

CHILD ABUSE DATABASE INFORMATION

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: John L. Valentine

AN ACT RELATING TO CHILD WELFARE; PROVIDING THAT WHEN AN ALLEGED PERPETRATOR OF ABUSE OR NEGLECT IS INCLUDED IN THE DCFS MANAGEMENT INFORMATION SYSTEM, THE AGE AND DATE OF BIRTH OF THAT ALLEGED PERPETRATOR ALSO BE INCLUDED; AND PROVIDING TECHNICAL CORRECTIONS.

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

AMENDS:

62A-4a-116, as last amended by Chapter 164, Laws of Utah 1999

62A-4a-116.5, as last amended by Chapter 164, Laws of Utah 1999

62A-4a-412, as last amended by Chapters 164 and 377, Laws of Utah 1999

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, 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 regarding that child and his siblings;

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

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

(iv) all reports of abuse or neglect received by the division with regard to that child's parent or parents, including documentation regarding whether each report was substantiated, unsubstantiated, or without merit;

(v) the number of times the child's parent or parents have failed any treatment plan; and
(vi) the number of different caseworkers who have been assigned to that child in the past;
(b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect;

(c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans; and

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

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

(ii) a report that is unsubstantiated if no subsequent report involving the same alleged perpetrator has occurred within ten years.

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

(4) With regard to all child welfare and protective services cases, the age and date of birth of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be included in the management information system.

~~[(4)]~~ (5) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:

(i) limited to:

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

(B) the name of a person who was not sent a notice of agency action under Section 62A-4a-116.5 because his location was not available on the management information system or who was sent a notice of agency action that was returned to the division as undelivered for the sole

purpose of alerting the division of the need to afford the person an opportunity to challenge the finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond delaying the person's licensing application to provide an opportunity for challenge, may be taken;

(C) an adjudication of child abuse or neglect by a court of competent jurisdiction if Subsection 62A-4a-116.5(5) has been met; and

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

(ii) accessible by:

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

(B) the division:

(I) to screen a person at the request of the Office of the Guardian Ad Litem Director, created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the Office of the Guardian Ad Litem and each year thereafter that the person remains with the office; and

(II) to respond to a request for information from the person who is identified as a perpetrator in the report, after advising the person of the screening prohibition in Subsection (4)(d)(iii);

(C) subject to the provisions of Subsection [~~4~~] (5)(c), the Bureau of Health Facility Licensure within the Department of Health only for the purpose of licensing a child care program or provider, or for determining whether a person associated with a covered health care facility, as defined by the Department of Health by rule, who provides direct care to a child has a substantiated finding of child abuse or neglect; and

(D) the department as provided in Subsection [~~5~~] (6) and Section 62A-1-118.

(b) For the purpose of Subsection [~~4~~] (5)(a), "substantiated":

(i) means a finding that there is a reasonable basis to conclude that:

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

(I) physical abuse;

(II) sexual abuse;

(III) sexual exploitation;

- (IV) abandonment;
- (V) medical neglect resulting in death, disability, or serious illness; or
- (VI) chronic or severe neglect; and
- (B) a person under the age of 18:
 - (I) caused serious physical injury, as defined in Section 76-5-109(1)(d), to another child which indicates a significant risk to other children; or
 - (II) engaged in sexual behavior with or upon another child which indicates a significant risk to other children; and
 - (ii) does not include:
 - (A) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
 - (B) a person's conduct that:
 - (I) is justified under Section 76-2-401; or
 - (II) constituted the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury.
 - (iii) (A) For purposes of Subsection [~~(4)~~] (5)(b)(i)(B), "significant risk" shall be determined in accordance with risk assessment tools and policies established by the division that focus on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other related considerations.
 - (B) The division shall train its child protection workers to apply the risk assessment tools and policies established under Subsection [~~(4)~~] (5)(b)(iii)(A).
- (c) (i) The Department of Health shall:
 - (A) designate two persons within the Department of Health to access the licensing part of the management information system; and
 - (B) adopt measures to:
 - (I) protect the security of the licensing part of the management information system; and

(II) strictly limit access to the licensing part of the management information system to those designated under Subsection ~~[(4)]~~ (5)(c)(i)(A).

(ii) Those designated under Subsection ~~[(4)]~~ (5)(c)(i)(A) shall receive training from the department with respect to:

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

(B) maintaining strict security; and

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

(iii) Those designated under Subsection ~~[(4)]~~ (5)(c)(i)(A):

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

(B) may only access the licensing part of the management information system in accordance with the provisions of Subsection ~~[(4)]~~ (5)(a)(ii).

(iv) The Department of Health may obtain information in the possession of the division that relates to a substantiated finding of abuse or neglect of a person screened under this Subsection ~~[(4)]~~ (5)(c).

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

(ii) No person, unless listed in Subsection ~~[(4)]~~ (5)(a)(ii), may request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection ~~[(4)]~~ (5)(a)(ii)(A)(III) to screen for potential perpetrators of child abuse or neglect.

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

~~[(5)]~~ (6) All information contained in the management information system shall be available to the department upon the approval of the executive director, on a need-to-know basis.

~~[(6)]~~ (7) The information contained in the management information system shall be encrypted.

~~[(7)]~~ (8) (a) The division shall send a certified letter to a person who submitted a report of

child abuse or neglect that is put onto any part of the management information system if the division determines, at the conclusion of its investigation, that:

- (i) the report is false;
 - (ii) it is more likely than not that the person knew that the report was false at the time the person submitted the report; and
 - (iii) the person's address is known or reasonably available.
- (b) The letter shall inform the person of:
- (i) the determination made under Subsection [~~(7)~~] (8)(a);
 - (ii) the penalty for submitting false information under Section 76-8-506 and other applicable laws;
 - (iii) the obligation of the division to inform law enforcement and the alleged perpetrator:
 - (A) in the present instance if an immediate referral is justified by the facts; or
 - (B) if the person submits a subsequent false report involving the same alleged perpetrator or victim.
- (c) (i) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection [~~(7)~~] (8)(a) if an immediate referral is justified by the facts.
- (ii) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection [~~(7)~~] (8)(a) if this is the second letter sent to the person involving the same alleged perpetrator or victim.
- (iii) The division shall determine, in consultation with law enforcement:
- (A) the information to be given to an alleged perpetrator about a false claim; and
 - (B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator about a false claim.
- (d) Nothing in this Subsection [~~(7)~~] (8) may be construed as requiring the division to conduct an investigation, beyond what is required in Subsection [~~(7)~~] (8)(a), to determine whether or not a report is false.

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

62A-4a-116.5. Opportunity to challenge a finding of child abuse or neglect.

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

(i) make reasonable efforts to identify the person's parent or legal guardian; and

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

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

(c) Nothing in this section may be construed as affecting:

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

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

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

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

(2) The notice shall state:

(a) that the division conducted an investigation;

(b) that the division found, at the conclusion of the investigation, that there was, in the opinion of the division, a reasonable basis to conclude that abuse or neglect occurred;

(c) the facts that support the finding;

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

(i) the department;

- (ii) a human services licensee;
- (iii) a child care provider or program; and
- (iv) a covered health care facility;
- (e) that the person has the right to request:

- (i) a copy of the report; and

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

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

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

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

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

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

or

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

- (iii) the dismissal of criminal charges or a verdict of not guilty based on the same underlying facts.

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

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

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

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

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

(b) The administrative hearing officer may make a determination of substantiation based solely on the out-of-court statement of the child that the officer finds to be reliable under the standards set forth in:

- (i) Section 76-5-411;
- (ii) Utah Rules of Criminal Procedure, Rule 15.5;
- (iii) Section 78-3a-116(5);
- (iv) the Utah Rules of Evidence; or
- (v) Utah case law.

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

- (i) child abuse or neglect, as described in Subsection 62A-4a-116~~(4)~~(5)(b), occurred;
- (ii) the person was substantially responsible for the abuse or neglect that occurred; and
- (iii) the person:
 - (A) was a party to the proceeding; or
 - (B) (I) had notice of the proceeding; and
 - (II) was provided a meaningful opportunity to challenge the facts underlying the court's

determination.

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

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

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

(8) A person who, after receiving notice, fails to challenge a finding of child abuse or neglect may request the opportunity to challenge the finding under this section:

(a) if since the time that the person received notice, state law has been amended to permit a broader use of or access to information on the licensing part of the management information system; and

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

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

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

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

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

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

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

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

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

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

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

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

(g) a person authorized by a Children's Justice Center, for the purposes described in Section

67-5b-102;

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

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

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

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

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

(3) Except as provided in Subsection 62A-4a-116[~~(7)~~](8)(c), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the management information system, in violation of this part or Section 62A-4a-116, is guilty of a class C misdemeanor.

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

