

1 **AMENDMENTS - CHILD ABUSE DATABASE**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Lyle W. Hillyard**

5 AN ACT RELATING TO HUMAN SERVICES; REQUIRING WITHOUT MERIT AND
6 UNSUBSTANTIATED REPORTS OF CHILD ABUSE OR NEGLECT TO BE REMOVED
7 FROM THE CHILD WELFARE DATABASE WHEN SUBSEQUENT REPORTS HAVE NOT
8 OCCURRED WITHIN A SPECIFIED TIME PERIOD; INCLUDING THE NAME OF A
9 PERSON ON THE LICENSING DATABASE WHEN NOTICE WENT UNDELIVERED;
10 CLARIFYING THE CIRCUMSTANCES UNDER WHICH A JUVENILE PERPETRATOR
11 MAY BE INCLUDED ON THE LICENSING DATABASE; PROHIBITING ANYONE BUT A
12 CHILDREN'S ORGANIZATION FROM REQUESTING A PERSON TO OBTAIN
13 INFORMATION FROM THE LICENSING DATABASE; PERMITTING A FINDING OF
14 ABUSE OR NEGLECT TO BE SUPPORTED SOLELY BY A CHILD'S STATEMENT THAT
15 IS ADMISSIBLE UNDER EXISTING STATUTE OR COURT RULE; REQUIRING A NEW
16 OPPORTUNITY TO CHALLENGE, IN CERTAIN CIRCUMSTANCES, IF THE USE OF THE
17 LICENSING DATABASE IS BROADENED; CLARIFYING WHEN A COURT
18 DETERMINATION OF ABUSE OR NEGLECT IS TO BE INCLUDED ON THE LICENSING
19 DATABASE; AND MAKING TECHNICAL AND CONFORMING AMENDMENTS.

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

21 AMENDS:

22 **62A-2-121**, as enacted by Chapter 358, Laws of Utah 1998

23 **62A-4a-116**, as last amended by Chapter 196, Laws of Utah 1998

24 **62A-4a-116.5**, as enacted by Chapter 196, Laws of Utah 1998

25 **62A-4a-412**, as last amended by Chapters 169, 196 and 274, Laws of Utah 1998

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

27 Section 1. Section **62A-2-121** is amended to read:

28 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

29 (1) With respect to human services licensees, the department may access only the licensing
30 part of the Division of Child and Family Service's management information system created by
31 Section 62A-4a-116 for the purpose of:

32 (a) determining whether a person associated with a licensee, who provides care described
33 in Subsection [~~(2)~~] (3), has a substantiated finding of abuse or neglect; [and]

34 (b) informing a licensee, who provides care described in Subsection [~~(2)~~] (3), that a person
35 associated with the licensee has a substantiated finding of child abuse or neglect[-]; and

36 (c) providing information to a person who makes a request pursuant to Section
37 62A-4a-116.

38 (2) The office shall maintain a list of organizations that may request a person to obtain
39 information under Section 62A-4a-116.

40 [~~(2)~~] (3) (a) A licensee or individual applying for or renewing a license to provide
41 child-placing services, youth programs, substitute care, foster care, or institutionalized care to
42 children shall submit to the department the name and other identifying information of a person
43 associated with the licensee.

44 (b) The office shall process the information to determine whether the licensee or a person
45 associated with a licensee has a substantiated finding of child abuse or neglect.

46 [~~(3)~~] (4) The office shall adopt rules defining the circumstances under which a person who
47 has a substantiated finding of child abuse or neglect may provide child-placing services, foster
48 care, youth programs, substitute care, or institutionalized care for children in a facility licenced by
49 the department.

50 Section 2. Section **62A-4a-116** is amended to read:

51 **62A-4a-116. Management information system -- Requirements.**

52 (1) The division shall develop and implement a management information system that
53 meets the requirements of this section and the requirements of federal law and regulation.

54 (2) With regard to all child welfare cases, the management information system shall:

55 (a) provide each caseworker with a complete history of each child in his caseload,
56 including:

57 (i) all past action taken by the division with regard to that child and his siblings, the
58 complete case history and all reports and information in the control or keeping of the division

59 regarding that child and his siblings;

60 (ii) the number of times the child has been in foster care;

61 (iii) the cumulative period of time the child has been in foster care;

62 (iv) all reports of abuse or neglect received by the division with regard to that child's parent
63 or parents, including documentation regarding whether each report was substantiated [or],
64 unsubstantiated, or without merit;

65 (v) the number of times the child's parent or parents have failed any treatment plan; and

66 (vi) the number of different caseworkers who have been assigned to that child in the past;

67 (b) contain all key elements of each family's current treatment plan, including the dates and
68 number of times the plan has been administratively or judicially reviewed, the number of times the
69 parent or parents have failed that treatment plan, and the exact length of time that treatment plan
70 has been in effect; [and]

71 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
72 plans[-]; and

73 (d) unless the executive director determines that there is good cause for keeping the report
74 on the system based on standards established by rule, delete any reference to:

75 (i) a report that is without merit if no subsequent report involving the same alleged
76 perpetrator has occurred within one year; or

77 (ii) a report that is unsubstantiated if no subsequent report involving the same alleged
78 perpetrator has occurred within ten years.

79 (3) With regard to all child protective services cases, the management information system
80 shall, in addition to the information required in Subsection (2), monitor compliance with the policy
81 of the division, the laws of this state, and federal law and regulation.

82 (4) (a) The division shall develop and maintain a part of the information management
83 system for licensing purposes, which shall be:

84 (i) limited to:

85 (A) substantiated findings of child abuse or neglect since January 1, [1994] 1988, after
86 notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;

87 ~~[(B) substantiated findings of child abuse or neglect for which a notice has been sent under~~
88 ~~Section 62A-4a-116.5 by July 1, 1998, and found by an administrative hearing officer before~~
89 ~~December 1, 1998, to have occurred between January 1, 1988, and January 1, 1994, except that~~

90 if a person applies for licensure or an adoption before June 30, 1999, and that person has not
91 previously been given notice under Section 62A-4a-116.5, the department may determine whether
92 a substantiated finding exists between January 1, 1988, and January 1, 1994, and if so, provide
93 notice and an opportunity to challenge under Section 62A-4a-116.5 before the license or adoption
94 may be approved;]

95 (B) the name of a person who was not sent a notice of agency action under Section
96 62A-4a-116.5 because his location was unknown at the time of substantiation or who was sent a
97 notice of agency that was returned to the division as undelivered for the sole purpose of alerting
98 the division of the need to afford the person an opportunity to challenge the finding of
99 substantiated child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond
100 delaying the person's licensing application to provide an opportunity for challenge, may be taken;

101 (C) an adjudication of child abuse or neglect by a court of competent jurisdiction if
102 Subsection 62A-4a-116.5(5) has been met; and

103 (D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual
104 abuse of any person; and

105 (ii) accessible by:

106 (A) the Office of Licensing;

107 (I) for licensing purposes [only];

108 (II) to screen a person at the request of the Office of the Guardian Ad Litem Director,
109 created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the
110 Office of the Guardian Ad Litem and each year thereafter that the person remains with the office;
111 and

112 (III) to respond to a request for information brought pursuant to Subsection (4)(d); [and]

113 (B) subject to the provisions of Subsection (4)(c), the Bureau of Health Facility Licensure
114 within the Department of Health only for the purpose of licensing a child care program or provider,
115 or for determining whether a person associated with a covered health care facility, as defined by
116 the Department of Health by rule, who provides direct care to a child has a substantiated finding
117 of child abuse or neglect[-]; and

118 (C) the department as provided in Subsection (5) and Section 62A-1-118.

119 (b) For the purpose of Subsection (4)(a), "substantiated":

120 (i) means a finding, at the completion of an investigation, that there is a reasonable basis

121 to conclude that:

122 (A) a person 15 years of age or older committed one or more of the following types of
123 child abuse or neglect [has occurred]:

124 [~~(A)~~] (I) physical abuse;

125 [~~(B)~~] (II) sexual abuse;

126 [~~(C)~~] (III) sexual exploitation;

127 [~~(D)~~] (IV) abandonment;

128 [~~(E)~~] (V) medical neglect resulting in death, disability, or serious illness; or

129 [~~(F)~~] (VI) chronic or severe neglect; and

130 (B) a person eight years of age or older but less than 15 years of age committed an act of
131 physical or sexual abuse against a child that:

132 (I) resulted in serious physical, psychological, or emotional harm to the victim; and

133 (II) exhibited a callous indifference toward the well-being of the victim, taking into
134 account such things as a trust relationship, coercion, self-gratification, premeditation, the use of
135 a weapon, and the degree of harm inflicted; and

136 (ii) does not include:

137 (A) the use of reasonable and necessary physical restraint or force by an educator in
138 accordance with Subsection 53A-11-802(2) or Section 76-2-401[-]; or

139 (B) any act or omission by a person who is seven years of age or younger.

140 (c) (i) The Department of Health shall:

141 (A) designate two persons within the Department of Health to access the licensing part of
142 the management information system; and

143 (B) adopt measures to:

144 (I) protect the security of the licensing part of the management information system; and

145 (II) strictly limit access to the licensing part of the management information system to
146 those designated under Subsection (4)(c)(i)(A).

147 (ii) Those designated under Subsection (4)(c)(i)(A) shall receive training from the
148 department with respect to:

149 (A) accessing the licensing part of the management information system;

150 (B) maintaining strict security; and

151 (C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

- 152 (iii) Those designated under Subsection (4)(c)(i)(A):
153 (A) are the only ones in the Department of Health with the authority to access the licensing
154 part of the management information system; and
155 (B) may only access the licensing part of the management information system in
156 accordance with the provisions of Subsection (4)(a)(ii).
- 157 (d) (i) Information in the licensing part of the management information system is
158 confidential and may only be used or disclosed as specifically provided in this section, Section
159 62A-4a-121, and Section 62A-4a-116.5.
- 160 (ii) After being advised of the prohibition in Subsection (4)(d)(iii), a person may request
161 and obtain information, if any, from the Office of Licensing that is on the licensing part of the
162 management information system that identifies or otherwise relates to the person as a perpetrator
163 of child abuse or neglect.
- 164 (iii) No person, unless qualified under Subsection (4)(d)(iv), may request another person
165 to obtain, release, or otherwise disclose information that is available under Subsection (4)(d)(ii)
166 to screen for potential perpetrators of child abuse or neglect.
- 167 (iv) (A) An organization whose primary function is to provide direct care or services to
168 children and is listed with the Office of Licensing may request a person to obtain information
169 about himself under Subsection (4)(d)(iii) and to give that information to the organization for the
170 sole purpose of allowing the organization to screen the person as an unpaid volunteer if having
171 direct, unsupervised contact with one or more children is integral to the position.
- 172 (B) The Office of Licensing shall maintain a list of organizations that qualify under
173 Subsection (4)(d)(iv)(A).
- 174 (v) A person who requests information knowing that it is a violation of Subsection
175 (4)(d)(iii) to do so is subject to the criminal penalty in Section 62A-4a-412.
- 176 (5) All information contained in the management information system shall be available
177 to the department upon the approval of the executive director, on a need-to-know basis.
- 178 (6) The information contained in the management information system shall be encrypted.
179 Section 3. Section **62A-4a-116.5** is amended to read:
- 180 **62A-4a-116.5. Opportunity to appeal a substantiated finding of child abuse or**
181 **neglect.**
- 182 (1) If the division makes a substantiated finding of abuse or neglect pursuant to Subsection

183 62A-4a-116(4)(b), the division shall send notice of agency action regarding the division's finding
184 to the person found to have committed the abuse or neglect.

185 (2) The notice shall state:

186 (a) the facts that support the finding of substantiation;

187 (b) that the person may be disqualified from adopting a child or working for or being
188 licensed by:

189 (i) the department;

190 (ii) a human services licensee;

191 (iii) a child care provider or program; and

192 (iv) a covered health care facility;

193 (c) that the person has the right to request:

194 (i) a copy of the substantiated report; and

195 (ii) an opportunity to challenge the finding and its inclusion on the licensing part of the
196 management information system described in Subsection 62A-4a-116(4), except as provided in
197 Subsection (5)(b); and

198 (d) that failure to request an opportunity to challenge the finding within 30 days of the
199 notice being received will result in an unappealable finding of substantiation, unless the person can
200 show good cause for why compliance within the 30-day requirement was virtually impossible or
201 unreasonably burdensome.

202 (3) (a) A person may make a request to challenge a substantiated finding within 30 days
203 of:

204 (i) a notice being received under Subsection (2);

205 (ii) a finding by a court of competent jurisdiction based on the same underlying facts that:

206 (A) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), did not occur;

207 or

208 (B) the person was not responsible for the child abuse or neglect that did occur; or

209 (iii) the dismissal of criminal charges or a verdict of not guilty based on the same
210 underlying facts.

211 (b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown
212 that compliance was virtually impossible or unreasonably burdensome.

213 (c) The division may approve or deny a request made under Subsection (3)(a).

214 (d) If the division denies the request or fails to act within 30 days after receiving a request
215 submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an
216 adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

217 (4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall
218 prove by a preponderance of the evidence that there is a reasonable basis to conclude that:

219 (i) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), occurred; and

220 (ii) the person was substantially responsible for the abuse or neglect that occurred.

221 (b) The administrative hearing officer may make a determination of substantiation based

222 solely on the statement of the child that is found to be admissible under the standards set forth in:

223 (i) Section 76-5-411;

224 (ii) Utah Rules of Criminal Procedure, Rule 15.5;

225 (iii) the Utah Rules of Evidence; or

226 (iv) Utah case law.

227 (5) (a) A person may not make a request to challenge a substantiated finding under
228 Subsection (3)(a), if, at anytime, a court of competent jurisdiction has made a determination based
229 on the same underlying facts that:

230 (i) child abuse or neglect, as described in Subsection 62A-4a-116(4)(b), occurred; ~~and~~

231 (ii) the person was substantially responsible for the abuse or neglect that occurred~~[.]; and~~

232 (iii) the person:

233 (A) was a party to the proceeding; or

234 (B) (I) had notice of the proceeding; and

235 (II) was provided a meaningful opportunity to challenge the facts underlying the court's
236 determination.

237 (b) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during the
238 time a judicial action is pending.

239 (6) Nothing in this section may affect the inclusion or exclusion of a report or finding of
240 child abuse or neglect from or access by the division, its caseworkers, and child protective services
241 workers to that part of the management information system used for purposes of child welfare
242 cases and child protective services as described in Subsections 62A-4a-116(2) and (3).

243 (7) By December 31, 1998, the division shall provide notice to each person with a
244 substantiated finding of abuse or neglect since January 1, 1994.

245 (8) A person who, after receiving notice, fails to challenge a substantiated finding of child
246 abuse or neglect may request the opportunity to challenge the finding under this section:

247 (a) if since the time that the person received notice, state law has been amended to permit
248 a broader use of or access to information on the licensing part of the management information
249 system; and

250 (b) before the finding may be used against the person in connection with the broader use
251 or access.

252 Section 4. Section **62A-4a-412** is amended to read:

253 **62A-4a-412. Reports and information confidential.**

254 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well
255 as any other information in the possession of the division obtained as the result of a report, with
256 the exception of information on the licensing part of the management information system which
257 is governed by Subsection 62A-4a-116(4)(ii), is confidential and may only be made available to:

258 (a) a police or law enforcement agency investigating a report of known or suspected child
259 abuse or neglect;

260 (b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

261 (c) an agency that has responsibility or authority to care for, treat, or supervise a child who
262 is the subject of a report;

263 (d) any subject of the report, the natural parents of the minor, and the guardian ad litem;

264 (e) a court, upon a finding that access to the records may be necessary for the
265 determination of an issue before it;

266 (f) an office of the public prosecutor or its deputies investigating or prosecuting a report
267 of known or suspected child abuse or neglect;

268 (g) a person authorized by a Children's Justice Center, for the purposes described in
269 Section 67-5b-102;

270 [~~h) the Bureau of Health Facility Licensure within the Department of Health, as provided~~
271 ~~for in Section 26-21-9.5, for the sole purpose of determining whether a person associated with a~~
272 ~~covered health care facility and who provides direct care to children has a substantiated finding~~
273 ~~of child abuse or neglect;]~~

274 [~~i) the Bureau of Health Facility Licensure within the Department of Health for the~~
275 ~~purpose of determining whether a person associated with a child care provider has a substantiated~~

276 finding of child abuse or neglect on the licensing part of the management information system
277 created in Section 62A-4a-116; and]

278 [(j)] (h) a person engaged in bona fide research, when approved by the director of the
279 division, if the information does not include names and addresses[-]; and

280 (i) any person identified in the report as a perpetrator or possible perpetrator of child abuse
281 or neglect, after being advised of the screening prohibition in Subsection (2).

282 (2) (a) No person, unless listed in Subsection (1), may request another person to obtain,
283 release, or otherwise disclose information that is available under Subsection (1)(i) to screen for
284 potential perpetrators of child abuse or neglect.

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

287 [(2)] (3) The division and law enforcement officials shall ensure the anonymity of the
288 person or persons making the initial report and any others involved in its subsequent investigation.

289 [(3)] (4) Any person who wilfully permits, or aides and abets the release of data or
290 information obtained as a result of this part, in the possession of the division or contained [~~in the~~
291 ~~central register~~] on any part of the management information system, in violation of this part or
292 Section 62A-4a-116, is guilty of a class C misdemeanor.

293 [(4)] (5) The physician-patient privilege is not a ground for excluding evidence regarding
294 a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in
295 good faith pursuant to this part.

Legislative Review Note
as of 1-20-99 11:46 AM

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

Office of Legislative Research and General Counsel