Part 4
Child Abuse or Neglect Reporting Requirements

62A-4a-401 Legislative purpose.
It is the purpose of this part to protect the best interests of children, offer protective services to prevent harm to children, stabilize the home environment, preserve family life whenever possible, and encourage cooperation among the states in dealing with the problem of abuse or neglect.

Amended by Chapter 168, 2016 General Session

62A-4a-402 Definitions.
As used in this part:
(1) "A person responsible for a child's care" means the child's parent, guardian, or other person responsible for the child's care, whether in the same home as the child, a relative's home, a group, family, or center day care facility, a foster care home, or a residential institution.
(2) "Subject" or "subject of the report" means any person reported under this part, including, but not limited to, a child, parent, guardian, or other person responsible for a child's care.

Amended by Chapter 299, 2008 General Session

62A-4a-403 Reporting requirements.
(1)
(a) Except as provided in Subsection (2), when any individual, including an individual licensed under Title 58, Chapter 31b, Nurse Practice Act, or Title 58, Chapter 67, Utah Medical Practice Act, has reason to believe that a child has been subjected to abuse or neglect, or observes a child being subjected to conditions or circumstances that would reasonably result in abuse or neglect, that individual shall immediately report the alleged abuse or neglect to the nearest peace officer, law enforcement agency, or office of the division.
(b) Upon receipt of a report described in Subsection (1)(a), the peace officer or law enforcement agency shall immediately notify the nearest office of the division. If an initial report of abuse or neglect is made to the division, the division shall immediately notify the appropriate local law enforcement agency.
(c) The division shall, in addition to its own investigation, comply with and lend support to investigations by law enforcement undertaken to investigate a report described in Subsection (1)(a).
(2) Subject to Subsection (3), the notification requirement described in Subsection (1)(a) does not apply to a member of the clergy, with regard to any confession made to the member of the clergy while functioning in the ministerial capacity of the member of the clergy and without the consent of the individual making the confession, if:
(a) the perpetrator made the confession directly to the member of the clergy; and
(b) the member of the clergy is, under canon law or church doctrine or practice, bound to maintain the confidentiality of that confession.
(3)
(a) When a member of the clergy receives information about abuse or neglect from any source other than confession of the perpetrator, the member of the clergy is required to report that information even though the member of the clergy may have also received information about abuse or neglect from the confession of the perpetrator.
(b) Exemption of the reporting requirement for a member of the clergy does not exempt the member of the clergy from any other efforts required by law to prevent further abuse or neglect by the perpetrator.

Amended by Chapter 91, 2018 General Session

62A-4a-404 Fetal alcohol syndrome and drug dependency -- Reporting requirements.

When an individual, including a licensee under the Medical Practice Act or the Nurse Practice Act, attends the birth of a child or cares for a child, and determines that the child, at the time of birth, has fetal alcohol syndrome, fetal alcohol spectrum disorder, or fetal drug dependency, the individual shall report that determination to the division as soon as possible.

Amended by Chapter 293, 2012 General Session

62A-4a-405 Death of child -- Reporting requirements.

(1) Any person who has reason to believe that a child has died as a result of abuse or neglect shall report that fact to:
   (a) the local law enforcement agency, who shall report to the county attorney or district attorney as provided under Section 17-18a-202 or 17-18a-203; and
   (b) the appropriate medical examiner in accordance with Title 26, Chapter 4, Utah Medical Examiner Act.

(2) After receiving a report described in Subsection (1), the medical examiner shall investigate and report the medical examiner’s findings to:
   (a) the police;
   (b) the appropriate county attorney or district attorney;
   (c) the attorney general's office;
   (d) the division; and
   (e) if the institution making the report is a hospital, to that hospital.

Amended by Chapter 237, 2013 General Session

62A-4a-406 Photographs.

(1) Any physician, surgeon, medical examiner, peace officer, law enforcement official, or public health officer or official may take photographs of the areas of trauma visible on a child and, if medically indicated, perform radiological examinations.

(2) Photographs may be taken of the premises or of objects relevant to a reported circumstance of abuse or neglect.

(3) Photographs or X-rays, and all other medical records pertinent to an investigation for abuse or neglect shall be made available to the division, law enforcement officials, and the court.

Amended by Chapter 299, 2008 General Session

62A-4a-407 Protective custody.

(1) A physician examining or treating a child may take the child into protective custody not to exceed 72 hours, without the consent of the child's parent, guardian, or any other person responsible for the child's care or exercising temporary or permanent control over the child, when the physician has reason to believe that the child's life or safety will be in danger unless protective custody is exercised.
(2) The person in charge of a hospital or similar medical facility may retain protective custody of a child suspected of being abused or neglected, when he reasonably believes the facts warrant that retention. This action may be taken regardless of whether additional medical treatment is required, and regardless of whether the person responsible for the child's care requests the child's return.

(3) The division shall be immediately notified of protective custody exercised under this section. Protective custody under this section may not exceed 72 hours without an order of the district or juvenile court.

(4) A person who takes a child into, or retains a child in, protective custody under this section shall document:
   (a) the grounds upon which the child was taken into, or retained in, protective custody; and
   (b) the nature of, and necessity for, any medical care or treatment provided to the child.

Amended by Chapter 75, 2006 General Session

62A-4a-408 Written reports.
(1) Reports made pursuant to this part shall be followed by a written report within 48 hours, if requested by the division. The division shall immediately forward a copy of that report to the statewide central register, on forms supplied by the register.

(2) If, in connection with an intended or completed abortion by a minor, a physician is required to make a report of incest or abuse of a minor, the report may not include information that would in any way disclose that the report was made in connection with:
   (a) an abortion; or
   (b) a consultation regarding an abortion.

Amended by Chapter 207, 2006 General Session

62A-4a-409 Investigation by division -- Temporary protective custody -- Preremoval interviews of children.
(1)
   (a) The division shall make a thorough preremoval investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect that a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency exists.
   (b) The primary purpose of the investigation described in Subsection (1)(a) shall be protection of the child.

(2) The preremoval investigation described in Subsection (1)(a) shall include the same investigative requirements described in Section 62A-4a-202.3.

(3) The division shall make a written report of its investigation that shall include a determination regarding whether the alleged abuse or neglect is supported, unsupported, or without merit.

(4)
   (a) The division shall use an interdisciplinary approach when appropriate in dealing with reports made under this part.
   (b) The division shall convene a child protection team to assist the division in the division's protective, diagnostic, assessment, treatment, and coordination services.
   (c) The division may include members of a child protection unit in the division's protective, diagnostic, assessment, treatment, and coordination services.
(d) A representative of the division shall serve as the team’s coordinator and chair. Members of the team shall serve at the coordinator’s invitation. Whenever possible, the team shall include representatives of:
(i) health, mental health, education, and law enforcement agencies;
(ii) the child;
(iii) parent and family support groups unless the parent is alleged to be the perpetrator; and
(iv) other appropriate agencies or individuals.
(5) If a report of neglect is based upon or includes an allegation of educational neglect, the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53G-6-201 through 53G-6-206.
(6) When the division completes its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.
(7) Division workers or other child protection team members have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged abuse or neglect, upon notice to parents of their rights under the Child Abuse Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.
(8) With regard to any interview of a child prior to removal of that child from the child's home:
(a) except as provided in Subsection (8)(b) or (c), the division shall inform a parent of the child prior to the interview of:
(i) the specific allegations concerning the child; and
(ii) the time and place of the interview;
(b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division is not required to comply with Subsection (8)(a);
(c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is unknown, the division may conduct a minimal interview or conversation, not to exceed 15 minutes, with the child prior to complying with Subsection (8)(a);
(d) in all cases described in Subsection (8)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but in no case later than 24 hours after the interview has taken place;
(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and
(f) the child shall be allowed to have a support person of the child's choice present, who:
(i) may include:
   (A) a school teacher;
   (B) an administrator;
   (C) a guidance counselor;
   (D) a child care provider;
   (E) a family member;
   (F) a family advocate; or
   (G) a member of the clergy; and
(ii) may not be an individual who is alleged to be, or potentially may be, the perpetrator.
(9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3, a division worker or child protection team member may take a child into protective custody and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from the child's original environment. Control and jurisdiction over the child is determined by the provisions of Title 78A, Chapter 6, Juvenile Court Act, and as otherwise provided by law.
(10) With regard to cases in which law enforcement has or is conducting an investigation of alleged abuse or neglect of a child:
(a) the division shall coordinate with law enforcement to ensure that there is an adequate safety plan to protect the child from further abuse or neglect; and
(b) the division is not required to duplicate an aspect of the investigation that, in the division's determination, has been satisfactorily completed by law enforcement.
(11) With regard to a mutual case in which a child protection unit was involved in the investigation of alleged abuse or neglect of a child, the division shall consult with the child protection unit before closing the case.

Amended by Chapter 91, 2018 General Session
Amended by Chapter 415, 2018 General Session

62A-4a-410 Immunity from liability -- Exceptions.
(1) Except as provided in Subsection (3), any person, official, or institution participating in good faith in making a report, taking photographs or X-rays, assisting an investigator from the division, serving as a member of a child protection team, or taking a child into protective custody pursuant to this part, is immune from any liability, civil or criminal, that otherwise might result by reason of those actions.
(2) This section does not provide immunity with respect to acts or omissions of a governmental employee except as provided in Title 63G, Chapter 7, Governmental Immunity Act of Utah.
(3) The immunity described in Subsection (1) does not apply if the person, official, or institution:
(a) acted or failed to act through fraud or willful misconduct;
(b) in a judicial or administrative proceeding, intentionally or knowingly gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false testimony material to the issue or matter of inquiry in the proceeding; or
(c) intentionally or knowingly:
   (i) fabricated evidence; or
   (ii) except as provided in Subsection (4), with a conscious disregard for the rights of others, failed to disclose evidence that:
   (A) was known to the person, official, or institution; and
   (B)
      (I) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a pending judicial or administrative proceeding if the person, official, or institution knew of the pending judicial or administrative proceeding; or
      (II) was known by the person, official, or institution to be relevant to a material issue or matter of inquiry in a judicial or administrative proceeding, if disclosure of the evidence was requested of the employee by a party to the proceeding or counsel for a party to the proceeding.
(4) Immunity is not lost under Subsection (3)(c)(ii), if the person, official, or institution:
(a) failed to disclose evidence described in Subsection (3)(c)(ii), because the person, official, or institution is prohibited by law from disclosing the evidence; or
(b) (i) pursuant to the provisions of 45 CFR 164.502(g)(5), refused to disclose evidence described in Subsection (3)(c)(ii) to a person who requested the evidence; and
   (ii) after refusing to disclose the evidence under Subsection (4)(b)(i), complied with or responded to a valid court order or valid subpoena received by the person, official, or institution to disclose the evidence described in Subsection (3)(c)(ii).
62A-4a-411 Failure to report -- Criminal penalty.

Any person, official, or institution required to report a case of suspected abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, who willfully fails to do so is guilty of a class B misdemeanor. Action for failure to report must be commenced within four years from the date of knowledge of the offense and the willful failure to report.

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

(1) Except as otherwise provided in this chapter, reports made under this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63G, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect, including members of a child protection unit;
(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;
(c) an agency that has responsibility or authority to care for, treat, or supervise a minor who is the subject of a report;
(d) a contract provider that has a written contract with the division to render services to a minor who is the subject of a report;
(e) except as provided in Subsection 63G-2-202(10), a subject of the report, the natural parents of the child, and the guardian ad litem;
(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:
   (i) limited to objective or undisputed facts that were verified at the time of the investigation; and
   (ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;
(g) an office of the public prosecutor or its deputies in performing an official duty;
(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;
(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;
(j) the State Board of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;
(k) any person identified in the report as a perpetrator or possible perpetrator of abuse or neglect, after being advised of the screening prohibition in Subsection (2);
(l) except as provided in Subsection 63G-2-202(10), a person filing a petition for a child protective order on behalf of a child who is the subject of the report;

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and 78B-6-130; or

(n) an Indian tribe to:
   (i) certify or license a foster home;
   (ii) render services to a subject of a report; or
   (iii) investigate an allegation of abuse, neglect, or dependency.

(2)

(a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of abuse or neglect.

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

(3)

(a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and Title 63G, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:
   (i) identify the referent;
   (ii) impede a criminal investigation; or
   (iii) endanger a person's safety.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

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

(6) A child-placing agency or person who receives a report in connection with a preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:

(a) may provide this report to the person who is the subject of the report; and

(b) may provide this report to a person who is performing a preplacement adoptive evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a licensed child-placing agency or to an attorney seeking to facilitate an adoption.

Amended by Chapter 209, 2017 General Session
Amended by Chapter 459, 2017 General Session

62A-4a-414 Interviews of children -- Recording required -- Exceptions.

(1)
(a) Except as provided in Subsection (4), interviews of children during an investigation in accordance with Section 62A-4a-409, and involving allegations of sexual abuse, sexual exploitation, severe abuse, or severe neglect of a child, shall be conducted only under the following conditions:
   (i) the interview shall be recorded visually and aurally on film, videotape, or by other electronic means;
   (ii) both the interviewer and the child shall be simultaneously recorded and visible on the final product;
   (iii) the time and date of the interview shall be continuously and clearly visible to any subsequent viewer of the recording; and
   (iv) the recording equipment shall run continuously for the duration of the interview.
(b) This Subsection (1) does not apply to initial or minimal interviews conducted in accordance with Subsection 62A-4a-409(8)(b) or (c).

(2) Interviews conducted in accordance with Subsection (1) shall be carried out in an existing Children's Justice Center or in a soft interview room, when available.
   (a) If the Children's Justice Center or a soft interview room is not available, the interviewer shall use the best setting available under the circumstances.
   (b) Except as provided in Subsection (4), if the equipment required under Subsection (1) is not available, the interview shall be audiotaped, provided that the interviewer shall clearly state at the beginning of the tape:
      (i) the time, date, and place of the interview;
      (ii) the full name and age of the child being interviewed; and
      (iii) that the equipment required under Subsection (1) is not available and why.

(3) Except as provided in Subsection (4), all other investigative interviews shall be audiotaped using electronic means. At the beginning of the tape, the worker shall state clearly the time, date, and place of the meeting, and the full name and age of the child in attendance.

(4)
   (a) Subject to Subsection (4)(b), an interview described in this section may be conducted without being taped if the child:
      (i) is at least nine years old;
      (ii) refuses to have the interview audio taped; and
      (iii) refuses to have the interview video taped.
   (b) If, pursuant to Subsection (4)(a), an interview is conducted without being taped, the child's refusal shall be documented as follows:
      (i) the interviewer shall attempt to get the child's refusal on tape, including the reasons for the refusal; or
      (ii) if the child does not allow the refusal, or the reasons for the refusal, to be taped, the interviewer shall:
         (A) state on the tape that the child is present, but has refused to have the interview, refusal, or the reasons for the refusal taped; or
         (B) if complying with Subsection (4)(b)(ii)(A) will result in the child, who would otherwise consent to be interviewed, to refuse to be interviewed, the interviewer shall document, in writing, that the child refused to allow the interview to be taped and the reasons for that refusal.
   (c) The division shall track the number of interviews under this section that are not taped, and the number of refusals that are not taped, for each interviewer, in order to determine whether a particular interviewer has a higher incidence of refusals, or taped refusals, than other interviewers.
Amended by Chapter 239, 2010 General Session

62A-4a-415 Law enforcement interviews of children in state custody.
(1) Except as provided in Subsection (2), the division may not consent to the interview of a child in the division’s custody by a law enforcement officer, unless consent for the interview is obtained from the child’s guardian ad litem.
(2) Subsection (1) does not apply if a guardian ad litem is not appointed for the child.

Enacted by Chapter 322, 2010 General Session