

1 **CHILD PROTECTION AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: L. Steven Poulton**

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

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

13 AMENDS:

14 **62A-4a-116**, as last amended by Chapter 164, Laws of Utah 1999

15 **62A-4a-202.3**, as last amended by Chapters 13 and 274, Laws of Utah 1998

16 **62A-4a-309**, as renumbered and amended by Chapter 260, Laws of Utah 1994

17 **62A-4a-409**, as last amended by Chapter 274, Laws of Utah 1998

18 **62A-4a-412**, as last amended by Chapters 164 and 377, Laws of Utah 1999

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

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

21 **62A-4a-116. Management information system -- Requirements.**

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

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

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

27 (i) all past action taken by the division with regard to that child and his siblings, the

28 complete case history and all reports and information in the control or keeping of the division  
29 regarding that child and his siblings;

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

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

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

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

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

37 (b) contain all key elements of each family's current treatment plan, including the dates and  
38 number of times the plan has been administratively or judicially reviewed, the number of times the  
39 parent or parents have failed that treatment plan, and the exact length of time that treatment plan  
40 has been in effect;

41 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment  
42 plans; and

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

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

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

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

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

54 (i) limited to:

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

57 (B) the name of a person who was not sent a notice of agency action under Section  
58 62A-4a-116.5 because his location was not available on the management information system or

59 who was sent a notice of agency action that was returned to the division as undelivered for the sole  
60 purpose of alerting the division of the need to afford the person an opportunity to challenge the  
61 finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond  
62 delaying the person's licensing application to provide an opportunity for challenge, may be taken;

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

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

67 (ii) accessible by:

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

69 (B) the division:

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

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

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

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

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

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

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

87 (I) physical abuse;

88 (II) sexual abuse;

89 (III) sexual exploitation;

- 90 (IV) abandonment;
- 91 (V) medical neglect resulting in death, disability, or serious illness; or
- 92 (VI) chronic or severe neglect; and
- 93 (B) a person under the age of 18:
  - 94 (I) caused serious physical injury, as defined in [Section] Subsection 76-5-109(1)(d), to
  - 95 another child which indicates a significant risk to other children; or
  - 96 (II) engaged in sexual behavior with or upon another child which indicates a significant
  - 97 risk to other children; and
  - 98 (ii) does not include:
    - 99 (A) the use of reasonable and necessary physical restraint or force by an educator in
    - 100 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
    - 101 (B) a person's conduct that:
      - 102 (I) is justified under Section 76-2-401; or
      - 103 (II) constituted the use of reasonable and necessary physical restraint or force in
      - 104 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
      - 105 other dangerous object in the possession or under the control of a child or to protect the child or
      - 106 another person from physical injury.
    - 107 (iii) (A) For purposes of Subsection (4)(b)(i)(B), "significant risk" shall be determined in
    - 108 accordance with risk assessment tools and policies established by the division that focus on age,
    - 109 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other
    - 110 related considerations.
    - 111 (B) The division shall train its child protection workers to apply the risk assessment tools
    - 112 and policies established under Subsection (4)(b)(iii)(A).
  - 113 (c) (i) The Department of Health shall:
    - 114 (A) designate two persons within the Department of Health to access the licensing part of
    - 115 the management information system; and
    - 116 (B) adopt measures to:
      - 117 (I) protect the security of the licensing part of the management information system; and
      - 118 (II) strictly limit access to the licensing part of the management information system to
      - 119 those designated under Subsection (4)(c)(i)(A).
    - 120 (ii) Those designated under Subsection (4)(c)(i)(A) shall receive training from the

121 department with respect to:

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

123 (B) maintaining strict security; and

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

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

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

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

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

133 (d) (i) Information in the licensing part of the management information system is  
134 confidential and may only be used or disclosed as specifically provided in this section, Section  
135 62A-2-121, and Section 62A-4a-116.5.

136 (ii) No person, unless listed in Subsection (4)(a)(ii), may request another person to obtain  
137 or release a report or any other information in the possession of the division obtained as a result  
138 of the report that is available under Subsection (4)(a)(ii)(A)(III) to screen for potential perpetrators  
139 of child abuse or neglect.

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

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

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

147 (b) Each contract provider shall:

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

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

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

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

156 ~~[(6)]~~ (7) The division shall take all necessary precautions, including password protection  
157 and other appropriate technological techniques, to prevent unauthorized access to the information  
158 contained in the management information system [shall be encrypted].

159 ~~[(7)]~~ (8) (a) The division shall send a certified letter to a person who submitted a report  
160 of child abuse or neglect that is put onto any part of the management information system if the  
161 division determines, at the conclusion of its investigation, that:

162 (i) the report is false;

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

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

166 (b) The letter shall inform the person of:

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

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

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

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

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

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

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

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

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

182 (B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator

183 about a false claim.

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

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

188 **62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective**  
189 **custody.**

190 (1) When a child is taken into protective custody in accordance with Sections  
191 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately  
192 investigate the circumstances of the minor and the facts surrounding his being taken into protective  
193 custody.

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

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

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

201 (c) an interview with the child's natural parents or other guardian, unless their whereabouts  
202 are unknown;

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

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

206 (f) an unscheduled visit to the child's home, unless the division has probable cause to  
207 believe that the reported abuse was committed by a person who does not live in the child's home;  
208 and

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

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

214 (a) law enforcement or a Children's Justice Center has previously conducted a timely and  
215 thorough investigation regarding the alleged abuse or neglect and has produced a written report;

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

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

219 [(3)] (4) (a) The division's pre- or post-removal determination of whether a report is  
220 substantiated or unsubstantiated may be based on the child's statements alone.

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

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

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

227 [(4)] (5) The division should maintain protective custody of the child if it finds that one  
228 or more of the following conditions exist:

229 (a) the minor has no natural parent, guardian, or responsible relative who is able and  
230 willing to provide safe and appropriate care for the minor;

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

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

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

237 [(5)] (6) (a) Within 24 hours after receipt of a child into protective custody, excluding  
238 weekends and holidays, the Division of Child and Family Services shall convene a child protection  
239 team to review the circumstances regarding removal of the child from his home, and prepare the  
240 testimony and evidence that will be required of the division at the shelter hearing, in accordance  
241 with Section 78-3a-306.

242 (b) Members of that team shall include:

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



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

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

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

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

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

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

256 [(6)] (7) After receipt of a child into protective custody and prior to the adjudication  
257 hearing, all investigative interviews with the child that are initiated by the division shall be audio  
258 or video taped, and the child shall be allowed to have a support person of the child's choice present.  
259 That support person may not be an alleged perpetrator.

260 [(7)] (8) The division shall cooperate with law enforcement investigations regarding the  
261 alleged perpetrator.

262 [(8)] (9) The division may not close an investigation solely on the grounds that the division  
263 investigator is unable to locate the child, until all reasonable efforts have been made to locate the  
264 child and family members. Those efforts include:

265 (a) visiting the home at times other than normal work hours;

266 (b) contacting local schools;

267 (c) contacting local, county, and state law enforcement agencies; and

268 (d) checking public assistance records.

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

270 **62A-4a-309. Children's Trust Account.**

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

275 (2) Money shall be appropriated from the account to the division by the Legislature under

276 the Utah Budgetary Procedures Act, and shall be drawn upon by the director under the direction  
277 of the board.

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

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

285 **62A-4a-409. Investigation by division -- Temporary protective custody.**

286 (1) The division shall make a thorough pre-removal investigation upon receiving either  
287 an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug  
288 dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol  
289 syndrome, or fetal drug dependency. The primary purpose of that investigation shall be protection  
290 of the child.

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

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

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

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

301 (c) A representative of the division shall serve as the team's coordinator and chair.  
302 Members of the team shall serve at the coordinator's invitation, and whenever possible, the team  
303 shall include representatives of health, mental health, education, law enforcement agencies, and  
304 other appropriate agencies or individuals.

305 (5) In any case where the division supervises, governs, or directs the affairs of any  
306 individual, institution, or facility that has been alleged to be involved in acts or omissions of child

307 abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an  
308 agency other than the division.

309 (6) If a report of neglect is based upon or includes an allegation of educational neglect the  
310 division shall immediately consult with school authorities to verify the child's status in accordance  
311 with Sections 53A-11-101 through 53A-11-103.

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

314 (8) Division workers or other child protection team members have authority to enter upon  
315 public or private premises, using appropriate legal processes, to investigate reports of alleged child  
316 abuse or neglect.

317 (9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through  
318 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take a child  
319 into protective custody, and deliver the child to a law enforcement officer, or place the child in an  
320 emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent  
321 to the child's removal from its original environment. Control and jurisdiction over the child is  
322 determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

323 (10) If law enforcement or a Children's Justice Center has previously conducted a timely  
324 and thorough investigation into the alleged abuse or neglect, and if the division finds that an  
325 additional investigation is not in the best interest of the child, the division may rely on a written  
326 report of that prior investigation rather than conducting an additional investigation.

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

328 **62A-4a-412. Reports and information confidential.**

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

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

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

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

337 (d) a contract provider that has a written contract with the division to render services to

338 a child who is the subject of a report:

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

341       ~~[(e)]~~ (f) a court, upon a finding that access to the records may be necessary for the  
342 determination of an issue before it, provided that in a divorce, custody, or related proceeding  
343 between private parties, the record alone is:

344           (i) limited to objective or undisputed facts that were verified at the time of the  
345 investigation; and

346           (ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue  
347 of whether or not a person's acts or omissions constituted any level of abuse or neglect of another  
348 person;

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

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

352       ~~[(h)]~~ (i) a person engaged in bona fide research, when approved by the director of the  
353 division, if the information does not include names and addresses;

354       ~~[(i)]~~ (j) the State Office of Education, acting on behalf of itself or on behalf of a school  
355 district, for the purpose of evaluating whether an individual should be permitted to obtain or retain  
356 a license as an educator or serve as an employee or volunteer in a school, limited to information  
357 with substantiated findings involving an alleged sexual offense, an alleged felony or class A  
358 misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5,  
359 Offenses Against the Person, and with the understanding that the office must provide the subject  
360 of a report received under Subsection (1)~~[(j)]~~(k) with an opportunity to respond to the report before  
361 making a decision concerning licensure or employment; and

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

364       (2) (a) No person, unless listed in Subsection (1), may request another person to obtain or  
365 release a report or any other information in the possession of the division obtained as a result of  
366 the report that is available under Subsection (1)~~[(j)]~~(k) to screen for potential perpetrators of child  
367 abuse or neglect.

368       (b) A person who requests information knowing that it is a violation of Subsection (2)(a)

369 to do so is subject to the criminal penalty in Subsection (4).

370 (3) Except as provided in Subsection 62A-4a-116[(7)] (8)(c), the division and law  
371 enforcement officials shall ensure the anonymity of the person or persons making the initial report  
372 and any others involved in its subsequent investigation.

373 (4) Any person who wilfully permits, or aides and abets the release of data or information  
374 obtained as a result of this part, in the possession of the division or contained on any part of the  
375 management information system, in violation of this part or Section 62A-4a-116, is guilty of a  
376 class C misdemeanor.

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

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**Legislative Review Note**  
**as of 1-31-00 2:36 PM**

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

**Office of Legislative Research and General Counsel**