

**CHILD WELFARE RECORDS AMENDMENTS**

2001 GENERAL SESSION

STATE OF UTAH

**Sponsor: Lyle W. Hillyard**

**This act modifies records provisions pertaining to the Division of Child and Family Services. The first section puts all appeals from informal administrative hearings for substantiation of abuse within the jurisdiction of the juvenile court. The second section makes changes that clarify who has access to division records during a proceeding. The last section is modified to give the division access to juvenile court records for investigations and hearings conducted by Child Protective Services.**

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

AMENDS:

**63-46b-15**, as last amended by Chapter 164, Laws of Utah 1999

**78-3a-206**, as last amended by Chapters 90 and 303, Laws of Utah 2000

**78-3a-314**, as last amended by Chapter 274, Laws of Utah 1998

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

Section 1. Section **63-46b-15** is amended to read:

**63-46b-15. Judicial review -- Informal adjudicative proceedings.**

(1) (a) The district courts have jurisdiction to review by trial de novo all final agency actions resulting from informal adjudicative proceedings, except that the juvenile courts have jurisdiction over all state agency actions relating to:

(i) the removal or placement of children in state custody;

(ii) the support of children under Subsection (1)(a)(i) as determined administratively under Section 78-3a-906; and

(iii) substantiated findings of abuse or neglect [~~pursuant to Section 62A-4a-116.5~~] made by the Division of Child and Family Services, after an evidentiary hearing.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided in the statute governing the agency or, in the absence of such a venue provision, in the county where the petitioner resides or maintains his principal place of business.

(2) (a) The petition for judicial review of informal adjudicative proceedings shall be a complaint governed by the Utah Rules of Civil Procedure and shall include:

- (i) the name and mailing address of the party seeking judicial review;
- (ii) the name and mailing address of the respondent agency;
- (iii) the title and date of the final agency action to be reviewed, together with a duplicate copy, summary, or brief description of the agency action;
- (iv) identification of the persons who were parties in the informal adjudicative proceedings that led to the agency action;
- (v) a copy of the written agency order from the informal proceeding;
- (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial review;
- (vii) a request for relief, specifying the type and extent of relief requested; and
- (viii) a statement of the reasons why the petitioner is entitled to relief.

(b) All additional pleadings and proceedings in the district court are governed by the Utah Rules of Civil Procedure.

(3) (a) The district court, without a jury, shall determine all questions of fact and law and any constitutional issue presented in the pleadings.

(b) The Utah Rules of Evidence apply in judicial proceedings under this section.

Section 2. Section **78-3a-206** is amended to read:

**78-3a-206. Court records -- Inspection.**

(1) The court and the probation department shall keep records as required by the board and the presiding judge.

(2) Court records shall be open to inspection by:

(a) the parents or guardian, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Person, 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, with the understanding that the office must provide the individual with an opportunity to respond to any information gathered from its inspection of the records before it makes a decision concerning licensure or employment; ~~and~~

(c) the Division of Criminal Investigations and Technical Services, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704~~[-]; and~~

(d) the Division of Child and Family Services for the purpose of Child Protective Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and administrative hearings in accordance with Section 62A-4a-116.5.

(3) With the consent of the judge, court records may be inspected by the minor, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) If a petition is filed charging a minor 14 years of age or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.

Section 3. Section **78-3a-314** is amended to read:

**78-3a-314. All proceedings -- Persons entitled to be present.**

(1) A child who is the subject of a juvenile court hearing, any person entitled to notice pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, and any relative providing care for the child, are entitled to notice, to be present at each hearing held under this part, including administrative and citizen reviews, and are entitled to an opportunity to be heard.

(2) Because the child's foster parents have the right to notice, pursuant to Section 78-3a-309, they have the right to be present at each and every hearing held under this part including administrative and citizen reviews, and are entitled to an opportunity to be heard.

(3) A child shall be represented at each hearing by the guardian ad litem appointed to his case by the court. The child has a right to be present at each hearing, subject to the discretion of the guardian ad litem or the court regarding any possible detriment to the child.

(4) (a) The parent or guardian of a child who is the subject of a petition under this part has the right to be represented by counsel, and to present evidence, at each hearing.

(b) When it appears to the court that a parent or guardian of the child desires counsel but is financially unable to afford and cannot for that reason employ counsel, and the child has been placed in out-of-home care, or the petitioner is recommending that the child be placed in out-of-home care, the court shall appoint counsel.

(5) In every abuse, neglect, or dependency proceeding under this chapter, the court shall order that the child be represented by a guardian ad litem, in accordance with Section 78-3a-912. The guardian ad litem shall represent the best interest of the child, in accordance with the requirements of that section, at the shelter hearing and at all subsequent court and administrative proceedings, including any proceeding for termination of parental rights in accordance with Part 4, Termination of Parental Rights Act.

(6) Notwithstanding any other provision of law, counsel for all parties to the action shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to the abuse, neglect, or dependency proceeding under this chapter. If the natural parent of a child is representing himself, he shall have access to those records. The above disclosures are not required in the following circumstances:

(a) The division or other state or local public agency did not originally create the record

being requested. In those circumstances, the person making the request under this section shall be informed of the following:

(i) the existence of all records in the possession of the division or any other state or local public agency;

(ii) the name and address of the person or agency that originally created the record; and

(iii) that he must seek access to the record from the person or agency that originally created the record.

(b) Disclosure of the record would jeopardize the life or physical safety of a child who has been a victim of child abuse or neglect, or any person who provided substitute care for the child.

(c) Disclosure of the record would jeopardize the anonymity of the person or persons making the initial report of abuse or neglect or any others involved in the subsequent investigation.

(d) Disclosure of the record would jeopardize the life or physical safety of a person who has been a victim of domestic violence.

(7) (a) The appropriate foster care citizen review board shall be given access to all records, maintained by the division or any other state or local public agency, that are relevant to an abuse, neglect, or dependency proceeding under this chapter.

(b) Representatives of the appropriate foster care citizen review board are entitled to be present at each hearing held under this part, but notice is not required to be provided.