

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.

(b) Venue for judicial review of informal adjudicative proceedings shall be as provided

28 in the statute governing the agency or, in the absence of such a venue provision, in the county
29 where the petitioner resides or maintains his principal place of business.

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

32 (i) the name and mailing address of the party seeking judicial review;

33 (ii) the name and mailing address of the respondent agency;

34 (iii) the title and date of the final agency action to be reviewed, together with a duplicate
35 copy, summary, or brief description of the agency action;

36 (iv) identification of the persons who were parties in the informal adjudicative proceedings
37 that led to the agency action;

38 (v) a copy of the written agency order from the informal proceeding;

39 (vi) facts demonstrating that the party seeking judicial review is entitled to obtain judicial
40 review;

41 (vii) a request for relief, specifying the type and extent of relief requested; and

42 (viii) a statement of the reasons why the petitioner is entitled to relief.

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

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

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

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

49 **78-3a-206. Court records -- Inspection.**

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

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

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

55 (b) for information relating to adult offenders alleged to have committed a sexual offense,
56 a felony or class A misdemeanor drug offense, or an offense against the person under Title 76,
57 Chapter 5, Offenses Against the Person, the State Office of Education for the purpose of evaluating
58 whether an individual should be permitted to obtain or retain a license as an educator or serve as

59 an employee or volunteer in a school, with the understanding that the office must provide the
60 individual with an opportunity to respond to any information gathered from its inspection of the
61 records before it makes a decision concerning licensure or employment; [~~and~~]

62 (c) the Division of Criminal Investigations and Technical Services, established in Section
63 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm
64 and establishing good character for issuance of a concealed firearm permit as provided in Section
65 53-5-704[~~;~~]; and

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

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

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

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

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

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

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

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

87 **78-3a-314. All proceedings -- Persons entitled to be present.**

88 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
89 pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, and any relative providing care

90 for the child, are entitled to notice, to be present at each hearing held under this part, including
91 administrative and citizen reviews, and are entitled to an opportunity to be heard.

92 (2) Because the child's foster parents have the right to notice, pursuant to Section
93 78-3a-309, they have the right to be present at each and every hearing held under this part
94 including administrative and citizen reviews, and are entitled to an opportunity to be heard.

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

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

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

104 (5) In every abuse, neglect, or dependency proceeding under this chapter, the court shall
105 order that the child be represented by a guardian ad litem, in accordance with Section 78-3a-912.
106 The guardian ad litem shall represent the best interest of the child, in accordance with the
107 requirements of that section, at the shelter hearing and at all subsequent court and administrative
108 proceedings, including any proceeding for termination of parental rights in accordance with Part
109 4, Termination of Parental Rights Act.

110 (6) ~~[Notwithstanding any other provision of law]~~ Except as provided in Sections
111 62A-4a-116 and 62A-4a-412, counsel for all parties to the action shall be given access to all
112 records, maintained by the division or any other state or local public agency, that are relevant ~~[to]~~
113 and will be used by the division as evidence in the abuse, neglect, or dependency proceeding under
114 this chapter. If the natural parent of a child is representing himself, he shall have access to those
115 records.

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

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

Legislative Review Note
as of 1-16-01 1:46 PM

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

Office of Legislative Research and General Counsel