator about a false report.

630 (6) Nothing in this section may be construed as requiring the division to conduct an
631 investigation beyond what is described in Subsection (1), to determine whether or not a report is
632 false.

633 Section 9. Section **62A-4a-116.3** is enacted to read:

634 **62A-4a-116.3. Timeframes for deletion of specified information or reports.**

635 (1) Unless the executive director determines that there is good cause for keeping a report
636 of abuse or neglect in the Management Information System, based on standards established by rule,
637 the division shall delete any reference to:

638 (a) a report that is without merit, if no subsequent report involving the same alleged
639 perpetrator has occurred within one year; or

640 (b) a report that has been determined to be unsubstantiated, if no subsequent report
641 involving the same alleged perpetrator has occurred within five years.

642 (2) (a) The division shall maintain a separation of reports as follows:

643 (i) those that are without merit;

644 (ii) those that are unsubstantiated; and

645 (iii) those that are substantiated.

646 (b) Only persons with statutory authority have access to information contained in any of
647 the reports identified in Subsection (2)(a).

648 (3) The division shall remove from the Licensing Information System all names and other
649 information which should not be included under Subsection 62A-4a-116.1(1).

650 Section 10. Section **62A-4a-116.5** is amended to read:

651 **62A-4a-116.5. Notice and opportunity to challenge substantiation by division.**

652 (1) (a) The division shall send a notice of agency action to a person [if] who is
653 substantiated by the division [finds, at the conclusion of an investigation, that, in the opinion of
654 the division, there is a reasonable basis to conclude that the person committed abuse or neglect
655 listed in Subsection 62A-4a-116(5)(b)(i)]. [In the event that the person] In addition, if the alleged
656 perpetrator is under the age of 18, the division shall:

657 (i) make reasonable efforts to identify the [person's] alleged perpetrator's parent or [legal]
658 guardian; and

659 (ii) send a notice to each parent or [legal] guardian identified under Subsection (1)(a)(i)
660 that lives at a different address, unless there is good cause, as defined by rule, for not sending a
661 notice to a parent or [legal] guardian.

662 [~~(b) For purposes of this section only, which governs the right of a person to challenge the~~
663 ~~division's initial finding or opinion of abuse or neglect as it pertains to the licensing part of the~~
664 ~~management information system, the division shall refer to a finding under Subsection (1)(a) as~~
665 ~~a "finding" or an "initial finding" of abuse or neglect when notifying or explaining a notification~~
666 ~~to a person.]~~

667 [~~(c)~~] (b) Nothing in this section may be construed as affecting:

668 (i) the manner in which the division conducts an investigation; or

669 (ii) the use or effect, in any other setting, of:

670 (A) an initial [~~division finding or~~] substantiation [of child abuse or neglect] by the division
671 at the completion of an investigation for any purpose other than for notification under Subsection
672 (1)[~~(b)~~]; or

673 (B) the term "substantiated" as used in any other provision of the code.

674 (2) The notice described in Subsection (1) shall state:

675 (a) that the division has conducted an investigation regarding child abuse, neglect, or
676 dependency;

677 (b) that the division [~~found,~~] substantiated the abuse, neglect, or dependency at the
678 conclusion of [~~the~~] its investigation [~~, that there was, in the opinion of the division, a reasonable~~
679 ~~basis to conclude that abuse or neglect occurred~~];

680 (c) [~~the~~] that facts [~~that~~] gathered by the division support the [~~finding~~] substantiation;
681 [~~(d) that the person may be disqualified from adopting a child or working for or being~~
682 ~~licensed by:~~]

683 [(i) ~~the department;~~]

684 [(ii) ~~a human services licensee;~~]

685 [(iii) ~~a child care provider or program; and~~]

686 [(iv) ~~a covered health care facility;~~]

687 [(~~e~~)] (d) that the person has the right to request:

688 (i) a copy of the report; and

689 (ii) an opportunity to challenge the [~~finding and its inclusion on the licensing part of the~~
690 ~~management information system described in Subsection 62A-4a-116(5), except as provided in~~
691 ~~Subsection (5)(b); and~~] substantiation by the division; and

692 [(~~f~~)] (e) that failure to request an opportunity to challenge the finding of substantiation
693 within 30 days of receiving the notice [~~being received~~] will result in an unappealable finding of
694 substantiation of child abuse [~~or~~], neglect, or dependency unless the person can show good cause
695 for why compliance within the 30-day requirement was virtually impossible or unreasonably
696 burdensome.

697 (3) (a) A person may make a request to challenge a finding of substantiation within 30
698 days of:

699 (i) a notice being received under [~~Subsection (2)]~~ this section;

700 (ii) a finding by a court of competent jurisdiction based on the same underlying facts that:

701 (A) child abuse [~~or~~], neglect, [as described in Subsection 62A-4a-116(5)(b);] or
702 dependency did not occur; or

703 (B) the person was not responsible for the child abuse [~~or~~], neglect, or dependency that did
704 occur; or

705 (iii) the dismissal of criminal charges or a verdict of not guilty based on the same
706 underlying facts relied upon by the division.

707 (b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown

708 that compliance was virtually impossible or unreasonably burdensome.

709 (c) The division may approve or deny a request made under Subsection (3)(a).

710 (d) If the division denies the request or fails to act within 30 days after receiving a request
711 submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an
712 adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

713 (4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall
714 ~~[prove]~~ have the burden of proving, by a preponderance of the evidence ~~[that there is a reasonable~~
715 ~~basis to conclude that:]~~, that its substantiation is justified.

716 ~~[(i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred; and]~~
717 ~~[(ii) the person was substantially responsible for the abuse or neglect that occurred.]~~

718 (b) The administrative hearing officer may make a determination ~~[of]~~ that the division's
719 substantiation is justified based solely on the out-of-court statement of the child that the officer
720 finds to be reliable under the standards set forth in:

721 (i) Section 76-5-411;

722 (ii) Utah Rules of Criminal Procedure, Rule 15.5;

723 (iii) Section 78-3a-116(5);

724 (iv) the Utah Rules of Evidence; or

725 (v) Utah case law.

726 (c) Any party shall have the right of judicial review of final agency action, in accordance
727 with Title 63, Chapter 46b, Administrative Procedures Act.

728 (5) (a) Except as provided in Subsection (5)(b), a person may not make a request to
729 challenge a ~~[finding]~~ substantiation under Subsection (3)(a), if, at any time, a court of competent
730 jurisdiction has made a determination based on the same underlying facts relied upon by the
731 division that:

732 (i) child abuse ~~[or]~~, neglect, ~~[as described in Subsection 62A-4a-116(5)(b);]~~ or dependency
733 occurred;

734 (ii) the person was substantially responsible for the abuse ~~[or]~~, neglect, or dependency that
735 occurred; and

736 (iii) the person:

737 (A) was a party to the proceeding; or

738 (B) (I) had notice of the proceeding; and

739 (II) was provided a meaningful opportunity to challenge the facts underlying the court's
740 determination.

741 (b) The division shall remove a person's name from the [~~database~~] Management
742 Information System including the Licensing Information System, unless the division provides new
743 notice under Subsection (1)(a) and an opportunity to be heard under [~~Subsection (3)(a)~~]
744 Subsections (3) and (4), when [~~the~~] a court of competent jurisdiction:

745 (i) enters a finding of not guilty;

746 (ii) dismisses the information or indictment after compliance with the requirements of a
747 diversion agreement under Section 77-2-6; or

748 (iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the completion of
749 a plea in abeyance agreement following a plea of no contest.

750 (c) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during the
751 time a judicial action is pending.

752 (6) Nothing in this section may affect the inclusion or exclusion of a report or finding of
753 child abuse or neglect from or access by the division, its caseworkers, and child protective services
754 workers to that part of the Management Information System used solely for purposes of child
755 welfare cases and child protective services [~~as described in Subsections 62A-4a-116(2) and (3)~~].

756 [~~(7) By December 31, 1998, the division shall provide notice to each person with a finding~~
757 ~~of abuse or neglect since January 1, 1994.~~]

758 [(8)] (7) [A person] An alleged perpetrator who, after receiving notice, fails to challenge
759 a [~~finding of child abuse or neglect~~] substantiation by the division, as provided in Subsection (3),
760 may nevertheless request the opportunity to challenge the finding under this section:

761 (a) if since the time [~~that~~] the person received notice, state law has been amended to permit
762 a broader use of or access to information [~~on~~] contained in the [~~licensing part of the~~] Management
763 Information System; and

764 (b) before the finding may be used against the person in connection with the broader use
765 or access.

766 (8) Except as otherwise provided in this section, an alleged perpetrator who, after receiving
767 notice, fails to challenge a substantiation, in accordance with Subsection (3), may not further
768 challenge the substantiation and shall have no right to agency review or to an adjudicative hearing
769 or judicial review of the substantiation.

770 Section 11. Section **62A-4a-202.7** is amended to read:

771 **62A-4a-202.7. Pilot program for differentiated responses to child abuse and neglect**
772 **reports.**

773 (1) (a) Before July 1, 2000, the executive director shall select no less than one and no more
774 than three regions within the division to establish a pilot program that complies with the provisions
775 of this section.

776 (b) After July 1, 2001, the executive director may add one region, in addition to those
777 selected under Subsection (1)(a), to the pilot program every four months.

778 (2) This section shall be repealed in accordance with Section 63-55-262.

779 (3) (a) This section applies only to:

780 (i) those regions that have been selected under Subsection (1) to participate in this pilot
781 program; and

782 (ii) the response of the division to reports of child abuse or neglect in the participating
783 regions.

784 (b) Except as provided in Subsection (3)(a), nothing in this section may be construed as:

785 (i) superceding or otherwise altering the provisions of this chapter or Title 78, Chapter 3a,
786 Part 3, Abuse, Neglect, and Dependency Proceedings; or

787 (ii) as restricting the ability of the division to provide services, remove the child, or
788 otherwise proceed in accordance with this chapter and Title 78, Chapter 3a, Part 3, Abuse, Neglect,
789 and Dependency Hearings.

790 (4) Within each region selected, the division shall establish a process that classifies reports
791 of child abuse and neglect into one of the following three categories:

792 (a) accepted for an investigation;

793 (b) accepted for a family assessment; and

794 (c) not accepted.

795 (5) The division may only initiate contact with a family member in connection with a
796 report if the report has been officially accepted by the division for investigation or family
797 assessment in accordance with this section.

798 (6) (a) Except as provided in Subsection (7), a report shall be accepted for an investigation
799 if:

800 (i) required by Section 62A-4a-409; or

801 (ii) three prior reports involving the same family have been accepted by the division for
802 either an investigation or a family assessment.

803 (b) Except as provided in Subsection (6)(c), the division shall conduct an investigation of
804 a report accepted pursuant to Subsection (6)(a) in accordance with Section 62A-4a-409.

805 (c) The division may refer a case for a family assessment if at any time during the
806 investigation, the division determines that:

807 (i) the case is limited to a form of abuse or neglect listed in Subsection (7); or

808 (ii) (A) the harm to the child is minor; and

809 (B) the family indicates a willingness to participate in a family assessment.

810 (d) The division shall conduct an investigation anytime that it receives a report accepted
811 for investigation under this Subsection (6), even if:

812 (i) the report also includes allegations that would qualify for a family assessment under
813 Subsection (7); or

814 (ii) a second report is received before the investigation has occurred that would qualify for
815 a family assessment under Subsection (7).

816 (7) A report shall be accepted for a family assessment if there is a reasonable basis to
817 suspect that:

818 (a) the child is ungovernable; or

819 (b) one or more of the following has occurred:

820 (i) neglect involving a verbal child who is six years of age or older that is not serious or
821 chronic;

822 (ii) lack of proper supervision of a child;

823 (iii) domestic violence outside of a child's presence;

824 (iv) the receipt of three unaccepted reports involving the same family;

825 (v) a parent and child conflict indicating a significant breakdown in the parent-child

826 relationship and the need for direct intervention to prevent a foreseeable risk of violence or abuse;

827 or

828 (vi) educational neglect.

829 (8) The purpose of a family assessment is to:

830 (a) ensure that the child is safe;

831 (b) seek the cooperation of the family in learning about and participating in state and

832 community services; and

833 (c) determine with the family whether the family could benefit from division or community
834 services in view of the specific strengths, challenges, available resources, and needs of the family.

835 (9) (a) The division shall visit the child's home within three working days to begin a family
836 assessment for a report accepted pursuant to Subsection (7).

837 (b) In accordance with Subsection (8), the division shall seek the cooperation of the family
838 in participating in a family assessment.

839 (c) If the family declines to participate in a family assessment at the initial point of contact,
840 the division shall, by virtue of the fact that a report was accepted pursuant to Subsection (7):

841 (i) complete the family assessment components provided in Subsection (10); and

842 (ii) initiate an investigation if there is evidence of abuse or neglect for which an
843 investigation is required under Subsection (6).

844 (10) A family assessment shall consist of the following components:

845 (a) an analysis of the circumstances resulting in the report;

846 (b) a risk assessment designed to ensure the child's safety;

847 (c) a thorough review of the division's records of prior involvement with the family; and

848 (d) speaking face-to-face with the child, which may be conducted outside of the presence
849 of others if the division believes that it is necessary and appropriate under the circumstances.

850 (11) (a) A family assessment may include additional information from the family as may
851 be needed and that the family is willing to provide to better understand the family's strengths,
852 challenges, available resources, and needs.

853 (b) In requesting information under Subsection (11)(a), the division shall explain to the
854 family how it intends to use the information it collects.

855 (c) In performing a family assessment, the division shall inform the family orally or in
856 writing before the division contacts persons who are not immediate family members.

857 (12) (a) The division shall initiate an investigation if it determines during the course of a
858 family assessment that an investigation is required under Subsection (6).

859 (b) A family assessment may be discontinued if after completing the family assessment
860 components the division determines that:

861 (i) the circumstances do not warrant further involvement; or

862 (ii) the family requests the discontinuation of the assessment.

863 (13) The division may perform a family assessment for a family that requests one, even
864 if a report has not been accepted for a family assessment.

865 (14) A family assessment shall be completed within 30 days of the initial contact with the
866 family.

867 (15) (a) With respect to information acquired from a family assessment, the division may
868 only record the family assessment components described in Subsection (10) onto the Management
869 Information System described in [~~Subsection~~] Section 62A-4a-116[~~(2)~~].

870 (b) Nothing in Subsection (15)(a) may be construed as limiting the information that may
871 be recorded onto the management information system as a result of:

872 (i) a report of child abuse or neglect;

873 (ii) an investigation;

874 (iii) division services provided to the family; or

875 (iv) any other division involvement with the family apart from the family assessment.

876 (16) All references to a report accepted for a family assessment shall be deleted from the
877 management information system after five years unless:

878 (a) the executive director determines that there is good cause for keeping the report on the
879 management information system based on standards established by rule; or

880 (b) a subsequent report involving the same alleged initiator has occurred within that
881 five-year period.

882 (17) In connection with this pilot program, the division shall:

883 (a) standardize the key elements of the program;

884 (b) adequately train division employees to:

885 (i) process and classify incoming reports;

886 (ii) perform family assessments; and

887 (iii) conduct investigations;

888 (c) work within the FACT initiative to identify community partnerships to facilitate
889 delivery of services based on family assessments;

890 (d) establish quality assurance panels to review no less than twice each month the
891 appropriateness of classifying reports as unaccepted;

892 (e) consider the feasibility and, if appropriate, implementation of a system that:

893 (i) directs incoming reports of child abuse and neglect to a central location; and

894 (ii) sends reports from the central location to the appropriate regional offices for a
895 determination of whether, applying the provisions of this section, a particular report should be
896 accepted for investigation, accepted for a family assessment, or not accepted;

897 (f) contract before July 1, 2001, with an independent entity pursuant to Title 63, Chapter
898 56, Utah Procurement Code, to evaluate the outcomes of the pilot program with respect to:

899 (i) the safety of children;

900 (ii) the needs and perspectives of families;

901 (iii) the recurrence of child abuse and neglect;

902 (iv) the perspectives of child welfare and community partners;

903 (v) the perspectives of division employees; and

904 (vi) other areas identified by the division;

905 (g) send a copy of any written report by the independent evaluator to the Child Welfare
906 Legislative Oversight Panel within 30 days of receipt; and

907 (h) send a written report to the Child Welfare Legislative Oversight Panel 30 days before
908 a region is added to the pilot program pursuant to Subsection (1)(b), identifying:

909 (i) the overall status of the pilot program; and

910 (ii) the reasons supporting the executive director's decision to expand the pilot program
911 to the region selected.

912 Section 12. Section **62A-4a-412** is amended to read:

913 **62A-4a-412. Reports and information confidential.**

914 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well
915 as any other information in the possession of the division obtained as the result of a report [is
916 ~~confidential and~~ are protected records under Title 63, Chapter 2, Government Records Access and
917 Management Act, and notwithstanding Title 63, Chapter 2, Government Records Access and
918 Management Act, may only be made available to:

919 (a) a police or law enforcement agency investigating a report of known or suspected child
920 abuse or neglect;

921 (b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

922 (c) an agency that has responsibility or authority to care for, treat, or supervise a child who
923 is the subject of a report;

924 (d) a contract provider that has a written contract with the division to render services to

925 a child who is the subject of a report;

926 (e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

927 (f) a court, upon a finding that access to the records may be necessary for the determination
928 of an issue before it, provided that in a divorce, custody, or related proceeding between private
929 parties, the record alone is:

930 (i) limited to objective or undisputed facts that were verified at the time of the
931 investigation; and

932 (ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue
933 of whether or not a person's acts or omissions constituted any level of abuse or neglect of another
934 person;

935 (g) an office of the public prosecutor or its deputies in performing an official duty;

936 (h) a person authorized by a Children's Justice Center, for the purposes described in
937 Section 67-5b-102;

938 (i) a person engaged in bona fide research, when approved by the director of the division,
939 if the information does not include names and addresses;

940 (j) the State Office of Education, acting on behalf of itself or on behalf of a school district,
941 for the purpose of evaluating whether an individual should be permitted to obtain or retain a
942 license as an educator or serve as an employee or volunteer in a school, limited to information with
943 substantiated findings involving an alleged sexual offense, an alleged felony or class A
944 misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5,
945 Offenses Against the Person, and with the understanding that the office must provide the subject
946 of a report received under Subsection (1)(k) with an opportunity to respond to the report before
947 making a decision concerning licensure or employment; and

948 (k) any person identified in the report as a perpetrator or possible perpetrator of child abuse
949 or neglect, after being advised of the screening prohibition in Subsection (2).

950 (2) (a) No person, unless listed in Subsection (1), may request another person to obtain or
951 release a report or any other information in the possession of the division obtained as a result of
952 the report that is available under Subsection (1)(k) to screen for potential perpetrators of child
953 abuse or neglect.

954 (b) A person who requests information knowing that it is a violation of Subsection (2)(a)
955 to do so is subject to the criminal penalty in Subsection (4).

956 (3) Except as provided in [~~Subsection 62A-4a-116(9)(c)~~] Section 62A-4a-116.2, the
957 division and law enforcement officials shall ensure the anonymity of the person or persons making
958 the initial report and any others involved in its subsequent investigation.

959 (4) Any person who wilfully permits, or aides and abets the release of data or information
960 obtained as a result of this part, in the possession of the division or contained on any part of the
961 Management Information System, in violation of this part or [~~Section~~] Sections 62A-4a-116
962 through 62A-4a-116.2, is guilty of a class C misdemeanor.

963 (5) The physician-patient privilege is not a ground for excluding evidence regarding a
964 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in
965 good faith pursuant to this part.

966 Section 13. Section **63-2-304** is amended to read:

967 **63-2-304. Protected records.**

968 The following records are protected if properly classified by a governmental entity:

969 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has
970 provided the governmental entity with the information specified in Section 63-2-308;

971 (2) commercial information or nonindividual financial information obtained from a person
972 if:

973 (a) disclosure of the information could reasonably be expected to result in unfair
974 competitive injury to the person submitting the information or would impair the ability of the
975 governmental entity to obtain necessary information in the future;

976 (b) the person submitting the information has a greater interest in prohibiting access than
977 the public in obtaining access; and

978 (c) the person submitting the information has provided the governmental entity with the
979 information specified in Section 63-2-308;

980 (3) commercial or financial information acquired or prepared by a governmental entity to
981 the extent that disclosure would lead to financial speculations in currencies, securities, or
982 commodities that will interfere with a planned transaction by the governmental entity or cause
983 substantial financial injury to the governmental entity or state economy;

984 (4) records the disclosure of which could cause commercial injury to, or confer a
985 competitive advantage upon a potential or actual competitor of, a commercial project entity as
986 defined in Subsection 11-13-3(3);

987 (5) test questions and answers to be used in future license, certification, registration,
988 employment, or academic examinations;

989 (6) records the disclosure of which would impair governmental procurement proceedings
990 or give an unfair advantage to any person proposing to enter into a contract or agreement with a
991 governmental entity, except that this subsection does not restrict the right of a person to see bids
992 submitted to or by a governmental entity after bidding has closed;

993 (7) records that would identify real property or the appraisal or estimated value of real or
994 personal property, including intellectual property, under consideration for public acquisition before
995 any rights to the property are acquired unless:

996 (a) public interest in obtaining access to the information outweighs the governmental
997 entity's need to acquire the property on the best terms possible;

998 (b) the information has already been disclosed to persons not employed by or under a duty
999 of confidentiality to the entity;

1000 (c) in the case of records that would identify property, potential sellers of the described
1001 property have already learned of the governmental entity's plans to acquire the property; or

1002 (d) in the case of records that would identify the appraisal or estimated value of property,
1003 the potential sellers have already learned of the governmental entity's estimated value of the
1004 property;

1005 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
1006 compensated transaction of real or personal property including intellectual property, which, if
1007 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of
1008 the subject property, unless:

1009 (a) the public interest in access outweighs the interests in restricting access, including the
1010 governmental entity's interest in maximizing the financial benefit of the transaction; or

1011 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the
1012 value of the subject property have already been disclosed to persons not employed by or under a
1013 duty of confidentiality to the entity;

1014 (9) records created or maintained for civil, criminal, or administrative enforcement
1015 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
1016 release of the records:

1017 (a) reasonably could be expected to interfere with investigations undertaken for

1018 enforcement, discipline, licensing, certification, or registration purposes;

1019 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
1020 proceedings;

1021 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

1022 (d) reasonably could be expected to disclose the identity of a source who is not generally
1023 known outside of government and, in the case of a record compiled in the course of an
1024 investigation, disclose information furnished by a source not generally known outside of
1025 government if disclosure would compromise the source; or

1026 (e) reasonably could be expected to disclose investigative or audit techniques, procedures,
1027 policies, or orders not generally known outside of government if disclosure would interfere with
1028 enforcement or audit efforts;

1029 (10) records the disclosure of which would jeopardize the life or safety of an individual;

1030 (11) records the disclosure of which would jeopardize the security of governmental
1031 property, governmental programs, or governmental recordkeeping systems from damage, theft, or
1032 other appropriation or use contrary to law or public policy;

1033 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
1034 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
1035 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

1036 (13) records that, if disclosed, would reveal recommendations made to the Board of
1037 Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board
1038 of Pardons and Parole, or the Department of Human Services that are based on the employee's or
1039 contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

1040 (14) records and audit workpapers that identify audit, collection, and operational
1041 procedures and methods used by the State Tax Commission, if disclosure would interfere with
1042 audits or collections;

1043 (15) records of a governmental audit agency relating to an ongoing or planned audit until
1044 the final audit is released;

1045 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
1046 litigation that are not available under the rules of discovery;

1047 (17) records disclosing an attorney's work product, including the mental impressions or
1048 legal theories of an attorney or other representative of a governmental entity concerning litigation;

1049 (18) records of communications between a governmental entity and an attorney
1050 representing, retained, or employed by the governmental entity if the communications would be
1051 privileged as provided in Section 78-24-8;

1052 (19) personal files of a legislator, including personal correspondence to or from a member
1053 of the Legislature, but not correspondence that gives notice of legislative action or policy;

1054 (20) (a) records in the custody or control of the Office of Legislative Research and General
1055 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or
1056 contemplated course of action before the legislator has elected to support the legislation or course
1057 of action, or made the legislation or course of action public; and

1058 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of
1059 Legislative Research and General Counsel is a public document unless a legislator submits the
1060 "Request For Legislation" with a request that it be maintained as a protected record until such time
1061 as the legislator elects to make the legislation or course of action public;

1062 (21) research requests from legislators to the Office of Legislative Research and General
1063 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response
1064 to these requests;

1065 (22) drafts, unless otherwise classified as public;

1066 (23) records concerning a governmental entity's strategy about collective bargaining or
1067 pending litigation;

1068 (24) records of investigations of loss occurrences and analyses of loss occurrences that
1069 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured
1070 Employers' Fund, or similar divisions in other governmental entities;

1071 (25) records, other than personnel evaluations, that contain a personal recommendation
1072 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal
1073 privacy, or disclosure is not in the public interest;

1074 (26) records that reveal the location of historic, prehistoric, paleontological, or biological
1075 resources that if known would jeopardize the security of those resources or of valuable historic,
1076 scientific, educational, or cultural information;

1077 (27) records of independent state agencies if the disclosure of the records would conflict
1078 with the fiduciary obligations of the agency;

1079 (28) records of a public institution of higher education regarding tenure evaluations,

1080 appointments, applications for admissions, retention decisions, and promotions, which could be
1081 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
1082 Meetings, provided that records of the final decisions about tenure, appointments, retention,
1083 promotions, or those students admitted, may not be classified as protected under this section;

1084 (29) records of the governor's office, including budget recommendations, legislative
1085 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
1086 policies or contemplated courses of action before the governor has implemented or rejected those
1087 policies or courses of action or made them public;

1088 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
1089 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
1090 recommendations in these areas;

1091 (31) records provided by the United States or by a government entity outside the state that
1092 are given to the governmental entity with a requirement that they be managed as protected records
1093 if the providing entity certifies that the record would not be subject to public disclosure if retained
1094 by it;

1095 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
1096 except as provided in Section 52-4-7;

1097 (33) records that would reveal the contents of settlement negotiations but not including
1098 final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

1099 (34) memoranda prepared by staff and used in the decision-making process by an
1100 administrative law judge, a member of the Board of Pardons and Parole, or a member of any other
1101 body charged by law with performing a quasi-judicial function;

1102 (35) records that would reveal negotiations regarding assistance or incentives offered by
1103 or requested from a governmental entity for the purpose of encouraging a person to expand or
1104 locate a business in Utah, but only if disclosure would result in actual economic harm to the person
1105 or place the governmental entity at a competitive disadvantage, but this section may not be used
1106 to restrict access to a record evidencing a final contract;

1107 (36) materials to which access must be limited for purposes of securing or maintaining the
1108 governmental entity's proprietary protection of intellectual property rights including patents,
1109 copyrights, and trade secrets;

1110 (37) the name of a donor or a prospective donor to a governmental entity, including a

1111 public institution of higher education, and other information concerning the donation that could
1112 reasonably be expected to reveal the identity of the donor, provided that:

1113 (a) the donor requests anonymity in writing;

1114 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
1115 classified protected by the governmental entity under this Subsection (37); and

1116 (c) except for public institutions of higher education, the governmental unit to which the
1117 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no
1118 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
1119 owned or controlled by the donor or his immediate family;

1120 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

1121 (39) a notification of workers' compensation insurance coverage described in Section
1122 34A-2-205; ~~and~~

1123 (40) the following records of a public institution of education, which have been developed,
1124 discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:
1125 unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative
1126 works in process, scholarly correspondence, and confidential information contained in research
1127 proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a
1128 record[-]; and

1129 (41) information contained in the Management Information System and Licensing
1130 Information System described in Sections 62A-4a-116 and 62A-41-116.1.