

H.B. 83

CHILD WELFARE AMENDMENTS

HOUSE FLOOR AMENDMENTS

AMENDMENT 11

JANUARY 30, 2001 10:22 AM

Representative **Gary Cox** proposes the following amendments:

1. Page 1, Line 9: After "**five years.**" insert "**The act clarifies when a person is entitled to a hearing before being placed on the database system.**"

2. Page 1, Line 17: After line 17 insert:
"**62A-4a-116.5**, as last amended by Chapter 304, Laws of Utah 2000"

3. Page 4, Line 120a and 120b
House Committee Amendments
1-25-2001: Delete Lines 120a and 120b, renumber remaining subsections accordingly

4. Page 7, Line 194
After line 194 insert:
"Section 2. Section **62A-4a-116.5** is amended to read:
62A-4a-116.5. Opportunity to challenge a finding of child abuse or neglect.
(1) (a) The division shall send a notice of agency action to a person if the division finds, at the conclusion of an investigation, that, in the opinion of the division, there is a reasonable basis to conclude that the person committed abuse or neglect listed in Subsection 62A-4a-116(5)(b)(i). In the event that the person is under the age of 18, the division shall:
(i) make reasonable efforts to identify the person's parent or legal guardian; and
(ii) send a notice to each parent or legal guardian identified under Subsection (1)(a)(i) that lives at a different address unless there is good cause, as defined by rule, for not sending a notice to a parent or legal guardian.
(b) For purposes of this section only, which governs the right of a person to challenge the division's initial finding or opinion of abuse or neglect as it pertains to the licensing part of the management information system, the division shall refer to a finding under

Subsection (1)(a) as a "finding" or an "initial finding" of abuse or neglect when notifying or explaining a notification to a person.

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

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

(ii) the use or effect, in any other setting, of:

(A) an initial division finding or substantiation of child abuse or neglect at the completion of an investigation for any purpose other than for notification under Subsection (1)(b); or

(B) the term "substantiated" as used in any other provision of the code.

(2) The notice shall state:

(a) that the division conducted an investigation;

(b) that the division found, at the conclusion of the investigation, that there was, in the opinion of the division, a reasonable basis to conclude that abuse or neglect occurred;

(c) the facts that support the finding;

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

(i) the department;

(ii) a human services licensee;

(iii) a child care provider or program; and

(iv) a covered health care facility;

(e) that the person has the right to request:

(i) a copy of the report; and

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

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

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

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

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

(A) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), did not occur; or

- (B) the person was not responsible for the child abuse or neglect that did occur; or
- (iii) the dismissal of criminal charges or a verdict of not guilty based on the same underlying facts.
- (b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown that compliance was virtually impossible or unreasonably burdensome.
- (c) The division may approve or deny a request made under Subsection (3)(a).
- (d) If the division denies the request or fails to act within 30 days after receiving a request submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.
- (4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall prove by a preponderance of the evidence that there is a reasonable basis to conclude that:
 - (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred; and
 - (ii) the person was substantially responsible for the abuse or neglect that occurred.
- (b) The administrative hearing officer may make a determination of substantiation based solely on the out-of-court statement of the child that the officer finds to be reliable under the standards set forth in:
 - (i) Section 76-5-411;
 - (ii) Utah Rules of Criminal Procedure, Rule 15.5;
 - (iii) Section 78-3a-116(5);
 - (iv) the Utah Rules of Evidence; or
 - (v) Utah case law.
- (5) (a) ~~[A]~~ Except as provided in Subsection (5)(b), a person may not make a request to challenge a finding under Subsection (3)(a), if, at anytime, a court of competent jurisdiction has made a determination based on the same underlying facts that:
 - (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred;
 - (ii) the person was substantially responsible for the abuse or neglect that occurred; and
 - (iii) the person:
 - (A) was a party to the proceeding; or
 - (B) (I) had notice of the proceeding; and

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

(b) The division shall remove a persons name from the database unless the division provides new notice under Subsection (1)(a) and an opportunity to be heard under Subsection (3)(a) when the court of competent jurisdiction:

(i) enters a finding of not guilty;

(ii) dismisses the information or indictment after compliance with the requirements of a diversion agreement under Section 77-2-6; or

(iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the completion of a plea in abeyance agreement for a plea of no contest.

~~[(b)]~~ (c) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during the time a judicial action is pending.

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

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

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

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

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

Renumber remaining sections accordingly.