

1 **CHILD ABUSE AND NEGLECT REGISTRY -**
2 **MANAGEMENT AND LICENSING**
3 **INFORMATION SYSTEMS AMENDMENTS**

4 2008 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Gene Davis**

7 House Sponsor: David Litvack

8
9 **LONG TITLE**

10 **Committee Note:**

11 The Child Welfare Legislative Oversight Panel recommended this bill.

12 **General Description:**

13 This bill amends provisions of the Utah Human Services Code and the Juvenile Court
14 Act of 1996 relating to the Management Information System maintained by the
15 Department of Human Services.

16 **Highlighted Provisions:**

17 This bill:

- 18 ▶ provides that reports that are found to be without merit and false may not be
19 included in the Management Information System;
- 20 ▶ provides that contract providers for the Division of Child and Family Services and
21 designated court clerks may only have access to reports on the Management
22 Information System that are substantiated or supported;
- 23 ▶ places limitations on the use of certain reports on the Management Information
24 System as evidence in proceedings for child custody, a protection order, or divorce;
- 25 ▶ requires that, when the division or a court makes a finding that a report is without
26 merit, the division or the court must also determine whether the report is false;
- 27 ▶ describes how long a report remains on the Management Information System;



- 28 ▶ provides that proceedings for judicial review of a final agency action relating to a
- 29 report on the Management Information System are closed to the public;
- 30 ▶ grants rulemaking authority to the Judicial Council to ensure the confidentiality of
- 31 the proceedings described above; and
- 32 ▶ makes technical changes.

33 **Monies Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **26-21-9.5**, as last amended by Chapter 43, Laws of Utah 2007
- 40 **62A-2-121**, as last amended by Chapter 152, Laws of Utah 2007
- 41 **62A-4a-1003**, as last amended by Laws of Utah 2007, Chapter 152
- 42 **62A-4a-1008**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 43 **62A-4a-1009**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 44 **78-3a-104**, as last amended by Laws of Utah 2006, Chapters 55, 132, and 281
- 45 **78-3a-320**, as last amended by Laws of Utah 2006, Chapter 77

46 ENACTS:

47 **62A-4a-1003.5**, Utah Code Annotated 1953



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

50 Section 1. Section **26-21-9.5** is amended to read:

51 **26-21-9.5. Criminal background check and Licensing Information System check.**

52 (1) For purposes of this section:

- 53 (a) "Covered health care facility" means:
- 54 (i) home health care agencies;
- 55 (ii) hospices;
- 56 (iii) nursing care facilities;
- 57 (iv) assisted-living facilities;
- 58 (v) small health care facilities; and

- 59 (vi) end stage renal disease facilities.
- 60 (b) "Covered person" includes:
- 61 (i) the following people who provide direct patient care:
- 62 (A) employees;
- 63 (B) volunteers; and
- 64 (C) people under contract with the facility; and
- 65 (ii) for residential settings, any individual residing in the home where the assisted
- 66 living or small health care program is to be licensed who:
- 67 (A) is 18 years of age or older; or
- 68 (B) is a child between the age of 12 and 17 years of age; however, the identifying
- 69 information required for a child between the age of 12 and 17 does not include fingerprints.
- 70 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
- 71 covered health care facility at the time of initial application for a license and license renewal
- 72 shall:
- 73 (a) submit the name and other identifying information of each covered person at the
- 74 covered facility who:
- 75 (i) provides direct care to a patient; and
- 76 (ii) has been the subject of a criminal background check within the preceding
- 77 three-year period by a public or private entity recognized by the department; and
- 78 (b) submit the name and other identifying information, which may include fingerprints,
- 79 of each covered person at the covered facility who has not been the subject of a criminal
- 80 background check in accordance with Subsection (1)(a)(ii).
- 81 (3) (a) The department shall forward the information received under Subsection (2)(b)
- 82 to the Criminal Investigations and Technical Services Division of the Department of Public
- 83 Safety for processing to determine whether the covered individual has been convicted of any
- 84 crime.
- 85 (b) Except for individuals described in Subsection (1)(b)(ii)(B), if an individual has not
- 86 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
- 87 national criminal history record check. The fingerprints shall be submitted to the FBI through
- 88 the Criminal Investigations and Technical Services Division. The individual or licensee is
- 89 responsible for the cost of the fingerprinting and national criminal history check.

90 (4) The department may determine whether:

91 (a) an individual whose name and other identifying information has been submitted
92 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
93 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
94 of a severe type of child abuse or neglect under Section 78-3a-320, if identification as a
95 possible perpetrator of child abuse or neglect is relevant to the employment activities of that
96 individual;

97 (b) an individual whose name and other identifying information has been submitted
98 pursuant to Subsection (2) and who provides direct care to disabled or elder adults, or who is
99 residing in a residential home that is a facility licensed to provide direct care to disabled or
100 elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or elder
101 adult by accessing in accordance with Subsection (5) the database created in Section
102 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect,
103 or exploitation is relevant to the employment activities or residence of that person; or

104 (c) an individual whose name or other identifying information has been submitted
105 pursuant to Subsection (2) has been adjudicated in a juvenile court of committing an act which
106 if committed by an adult would be a felony or a misdemeanor if:

107 (i) the individual is under the age of 28 years; or

108 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
109 or is currently subject to a plea in abeyance or diversion agreement for any felony or
110 misdemeanor.

111 (5) (a) The department shall:

112 (i) designate two persons within the department to access:

113 (A) the Licensing Information System described in Section 62A-4a-1006;

114 (B) court records under Subsection 78-3a-320[~~(6)~~](7);

115 (C) the database described in Subsection (4)(b); and

116 (D) juvenile court records as permitted by Subsection (4)(c); and

117 (ii) adopt measures to:

118 (A) protect the security of the Licensing Information System, the court records, and the
119 database; and

120 (B) strictly limit access to the Licensing Information System, the court records, and the

121 database to those designated under Subsection (5)(a)(i).

122 (b) Those designated under Subsection (5)(a)(i) shall receive training from the
123 Department of Human Services with respect to:

124 (i) accessing the Licensing Information System, the court records, and the database;

125 (ii) maintaining strict security; and

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

128 (c) Those designated under Subsection (5)(a)(i):

129 (i) are the only ones in the department with the authority to access the Licensing
130 Information System, the court records, and database; and

131 (ii) may only access the Licensing Information System, the court records, and the
132 database for the purpose of licensing and in accordance with the provisions of Subsection (4).

133 (6) Within ten days of initially hiring a covered individual, a covered health care
134 facility shall submit the covered individual's information to the department in accordance with
135 Subsection (2).

136 (7) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
137 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
138 who has been convicted of a criminal offense, or a person described in Subsection (4), may
139 provide direct care to a patient in a covered health care facility, taking into account the nature
140 of the criminal conviction or substantiated finding and its relation to patient care.

141 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for
142 a criminal background check processed pursuant to this section.

143 (9) The department may inform the covered health care facility of information
144 discovered under Subsection (4) with respect to a covered individual.

145 (10) A covered health care facility is not civilly liable for submitting information to the
146 department as required by this section.

147 Section 2. Section **62A-2-121** is amended to read:

148 **62A-2-121. Access to abuse and neglect information.**

149 (1) For purposes of this section:

150 (a) "Direct service worker" is as defined in Section 62A-5-101.

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

152 (2) With respect to a licensee, a certified local inspector applicant, a direct service
153 worker, or a personal care attendant, the department may access only the Licensing Information
154 System of the Division of Child and Family Services created by Section 62A-4a-1006 and
155 juvenile court records under Subsection 78-3a-320~~(6)~~(7), for the purpose of:

156 (a) (i) determining whether a person associated with a licensee, with direct access to
157 children:

158 (A) is listed in the Licensing Information System; or

159 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
160 neglect under Subsections 78-3a-320(1) and (2); and

161 (ii) informing a licensee that a person associated with the licensee:

162 (A) is listed in the Licensing Information System; or

163 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
164 neglect under Subsections 78-3a-320(1) and (2);

165 (b) (i) determining whether a certified local inspector applicant:

166 (A) is listed in the Licensing Information System; or

167 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
168 neglect under Subsections 78-3a-320(1) and (2); and

169 (ii) informing a local government that a certified local inspector applicant:

170 (A) is listed in the Licensing Information System; or

171 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
172 neglect under Subsections 78-3a-320(1) and (2);

173 (c) (i) determining whether a direct service worker:

174 (A) is listed in the Licensing Information System; or

175 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
176 neglect under Subsections 78-3a-320(1) and (2); and

177 (ii) informing a direct service worker or the direct service worker's employer that the
178 direct service worker:

179 (A) is listed in the Licensing Information System; or

180 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
181 neglect under Subsections 78-3a-320(1) and (2); or

182 (d) (i) determining whether a personal care attendant:

183 (A) is listed in the Licensing Information System; or

184 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
185 neglect under Subsections 78-3a-320(1) and (2); and

186 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
187 personal care attendant:

188 (A) is listed in the Licensing Information System; or

189 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
190 neglect under Subsections 78-3a-320(1) and (2).

191 (3) Notwithstanding Subsection (2), the department may access the Division of Child
192 and Family Service's Management Information System under Section 62A-4a-1003:

193 (a) for the purpose of licensing and monitoring foster parents; and

194 (b) for the purposes described in Subsection 62A-4a-1003(1)(d).

195 (4) After receiving identifying information for a person under Subsection
196 62A-2-120(1), the department shall process the information for the purposes described in
197 Subsection (2).

198 (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
199 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
200 may have direct access or provide services to children when:

201 (a) the person is listed in the Licensing Information System of the Division of Child
202 and Family Services created by Section 62A-4a-1006; or

203 (b) juvenile court records show that a court made a substantiated finding under Section
204 78-3a-320, that the person committed a severe type of child abuse or neglect.

205 Section 3. Section **62A-4a-1003** is amended to read:

206 **62A-4a-1003. Management Information System -- Requirements -- Contents --**
207 **Purpose -- Access.**

208 (1) (a) The division shall develop and implement a Management Information System
209 that meets the requirements of this section and the requirements of federal law and regulation.

210 (b) The information and records contained in the Management Information System:

211 (i) are protected records under Title 63, Chapter 2, Government Records Access and
212 Management Act; and

213 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with

214 statutory authorization under Title 63, Chapter 2, Government Records Access and
215 Management Act, to review the information and records described in this Subsection (1)(b).

216 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
217 Subsection (1)(b) are available to a person:

218 (i) as provided under Subsection [~~(6)~~] (7) or Section 62A-4a-1006; or

219 (ii) who has specific statutory authorization to access the information or records for the
220 purpose of assisting the state with state and federal requirements to maintain information solely
221 for the purpose of protecting minors and providing services to families in need.

222 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in
223 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,
224 be provided by the division:

225 (i) to comply with child abuse and neglect registry checks requested by other states;
226 and

227 (ii) to the United States Department of Health and Human Services for purposes of
228 maintaining an electronic national registry of substantiated cases of child abuse and neglect.

229 (2) With regard to all child welfare cases, the Management Information System shall
230 provide each caseworker and the department's office of licensing, exclusively for the purposes
231 of foster parent licensure and monitoring, with a complete history of each child in that worker's
232 caseload, including:

233 (a) a record of all past action taken by the division with regard to that child and the
234 child's siblings;

235 (b) the complete case history and all reports and information in the control or keeping
236 of the division regarding that child and the child's siblings;

237 (c) the number of times the child has been in the custody of the division;

238 (d) the cumulative period of time the child has been in the custody of the division;

239 (e) except as provided in Subsection (3), a record of all reports of abuse or neglect
240 received by the division with regard to that child's parent, parents, or guardian including:

241 (i) for each report, documentation of the:

242 (A) latest status; or

243 (B) final outcome or determination; and

244 (ii) information that indicates whether each report was found to be:

- 245 (A) supported;
- 246 (B) unsupported;
- 247 (C) substantiated by a juvenile court;
- 248 (D) unsubstantiated by a juvenile court; or
- 249 (E) without merit;
- 250 (f) the number of times the child's parent or parents failed any child and family plan;

251 and

- 252 (g) the number of different caseworkers who have been assigned to that child in the
- 253 past.

254 (3) The Management Information System may not include a report, or any reference to
255 a report, that is:

- 256 (a) found by the division to be:
- 257 (i) without merit; and
- 258 (ii) false, under Section 62A-4a-1003.5; or
- 259 (b) found by a court to be:
- 260 (i) without merit; and
- 261 (ii) false, under Subsection 78-3a-320(4).

262 [~~3~~] (4) The [division's] Management Information System shall:

- 263 (a) contain all key elements of each family's current child and family plan, including:
- 264 (i) the dates and number of times the plan has been administratively or judicially
- 265 reviewed;
- 266 (ii) the number of times the parent or parents have failed that child and family plan;

267 and

- 268 (iii) the exact length of time the child and family plan has been in effect; and
- 269 (b) alert caseworkers regarding deadlines for completion of and compliance with
- 270 policy, including child and family plans.

271 [~~4~~] (5) With regard to all child protective services cases, the Management
272 Information System shall:

- 273 (a) monitor the compliance of each case with:
- 274 (i) division rule and policy;
- 275 (ii) state law; and

276 (iii) federal law and regulation; and

277 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or
278 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
279 the alleged perpetrator.

280 ~~[(5)]~~ (6) Except as provided in Subsection ~~[(6)]~~ (7) regarding contract providers and
281 Section 62A-4a-1006 regarding limited access to the Licensing Information System, all
282 information contained in the division's Management Information System is available to the
283 department, upon the approval of the executive director, on a need-to-know basis.

284 ~~[(6)]~~ (7) (a) Subject to this Subsection ~~[(6)]~~ (7), the division may allow its contract
285 providers, court clerks designated by the Administrative Office of the Courts, and the Office of
286 the Guardian Ad Litem to have limited access to the Management Information System.

287 (b) A division contract provider has access only to information about a person who is
288 currently receiving services from that specific contract provider.

289 (c) (i) Designated court clerks may only have access to information necessary to
290 comply with Subsection 78-3h-102(2).

291 (ii) The Office of the Guardian Ad Litem may access only the information that:

292 (A) relates to children and families where the Office of the Guardian Ad Litem is
293 appointed by a court to represent the interests of the children; and

294 (B) except as provided in Subsection ~~[(6)]~~ (7)(d), is entered into the Management
295 Information System on or after July 1, 2004.

296 (d) Notwithstanding Subsection ~~[(6)]~~ (7)(c)(ii)(B), the Office of the Guardian Ad Litem
297 shall have access to all child abuse and neglect referrals about children and families where the
298 office has been appointed by a court to represent the interests of the children, regardless of the
299 date that the information is entered into the Management Information System.

300 (e) Each contract provider and designated representative of the Office of the Guardian
301 Ad Litem who requests access to information contained in the Management Information
302 System shall:

303 (i) take all necessary precautions to safeguard the security of the information contained
304 in the Management Information System;

305 (ii) train its employees regarding:

306 (A) requirements for protecting the information contained in the Management

307 Information System as required by this chapter and under Title 63, Chapter 2, Government
308 Records Access and Management Act; and

309 (B) the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper
310 release of information; and

311 (iii) monitor its employees to ensure that they protect the information contained in the
312 Management Information System as required by law.

313 (f) The division shall take reasonable precautions to ensure that its contract providers
314 comply with the requirements of this Subsection [~~(6)~~] (7).

315 (g) The contract providers and designated court clerks described in this Subsection (7)
316 may not have access to reports, or references to reports, that are found to be unsubstantiated,
317 unsupported, or without merit.

318 [~~(7)~~] (8) The division shall take all necessary precautions, including password
319 protection and other appropriate and available technological techniques, to prevent
320 unauthorized access to or release of information contained in the Management Information
321 System.

322 (9) Reports that are unsubstantiated, unsupported, or without merit may not be
323 admitted as evidence, or relied upon, in a trial or proceeding for child custody, a protection
324 order, or divorce, for the purpose of establishing the truth of the incident asserted in the report.

325 Section 4. Section **62A-4a-1003.5** is enacted to read:

326 **62A-4a-1003.5. Report without merit -- Additional finding.**

327 If the division finds that a report is without merit, the division shall make an additional
328 finding regarding whether the report is false.

329 Section 5. Section **62A-4a-1008** is amended to read:

330 **62A-4a-1008. Timeframes for deletion of specified information or reports.**

331 [~~(1) Unless the executive director determines that there is good cause for keeping a~~
332 ~~report of abuse or neglect in the Management Information System, based on standards~~
333 ~~established by rule, the division shall delete any reference to:]~~

334 [~~(a) a report that is without merit, if no subsequent report involving the same alleged~~
335 ~~perpetrator has occurred within one year; or]~~

336 [~~(b) a report that is determined by a court of competent jurisdiction to be~~
337 ~~unsubstantiated or without merit, if no subsequent report involving the same alleged~~

338 ~~perpetrator has occurred within five years.]~~

339 (1) Except as provided in Subsection (3) or (4), the division shall delete from the
340 Management Information System a report that is unsubstantiated or unsupported:

341 (a) after the report has been on the Management Information system for three years,
342 unless the alleged perpetrator is listed on the Management Information System as the
343 perpetrator in a previous substantiated or supported report; or

344 (b) after the report has been on the Management Information System for five years, if
345 the alleged perpetrator is listed on the Management Information System as the perpetrator in a
346 previous substantiated or supported report.

347 (2) Except as provided in Subsection (3), (4), or 62A-4a-1003(3), the division shall
348 delete from the Management Information System a report that is without merit after the report
349 has been on the Management Information System one year.

350 (3) The time periods described in Subsections (1) and (2) shall start over, beginning on
351 the day that a subsequent report is placed on the Management Information System, if:

352 (a) the alleged perpetrator in the subsequent report is the same as the alleged
353 perpetrator in the report described in Subsection (1) or (2); and

354 (b) the subsequent report is found to be:

355 (i) supported;

356 (ii) unsupported;

357 (iii) substantiated;

358 (iv) unsubstantiated; or

359 (v) without merit, unless the report is:

360 (A) found by the division to be false, under Section 62A-4a-1003.5; or

361 (B) found by a court to be false, under Subsection 78-3a-320(4).

362 (4) (a) Except for a report described in Subsection 62A-4a-1003(3), a report described
363 in this section may not be deleted, unless otherwise ordered by a court, if the executive director
364 determines, based on standards established by rule, that there is good cause for keeping the
365 report in the Management Information System.

366 (b) A court may order the division to delete a report before the time periods described
367 in this section, if the court finds, by clear and convincing evidence, that it is in the interests of
368 justice to order deletion of the report at an earlier time.

369 (5) When the division deletes a report under this section, the division shall also delete
370 all references to the report, and information contained in the report, from the Management
371 Information System.

372 ~~(2)~~ (6) (a) The division shall maintain a separation of reports as follows:

373 (i) those that are supported;

374 (ii) those that are unsupported;

375 (iii) those that are without merit;

376 (iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;

377 (v) those that are substantiated under the law in effect prior to May 6, 2002; and

378 (vi) those that are consented-to supported findings under Subsection

379 62A-4a-1005(3)(a)(iii).

380 (b) Only persons with statutory authority ~~have~~ may access ~~to~~ the information
381 contained in any of the reports identified in Subsection ~~(2)~~ (6)(a).

382 Section 6. Section **62A-4a-1009** is amended to read:

383 **62A-4a-1009. Notice and opportunity to challenge supported finding in**
384 **Management Information System -- Right of judicial review.**

385 (1) (a) Except as provided in Subsection (2), the division shall send a notice of agency
386 action to a person with respect to whom the division makes a supported finding. In addition, if
387 the alleged perpetrator is under the age of 18, the division shall:

388 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

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

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

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

394 (ii) the use or effect, in any other setting, of a supported finding by the division at the
395 completion of an investigation for any purpose other than for notification under Subsection (1)
396 (a).

397 (2) Subsection (1) does not apply to a person who has been served with notice under
398 Subsection 62A-4a-1005(1)(a).

399 (3) The notice described in Subsection (1) shall state:

400 (a) that the division has conducted an investigation regarding alleged child abuse,
401 neglect, or dependency;

402 (b) that the division has made a supported finding of abuse, neglect, or dependency;

403 (c) that facts gathered by the division support the supported finding;

404 (d) that the person has the right to request:

405 (i) a copy of the report; and

406 (ii) an opportunity to challenge the supported finding by the division; and

407 (e) that failure to request an opportunity to challenge the supported finding within 30
408 days of receiving the notice will result in an unappealable supported finding of child abuse,
409 neglect, or dependency unless the person can show good cause for why compliance within the
410 30-day requirement was virtually impossible or unreasonably burdensome.

411 (4) (a) A person may make a request to challenge a supported finding within 30 days of
412 a notice being received under this section.

413 (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative
414 Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b,
415 Administrative Procedures Act.

416 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall
417 have the burden of proving, by a preponderance of the evidence, that child abuse, neglect, or
418 dependency occurred and that the alleged perpetrator was substantially responsible for the
419 abuse or neglect that occurred.

420 (b) Any party shall have the right of judicial review of final agency action, in
421 accordance with Title 63, Chapter 46b, Administrative Procedures Act.

422 (c) Proceedings for judicial review of a final agency action under this section shall be
423 closed to the public.

424 (d) The Judicial Council shall make rules that ensure the confidentiality of the
425 proceedings described in Subsection (5)(c) and the records related to the proceedings.

426 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after
427 receiving notice, fails to challenge a supported finding in accordance with this section:

428 (a) may not further challenge the finding; and

429 (b) shall have no right to:

430 (i) agency review of the finding;

431 (ii) an adjudicative hearing on the finding; or

432 (iii) judicial review of the finding.

433 (7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a
434 request under Subsection (4) to challenge a supported finding if a court of competent
435 jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that
436 the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which
437 was also the subject of the supported finding.

438 (b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

439 (c) An adjudicative proceeding under Subsection (5) may be stayed during the time a
440 judicial action on the same matter is pending.

441 (8) Pursuant to Section 78-3a 320, an adjudicative proceeding on a supported finding of
442 a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may
443 be joined in the juvenile court with an adjudicative proceeding on a supported finding of a
444 severe type of child abuse or neglect.

445 Section 7. Section **78-3a-104** is amended to read:

446 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

447 (1) Except as otherwise provided by law, the juvenile court has exclusive original
448 jurisdiction in proceedings concerning:

449 (a) a child who has violated any federal, state, or local law or municipal ordinance or a
450 person younger than 21 years of age who has violated any law or ordinance before becoming
451 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating
452 and ordinances;

453 (b) a person 21 years of age or older who has failed or refused to comply with an order
454 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's
455 21st birthday; however, the continuing jurisdiction is limited to causing compliance with
456 existing orders;

457 (c) a child who is an abused child, neglected child, or dependent child, as those terms
458 are defined in Section 78-3a-103;

459 (d) a protective order for a child pursuant to the provisions of Title 78, Chapter 3h,
460 Child Protective Orders, which the juvenile court may transfer to the district court if the
461 juvenile court has entered an ex parte protective order and finds that:

- 462 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
463 parent of the child who is the object of the petition;
- 464 (ii) the district court has a petition pending or an order related to custody or parent-time
465 entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6, Cohabitant Abuse Act, or Title
466 78, Chapter 45g, Utah Uniform Parentage Act, in which the petitioner and the respondent are
467 parties; and
- 468 (iii) the best interests of the child will be better served in the district court;
- 469 (e) appointment of a guardian of the person or other guardian of a minor who comes
470 within the court's jurisdiction under other provisions of this section;
- 471 (f) the emancipation of a minor in accordance with Part 10, Emancipation;
- 472 (g) the termination of the legal parent-child relationship in accordance with Part 4,
473 Termination of Parental Rights Act, including termination of residual parental rights and
474 duties;
- 475 (h) the treatment or commitment of a mentally retarded minor;
- 476 (i) a minor who is a habitual truant from school;
- 477 (j) the judicial consent to the marriage of a child under age 16 upon a determination of
478 voluntariness or where otherwise required by law, employment, or enlistment of a child when
479 consent is required by law;
- 480 (k) any parent or parents of a child committed to a secure youth corrections facility, to
481 order, at the discretion of the court and on the recommendation of a secure facility, the parent
482 or parents of a child committed to a secure facility for a custodial term, to undergo group
483 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of
484 that parent's or parents' child, or any other therapist the court may direct, for a period directed
485 by the court as recommended by a secure facility;
- 486 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;
- 487 (m) the treatment or commitment of a mentally ill child. The court may commit a child
488 to the physical custody of a local mental health authority in accordance with the procedures and
489 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to
490 Division of Substance Abuse and Mental Health. The court may not commit a child directly to
491 the Utah State Hospital;
- 492 (n) the commitment of a child in accordance with Section 62A-15-301;

493 (o) de novo review of final agency actions resulting from an informal adjudicative
494 proceeding as provided in Section 63-46b-15; and

495 (p) adoptions conducted in accordance with the procedures described in Title 78,
496 Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the
497 rights of a parent and finds that adoption is in the best interest of the child.

498 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
499 jurisdiction over any traffic or boating offense committed by a person under 16 years of age
500 and concurrent jurisdiction over all other traffic or boating offenses committed by a person 16
501 years of age or older, except that the court shall have exclusive jurisdiction over the following
502 offenses committed by a child:

503 (a) Section 76-5-207, automobile homicide;

504 (b) Section 41-6a-502, operating a vehicle while under the influence of alcohol or
505 drugs;

506 (c) Section 41-6a-528, reckless driving or Section 73-18-12, reckless operation;

507 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or
508 semitrailer for an extended period of time; and

509 (e) Section 41-6a-210 or 73-18-20, fleeing a peace officer.

510 (3) The court also has jurisdiction over traffic and boating offenses that are part of a
511 single criminal episode filed in a petition that contains an offense over which the court has
512 jurisdiction.

513 (4) The juvenile court has jurisdiction over an ungovernable or runaway child who is
514 referred to it by the Division of Child and Family Services or by public or private agencies that
515 contract with the division to provide services to that child where, despite earnest and persistent
516 efforts by the division or agency, the child has demonstrated that the child:

517 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school
518 authorities to the extent that the child's behavior or condition endangers the child's own welfare
519 or the welfare of others; or

520 (b) has run away from home.

521 (5) This section does not restrict the right of access to the juvenile court by private
522 agencies or other persons.

523 (6) The juvenile court has jurisdiction of all magistrate functions relative to cases

524 arising under Section 78-3a-602.

525 (7) The juvenile court has jurisdiction to make a finding of substantiated,
526 unsubstantiated, [or] without merit, or false in accordance with Section 78-3a-320.

527 Section 8. Section **78-3a-320** is amended to read:

528 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

529 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division
530 of Child and Family Services or any interested person informing the court, among other things,
531 that the division has made a supported finding that a person committed a severe type of child
532 abuse or neglect as defined in Section 62A-4a-1002, the court shall:

- 533 (a) make a finding of substantiated, unsubstantiated, or without merit;
- 534 (b) include the finding described in Subsection (1)(a) in a written order; and
- 535 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

536 (2) ~~[The]~~ A judicial finding under ~~[Subsection]~~ Subsections (1), (3), and (4) shall be
537 made:

- 538 (a) as part of the adjudication hearing;
- 539 (b) at the conclusion of the adjudication hearing; or
- 540 (c) as part of a court order entered pursuant to a written stipulation of the parties.

541 (3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with
542 the court a petition for removal of the person's name from the Licensing Information System.

- 543 (b) At the conclusion of the hearing on the petition, the court shall:
 - 544 (i) make a finding of substantiated, unsubstantiated, or without merit;
 - 545 (ii) include the finding described in Subsection (1)(a) in a written order; and
 - 546 (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.

547 (4) (a) If the court makes a finding of without merit under Subsection (1) or (3)(b), the
548 court shall:

- 549 (i) make an additional finding regarding whether the report is false; and
- 550 (ii) include the finding described in Subsection (4)(a)(i) in the orders described in
551 Subsections (1)(b) and (3)(b)(ii).

552 (b) The finding described in Subsection (4)(a)(i) shall be made solely for the purpose
553 of determining, under Subsection 62A-4a-1003(3), whether the report upon which the finding
554 is based, or any reference to the report, will be included in the Management Information

555 System.

556 ~~[(4)]~~ (5) A proceeding for adjudication of a supported finding under this section of a
557 type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be
558 joined in the juvenile court with an adjudication of a severe type of child abuse or neglect.

559 ~~[(5)]~~ (6) If a person whose name appears on the Licensing Information system prior to
560 May 6, 2002 files a petition during the time that an alleged perpetrator's application for
561 clearance to work with children or vulnerable adults is pending, the court shall hear the matter
562 and enter a final decision no later than 60 days after the filing of the petition.

563 ~~[(6)]~~ (7) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5,
564 62A-1-118, and for the purposes described in Section 62A-2-121:

565 (a) the court shall make available records of its findings under Subsections (1) and (2)
566 for licensing purposes, only to those with statutory authority to access also the Licensing
567 Information System created under Section 62A-4a-1006; and

568 (b) any appellate court shall make available court records of appeals from juvenile
569 court decisions under Subsections (1)~~[(2), (3), and (4)]~~ through (5) for licensing purposes,
570 only to those with statutory authority to access also the Licensing Information System.

Legislative Review Note
as of 11-6-07 11:33 AM

Office of Legislative Research and General Counsel

Fiscal Note**S.B. 17 - Child Abuse and Neglect Registry - Management and Licensing
Information Systems Amendments**

2008 General Session

State of Utah

State Impact

It is estimated that the Division of Child and Family Services will require a one-time General Fund appropriation of \$9,200 and a one-time federal funds appropriation of \$2,800 to implement provisions of this bill in FY 2009.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund, One-Time	\$0	\$9,200	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$2,800	\$0	\$0	\$0	\$0
Total	\$0	\$12,000	\$0	\$0	\$0	\$0

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.