

CHILD PROTECTION AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: L. Steven Poulton

AN ACT RELATING TO THE DIVISION OF CHILD AND FAMILY SERVICES; ALLOWING PRIVATE CONTRACT PROVIDERS ACCESS TO THE DCFS MANAGEMENT INFORMATION SYSTEM AND INFORMATION REGARDING REPORTS OF CHILD ABUSE OR NEGLECT; PROVIDING FOR CONFIDENTIALITY REQUIREMENTS; ALLOWING DCFS TO RELY ON SPECIFIED PRIOR REPORTS OF INVESTIGATION RATHER THAN CONDUCTING SEPARATE INTERVIEW; AMENDING CHILDREN'S TRUST ACCOUNT PROVISIONS; AND MAKING TECHNICAL CORRECTIONS.

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

AMENDS:

62A-4a-116, as last amended by Chapter 164, Laws of Utah 1999

62A-4a-202.3, as last amended by Chapters 13 and 274, Laws of Utah 1998

62A-4a-309, as renumbered and amended by Chapter 260, Laws of Utah 1994

62A-4a-409, as last amended by Chapter 274, Laws of Utah 1998

62A-4a-412, as last amended by Chapters 164 and 377, Laws of Utah 1999

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

Section 1. Section **62A-4a-116** is amended to read:

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

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

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

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

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

- (ii) the number of times the child has been in foster care;
 - (iii) the cumulative period of time the child has been in foster care;
 - (iv) all reports of abuse or neglect received by the division with regard to that child's parent or parents, including documentation regarding whether each report was substantiated, unsubstantiated, or without merit;
 - (v) the number of times the child's parent or parents have failed any treatment plan; and
 - (vi) the number of different caseworkers who have been assigned to that child in the past;
- (b) contain all key elements of each family's current treatment plan, including the dates and number of times the plan has been administratively or judicially reviewed, the number of times the parent or parents have failed that treatment plan, and the exact length of time that treatment plan has been in effect;
- (c) alert caseworkers regarding deadlines for completion of and compliance with treatment plans; and
- (d) unless the executive director determines that there is good cause for keeping the report on the system based on standards established by rule, delete any reference to:
- (i) a report that is without merit if no subsequent report involving the same alleged perpetrator has occurred within one year; or
 - (ii) a report that is unsubstantiated if no subsequent report involving the same alleged perpetrator has occurred within ten years.
- (3) With regard to all child protective services cases, the management information system shall, in addition to the information required in Subsection (2), monitor compliance with the policy of the division, the laws of this state, and federal law and regulation.
- (4) (a) The division shall develop and maintain a part of the information management system for licensing purposes, which shall be:
- (i) limited to:
 - (A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and an opportunity to challenge has been provided under Section 62A-4a-116.5;
 - (B) the name of a person who was not sent a notice of agency action under Section

62A-4a-116.5 because his location was not available on the management information system or who was sent a notice of agency action that was returned to the division as undelivered for the sole purpose of alerting the division of the need to afford the person an opportunity to challenge the finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond delaying the person's licensing application to provide an opportunity for challenge, may be taken;

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

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

(ii) accessible by:

(A) the Office of Licensing for licensing purposes only;

(B) the division:

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

(II) to respond to a request for information from the person who is identified as a perpetrator in the report, after advising the person of the screening prohibition in Subsection (4)(d)(iii);

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

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

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

(i) means a finding that there is a reasonable basis to conclude that:

(A) a person 18 years of age or older committed one or more of the following types of child abuse or neglect:

(I) physical abuse;

- (II) sexual abuse;
- (III) sexual exploitation;
- (IV) abandonment;
- (V) medical neglect resulting in death, disability, or serious illness; or
- (VI) chronic or severe neglect; and
- (B) a person under the age of 18:
 - (I) caused serious physical injury, as defined in ~~[Section]~~ Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or
 - (II) engaged in sexual behavior with or upon another child which indicates a significant risk to other children; and
 - (ii) does not include:
 - (A) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
 - (B) a person's conduct that:
 - (I) is justified under Section 76-2-401; or
 - (II) constituted the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury.
 - (iii) (A) For purposes of Subsection (4)(b)(i)(B), "significant risk" shall be determined in accordance with risk assessment tools and policies established by the division that focus on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other related considerations.
 - (B) The division shall train its child protection workers to apply the risk assessment tools and policies established under Subsection (4)(b)(iii)(A).
- (c) (i) The Department of Health shall:
 - (A) designate two persons within the Department of Health to access the licensing part of the management information system; and

(B) adopt measures to:

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

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

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

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

(B) maintaining strict security; and

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

(iii) Those designated under Subsection (4)(c)(i)(A):

(A) are the only ones in the Department of Health with the authority to access the licensing part of the management information system; and

(B) may only access the licensing part of the management information system in accordance with the provisions of Subsection (4)(a)(ii).

(iv) The Department of Health may obtain information in the possession of the division that relates to a substantiated finding of abuse or neglect of a person screened under this Subsection (4)(c).

(d) (i) Information in the licensing part of the management information system is confidential and may only be used or disclosed as specifically provided in this section, Section 62A-2-121, and Section 62A-4a-116.5.

(ii) No person, unless listed in Subsection (4)(a)(ii), may 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 (4)(a)(ii)(A)(III) to screen for potential perpetrators of child abuse or neglect.

(iii) A person who requests information knowing that it is a violation of Subsection (4)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

(5) All information contained in the management information system shall be available to the department upon the approval of the executive director, on a need-to-know basis.

(6) (a) The division may allow its contract providers to have limited access to the management information system. The division shall limit that access to information about persons who are currently receiving services from the specific contract provider.

(b) Each contract provider shall:

(i) take all necessary precautions to safeguard the security of the information contained in the management information system;

(ii) train its employees regarding requirements for confidentiality and the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

(iii) monitor its employees to ensure that they comply with the confidentiality requirements related to the management information system.

(c) The division shall take reasonable precautions to ensure that its contract providers are complying with Subsection (6)(b).

~~[(6)]~~ (7) The division shall take all necessary precautions, including password protection and other appropriate technological techniques, to prevent unauthorized access to the information contained in the management information system [shall be encrypted].

~~[(7)]~~ (8) (a) The division shall send a certified letter to a person who submitted a report of child abuse or neglect that is put onto any part of the management information system if the division determines, at the conclusion of its investigation, that:

(i) the report is false;

(ii) it is more likely than not that the person knew that the report was false at the time the person submitted the report; and

(iii) the person's address is known or reasonably available.

(b) The letter shall inform the person of:

(i) the determination made under Subsection ~~[(7)]~~ (8)(a);

(ii) the penalty for submitting false information under Section 76-8-506 and other applicable laws;

(iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

(A) in the present instance if an immediate referral is justified by the facts; or

(B) if the person submits a subsequent false report involving the same alleged perpetrator or victim.

(c) (i) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection [~~(7)~~] (8)(a) if an immediate referral is justified by the facts.

(ii) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection [~~(7)~~] (8)(a) if this is the second letter sent to the person involving the same alleged perpetrator or victim.

(iii) The division shall determine, in consultation with law enforcement:

(A) the information to be given to an alleged perpetrator about a false claim; and

(B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator about a false claim.

(d) Nothing in this Subsection [~~(7)~~] (8) may be construed as requiring the division to conduct an investigation, beyond what is required in Subsection [~~(7)~~] (8)(a), to determine whether or not a report is false.

Section 2. Section **62A-4a-202.3** is amended to read:

62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective custody.

(1) When a child is taken into protective custody in accordance with Sections 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into protective custody.

(2) The division's post-removal investigation shall include, among other actions necessary to meet reasonable professional standards:

(a) a search for and review of any records of past reports of abuse or neglect involving the same child, any sibling or other child residing in that household, and the alleged perpetrator;

(b) with regard to a child who is five years of age or older, a personal interview with the child outside of the presence of the alleged perpetrator, conducted in accordance with the requirements of Subsection [~~(6)~~] (7);

(c) an interview with the child's natural parents or other guardian, unless their whereabouts

are unknown;

(d) an interview with the person who reported the abuse, unless anonymous;

(e) where possible and appropriate, interviews with other third parties who have had direct contact with the child, including school personnel and the child's health care provider;

(f) an unscheduled visit to the child's home, unless the division has reasonable cause to believe

that the reported abuse was committed by a person who does not:

(i) live in the child's home; or

(ii) have access to the child; and

(g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or failure to meet the child's medical needs, a medical examination. That examination shall be obtained no later than 24 hours after the child was placed in protective custody.

(3) The division may rely on a written report of a prior interview rather than conducting an additional interview, if:

(a) law enforcement has previously conducted a timely and thorough investigation regarding the alleged abuse or neglect and has produced a written report;

(b) that investigation included one or more of the interviews required by Subsection (2); and

(c) the division finds that an additional interview is not in the best interest of the child.

~~[(3)]~~ (4) (a) The division's pre- or post-removal determination of whether a report is substantiated or unsubstantiated may be based on the child's statements alone.

(b) Inability to identify or locate the perpetrator may not be used by the division as a basis for determining that a report is unsubstantiated, or for closing the case.

(c) The division may not determine a case to be unsubstantiated or identify a case as unsubstantiated solely because the perpetrator was an out-of-home perpetrator.

(d) Decisions regarding whether a report is substantiated, unsubstantiated, or without merit shall be based on the facts of the case at the time the report was made.

~~[(4)]~~ (5) The division should maintain protective custody of the child if it finds that one or more of the following conditions exist:

(a) the minor has no natural parent, guardian, or responsible relative who is able and willing

to provide safe and appropriate care for the minor;

(b) shelter of the minor is a matter of necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in his home or the home of a responsible relative;

(c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction of the court; or

(d) the minor has left a previously court ordered placement.

~~[(5)]~~ (6) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends and holidays, the Division of Child and Family Services shall convene a child protection team to review the circumstances regarding removal of the child from his home, and prepare the testimony and evidence that will be required of the division at the shelter hearing, in accordance with Section 78-3a-306.

(b) Members of that team shall include:

(i) the caseworker assigned to the case and the caseworker who made the decision to remove the child;

(ii) a representative of the school or school district in which the child attends school;

(iii) the peace officer who removed the child from the home;

(iv) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;

(v) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances; and

(vi) any other individuals as determined to be appropriate and necessary by the team coordinator and chair.

(c) At that 24-hour meeting, the division shall have available for review and consideration, the complete child protective services and foster care history of the child and the child's parents and siblings.

~~[(6)]~~ (7) After receipt of a child into protective custody and prior to the adjudication hearing, all investigative interviews with the child that are initiated by the division shall be audio or video

taped, and the child shall be allowed to have a support person of the child's choice present. That support person may not be an alleged perpetrator.

[(7)] (8) The division shall cooperate with law enforcement investigations regarding the alleged perpetrator.

[(8)] (9) The division may not close an investigation solely on the grounds that the division investigator is unable to locate the child, until all reasonable efforts have been made to locate the child and family members. Those efforts include:

- (a) visiting the home at times other than normal work hours;
- (b) contacting local schools;
- (c) contacting local, county, and state law enforcement agencies; and
- (d) checking public assistance records.

Section 3. Section **62A-4a-309** is amended to read:

62A-4a-309. Children's Trust Account.

(1) There shall be a restricted account within the General Fund to be known as the Children's Trust Account. This account is for crediting of contributions from private sources and from appropriate revenues received under Section 26-2-12.5 for child abuse and neglect prevention programs described in Section 62A-4a-305.

(2) Money shall be appropriated from the account to the division by the Legislature under the Utah Budgetary Procedures Act, and shall be drawn upon by the director under the direction of the board.

(3) The Children's Trust Account may be used only to implement prevention programs described in Section 62A-4a-305, and may only be allocated to entities [~~which match one dollar of private funds for each dollar~~] that provide a one-to-one match, comprising a match from the community of at least 50% in cash and up to 50% in in-kind donations, which is 25% of the total funding received from the Children's Trust Account. The entity that receives the statewide evaluation contract is excepted from the cash-match provisions of this Subsection (3).

Section 4. Section **62A-4a-409** is amended to read:

62A-4a-409. Investigation by division -- Temporary protective custody.

(1) The division shall make a thorough pre-removal 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 a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency. The primary purpose of that investigation shall be protection of the child.

(2) The pre-removal investigation may include inquiry into the child's home environment, emotional, or mental health, nature and extent of injuries, and physical safety.

(3) The division shall make a written report of its investigation. The written report shall include a determination regarding whether the alleged abuse or neglect was substantiated [or], unsubstantiated, or without merit.

(4) (a) The division shall use an interdisciplinary approach whenever possible in dealing with reports made under this part.

(b) For this purpose, the division shall convene appropriate interdisciplinary "child protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination services.

(c) 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, and whenever possible, the team shall include representatives of health, mental health, education, law enforcement agencies, and other appropriate agencies or individuals.

(5) In any case where the division supervises, governs, or directs the affairs of any individual, institution, or facility that has been alleged to be involved in acts or omissions of child abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an agency other than the division.

(6) 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 53A-11-101 through 53A-11-103.

(7) When the division has completed its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.

(8) 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 child

abuse or neglect.

(9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3 and 78-3a-301, 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 its original environment. Control and jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, 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.

Section 5. Section **62A-4a-412** is amended to read:

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

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report is confidential and may only be made available to:

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

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

(c) an agency~~[-including a school district,]~~ that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

~~[(d)]~~ (e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

~~[(e)]~~ (f) a court, upon a finding that access to the records may be necessary for the determination of an issue before it, 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 its 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;

~~(f)~~ (g) an office of the public prosecutor or its deputies in performing an official duty;

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

~~(h)~~ (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;

~~(i)~~ (j) the State Office 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)~~(j)~~(k) with an opportunity to respond to the report before making a decision concerning licensure or employment; and

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

(2) (a) No person, unless listed in Subsection (1), may 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)~~(j)~~(k) to screen for potential perpetrators of child 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) Except as provided in Subsection 62A-4a-116~~(7)~~ (8)(c), 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.

(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 Section 62A-4a-116, 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.