

1 **ADULT PROTECTIVE SERVICES**

2 **AMENDMENTS**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kevin T. VanTassell**

6 House Sponsor: David Litvack

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Aging and Adult Services chapter of the Utah Human Services
11 Code and related provisions.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines and modifies terms;
- 15 ▶ clarifies the rulemaking authority of the Division of Aging and Adult Services;
- 16 ▶ describes the powers and duties of Adult Protective Services;
- 17 ▶ clarifies that a law enforcement agency has discretion regarding whether to open an
18 investigation of potential criminal conduct against a vulnerable adult;
- 19 ▶ clarifies provisions regarding the collection of photographic, audio, or video
20 evidence relating to the abuse, neglect, or exploitation of a vulnerable adult;
- 21 ▶ removes or modifies time restrictions relating to an adult protection case;
- 22 ▶ modifies provisions relating to access to records maintained by Adult Protective
23 Services;
- 24 ▶ modifies provisions related to the offender database maintained by Adult Protective
25 Services, including findings made, the notice given to alleged perpetrators, and
26 procedures to challenge findings;
- 27 ▶ modifies provisions relating to emergency orders; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **62A-2-122**, as last amended by Laws of Utah 2005, Chapters 60, 107, and 188

36 **62A-3-109**, as enacted by Laws of Utah 1988, Chapter 1

37 **62A-3-301**, as last amended by Laws of Utah 2007, Chapter 31

38 **62A-3-302**, as last amended by Laws of Utah 2006, Chapter 31

39 **62A-3-303**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

40 **62A-3-304**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

41 **62A-3-305**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

42 **62A-3-308**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

43 **62A-3-309**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

44 **62A-3-311**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

45 **62A-3-311.1**, as last amended by Laws of Utah 2005, Chapter 50

46 **62A-3-312**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

47 **62A-3-318**, as enacted by Laws of Utah 2002, Chapter 108

48 **62A-3-320**, as enacted by Laws of Utah 2002, Chapter 108

49 **63-2-202**, as last amended by Laws of Utah 2005, Chapter 201

50 **63-2-302**, as last amended by Laws of Utah 2006, Chapter 2

51 **ENACTS:**

52 **62A-3-311.5**, Utah Code Annotated 1953

53 **REPEALS AND REENACTS:**

54 **62A-3-307**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

55 **REPEALS:**

56 **62A-3-306**, as repealed and reenacted by Laws of Utah 2002, Chapter 108

57 **62A-3-313**, as enacted by Laws of Utah 2002, Chapter 108

58

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

60 Section 1. Section **62A-2-122** is amended to read:

61 **62A-2-122. Access to vulnerable adult abuse and neglect information.**

62 (1) For purposes of this section:

63 (a) "Direct service worker" is as defined in Section 62A-5-101[~~;~~and].

64 (b) "Personal care attendant" is as defined in Section 62A-3-101.

65 (2) With respect to a licensee, a certified local inspector applicant, a direct service
66 worker, or a personal care attendant, the department may access the [~~data base~~] database
67 created by Section 62A-3-311.1 for the purpose of:

68 (a) (i) determining whether a person associated with a licensee, with direct access to
69 vulnerable adults, has a supported or substantiated finding of:

70 (A) abuse;

71 (B) neglect; or

72 (C) exploitation; and

73 (ii) informing a licensee that a person associated with the licensee has a supported or
74 substantiated finding of:

75 (A) abuse;

76 (B) neglect; or

77 (C) exploitation;

78 (b) (i) determining whether a certified local inspector applicant has a supported or
79 substantiated finding of:

80 (A) abuse;

81 (B) neglect; or

82 (C) exploitation; and

83 (ii) informing a local government that a certified local inspector applicant has a
84 supported or substantiated finding of:

85 (A) abuse;

86 (B) neglect; or

87 (C) exploitation; [~~or~~]

88 (c) (i) determining whether a direct service worker has a supported or substantiated
89 finding of:

90 (A) abuse;
91 (B) neglect; or
92 (C) exploitation; and
93 (ii) informing a direct service worker or the direct service worker's employer that the
94 direct service worker has a supported or substantiated finding of:

95 (A) abuse;
96 (B) neglect; or
97 (C) exploitation; or
98 (d) (i) determining whether a personal care attendant has a supported or substantiated
99 finding of:

100 (A) abuse;
101 (B) neglect; or
102 (C) exploitation; and
103 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
104 personal care attendant has a supported or substantiated finding of:

105 (A) abuse;
106 (B) neglect; or
107 (C) exploitation;

108 (3) After receiving identifying information for a person under Subsection
109 62A-2-120(1), the department shall process the information for the purposes described in
110 Subsection (2).

111 (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
112 Rulemaking Act, consistent with this chapter and [~~consistent with Section 62A-3-311.1~~] Title
113 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of Vulnerable Adults, defining the
114 circumstances under which a person may have direct access or provide services to vulnerable
115 adults when the person is listed in the statewide database of the Division of Aging and Adult
116 Services created by Section 62A-3-311.1 as having a supported or substantiated finding of
117 abuse, neglect, or exploitation.

118 Section 2. Section **62A-3-109** is amended to read:

119 **62A-3-109. Adjudicative proceedings.**

120 [~~The~~] Adjudicative proceedings held by, or relating to, the division or the board shall

121 comply with the procedures and requirements of Title 63, Chapter 46b, [~~in its adjudicative~~
122 ~~proceedings~~] Administrative Procedures Act.

123 Section 3. Section **62A-3-301** is amended to read:

124 **62A-3-301. Definitions.**

125 As used in this part:

126 (1) "Abandonment" means any knowing or intentional action or [~~inaction~~] failure to
127 act, including desertion, by a person or entity acting as a caretaker for a vulnerable adult that
128 leaves the vulnerable adult without the means or ability to obtain necessary food, clothing,
129 shelter, or medical or other health care.

130 (2) "Abuse" means:

131 (a) knowingly or intentionally:

132 [~~(a)~~] (i) attempting to cause harm[~~, intentionally or knowingly~~];

133 (ii) causing harm[~~, or intentionally or knowingly~~]; or

134 (iii) placing another in fear of [~~imminent~~] harm;

135 (b) unreasonable or inappropriate use of physical restraint, medication, or isolation that
136 causes or is likely to cause harm to a vulnerable adult [~~that is in conflict with a physician's~~
137 ~~orders or used as an unauthorized substitute for treatment, unless that conduct furthers the~~
138 ~~health and safety of the adult~~];

139 (c) emotional or psychological abuse;

140 (d) a sexual offense as described in Title 76, Chapter 5, Offenses Against the Person;

141 or

142 (e) deprivation of life sustaining treatment, or medical or mental health treatment,

143 except:

144 (i) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

145 (ii) when informed consent, as defined in Section 76-5-111, has been obtained.

146 (3) "Adult" means a person who is 18 years of age or older.

147 (4) "Adult protection case file" means [~~documents and information~~] a record, stored in
148 any format, contained in [~~the~~] a case file maintained by Adult Protective Services [~~on a~~
149 ~~particular case, including any report or other notification received by the division or Adult~~
150 ~~Protective Services~~].

151 (5) "Adult Protective Services" means the unit within the division responsible to

152 investigate abuse, neglect, and exploitation of vulnerable adults and provide appropriate
153 protective services.

154 (6) "Capacity to consent" means the ability of a person to understand and communicate
155 regarding the nature and consequences of decisions relating to the person, and relating to the
156 person's property and lifestyle, including a decision to accept or refuse services.

157 ~~[(6)] (7) "Caretaker" means [any] each~~ person, entity, corporation, or public institution
158 that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing,
159 supervision, medical or other health care, resource management, or other necessities.

160 ~~["Caretaker" includes a relative by blood or marriage, a household member, a person who is~~
161 ~~employed or who provides volunteer work, or a person who contracts or is under court order to~~
162 ~~provide care.]~~

163 ~~[(7)] (8) "Counsel" means an attorney licensed to practice law in this state.~~

164 (9) "Database" means the statewide database maintained by the division under Section
165 62A-3-311.1.

166 ~~[(8)] (10) "Elder abuse" means abuse, neglect, or exploitation of an elder adult.~~

167 ~~[(9)] (11) "Elder adult" means a person 65 years of age or older.~~

168 ~~[(10)] (12) "Emergency" means a circumstance in which a vulnerable adult is at an~~
169 ~~immediate risk of death [or], serious physical injury, or [is at risk of immediate,] serious~~
170 ~~physical, emotional, or financial harm. [Risk of immediate, serious harm includes exploitation~~
171 ~~that results in the inability of a vulnerable adult to provide funds for immediate needs,~~
172 ~~including food, shelter, and necessary medical care.]~~

173 ~~[(11)] (13) (a) "Emotional or psychological abuse" means [intentional or] knowing or~~
174 ~~intentional verbal or nonverbal conduct directed at a vulnerable adult [including ridiculing,~~
175 ~~intimidating, yelling, swearing, threatening, isolating, coercing, harassing, or other forms of~~
176 ~~intimidating behavior] that results or could result in the vulnerable adult suffering mental~~
177 ~~anguish [or], emotional distress, [including] fear, humiliation, degradation, agitation, or~~
178 ~~confusion[, or isolation].~~

179 (b) "Emotional or psychological abuse" includes ridiculing, intimidating, yelling,
180 swearing, threatening, isolating, coercing, or harassing.

181 ~~[(12)] (14) "Exploitation" means the offense described in Subsection 76-5-111(4).~~

182 ~~[(13)] (15) "Harm" means pain, mental anguish, emotional distress, hurt, physical or~~

183 psychological damage, physical injury, serious physical injury, suffering, or distress inflicted
184 knowingly or intentionally.

185 (16) "Inconclusive" means a finding by the division that there is not a reasonable basis
186 to conclude that abuse, neglect, or exploitation occurred.

187 ~~[(14)]~~ (17) "Intimidation" means communication through verbal or nonverbal conduct
188 which threatens deprivation of money, food, clothing, medicine, shelter, social interaction,
189 supervision, health care, or companionship, or which threatens isolation or abuse.

190 ~~[(15)]~~ (18) (a) "Isolation" means knowingly or intentionally preventing a vulnerable
191 adult from having contact with another person by:

192 (i) preventing the vulnerable adult from receiving visitors, mail, or telephone calls,
193 contrary to the ~~[express]~~ expressed wishes of the vulnerable adult, including communicating to
194 a visitor that the vulnerable adult is not present or does not want to meet with or talk to the
195 visitor, knowing that communication to be false;

196 (ii) physically restraining the vulnerable adult in order to prevent the vulnerable adult
197 from meeting with a visitor; or

198 (iii) making false or misleading statements to the vulnerable adult in order to induce
199 the vulnerable adult to refuse to receive communication from visitors or other family members.

200 (b) The term "isolation" does not include an act intended to protect the physical or
201 mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or
202 instructions of a physician or other professional advisor of the vulnerable adult.

203 ~~[(16)]~~ (19) "Lacks capacity to consent" has the meaning as provided in Section
204 76-5-111.

205 ~~[(17)]~~ (20) (a) "Neglect" means:

206 ~~[(a)]~~ (i) (A) failure of a caretaker to provide necessary care, including nutrition,
207 clothing, shelter, supervision, personal care, or dental, medical, or other health care for a
208 vulnerable adult, unless the vulnerable adult is able to provide or obtain the necessary care
209 without assistance; or

210 ~~[(i)]~~ (B) failure of a caretaker to provide protection from health and safety hazards or
211 maltreatment;

212 ~~[(b)]~~ (ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner
213 and with the degree of care that a reasonable person in a like position would exercise;

214 ~~[(e)]~~ (iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed
215 consent, resulting in deprivation of food, water, medication, health care, shelter, cooling,
216 heating, or other services necessary to maintain the vulnerable adult's well being;

217 ~~[(d)]~~ (iv) knowing or intentional failure by a caretaker to carry out a prescribed
218 treatment plan that causes or is likely to cause harm to the vulnerable adult;

219 ~~[(e)]~~ (v) self-neglect by the vulnerable adult; or

220 ~~[(f)]~~ (vi) abandonment by a caretaker.

221 ~~[(18) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic~~
222 ~~conduct, to the extent that the tissue must undergo a healing process in order to be restored to a~~
223 ~~sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot~~
224 ~~be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a~~
225 ~~dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding,~~
226 ~~malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling,~~
227 ~~injury to any internal organ, or any other physical condition that imperils the health or welfare~~
228 ~~of a vulnerable adult and is not a serious physical injury as defined in this section.]~~

229 (b) "Neglect" does not include conduct, or failure to take action, that is permitted or
230 excused under Title 75, Chapter 2a, Advance Health Care Directive Act.

231 (21) "Physical injury" includes the damage and conditions described in Section
232 76-5-111.

233 ~~[(19)]~~ (22) "Protected person" means a vulnerable adult for whom the court has
234 ordered protective services~~[, including a vulnerable adult for whom emergency protective~~
235 ~~services have been established under the provisions of this chapter].~~

236 ~~[(20) "Protective services" means any services provided by Adult Protective Services~~
237 ~~to a vulnerable adult, either with the consent of the vulnerable adult or the vulnerable adult's~~
238 ~~guardian or conservator, or by court order, if that adult has been abused, neglected, exploited,~~
239 ~~or is in a state of self-neglect; protective services may include:]~~

240 ~~[(a) an intake system for receiving and screening reports;]~~

241 ~~[(b) investigation of referrals in accordance with statutory and policy guidelines;]~~

242 ~~[(c) protective needs assessment;]~~

243 ~~[(d) coordination and referral to community resources for services; or]~~

244 ~~[(e) short-term, limited services including emergency shelter or respite when family or~~

245 ~~other community resources are not available to provide protection.]~~

246 (23) "Protective services" means services to protect a vulnerable adult from abuse,
247 neglect, or exploitation.

248 ~~[(21)]~~ (24) "Self-neglect" means the failure of a vulnerable adult to provide or obtain
249 food, water, medication, health care, shelter, cooling, heating, safety, or other services
250 necessary to maintain the vulnerable adult's well being when that failure is the result of the
251 adult's mental or physical impairment. Choice of lifestyle or living arrangements may not, by
252 themselves, be evidence of self-neglect.

253 ~~[(22)]~~ (25) "Serious physical injury" ~~[has the meaning as provided]~~ is as defined in
254 Section 76-5-111.

255 ~~[(23)]~~ "Substantiated" or "substantiation" means a finding, based upon a preponderance
256 of the evidence, that there is a reasonable basis to conclude that abuse, neglect, or exploitation
257 occurred, regardless of whether there is an identified perpetrator or current need for protective
258 services. ~~If more than one allegation is made or identified during the course of the~~
259 ~~investigation, any allegation determined to meet the criteria for substantiation requires a case~~
260 ~~finding of "substantiated."]~~

261 (26) "Supported" means a finding by the division that there is a reasonable basis to
262 conclude that abuse, neglect, or exploitation occurred.

263 ~~[(24)]~~ (27) "Undue influence" occurs when a person uses the person's role, relationship,
264 or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or
265 fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control
266 deceptively over the decision making of the vulnerable adult.

267 ~~[(25)]~~ "Unsubstantiated" means a finding, based upon a preponderance of the evidence,
268 ~~that there is insufficient evidence to conclude that abuse, neglect, or exploitation occurred.]~~

269 ~~[(26)]~~ (28) "Vulnerable adult" means an elder adult, or an adult who has a mental or
270 physical impairment which substantially affects that person's ability to:

- 271 (a) provide personal protection;
- 272 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
- 273 (c) obtain services necessary for health, safety, or welfare;
- 274 (d) carry out the activities of daily living;
- 275 (e) manage the adult's own financial resources; or

276 (f) comprehend the nature and consequences of remaining in a situation of abuse,
277 neglect, or exploitation.

278 (29) "Without merit" means a finding that abuse, neglect, or exploitation did not occur.

279 Section 4. Section **62A-3-302** is amended to read:

280 **62A-3-302. Purpose of Adult Protective Services Program.**

281 Subject to the rules made by the division under Section 62A-3-106.5, Adult Protective
282 Services [~~shall~~]:

283 (1) shall investigate or cause to be investigated reports of alleged abuse, neglect, or
284 exploitation of vulnerable adults [~~occurring in all settings~~]; [~~and~~]

285 (2) shall, where appropriate, provide short-term, limited protective services with the
286 permission of the affected vulnerable adult or the guardian or conservator of the vulnerable
287 adult[~~—The division may promulgate rules~~]; and

288 (3) may make rules, in accordance with Title 63, Chapter 46a, Utah Administrative
289 Rulemaking Act, and develop procedures and policies [~~to be used in~~] relating to:

290 (i) reporting and investigating incidents of abuse, neglect, or exploitation[~~—and in~~
291 investigating]; and

292 (ii) providing protective services to the extent that funds are appropriated by the
293 Legislature for this purpose.

294 Section 5. Section **62A-3-303** is amended to read:

295 **62A-3-303. Powers and duties of Adult Protective Services.**

296 In addition to all other powers and duties that Adult Protective Services is given under
297 this part, Adult Protective Services:

298 (1) shall maintain an intake system for receiving and screening reports;

299 (2) shall investigate reports;

300 (3) shall perform protective needs assessments;

301 (4) may coordinate with, or make referrals to, community resources;

302 (5) may provide limited services to a vulnerable adult, on a temporary basis, when
303 family or community resources are not available to provide for the protective needs of the
304 vulnerable adult;

305 [~~(6)~~] (6) shall have access to facilities licensed by, or contracting with [~~either~~], the
306 department or the Department of Health for the purpose of conducting investigations;

307 ~~[(2) has authority to receive, upon request,]~~
308 (7) shall be given access to, or provided with, written statements, documents, exhibits,
309 and other items ~~[pertinent]~~ related to an investigation, including medical or financial records of
310 a vulnerable adult who is the subject of an investigation ~~[when]~~ if:

311 (a) for a vulnerable adult who does not lack the capacity to consent, the vulnerable
312 adult signs a release of information ~~[is provided by the vulnerable adult who does not lack~~
313 ~~capacity to consent]~~; or

314 (b) for a vulnerable adult who lacks the capacity to consent, ~~[and]~~ an administrative
315 subpoena ~~[has been]~~ is issued ~~[through]~~ by Adult Protective Services;

316 ~~[(3) has authority to]~~

317 (8) may institute proceedings in a court of competent jurisdiction to seek relief
318 necessary to carry out the provisions of this chapter;

319 ~~[(4) has authority to]~~

320 (9) may require all persons, including family members of a vulnerable adult and any
321 caretaker, to cooperate with Adult Protective Services in carrying out its duties under this
322 chapter, including conducting investigations and providing protective services;

323 ~~[(5)]~~ (10) may require all officials, agencies, departments, and political subdivisions of
324 the state to assist and cooperate within their jurisdictional power with the court, the division,
325 and Adult Protective Services in furthering the purposes of this chapter;

326 ~~[(6)]~~ (11) may conduct studies and compile data regarding abuse, neglect, and
327 exploitation; and

328 ~~[(7)]~~ (12) may issue reports and recommendations.

329 Section 6. Section **62A-3-304** is amended to read:

330 **62A-3-304. Cooperation by caretaker.**

331 A caretaker, facility, or other institution ~~[may not use its own]~~ shall, regardless of the
332 confidentiality standards [as a basis for failure to] of the caretaker, facility, or institution:

333 (1) report abuse, neglect, or exploitation of a vulnerable adult in accordance with this
334 chapter;

335 (2) cooperate with any Adult Protective Services investigation;

336 (3) provide Adult Protective Services with access to records or documents relating to
337 the vulnerable adult who is the subject of an investigation; or

338 (4) provide evidence in any judicial or administrative proceeding relating to a
339 vulnerable adult who is the subject of an investigation.

340 Section 7. Section **62A-3-305** is amended to read:

341 **62A-3-305. Reporting requirements -- Investigation -- Immunity -- Violation --**
342 **Penalty -- Physician-patient privilege -- Nonmedical healing.**

343 (1) Any person who has reason to believe that any vulnerable adult has been the subject
344 of abuse, neglect, or exploitation shall immediately notify Adult Protective Services intake or
345 the nearest law enforcement agency. When the initial report is made to law enforcement, law
346 enforcement shall immediately notify Adult Protective Services intake. Adult Protective
347 Services and law enforcement shall coordinate, as appropriate, their efforts to provide
348 protection to the vulnerable adult.

349 (2) When the initial report or subsequent investigation by Adult Protective Services
350 indicates that a criminal offense may have occurred against a vulnerable adult~~[-it]~~:

351 (a) Adult Protective Services shall notify the nearest local law enforcement agency~~[-~~
352 ~~That]~~ regarding the potential offense; and

353 (b) the law enforcement agency ~~shall~~ may initiate an investigation in cooperation
354 with Adult Protective Services.

355 (3) Anyone who in good faith makes a report or otherwise notifies a law enforcement
356 agency~~[-the division,]~~ or Adult Protective Services of suspected abuse, neglect, or exploitation
357 is immune from civil and criminal liability in connection with the report or other notification.

358 (4) Any person who willfully fails to report suspected abuse, neglect, or exploitation of
359 a vulnerable adult is guilty of a class B misdemeanor.

360 (5) Under circumstances not amounting to a violation of Section 76-8-508, a person
361 who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a
362 report, a witness, the person who made the report, or any other person cooperating with an
363 investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

364 ~~[(6) The physician-patient privilege does not constitute grounds for excluding evidence~~
365 ~~regarding a vulnerable adult's injuries, or the cause of those injuries, in any judicial or~~
366 ~~administrative proceeding resulting from a report made in good faith pursuant to this part.]~~

367 ~~[(7)]~~ (6) An adult is not considered abused, neglected, or a vulnerable adult for the
368 reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in

369 lieu of medical care.

370 Section 8. Section **62A-3-307** is repealed and reenacted to read:

371 **62A-3-307. Photographing, video, and audio taping.**

372 Law enforcement or Adult Protective Services investigators may collect evidence
373 regarding alleged abuse, neglect, or exploitation of a vulnerable adult by taking, or causing to
374 be taken, photographs, video tape recordings, or audio or video tape accounts of a vulnerable
375 adult, if the vulnerable adult:

376 (1) consents to the taking of the photographs, video tape recordings, or audio or video
377 tape accounts; or

378 (2) lacks the capacity to give the consent described in Subsection (1).

379 Section 9. Section **62A-3-308** is amended to read:

380 **62A-3-308. Peace officer's authority to transport -- Notification.**

381 (1) A peace officer may remove and transport, or cause to have transported, a
382 vulnerable adult to an appropriate medical or shelter facility, if:

383 (a) the officer has probable cause to believe that:

384 (i) by reason of abuse, neglect, or exploitation there exist [~~emergency~~] exigent
385 circumstances; and[;]

386 [~~(a)~~] (ii) the vulnerable adult will suffer serious physical injury or death if not
387 immediately placed in a safe environment;

388 (b) the vulnerable adult refuses to consent or lacks capacity to consent; and

389 (c) there is not time to notify interested parties or to apply for a warrant or other court
390 order.

391 (2) [~~The~~] A peace officer [~~shall~~] described in Subsection (1) shall, within four hours
392 after a vulnerable adult is transported to an appropriate medical or shelter facility:

393 (a) notify Adult Protective Services [~~within four hours of transporting a vulnerable~~
394 adult to a medical or shelter facility.] intake; and

395 (b) request that Adult Protective Services or the division [~~shall~~] file a petition with the
396 court for an emergency protective order [~~under Section 62A-3-320 within 24 hours after being~~
397 ~~notified, not including Saturdays, Sundays, and legal holidays].~~

398 Section 10. Section **62A-3-309** is amended to read:

399 **62A-3-309. Enforcement by division -- Duty of county or district attorney.**

400 (1) It is the duty of the county or district attorney, as appropriate under Sections
401 17-18-1, 17-18-1.5, and 17-18-1.7, to:

- 402 (a) assist and represent the division [~~and to~~];
- 403 (b) initiate legal proceedings to protect vulnerable adults; and
- 404 (c) take appropriate action to prosecute the alleged offenders.

405 (2) [~~When~~] If the county or district attorney fails to act upon the request of the division
406 to provide legal assistance within [30 days of the request,] five business days after the day on
407 which the request is made:

- 408 (a) the division may request the attorney general to act [~~and, in the attorney general's~~
409 ~~discretion,]; and~~
- 410 (b) the attorney general may, in the attorney general's discretion, assume the
411 responsibilities and carry the action forward in place of the county or district attorney.

412 Section 11. Section **62A-3-311** is amended to read:

413 **62A-3-311. Requests for information.**

414 (1) Requests for [~~information contained in an adult protection case file~~] records
415 maintained by Adult Protective Services shall be made in writing to Adult Protective Services.
416 [~~Requests should indicate the specific information requested and the reason for the request.~~
417 ~~Notwithstanding the provisions of Title 63, Chapter 2, Government Records Access and~~
418 ~~Management Act, nothing may be released in response to a request except as provided in~~
419 ~~Section 62A-3-312.]~~

420 (2) Classification and disclosure of records shall be made in accordance with Title 63,
421 Chapter 2, Government Records Access and Management Act.

422 Section 12. Section **62A-3-311.1** is amended to read:

423 **62A-3-311.1. Statewide database -- Restricted use and access.**

424 (1) The division shall maintain a [~~data base~~] database for reports of vulnerable adult
425 abuse, neglect, or exploitation made pursuant to this part.

426 (2) The [~~data base~~] database shall include:

427 (a) the names and identifying data of the alleged abused, neglected, or exploited
428 vulnerable adult and the [~~reported abuser~~] alleged perpetrator;

429 (b) information regarding whether or not the allegation of abuse, neglect, or
430 exploitation was [~~substantiated or unsubstantiated, and~~] found to be:

- 431 (i) supported;
 432 (ii) inconclusive;
 433 (iii) without merit; or
 434 (iv) for reports for which the finding is made before May 5, 2008:
 435 (A) substantiated; or
 436 (B) unsubstantiated; and
 437 (c) any other information that may be helpful in furthering the purposes of this part, as
 438 determined by the division~~[, subject to the restrictions of Section 62A-3-306].~~
 439 (3) Information obtained from the ~~[data base]~~ database may be used only [for]:
 440 (a) ~~[compiling]~~ for statistical summaries compiled by the department that do not
 441 include names or other identifying data;
 442 ~~[(b) granting or denying licenses or other grants of privilege by the department where~~
 443 ~~identification as a possible adult abuser may be relevant to the privilege in question, in~~
 444 ~~accordance with Subsection (4); and]~~
 445 ~~[(c) licensing purposes by the Bureau of Licensing within the Department of Health, as~~
 446 ~~provided for in Section 26-21-9.5, in determining whether a person associated with a covered~~
 447 ~~health care facility who provides direct care to vulnerable adults has a substantiated finding of~~
 448 ~~vulnerable adult abuse, neglect, or exploitation if identification as a possible perpetrator is~~
 449 ~~relevant to the employment activities of that person.]~~
 450 ~~[(4) (a) A license or privilege may not be denied under Subsection (3) solely on the~~
 451 ~~basis of information in the data base.]~~
 452 ~~[(b) Before a license or privilege may be denied under Subsection (3), the department~~
 453 ~~taking the action shall conduct a review and provide the person making application for the~~
 454 ~~license or privilege with notice and an opportunity to be heard in accordance with Title 63,~~
 455 ~~Chapter 46b, Administrative Procedures Act.]~~
 456 (b) where identification of a person as a perpetrator may be relevant in a determination
 457 regarding whether to grant or deny a license, privilege, or approval made by:
 458 (i) the department;
 459 (ii) the Division of Occupational and Professional Licensing;
 460 (iii) the Bureau of Licensing, within the Department of Health;
 461 (iv) any government agency specifically authorized by statute to access or use the

462 information in the database; or

463 (v) an agency of another state that performs a similar function to an agency described
464 in Subsections (3)(b)(i) through (iv); or

465 (c) as otherwise specifically provided by law.

466 Section 13. Section **62A-3-311.5** is enacted to read:

467 **62A-3-311.5. Notice of supported finding -- Procedure for challenging finding --**

468 **Limitations.**

469 (1) (a) Except as provided in Subsection (1)(b), within 15 days after the day on which
470 the division makes a supported finding that a person committed abuse, neglect, or exploitation
471 of a vulnerable adult, the division shall serve the person with a notice of agency action, in
472 accordance with Subsections (2) and (3).

473 (b) The division may serve the notice described in Subsection (1)(a) within a
474 reasonable time after the 15 day period described in Subsection (1)(a) if:

475 (i) the delay is necessary in order to:

476 (A) avoid impeding an ongoing criminal investigation or proceeding; or

477 (B) protect the safety of a person; and

478 (ii) the notice is provided before the supported finding is used as a basis to deny the
479 person a license or otherwise adversely impact the person.

480 (2) The division shall cause the notice described in Subsection (1)(a) to be served by
481 personal service or certified mail.

482 (3) The notice described in Subsection (1)(a) shall:

483 (a) indicate that the division has conducted an investigation regarding alleged abuse,
484 neglect, or exploitation of a vulnerable adult by the alleged perpetrator;

485 (b) indicate that, as a result of the investigation described in Subsection (3)(a), the
486 division made a supported finding that the alleged perpetrator committed abuse, neglect, or
487 exploitation of a vulnerable adult;

488 (c) include a summary of the facts that are the basis for the supported finding;

489 (d) indicate that the supported finding may result in disqualifying the person from:

490 (i) being licensed, certified, approved, or employed by a government agency;

491 (ii) being employed by a service provider, person, or other entity that contracts with, or
492 is licensed by, a government agency; or

493 (iii) qualifying as a volunteer for an entity described in Subsection (3)(d)(i) or (ii);
494 (e) indicate that, as a result of the supported finding, the alleged perpetrator's
495 identifying information is listed in the database;
496 (f) indicate that the alleged perpetrator may request a copy of the report of the alleged
497 abuse, neglect, or exploitation; and
498 (g) inform the alleged perpetrator of:
499 (i) the right described in Subsection (4)(a); and
500 (ii) the consequences of failing to exercise the right described in Subsection (4)(a) in a
501 timely manner.

502 (4) (a) The alleged perpetrator has the right, within 30 days after the day on which the
503 notice described in Subsection (1)(a) is served, to challenge the supported finding by filing a
504 request for an informal adjudicative proceeding, under Title 63, Chapter 46b, Administrative
505 Procedures Act.

506 (b) If the alleged perpetrator fails to file a request for an informal adjudicative
507 proceeding within the time described in Subsection (4)(a), the supported finding will become
508 final and will not be subject to challenge or appeal.

509 (5) At the hearing described in Subsection (4)(a), the division has the burden of
510 proving, by a preponderance of the evidence, that the alleged perpetrator committed abuse,
511 neglect, or exploitation of a vulnerable adult.

512 (6) Notwithstanding any provision of this section, an alleged perpetrator described in
513 this section may not challenge a supported finding if a court of competent jurisdiction entered a
514 finding in a proceeding to which the alleged perpetrator was a party, that the alleged perpetrator
515 committed the abuse, neglect, or exploitation of a vulnerable adult, upon which the supported
516 finding is based.

517 (7) A person who was listed in the database as a perpetrator before May 5, 2008, and
518 who did not have an opportunity to challenge the division's finding that resulted in the listing,
519 may at any time:

520 (a) request that the division reconsider the division's finding; or
521 (b) request an informal adjudicative proceeding, under Title 63, Chapter 46b,
522 Administrative Procedures Act, to challenge the finding.

523 Section 14. Section **62A-3-312** is amended to read:

524 **62A-3-312. Access to information in database.**

525 ~~[The records and information contained in the data base and the adult protection case~~
 526 ~~file are protected records under Title 63, Chapter 2, Government Records Access and~~
 527 ~~Management Act. However, notwithstanding the provisions of Title 63, Chapter 2,~~
 528 ~~Government Records Access and Management Act, information and records contained in the~~
 529 ~~data base and in the adult protection case file are not open to public inspection.]~~

530 ~~[Pertinent parts of the data base]~~ The database and the adult protection case file;

531 (1) shall be made available to law enforcement agencies, the attorney general's office,
 532 and county or district attorney's offices;

533 (2) shall be released as required under Subsection 63-2-202(4)(c); and

534 (3) may be made available, at the discretion of the division, to:

535 ~~[(+)]~~ (a) subjects of a report as follows:

536 ~~[(a)]~~ (i) a vulnerable adult named in a report as a victim of abuse, neglect, or
 537 exploitation, or that adult's attorney or legal guardian; and

538 ~~[(b)]~~ (ii) a person identified in a report as having abused, neglected, or exploited a
 539 vulnerable adult, or that person's attorney; and

540 ~~[(2)]~~ (b) persons involved in an evaluation or assessment of the vulnerable adult as
 541 follows:

542 ~~[(a)]~~ (i) an employee or contractor of the department who is responsible for the
 543 evaluation or assessment of an adult protection case file;

544 ~~[(b)]~~ (ii) a multidisciplinary team approved by the division to assist Adult Protective
 545 Services in the evaluation, assessment, and disposition of a vulnerable adult case;

546 ~~[(c)]~~ (iii) an authorized person or agency providing services to, or responsible for, the
 547 care, treatment, assessment, or supervision of a vulnerable adult named in the report as a
 548 victim, when in the opinion of the division, that information will assist in the protection of, or
 549 provide other benefits to, the victim;

550 ~~[(d)]~~ (iv) a licensing authority for a facility, program, or person providing care to a
 551 victim named in a report; and

552 ~~[(e)]~~ ~~the person or entity that reported the abuse, neglect, or exploitation, as considered~~
 553 ~~necessary on an individual case basis by the division; and]~~

554 ~~[(f)]~~ (v) legally authorized protection and advocacy agencies when they represent a

555 victim or have been requested by the division to assist on a case[-], including:

556 (A) the Office of Public Guardian, created in Section 62A-14-103; and

557 (B) the Long-Term Care Ombudsman Program, created in Section 62A-3-203.

558 Section 15. Section **62A-3-318** is amended to read:

559 **62A-3-318. Petition by division for protective services -- Notice -- Rights of adult.**

560 (1) If the division determines that a vulnerable adult is in need of protective services
561 but lacks capacity to consent to protective services, the division may petition the district court
562 for an order authorizing the division to provide protective services. The petition shall include:

563 (a) the name, address, and age of the adult who is the subject of the petition;

564 (b) the reasonably ascertainable names and addresses of the spouse, parents, adult
565 children, and caretaker of the adult who is the subject of the petition;

566 (c) the name and address of any court-appointed guardian or conservator for the adult;

567 (d) specific facts sufficient to show that the subject of the petition is a vulnerable adult
568 in need of protective services; and

569 (e) specific facts sufficient to show that the vulnerable adult lacks capacity to consent.

570 (2) Upon the filing of a petition, the court shall set a date for hearing on the petition.

571 At least ten days' notice of the petition and the hearing shall be given to the adult who is the
572 subject of the petition and to each other person identified in Subsection (1)(b) or (c).

573 (3) The notice shall be in plain language and [~~large type,~~] in at least [14] a 14-point
574 font. The notice shall indicate the time and place of the hearing, the possible adverse
575 consequences to the adult, and a list of rights as set forth in Subsections (4), (6), and (7). The
576 petition and notice shall be served personally upon the adult who is the subject of the petition
577 and upon the adult's spouse, caretaker, and parents if they can be found within the state. Notice
578 to the spouse, caretaker, and parents, if they cannot be found within the state, and to other
579 persons shall be given by first-class mail, postage prepaid.

580 (4) The adult who is the subject of the petition shall have the right to be present at the
581 hearing, unless the adult has knowingly and voluntarily waived the right to be present, or
582 unless a licensed physician has certified that the adult is physically unable to attend. Waiver
583 shall not be presumed by nonappearance of the adult, but shall be determined by the court on
584 the basis of evidence provided to the court.

585 (5) The adult who is the subject of the petition may be examined by a licensed

586 physician appointed by the court, who shall submit a written report to the court. The adult may
 587 be interviewed by a visitor, as defined in Section 75-5-308, appointed by the court, who shall
 588 submit a written report to the court. The visitor may also interview knowledgeable persons at
 589 the division and others who have knowledge of the adult who is the subject of the petition.

590 (6) The adult who is the subject of the petition has the right to be represented by
 591 counsel at all proceedings before the court. Unless the adult has retained counsel, the court
 592 shall appoint counsel. The fees of the adult's counsel shall be paid by the adult who is the
 593 subject of the petition unless the adult is indigent in which case the division will pay the adult's
 594 reasonable ~~[attorneys]~~ attorney fees.

595 (7) The adult who is the subject of the petition is entitled to present evidence and to
 596 cross-examine witnesses, including any court-appointed physician and visitor. The issues may
 597 be determined at a closed hearing if the adult who is the subject of the petition so requests.

598 (8) Nothing in this section limits proceedings under Title 75, Utah Uniform Probate
 599 Code.

600 Section 16. Section **62A-3-320** is amended to read:

601 **62A-3-320. Petition for emergency order -- Protective services -- Temporary**
 602 **guardian -- Forcible entry.**

603 (1) Upon ~~[petition therefor,]~~ the filing of a petition for an emergency order, the court
 604 may, without notice, order appropriate protective services, if the court finds that:

605 (a) the subject of the petition is a vulnerable adult~~[-that];~~

606 (b) the adult has no court-appointed guardian or conservator or the guardian or
 607 conservator is not effectively performing the guardian's or conservator's duties~~[-that];~~

608 (c) an emergency exists~~[-];~~ and ~~[that]~~

609 (d) the welfare, safety, or best interests of the adult require immediate action~~[-the court~~
 610 ~~may, without notice, order appropriate protective services].~~

611 (2) The order described in Subsection (1) shall specifically designate the protective
 612 services which are ~~[being]~~ approved, together with supporting facts.

613 ~~[(2)]~~ (3) Protective services authorized in an emergency order may not include
 614 hospitalization, nursing or custodial care, or a change in residence, unless the court specifically
 615 finds that the action is necessary and authorizes the specific protective services in the order.

616 ~~[(3)]~~ (4) (a) Protective services ~~[shall be]~~ provided through an emergency order ~~[for a~~

617 ~~period not to exceed~~ may not be provided longer than three business days, at which time the
 618 order shall expire unless a petition for guardianship, conservatorship, or other protective
 619 services ~~[has been]~~ is filed.

620 (b) If a petition for guardianship, conservatorship, or other protective services is filed
 621 within the three-business-day period described in Subsection (4)(a), the emergency order may
 622 be continued for as long as 15 days from the ~~[date]~~ day on which the last petition was filed, to
 623 allow time for a hearing to determine whether the emergency order shall remain in effect.

624 ~~[(4)]~~ (5) In ~~[its]~~ the emergency order, the court may appoint ~~[the petitioner or another~~
 625 ~~interested person as]~~ a temporary guardian, in accordance with Section 75-5-310.

626 ~~[(5)]~~ (6) To implement an emergency order, the court may authorize forcible entry by a
 627 peace officer into the premises where the protected person is residing, only upon a showing that
 628 voluntary access into the premises is not possible and that forcible entry is required.

629 Section 17. Section **63-2-202** is amended to read:

630 **63-2-202. Access to private, controlled, and protected documents.**

631 (1) Upon request, and except as provided in Subsection (10)(a), a governmental entity
 632 shall disclose a private record to:

633 (a) the subject of the record;

634 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
 635 record;

636 (c) the legal guardian of a legally incapacitated individual who is the subject of the
 637 record;

638 (d) any other individual who:

639 (i) has a power of attorney from the subject of the record;

640 (ii) submits a notarized release from the subject of the record or his legal representative
 641 dated no more than 90 days before the date the request is made; or

642 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health
 643 care provider, as defined in Section 26-33a-102, if releasing the record or information in the
 644 record is consistent with normal professional practice and medical ethics; or

645 (e) any person to whom the record must be provided pursuant to:

646 (i) court order as provided in Subsection (7); or

647 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

648 Powers.

649 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

650 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
651 a government public health agency upon submission of:

652 (A) a release from the subject of the record that is dated no more than 90 days prior to
653 the date the request is made; and

654 (B) a signed acknowledgment of the terms of disclosure of controlled information as
655 provided by Subsection (2)(b); and

656 (ii) any person to whom the record must be disclosed pursuant to:

657 (A) a court order as provided in Subsection (7); or

658 (B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

659 Powers.

660 (b) A person who receives a record from a governmental entity in accordance with
661 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
662 including the subject of the record.

663 (3) If there is more than one subject of a private or controlled record, the portion of the
664 record that pertains to another subject shall be segregated from the portion that the requester is
665 entitled to inspect.

666 (4) Upon request, and except as provided in Subsection (10)(b), a governmental entity
667 shall disclose a protected record to:

668 (a) the person who submitted the record;

669 (b) any other individual who:

670 (i) has a power of attorney from all persons, governmental entities, or political
671 subdivisions whose interests were sought to be protected by the protected classification; or

672 (ii) submits a notarized release from all persons, governmental entities, or political
673 subdivisions whose interests were sought to be protected by the protected classification or from
674 their legal representatives dated no more than 90 days prior to the date the request is made;

675 (c) any person to whom the record must be provided pursuant to:

676 (i) a court order as provided in Subsection (7); or

677 (ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

678 Powers; or

679 (d) the owner of a mobile home park, subject to the conditions of Subsection
680 41-1a-116(5).

681 (5) A governmental entity may disclose a private, controlled, or protected record to
682 another governmental entity, political subdivision, another state, the United States, or a foreign
683 government only as provided by Section 63-2-206.

684 (6) Before releasing a private, controlled, or protected record, the governmental entity
685 shall obtain evidence of the requester's identity.

686 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
687 signed by a judge from a court of competent jurisdiction, provided that:

688 (a) the record deals with a matter in controversy over which the court has jurisdiction;

689 (b) the court has considered the merits of the request for access to the record; and

690 (c) the court has considered and, where appropriate, limited the requester's use and
691 further disclosure of the record in order to protect:

692 (i) privacy interests in the case of private or controlled records;

693 (ii) business confidentiality interests in the case of records protected under Subsection
694 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and

695 (iii) privacy interests or the public interest in the case of other protected records;

696 (d) to the extent the record is properly classified private, controlled, or protected, the
697 interests favoring access, considering limitations thereon, outweigh the interests favoring
698 restriction of access; and

699 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
700 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

701 (8) (a) A governmental entity may disclose or authorize disclosure of private or
702 controlled records for research purposes if the governmental entity:

703 (i) determines that the research purpose cannot reasonably be accomplished without
704 use or disclosure of the information to the researcher in individually identifiable form;

705 (ii) determines that:

706 (A) the proposed research is bona fide; and

707 (B) the value of the research outweighs the infringement upon personal privacy;

708 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
709 the records; and

710 (B) requires the removal or destruction of the individual identifiers associated with the
711 records as soon as the purpose of the research project has been accomplished;

712 (iv) prohibits the researcher from:

713 (A) disclosing the record in individually identifiable form, except as provided in
714 Subsection (8)(b); or

715 (B) using the record for purposes other than the research approved by the governmental
716 entity; and

717 (v) secures from the researcher a written statement of the researcher's understanding of
718 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
719 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
720 under Section 63-2-801.

721 (b) A researcher may disclose a record in individually identifiable form if the record is
722 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
723 or disclosure of the record in individually identifiable form will be made by the auditor or
724 evaluator except as provided by this section.

725 (c) A governmental entity may require indemnification as a condition of permitting
726 research under this Subsection (8).

727 (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may
728 disclose to persons other than those specified in this section records that are:

729 (i) private under Section 63-2-302; or

730 (ii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
731 business confidentiality has been made under Section 63-2-308.

732 (b) Under Subsection 63-2-403(11)(b), the records committee may require the
733 disclosure to persons other than those specified in this section of records that are:

734 (i) private under Section 63-2-302;

735 (ii) controlled under Section 63-2-303; or

736 (iii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
737 business confidentiality has been made under Section 63-2-308.

738 (c) Under Subsection 63-2-404(8), the court may require the disclosure of records that
739 are private under Section 63-2-302, controlled under Section 63-2-303, or protected under
740 Section 63-2-304 to persons other than those specified in this section.

741 (10) (a) A private record described in Subsection 63-2-302(2)(f) may only be disclosed
742 as provided in Subsection (1)(e).

743 (b) A protected record described in Subsection 63-2-304(43) may only be disclosed as
744 provided in Subsection (4)(c) or Section 62A-3-312.

745 Section 18. Section **63-2-302** is amended to read:

746 **63-2-302. Private records.**

747 (1) The following records are private:

748 (a) records concerning an individual's eligibility for unemployment insurance benefits,
749 social services, welfare benefits, or the determination of benefit levels;

750 (b) records containing data on individuals describing medical history, diagnosis,
751 condition, treatment, evaluation, or similar medical data;

752 (c) records of publicly funded libraries that when examined alone or with other records
753 identify a patron;

754 (d) records received or generated for a Senate or House Ethics Committee concerning
755 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
756 meeting, if the ethics committee meeting was closed to the public;

757 (e) records received or generated for a Senate confirmation committee concerning
758 character, professional competence, or physical or mental health of an individual:

759 (i) if prior to the meeting, the chair of the committee determines release of the records:

760 (A) reasonably could be expected to interfere with the investigation undertaken by the
761 committee; or

762 (B) would create a danger of depriving a person of a right to a fair proceeding or
763 impartial hearing; and

764 (ii) after the meeting, if the meeting was closed to the public;

765 (f) employment records concerning a current or former employee of, or applicant for
766 employment with, a governmental entity that would disclose that individual's home address,
767 home telephone number, Social Security number, insurance coverage, marital status, or payroll
768 deductions;

769 (g) records or parts of records under Section 63-2-302.5 that a current or former
770 employee identifies as private according to the requirements of that section;

771 (h) that part of a record indicating a person's Social Security number or federal

772 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
773 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

774 (i) that part of a voter registration record identifying a voter's driver license or
775 identification card number, Social Security number, or last four digits of the Social Security
776 number;

777 (j) a record that:

778 (i) contains information about an individual;

779 (ii) is voluntarily provided by the individual; and

780 (iii) goes into an electronic database that:

781 (A) is designated by and administered under the authority of the Chief Information
782 Officer; and

783 (B) acts as a repository of information about the individual that can be electronically
784 retrieved and used to facilitate the individual's online interaction with a state agency;

785 (k) information provided to the Commissioner of Insurance under:

786 (i) Subsection 31A-23a-115(2)(a); or

787 (ii) Subsection 31A-23a-302(3); and

788 (l) information obtained through a criminal background check under Title 11, Chapter
789 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

790 (2) The following records are private if properly classified by a governmental entity:

791 (a) records concerning a current or former employee of, or applicant for employment
792 with a governmental entity, including performance evaluations and personal status information
793 such as race, religion, or disabilities, but not including records that are public under Subsection
794 63-2-301(2)(b) or 63-2-301(3)(o), or private under Subsection (1)(b);

795 (b) records describing an individual's finances, except that the following are public:

796 (i) records described in Subsection 63-2-301(2);

797 (ii) information provided to the governmental entity for the purpose of complying with
798 a financial assurance requirement; or

799 (iii) records that must be disclosed in accordance with another statute;

800 (c) records of independent state agencies if the disclosure of those records would
801 conflict with the fiduciary obligations of the agency;

802 (d) other records containing data on individuals the disclosure of which constitutes a

803 clearly unwarranted invasion of personal privacy; ~~and~~

804 (e) records provided by the United States or by a government entity outside the state
805 that are given with the requirement that the records be managed as private records, if the
806 providing entity states in writing that the record would not be subject to public disclosure if
807 retained by it[-]; and

808 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
809 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
810 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

811 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
812 records, statements, history, diagnosis, condition, treatment, and evaluation.

813 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
814 doctors, or affiliated entities are not private records or controlled records under Section
815 63-2-303 when the records are sought:

816 (i) in connection with any legal or administrative proceeding in which the patient's
817 physical, mental, or emotional condition is an element of any claim or defense; or

818 (ii) after a patient's death, in any legal or administrative proceeding in which any party
819 relies upon the condition as an element of the claim or defense.

820 (c) Medical records are subject to production in a legal or administrative proceeding
821 according to state or federal statutes or rules of procedure and evidence as if the medical
822 records were in the possession of a nongovernmental medical care provider.

823 Section 19. **Repealer.**

824 This bill repeals:

825 Section **62A-3-306, Anonymity of reporter.**

826 Section **62A-3-313, Penalty for unauthorized release of information.**

Legislative Review Note
as of 1-7-08 3:42 PM

Office of Legislative Research and General Counsel

S.B. 63 - Adult Protective Services Amendments

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
