

Representative Bill Wright proposes to substitute the following bill:

CHILD ABUSE DATABASE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Craig A. Peterson

AN ACT RELATING TO HUMAN SERVICES; PERMITTING SUBSTANTIATED FINDINGS OF CHILD ABUSE AND NEGLECT BE PUT INTO A DATABASE TO SCREEN POTENTIAL HUMAN SERVICES AND CHILD CARE PROVIDERS; AND PROVIDING NOTICE AND AN OPPORTUNITY TO CHALLENGE A FINDING OF SUBSTANTIATION.

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

AMENDS:

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

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

ENACTS:

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

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

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

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

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

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

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

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

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1 regarding that child and his siblings;

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

3 (iii) the cumulative period of time the child has been in foster care;

4 (iv) all reports of abuse or neglect received by the division with regard to that child's
5 parent or parents, including documentation regarding whether each report was substantiated or
6 unsubstantiated;

7 (v) the number of times the child's parent or parents have failed any treatment plan; and

8 (vi) the number of different caseworkers who have been assigned to that child in the past;

9 (b) contain all key elements of each family's current treatment plan, including the dates
10 and number of times the plan has been administratively or judicially reviewed, the number of times
11 the parent or parents have failed that treatment plan, and the exact length of time that treatment
12 plan has been in effect; and

13 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
14 plans.

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

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

20 (i) limited to:

21 (A) substantiated findings of abuse or neglect since January 1, 1994, after notice and an
22 opportunity to challenge has been provided under Section 62A-4a-116.5;

23 (B) substantiated findings of child abuse or neglect found by an administrative hearing
24 officer before July 1, 1998, to have occurred between January 1, 1988, and January 1, 1994;

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

26 (D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual
27 abuse of any person; and

28 (ii) accessible by:

29 (A) the Office of Licensing for licensing purposes only; and

30 (B) subject to the provisions of Subsection (4)(c), the Bureau of Health Facility Licensure
31 within the Department of Health only for the purpose of licensing a child care program or provider,

1 or for determining whether a person associated with a covered health care facility, as defined by
2 the Department of Health by rule, who provides direct care to a child has a substantiated finding
3 of child abuse or neglect.

4 (b) For the purpose of Subsection (4)(a), "substantiated":

5 (i) means a finding, at the completion of an investigation, that there is a reasonable basis
6 to conclude that one or more of the following types of abuse or neglect has occurred:

7 (A) physical abuse;

8 (B) sexual abuse;

9 (C) sexual exploitation;

10 (D) abandonment;

11 (E) medical neglect resulting in death, disability, or serious illness; or

12 (F) chronic or severe neglect; and

13 (ii) does not include the use of reasonable and necessary physical restraint or force by an
14 educator in accordance with Subsection 53A-11-802(2).

15 (c) (i) The Department of Health shall:

16 (A) designate two persons within the Department of Health to access the licensing part of
17 the management information system; and

18 (B) adopt measures to:

19 (I) protect the security of the licensing part of the management information system; and

20 (II) strictly limit access to the licensing part of the management information system to
21 those designated under Subsection (4)(c)(i)(A).

22 (ii) Those designated under Subsection (4)(c)(i)(A) shall receive training from the
23 department with respect to:

24 (A) accessing the licensing part of the management information system;

25 (B) maintaining strict security; and

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

27 (iii) Those designated under Subsection (4)(c)(i)(A):

28 (A) are the only ones in the Department of Health with the authority to access the licensing
29 part of the management information system; and

30 (B) may only access the licensing part of the management information system in
31 accordance with the provisions of Subsection (4)(a)(ii).

1 ~~[(4)]~~ (5) All information contained in the management information system shall be
2 available to the department~~[-so that divisions may share common databases]~~ upon the approval
3 of the executive director, on a need-to-know basis.

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

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

6 **62A-4a-116.5. Opportunity to appeal a substantiated finding of child abuse or**
7 **neglect.**

8 (1) If the division makes a substantiated finding of abuse or neglect pursuant to Subsection
9 62A-4a-116(4)(b), the division shall send notice of agency action regarding the division's finding
10 to the person found to have committed the abuse or neglect.

11 (2) The notice shall state:

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

13 (b) that the person may be disqualified from adopting a child or working for or being
14 licensed by:

15 (i) the department;

16 (ii) a human services licensee;

17 (iii) child care provider or program; and

18 (iv) covered health care facilities;

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

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

21 (ii) an opportunity to challenge the finding and its inclusion on the licensing part of the
22 management information system described in Subsection 62A-4a-116(4), except as provided in
23 Subsection (5)(b); and

24 (d) that failure to request an opportunity to challenge the finding within 30 days of the
25 notice being received will result in an unappealable finding of substantiation, unless the person can
26 show good cause for why compliance within the 30-day requirement was virtually impossible or
27 unreasonably burdensome.

28 (3) (a) A person may make a request to challenge a substantiated finding within 30 days
29 of:

30 (i) a notice being received under Subsection (2);

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

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

2 or

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

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

5 underlying facts.

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

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

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

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

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

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

16 (5) (a) A person may not make a request to challenge a substantiated finding under
17 Subsection (3)(a), if, at anytime, a court of competent jurisdiction has made a determination based
18 on the same underlying facts that:

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

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

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

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

27 (7) By December 31, 1988, the division shall provide notice to each person with a
28 substantiated finding of abuse or neglect since January 1, 1994.

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

30 **62A-4a-412. Reports and information confidential.**

31 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well

1 as any other information in the possession of the division obtained as the result of a report is
2 confidential and may only be made available to:

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

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

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

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

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

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

13 (g) the Bureau of Health Facility Licensure within the Department of Health for the
14 purpose of determining whether a person associated with a child care provider has a substantiated
15 finding of child abuse or neglect on the licensing part of the management information system
16 created in Section 62A-4a-116; and

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

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

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

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