

1 **CHILD ABUSE DATABASE AMENDMENTS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Craig A. Peterson**

5 AN ACT RELATING TO HUMAN SERVICES; PERMITTING SUBSTANTIATED FINDINGS
6 OF CHILD ABUSE AND NEGLECT BE PUT INTO A DATABASE TO SCREEN
7 POTENTIAL HUMAN SERVICES AND CHILD CARE PROVIDERS; AND PROVIDING
8 NOTICE AND AN OPPORTUNITY TO REQUEST THE AMENDMENT OR REMOVAL
9 OF SUBSTANTIATED FINDINGS FROM THE LICENSING DATABASE.

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

11 AMENDS:

12 **62A-4a-116**, as last amended by Chapter 318, Laws of Utah 1996

13 **62A-4a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994

14 ENACTS:

15 **62A-4a-116.5**, Utah Code Annotated 1953

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

17 Section 1. Section **62A-4a-116** is amended to read:

18 **62A-4a-116. Management information system -- Requirements.**

19 (1) The division shall develop and implement a management information system that
20 meets the requirements of this section and the requirements of federal law and regulation.

21 (2) With regard to all child welfare cases, [that] the management information system shall:

22 (a) provide each caseworker with a complete history of each child in his caseload,
23 including:

24 (i) all past action taken by the division with regard to that child and his siblings, the
25 complete case history and all reports and information in the control or keeping of the division
26 regarding that child and his siblings;

27 (ii) the number of times the child has been in foster care;

- 1 (iii) the cumulative period of time the child has been in foster care;
- 2 (iv) all reports of abuse or neglect received by the division with regard to that child's
- 3 parent or parents, including documentation regarding whether each report was substantiated or
- 4 unsubstantiated;
- 5 (v) the number of times the child's parent or parents have failed any treatment plan; and
- 6 (vi) the number of different caseworkers who have been assigned to that child in the past;
- 7 (b) contain all key elements of each family's current treatment plan, including the dates
- 8 and number of times the plan has been administratively or judicially reviewed, the number of times
- 9 the parent or parents have failed that treatment plan, and the exact length of time that treatment
- 10 plan has been in effect; and
- 11 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
- 12 plans.

13 (3) With regard to all child protective services cases, [that] the management information
 14 system shall [also], in addition to the information required in Subsection (2), monitor compliance
 15 with the policy of the division, the laws of this state, and federal law and regulation.

16 (4) (a) The division shall develop and maintain a part of the information management
 17 system for licensing purposes, which shall be:

18 (i) limited to:

19 (A) substantiated findings of abuse or neglect since January 1, 1988, unless removed
 20 pursuant to Subsection 62A-4a-116.5(6);

21 (B) an adjudication of child abuse or neglect by a court of competent jurisdiction; and

22 (C) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual
 23 abuse of any person; and

24 (ii) accessible by § :

24a (A) § the Office of Licensing for licensing purposes only § ; AND

24b (B) SUBJECT TO THE PROVISIONS OF SUBSECTION (c), THE BUREAU OF HEALTH FACILITY
 24c LICENSURE WITHIN THE DEPARTMENT OF HEALTH FOR THE PURPOSE OF LICENSING A CHILD
 24d CARE PROGRAM OR PROVIDER OR FOR DETERMINING WHETHER A PERSON ASSOCIATED WITH A
 24e COVERED HEALTH CARE FACILITY, AS DEFINED BY THE DEPARTMENT OF HEALTH BY RULE, WHO
 24f PROVIDES DIRECT CARE TO A CHILD HAS A SUBSTANTIATED FINDING OF CHILD ABUSE OR
 24g NEGLECT § .

25 (b) For the purpose of Subsection (4)(a), "substantiated" means a finding, at the
26 completion of an investigation, that there is a reasonable basis to conclude that one or more of the
27 following types of abuse or neglect has occurred:

28 (i) physical abuse;

29 (ii) sexual abuse;

30 (iii) sexual exploitation;

31 (iv) abandonment;

1 (v) medical neglect resulting in death, disability, or serious illness; or

2 (vi) chronic or severe neglect.

3 § [(c) The Office of Licensing shall access and provide information in a timely manner from
4 the licensing part of the management information system that is specifically requested by the
5 Department of Health in connection with licensing a child care provider or program.]

5a (c)(i) THE DEPARTMENT OF HEALTH SHALL:

5b (A) DESIGNATE TWO PERSONS WITHIN THE DEPARTMENT OF HEALTH TO ACCESS THE
5c LICENSING PART OF THE MANAGEMENT INFORMATION SYSTEM; AND

5d (B) ADOPT MEASURES TO:

5e (I) PROTECT THE SECURITY OF THE LICENSING PART OF THE MANAGEMENT INFORMATION
5f SYSTEM; AND

5g (II) STRICTLY LIMIT ACCESS TO THE LICENSING PART OF THE MANAGEMENT INFORMATION
5h SYSTEM TO THOSE DESIGNATED UNDER SUBSECTION (4)(c)(i)(A).

5i (ii) THOSE DESIGNATED UNDER SUBSECTION (4)(c)(i)(A) SHALL RECEIVE TRAINING FROM
5j THE DEPARTMENT WITH RESPECT TO:

5k (A) ACCESSING THE LICENSING PART OF THE MANAGEMENT INFORMATION SYSTEM;

5l (B) MAINTAINING STRICT SECURITY; AND

5m (C) THE CRIMINAL PROVISIONS IN SECTION 62A-4a-412 FOR THE IMPROPER RELEASE OF
5n INFORMATION.

5o (iii) THOSE DESIGNATED UNDER SUBSECTION (4)(c)(i)(A):

5p (A) ARE THE ONLY ONES IN THE DEPARTMENT OF HEALTH WITH THE AUTHORITY TO
5q ACCESS THE LICENSING PART OF MANAGEMENT INFORMATION SYSTEM; AND

5r (ii) MAY ONLY ACCESS THE LICENSING PART OF THE MANAGEMENT INFORMATION
SYSTEM

5s IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (4)(a)(ii). §

6 [(4)] (5) All information contained in the management information system shall be
7 available to the department[, so that divisions may share common databases] upon the approval
8 of the executive director, on a need-to-know basis.

9 (6) The information contained in the management information system shall be encrypted.

10 Section 2. Section 62A-4a-116.5 is enacted to read:

11 62A-4a-116.5. Opportunity to appeal a substantiated finding of child abuse or
12 neglect.

13 (1) If the division makes a substantiated finding of abuse or neglect pursuant to Subsection
14 62A-4a-116(4)(b), the division shall send notice of agency action regarding the division's finding
15 to the person found to have committed the abuse or neglect.

16 (2) The notice shall state:

17 (a) the facts that support the finding of substantiation;

18 (b) that the person may be disqualified from § **ADOPTING A CHILD OR** § working for or
18a being licensed by:

19 (i) the department;

20 (ii) a human services licensee; § **[and]** §

21 (iii) child care provider or program; § **AND**

21a (iv) **COVERED HEALTH CARE FACILITIES;** §

22 (c) that the person has the right to request:

23 (i) a copy of the substantiated report; and

24 (ii) that the finding be amended or removed from the licensing part of the management
25 information system described in Subsection 62A-4a-116(4), except as provided in Subsection
26 (5)(b); and

27 (d) that failure to request an amendment or removal of the finding within 30 days of the
28 notice being sent will result in an unappealable finding of substantiation, unless the person can
29 show good cause for why compliance within the 30-day requirement was virtually impossible or
30 unreasonably burdensome.

31 (3) (a) A person may request to amend or remove a substantiated finding within 30 days

1 of:

2 (i) a notice being sent under Subsection (2);

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

4 (A) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), did not occur;

5 or

6 (B) the person was not responsible for the child abuse or neglect that did occur;

7 (iii) the dismissal of criminal charges or a verdict of not guilty based on the same

8 underlying facts; or

9 (iv) a negative employment or licensing decision based on a substantiated finding of abuse
 10 or neglect if the person has not previously been given the opportunity to contest that finding by
 11 virtue of a notice being sent to the person under Subsection (2).

12 (b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown
 13 that compliance was virtually impossible or unreasonably burdensome.

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

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

18 (4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall
 19 prove by a preponderance of the evidence that there is a reasonable basis to conclude that:

20 (i) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), occurred; and

21 (ii) the person was responsible, at least in part, for the abuse or neglect that occurred.

22 (b) The administrative hearing officer may:

23 (i) consider hearsay evidence to be competent evidence and may not exclude it on the basis
 24 that it would be disallowed under the Utah Rules of Evidence; and

25 (ii) make a determination of substantiation based solely on the § HEARSAY § statement of
 25a the child.

26 (c) If the division fails to carry its burden at the hearing, the division shall amend or
 27 remove the finding as directed by the hearing officer.

28 (5) (a) A person may not request to amend or remove a substantiated finding under
 29 Subsection (3)(a), if, at anytime, a court of competent jurisdiction has made a determination based
 30 on the same underlying facts that:

31 (i) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), occurred; and

1 (ii) the person was responsible, at least in part, for the abuse or neglect that occurred.

2 (b) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during the
3 time a judicial action is pending.

4 (6) The department shall remove a substantiated finding from the licensing part of the
5 information system described in Subsection 62A-4a-116(4) within 30 days of a determination by
6 the division, an administrative hearing officer, or a court in a proceeding initiated pursuant to
7 Subsection (3)(a) that a finding of child abuse or neglect is not substantiated unless that
8 determination is appealed in a timely manner by the division.

9 (7) Nothing in this section may affect the inclusion or exclusion of a report or finding of
10 child abuse or neglect from or access by the division, its caseworkers, and child protective services
11 workers to that part of the management information system used for purposes of child welfare
12 cases and child protective services as described in Subsections 62A-4a-116(2) and (3).

13 (8) The division shall provide a notice to each person with a substantiated finding of abuse
14 or neglect on the licensing part of the management information system described in Subsection
15 62A-4a-116(4) by December 31, 1999.

16 Section 3. Section **62A-4a-412** is amended to read:

17 **62A-4a-412. Reports and information confidential.**

18 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well
19 as any other information in the possession of the division obtained as the result of a report is
20 confidential and may only be made available to:

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

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

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

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

28 (e) a court, upon a finding that access to the records may be necessary for the
29 determination of an issue before it;

30 (f) an office of the public prosecutor or its deputies; [and]

31 (g) the Bureau of Health Facility Licensure within the Department of Health for the

1 purpose of determining whether a person associated with a child care provider has a substantiated
2 finding of child abuse or neglect on the licensing part of the management information system
3 created in Section 62A-4a-116; and

4 [(g)] (h) a person engaged in bona fide research, when approved by the director of the
5 division, if the information does not include names and addresses.

6 (2) The division and law enforcement officials shall ensure the anonymity of the person
7 or persons making the initial report and any others involved in its subsequent investigation.

8 (3) Any person who wilfully permits, or aides and abets the release of data or information
9 obtained as a result of this part, in the possession of the division or contained in the central
10 register, in violation of this part, is guilty of a class C misdemeanor.

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

Legislative Review Note
as of 2-6-98 11:55 AM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel