

DCFS MANAGEMENT INFORMATION SYSTEM**AMENDMENTS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

This act amends the Utah Human Services Code and the Judicial Code. The act adds definitions of various terms used in the Management Information System and Licensing Information System provisions. The act reorganizes and clarifies statutes governing the Division of Child and Family Services' Management Information System. The act provides that when the division makes a supported finding of certain types of severe child abuse or neglect that finding is referred to juvenile court or a notice is personally served upon the alleged perpetrator. The act provides that in certain circumstances the alleged perpetrator has the right to either consent to entry of the alleged perpetrator's name on the Licensing Information System or to petition for a hearing before a juvenile court judge. The act provides that the juvenile court will make a finding of substantiated, unsubstantiated, or without merit and provide a copy of its determination to the division. The act provides that the division remove information from the Licensing Information System after a juvenile court makes a finding. The act clarifies the right of judicial review of final agency action. The act provides an opportunity for certain persons to petition the juvenile court to remove their names from the Licensing Information System. The act provides that certain juvenile court records and related appellate court records are accessible for licensing purposes. The act clarifies that information contained in the Management Information System and Licensing Information System is a protected record. The act expands the jurisdiction of the juvenile court. The act makes technical changes.

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

AMENDS:

26-21-9.5, as last amended by Chapter 276, Laws of Utah 1999

26-39-105.5, as last amended by Chapter 86, Laws of Utah 2000

62A-1-118, as enacted by Chapter 358, Laws of Utah 1998

- 62A-2-121, as last amended by Chapter 164, Laws of Utah 1999
- 62A-4a-101, as last amended by Chapter 134, Laws of Utah 2001
- 62A-4a-116, as last amended by Chapters 153 and 184, Laws of Utah 2001
- 62A-4a-116.5, as last amended by Chapter 153, Laws of Utah 2001
- 62A-4a-202.7, as enacted by Chapter 228, Laws of Utah 2000
- 62A-4a-412, as last amended by Chapter 9, Laws of Utah 2001
- 63-2-304, as last amended by Chapters 232 and 335, Laws of Utah 2000
- 78-3a-103, as last amended by Chapters 134 and 255, Laws of Utah 2001
- 78-3a-104, as last amended by Chapters 213 and 255, Laws of Utah 2001

ENACTS:

- 62A-4a-116.1, Utah Code Annotated 1953
- 62A-4a-116.2, Utah Code Annotated 1953
- 62A-4a-116.3, Utah Code Annotated 1953
- 62A-4a-116.4, Utah Code Annotated 1953
- 62A-4a-116.6, Utah Code Annotated 1953
- 78-3a-320, Utah Code Annotated 1953

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

Section 1. Section **26-21-9.5** is amended to read:

26-21-9.5. Criminal background check and Licensing Information System check.

(1) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a covered health care facility, as defined in Subsection (10), at the time of initial application for a license and license renewal shall:

(a) submit the name and other identifying information of each person associated with the facility who:

- (i) provides direct care to a patient; and
- (ii) has been the subject of a criminal background check within the preceding three-year period by a public or private entity recognized by the department; and

(b) submit the name and other identifying information, which may include fingerprints, of

each person associated with the facility who:

- (i) provides direct care to a patient; and
- (ii) has not been the subject of a criminal background check in accordance with Subsection (1)(a)(ii).

(2) (a) The department shall forward the information received under Subsection (1)(b) to the Criminal Investigations and Technical Services Division of the Department of Public Safety for processing to determine whether an individual has been convicted of any crime.

(b) If an individual has not had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI national criminal history record check. The fingerprints shall be submitted to the FBI through the Criminal Investigations and Technical Services Division. The individual or licensee is responsible for the cost of the fingerprinting and national criminal history check.

(3) The department may determine whether:

(a) an individual whose name and other identifying information has been submitted pursuant to Subsection (1) and who provides direct care to children [~~has a substantiated finding of child abuse or neglect by accessing in accordance with Subsection (4) the licensing part of the management information system created in Section 62A-4a-116~~] is listed in the Licensing Information System described in Section 62A-4a-116.2 or has a substantiated finding by a court of severe child abuse or neglect under Section 78-3a-320, if identification as a possible perpetrator of child abuse or neglect is relevant to the employment activities of that individual; or

(b) an individual whose name and other identifying information has been submitted pursuant to Subsection (1) and who provides direct care to disabled or elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or elder adult by accessing in accordance with Subsection (4) the database created in Section 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation is relevant to the employment activities of that person.

(4) (a) The department shall:

- (i) designate two persons within the department to access the [~~licensing part of the~~

~~management information system]~~ Licensing Information System described in Section 62A-4a-116.2 and court records under Subsection 78-3a-320(4) and two persons to access the database described in Subsection (3)(b); and

(ii) adopt measures to:

(A) protect the security of the ~~[management information system]~~ Licensing Information System, the court records, and the database; and

(B) strictly limit access to the ~~[management information system]~~ Licensing Information System, the court records, and the database to those designated under Subsection (4)(a)(i).

(b) Those designated under Subsection (4)(a)(i) shall receive training from the Department of Human Services with respect to:

(i) accessing the ~~[management information system]~~ Licensing Information System, the court records, and the database;

(ii) maintaining strict security; and

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

(c) Those designated under Subsection (4)(a)(i):

(i) are the only ones in the department with the authority to access the ~~[management information system]~~ Licensing Information System, the court records, and database; and

(ii) may only access the ~~[management information system]~~ Licensing Information System, the court records, and the database for the purpose of licensing and in accordance with the provisions of Subsection (3).

(5) Within ten days of initially hiring an individual, a covered health care facility shall submit the individual's information to the department in accordance with Subsection (1).

(6) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person who has been convicted of a criminal offense ~~[or has a substantiated report of child abuse or neglect or disabled or elder adult abuse, neglect, or exploitation may provide direct care],~~ or a person described in Subsection (3), may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal conviction or substantiated finding and its relation to patient care.

(7) The department may, in accordance with Section 26-1-6, assess reasonable fees for a criminal background check processed pursuant to this section.

(8) The department may inform the covered health care facility of ~~[the criminal conviction or substantiated finding of child abuse or neglect of an individual associated with the facility]~~ information discovered under Subsection (3) with respect to an individual associated with the facility.

(9) A covered health care facility is not civilly liable for submitting information to the department as required by Subsection (1).

(10) For purposes of this section, "covered health care facility" only includes:

- (a) home health care agencies;
- (b) hospices;
- (c) nursing care facilities;
- (d) assisted-living facilities;
- (e) small health care facilities; and
- (f) end stage renal disease facilities.

Section 2. Section **26-39-105.5** is amended to read:

26-39-105.5. Residential child care certificate.

(1) (a) A residential child care provider of five to eight children shall obtain a Residential Child Care Certificate from the department unless Section 26-39-106 applies.

(b) The qualifications for a Residential Child Care Certificate are limited to:

(i) the submission of:

(A) an application in the form prescribed by the department;

(B) a certification and criminal background fee established in accordance with Section 26-1-6; and

(C) identifying information described in Subsection 26-39-107(1) for each adult person who resides in the provider's home:

(I) for processing by the Department of Public Safety to determine whether any such person has been convicted of a crime; ~~[and]~~

(II) to screen for a substantiated finding of child abuse or neglect [~~pursuant to Section 62A-4a-116~~] by a juvenile court; and

(III) to discover whether the person is listed in the Licensing Information System described in Section 62A-4a-116.2.

(ii) an initial and annual inspection of the provider's home within 90 days of sending an intent to inspect notice to:

(A) check the immunization record of each child who receives child care in the provider's home;

(B) identify serious sanitation, fire, and health hazards to children; and

(C) make appropriate recommendations; and

(iii) for new providers, completion of:

(A) five hours of department-approved training; and

(B) a department-approved CPR and first aid course.

(c) If a serious sanitation, fire, or health hazard has been found during an inspection conducted pursuant to Subsection (1)(b)(ii), the department may, at the option of the residential care provider:

(i) require corrective action for the serious hazards found and make an unannounced follow up inspection to determine compliance; or

(ii) inform the parents of each child in the care of the provider of the results of the department's inspection and the failure of the provider to take corrective action.

(d) In addition to an inspection conducted pursuant to Subsection (1)(b)(ii), the department may inspect the home of a residential care provider of five to eight children in response to a complaint of:

(i) child abuse or neglect;

(ii) serious health hazards in or around the provider's home; or

(iii) providing residential child care without the appropriate certificate or license.

(2) Notwithstanding this section:

(a) a license under Section 26-39-105 is required of a residential child care provider who

cares for nine or more children;

(b) a certified residential child care provider may not provide care to more than two children under the age of two; and

(c) an inspection may be required of a residential child care provider in connection with a federal child care program.

(3) With respect to residential child care, the department may only make and enforce rules necessary to implement this section.

Section 3. Section **62A-1-118** is amended to read:

62A-1-118. Access to abuse and neglect information to screen employees and volunteers.

(1) With respect to department employees and volunteers, the department may only access information in the Division of Child and Family Service's [~~management information system~~] Management Information System created by Section 62A-4a-116 and the Division of Aging and Adult Services database created by Section 62A-3-311.1 for the purpose of determining at the time of hire and each year thereafter whether a department employee or volunteer has an adjudication of abuse or neglect or since January 1, 1994, a substantiated finding of abuse or neglect after notice and an opportunity for a hearing consistent with Title 63, Chapter 46b, Administrative Procedures Act, but only if identification as a possible perpetrator of abuse or neglect is directly relevant to the employment or volunteer activities of that person.

(2) A department employee or volunteer to whom Subsection (1) applies shall submit to the department his name and other identifying information upon request.

(3) The department shall process the information to determine whether the employee or volunteer has a substantiated finding of child abuse or neglect.

(4) The department shall adopt rules defining permissible and impermissible work-related activities for a department employee or volunteer with one or more substantiated findings of abuse or neglect.

Section 4. Section **62A-2-121** is amended to read:

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

(1) With respect to human services licensees, the department may access only the ~~[licensing part]~~ Licensing Information System of the Division of Child and Family ~~[Service's management information system]~~ Services created by ~~[Section 62A-4a-116]~~ Section 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320(4), for the purpose of:

(a) determining whether a person associated with a licensee, who provides care described in Subsection (2), is listed in the Licensing Information System or has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2); and

(b) informing a licensee, who provides care described in Subsection (2), that a person associated with the licensee is listed in the Licensing Information System or has a substantiated finding by a juvenile court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2).

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

(b) The office shall process the information ~~[to determine whether the licensee or a person associated with a licensee has a substantiated finding of child abuse or neglect]~~ for the purposes described in Subsection (1).

(3) The ~~[office]~~ department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person associated with a licensee who is listed in the Licensing Information System or has a substantiated finding by a court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2) may provide ~~[child-placing services, foster care, youth programs, substitute care, or institutionalized care for children in a facility licenced by the department]~~ services to children.

Section 5. Section **62A-4a-101** is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

- (1) "Abuse" means:
 - (a) actual or threatened nonaccidental physical or mental harm;
 - (b) negligent treatment;
 - (c) sexual exploitation; or
 - (d) any sexual abuse.

(2) "Adoption services" means placing children for adoption, subsidizing adoptions under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court, conducting adoption studies, preparing adoption reports upon request of the court, and providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.

(3) "Board" means the Board of Child and Family Services established in accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

(4) "Child" has the same meaning as "minor," as defined in this section.

~~[(4)]~~ (5) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

(6) "Chronic physical abuse" means repeated or patterned physical abuse.

(7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent, guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

(8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

~~[(5)]~~ (9) "Custody," with regard to the division, means the custody of a child in the division as of the date of disposition.

~~[(6)]~~ (10) "Day-care services" means care of a child for a portion of the day which is less than 24 hours, in his own home by a responsible person, or outside of his home in a day-care center, family group home, or family child care home.

~~[(7)]~~ (11) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of [his] the child's parent, guardian, or custodian.

~~[(8)]~~ (12) "Director" means the director of the Division of Child and Family Services.

~~[(9)]~~ (13) "Division" means the Division of Child and Family Services.

~~[(10)]~~ (14) (a) "Domestic violence services" means temporary shelter, treatment, and related services to persons who are victims of abuse and their dependent children and treatment services for domestic violence perpetrators.

(b) As used in this Subsection ~~[(10)]~~ (14) "abuse" means the same as that term is defined in Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection 77-36-1(2).

~~[(11)]~~ (15) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

~~[(12)]~~ (16) "Minor" means a person under 18 years of age. "Minor" may also include a person under 21 years of age for whom the division has been specifically ordered by the juvenile court to provide services.

~~[(13)]~~ (17) "Natural parent" means a ~~[child's]~~ minor's biological or adoptive parent, and includes a ~~[child's]~~ minor's noncustodial parent.

~~[(14)]~~ (18) (a) "Neglect" means:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) subjecting a child to mistreatment or abuse;

(iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for his health, safety, morals, or well-being; or

(v) a child at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection ~~[(14)]~~ (18)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without good

cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

~~[(15)]~~ (19) "Protective custody," with regard to the division, means the shelter of a child by the division from the time ~~[he]~~ the child is removed from ~~[his]~~ the child's home until the shelter hearing, or ~~[his]~~ the child's return home, whichever occurs earlier.

~~[(16)]~~ (20) "Protective services" means expedited services that are provided:

- (a) in response to evidence of neglect, abuse, or ~~[exploitation]~~ dependency of a minor;
- (b) in an effort to substantiate evidence of neglect, abuse, or ~~[exploitation]~~ dependency;
- (c) to a cohabitant who is neglecting or abusing a child, in order to help ~~[him]~~ the cohabitant develop recognition of ~~[his]~~ the cohabitant's duty of care and of the causes of neglect or abuse, and to strengthen ~~[his]~~ the cohabitant's ability to provide safe and acceptable care; and
- (d) in cases where the child's welfare is endangered:
 - (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;
 - (ii) to cause a protective order to be issued for the protection of the ~~[child]~~ minor, when appropriate; and
 - (iii) to protect the child from the circumstances that endanger ~~[his]~~ the child's welfare including, when appropriate, removal from ~~[his]~~ the child's home, placement in substitute care, and petitioning the court for termination of parental rights.

~~[(17)]~~ (21) "Services to unwed parents" means social, educational, and medical services arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

(22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a minor.

~~[(18)]~~ (23) "Shelter care" means the temporary care of minors in nonsecure facilities.

~~[(19)]~~ (24) "State" means a state of the United States, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession administered by the United States.

(25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause serious harm to a minor.

(26) "Severe physical abuse" means physical abuse that causes or threatens to cause serious harm to a minor.

~~[(20)]~~ (27) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

~~[(21)]~~ (28) "Status offender" means a minor who has been declared a runaway or ungovernable.

(29) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

~~[(22)]~~ (30) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the child's own home would be contrary to the child's welfare;

(b) services provided for a child awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

(31) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

~~[(23)]~~ (32) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

~~[(24)]~~ (33) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

(34) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

(35) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

(36) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

~~[(25)]~~ (37) "Youth services" means services provided to families in crisis when a minor is ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family conflict, maintain or reunite minors with their families, and to divert minors from the juvenile justice system. Those services may include crisis intervention, short-term shelter, time-out placement, and family counseling.

Section 6. Section **62A-4a-116** is amended to read:

62A-4a-116. Management Information System -- Requirements -- Contents -- Purpose -- Access.

(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. The information and records contained in the Management Information System are protected records under Title 63, Chapter 2, Government Records Access and Management Act, and except for the limited, specific, and narrow provisions relating to licensing, contained in Section 62A-4a-116.2, and those provisions relating to contract providers, described in Subsection (6), they are available only to those with statutory authorization to review under that law. They are also available to those who have a specific statutory authorization to access the record for the purpose of assisting the state with state and federal requirements to maintain information solely for the purpose of protecting minors and providing services to families in need.

(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]~~ that worker's caseload, including the following information:

~~[(i)]~~ (a) a record of all past action taken by the division with regard to that child and [his] the child's siblings[;];

(b) the complete case history and all reports and information in the control or keeping of the division regarding that child and [his] the child's siblings;

~~[(ii)]~~ (c) the number of times the child has been in [foster care] the custody of the division;

~~[(iii)]~~ (d) the cumulative period of time the child has been in [foster care] the custody of the division;

~~[(iv)]~~ (e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, [or] parents, or guardian including documentation [regarding whether each report was] of the latest status or the final outcome or determination regarding each report, including whether each report was found to be supported, unsupported, substantiated by a juvenile court, unsubstantiated by a juvenile court, or without merit;

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

~~[(vi)]~~ (g) the number of different caseworkers who have been assigned to that child in the past[;].

(3) The division's Management Information System shall also:

~~[(b)]~~ (a) 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; and

~~[(c)]~~ (b) alert caseworkers regarding deadlines for completion of and compliance with policy, including treatment plans[;].

~~[(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 five years; and]~~

~~[(e) maintain a separation of reports that are without merit in the system to identify the cases apart from substantiated cases and, where necessary, provide restricted access to the without merit cases;]~~

~~[(3)] (4) With regard to all child protective services cases, the Management Information System shall~~~~[, in addition to the information required in Subsection (2);] also:~~

~~(a) monitor the compliance of each case with [the policy of the] division~~~~[, the laws of this] rule and policy, state law, and federal law and regulation~~~~[;] and~~

~~[(4)] (b) [With regard to all child welfare and protective services cases;] include the age and date of birth of the alleged perpetrator~~~~[;] at the time the abuse or neglect is alleged to have occurred~~~~[; shall be included in the management information system], in order to ensure accuracy regarding the identification of the alleged perpetrator.~~

~~[(5) (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]~~

~~[(H) 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 (5)(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 (6) and Section 62A-1-118:]~~

~~[(b) For the purpose of Subsection (5)(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:]~~

~~[(f) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or]~~

~~[(H) 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;]~~

~~[(B) a person's conduct that:]~~

~~[(I) is justified under Section 76-2-401; or]~~

~~[(H) 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; or]~~

~~[(C) (I) failure to administer prescribed or recommended medication or to follow a course of treatment prescribed or recommended by a health care provider as defined in Section 78-14-3, if the division has not provided the legal guardian or parent notice of the opportunity to obtain, at the parent's or guardian's expense, a physical examination of the minor by a health care professional licensed under Title 58, Chapter 67, Utah Medical Practice Act, Chapter 68, Utah Osteopathic Medical Practices Act, Chapter 70a, Physician Assistant Act, or licensed as an advance practice registered nurse under Chapter 31b, Nurse Practices Act, to determine if the course of treatment chosen by the legal guardian or parent is a medically acceptable alternative and is in the best interest of the minor under the circumstances;]~~

~~[(H) Subsection (5)(b)(ii)(C)(I) does not apply in circumstances where a delay in the prescribed or recommended medical treatment may result in death, permanent loss of a body function, or significant physical or mental impairment of the minor; and]~~

~~[(H) for purposes of this Subsection (5)(b)(ii)(C), if the division has reason to believe that an individual is making medical recommendations concerning the administration of medication, and the individual is not licensed as a health care provider, as defined in Section 78-14-3, the division may report that individual to the appropriate licensing authority.]~~

~~[(iii) (A) For purposes of Subsection (5)(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 (5)(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:]~~

~~[(F) protect the security of the licensing part of the management information system; and]~~

~~[(H) strictly limit access to the licensing part of the management information system to those designated under Subsection (5)(c)(i)(A).]~~

~~[(ii) Those designated under Subsection (5)(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 (5)(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 (5)(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 (5)(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 (5)(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 (5)(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 (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.]~~

~~[(6) AH] (5) Except as provided in Subsection (6) regarding contract providers and Section 62A-4a-116.2 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System ~~[shall be]~~ is available to the department, upon the approval of the executive director, on a need-to-know basis.~~

~~[(7)] (6) (a) The division may allow its contract providers to have limited access to the Management Information System. ~~[The division shall limit that]~~ A division contract provider has access only to information about persons who are currently receiving services from ~~[the]~~ that specific contract provider.~~

~~(b) Each contract provider who requests access to information contained in the Management Information System 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]~~ protecting the information contained in the Management Information System as required by this chapter and under Title 63, Chapter 2, Government Records Access and Management Act, 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]~~ protect the information contained in the Management Information System as required by law.~~

~~(c) The division shall take reasonable precautions to ensure that its contract providers ~~[are complying]~~ comply with the requirements of this Subsection ~~[(7)(b)] (6).~~~~

~~[(8)] (7) The division shall take all necessary precautions, including password protection and other appropriate and available technological techniques, to prevent unauthorized access to ~~[the]~~ or~~

release of information contained in the Management Information System.

~~[(9) (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 (9)(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 (9)(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 (9)(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 (9) may be construed as requiring the division to conduct an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report is~~

false:]

Section 7. Section **62A-4a-116.1** is enacted to read:

62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in Licensing Information System -- Juvenile court petition or notice to alleged perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.

(1) If the division makes a supported finding of one or more of the severe types of child abuse or neglect described in Subsection (2), the division shall:

(a) enter into the Licensing Information System created in Section 62A-4a-116.2 the name and other identifying information of the perpetrator with the supported finding, without identifying the person as a perpetrator or alleged perpetrator, and a notation to the effect that an investigation regarding the person is pending; and

(b) (i) if the division considers it advisable, file a petition with the juvenile court under Section 78-3a-305 regarding the supported finding of abuse or neglect; or

(ii) if the division does not file a petition under Subsection (1)(b)(i), cause the notice described in Subsection (5) to be served on the alleged perpetrator.

(2) Except as otherwise provided in Subsection (3), the severe types of child abuse or neglect referred to in Subsection (1) are as follows:

(a) if committed by a person 18 years of age or older:

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse; or

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

(3) Severe child abuse or neglect in Subsection (2) 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) constitutes 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.

(4) (a) For purposes of Subsection (2)(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)(a).

(5) The notice referred to in Subsection (1)(b)(ii) shall state that:

(a) the division has conducted an investigation regarding alleged child abuse or neglect;

(b) the division has made a supported finding of one of the severe types of child abuse or neglect described in Subsection (2);

(c) facts gathered by the division support the supported finding;

(d) as a result of the supported finding, the alleged perpetrator's name and other identifying information have been listed in the Licensing Information System in accordance with Subsection (1)(a);

(e) the alleged perpetrator may be disqualified from adopting a child 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;
(f) the alleged perpetrator has the rights described in Subsection (6); and
(g) failure to take either action described in Subsection (6)(a) within one year after service of the notice will result in the action described in Subsection (6)(b).

(6) (a) Upon receipt of the notice described in Subsection (5), the alleged perpetrator shall have the right to:

(i) petition the juvenile court to hold an evidentiary hearing to determine whether the alleged perpetrator's name and other information related to the alleged incident of abuse or neglect should be removed from the Licensing Information System; or

(ii) sign a written consent to the supported finding and entry of the alleged perpetrator's name and other information regarding the supported finding of abuse or neglect into the Licensing Information System.

(b) If the alleged perpetrator fails to take either action described in Subsection (6)(a) within one year after service of the notice described in Subsection (5), the alleged perpetrator's name and the notation described in Subsection (1)(a) shall remain in the Licensing Information System. This information shall also remain in the Licensing Information System while the division awaits a response from the alleged perpetrator pursuant to Subsection (6)(a) and during the pendency of any proceeding, including an appeal of a finding of unsubstantiated or without merit, under Section 78-3a-320.

(c) The alleged perpetrator shall have no right to petition the juvenile court under Subsection (6)(b) if the court has previously held a hearing on the same alleged incident of abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other party.

(d) Consent under Subsection (6)(a)(ii) by a minor shall be given by the minor's parent or guardian.

(7) Upon the filing of a petition under Subsection (1)(b)(i), the juvenile court shall make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections 78-3a-320(1) and (2).

(8) Service of the notice under Subsections (1)(b)(ii) and (5):

(a) shall be personal service in accordance with Rule 4 of the Utah Rules of Civil Procedure;
and

(b) does not preclude civil or criminal action against the alleged perpetrator.

Section 8. Section **62A-4a-116.2** is enacted to read:

62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding -- Protected record -- Access -- Criminal penalty.

(1) The division shall maintain a sub-part of the Management Information System established pursuant to Section 62A-4a-116, to be known as the Licensing Information System, to be used solely for licensing purposes. The Licensing Information System shall include only the following information:

(a) the information described in Subsections 62A-4a-116.1(1)(a) and (6)(b);

(b) consented-to supported findings by alleged perpetrators under Subsection 62A-4a-116.1(6)(a)(ii); and

(c) the information in the licensing part of the division's Management Information System as of May 6, 2002.

(2) The division shall promptly remove from the Licensing Information System all information with respect to a finding upon receipt of notice that a juvenile court has made a finding under Section 78-3a-320. However, if a juvenile court finding of unsubstantiated or without merit is appealed, the information shall remain in the Licensing Information System until the appeal is concluded.

(3) Information contained in the Licensing Information System is classified as a protected record under Title 63, Chapter 2, Government Records Access and Management Act. Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government Records Access and Management Act, the information contained in the Licensing Information System may only be used or disclosed as specifically provided in this chapter and Section 62A-2-121 and is accessible only to:

(a) the Office of Licensing within the department, for licensing purposes only;

(b) the division, for the following purposes:

(i) to screen a person at the request of the Office of the Guardian Ad Litem Director, at the time that person seeks a paid or voluntary position with the Office of the Guardian Ad Litem Director and each year thereafter that the person remains with that office; and

(ii) to respond to a request for information from a person whose name is listed in the Licensing Information System;

(c) two persons designated by and within the Department of Health, only for the following purposes:

(i) licensing a child care program or provider; or

(ii) 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 supported finding of severe child abuse or neglect; and

(d) the department, as specifically provided in this chapter.

(4) The two persons designated by the Department of Health under Subsection (3)(c) shall adopt measures to:

(a) protect the security of the Licensing Information System; and

(b) strictly limit access to the Licensing Information System to those persons designated by statute.

(5) All persons designated by statute as having access to information contained in the Licensing Information System shall receive training from the department with respect to:

(a) accessing the Licensing Information System;

(b) maintaining strict security; and

(c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the improper release of information.

(6) No person, except those authorized by this chapter, may request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of child abuse or neglect. A person who requests information knowing that it is a violation of this Subsection (6) to do so is subject to the criminal penalty described in Sections

62A-4a-412 and 63-2-801.

Section 9. Section **62A-4a-116.3** is enacted to read:

62A-4a-116.3. False reports -- Penalties.

(1) The division shall send a certified letter to any person who submits a report of child abuse or neglect that is placed into or included in any part of the Management Information System, if the division determines, at the conclusion of its investigation, that:

(a) the report is false;

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

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

(2) The letter shall inform the reporting person of:

(a) the division's determination made under Subsection (1);

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

(c) the obligation of the division to inform law enforcement and the person alleged to have committed abuse or neglect:

(i) in the present instance if law enforcement considers an immediate referral of the reporting person to law enforcement to be justified by the facts; or

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

(3) The division may inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1), if an immediate referral is justified by the facts.

(4) The division shall inform law enforcement and the alleged perpetrator of a report for which a letter is required to be sent under Subsection (1) if a second letter is sent to the reporting person involving the same alleged perpetrator or victim.

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

(a) what information should be given to an alleged perpetrator relating to a false report; and

(b) whether good cause exists, as defined by the division by rule, for not informing an alleged perpetrator about a false report.

(6) Nothing in this section may be construed as requiring the division to conduct an investigation beyond what is described in Subsection (1), to determine whether or not a report is false.

Section 10. Section **62A-4a-116.4** is enacted to read:

62A-4a-116.4. Timeframes for deletion of specified information or reports.

(1) Unless the executive director determines that there is good cause for keeping a report of abuse or neglect in the Management Information System, based on standards established by rule, the division shall delete any reference to:

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

(b) a report that has been determined by a court of competent jurisdiction to be unsubstantiated or without merit, if no subsequent report involving the same alleged perpetrator has occurred within five years.

(2) (a) The division shall maintain a separation of reports as follows:

(i) those that are supported;

(ii) those that are unsupported;

(iii) those that are without merit;

(iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;

(v) those that are substantiated under the law in effect prior to May 6, 2002; and

(vi) those that are consented-to supported findings under Subsection 62A-4a-116.1(6)(a)(ii).

(b) Only persons with statutory authority have access to information contained in any of the reports identified in Subsection (2)(a).

Section 11. Section **62A-4a-116.5** is amended to read:

62A-4a-116.5. Notice and opportunity to challenge supported finding in Management Information System -- Right of judicial review.

(1) (a) [The] Except as provided in Subsection (2), the division shall send a notice of agency

action to a person [if] with respect to whom 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] makes a supported finding. In addition, if the alleged perpetrator is under the age of 18, the division shall:

(i) make reasonable efforts to identify the [person's] alleged perpetrator'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)]~~ (b) 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]~~ a supported finding by the division 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) Subsection (1) does not apply to a person who has been served with notice under Subsection 62A-4a-116.1(1)(b)(ii).

~~[(2)]~~ (3) The notice described in Subsection (1) shall state:

(a) that the division has conducted an investigation regarding alleged child abuse, neglect, or dependency;

(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]~~ has made a supported finding of abuse ~~[or]~~, neglect ~~[occurred]~~, or dependency;

(c) ~~[the]~~ that facts ~~[that]~~ gathered by the division support the supported 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)]~~ (d) 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]~~ supported finding by the division; and

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

~~[(3)]~~ (4) (a) A person may make a request to challenge a supported finding within 30 days of ~~[(i)]~~ a notice being received under ~~[Subsection (2);]~~ this section.

~~[(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)]~~ (b) [If the division denies the request or fails to act within 30 days after receiving a

~~request submitted under~~ Upon receipt of a request under Subsection ~~[(3)]~~ (4)(a), the Office of Administrative Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

~~[(4)]~~ (5) (a) In an adjudicative proceeding held pursuant to ~~[Subsection (3)(d)]~~ this section, the division shall ~~[prove]~~ have the burden of proving, 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]~~ or dependency occurred and that the alleged perpetrator 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.]~~

(b) Any party shall have the right of judicial review of final agency action, in accordance with Title 63, Chapter 46b, Administrative Procedures Act.

~~[(5) (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 any time, 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]~~

~~[(H) was provided a meaningful opportunity to challenge the facts underlying the court's determination.]~~

~~[(b) The division shall remove a person's 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 following a plea of no contest.]~~

~~[(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.]~~

(6) Except as otherwise provided in this chapter, an alleged perpetrator who, after receiving notice, fails to challenge a supported finding in accordance with this section, may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

(7) (a) An alleged perpetrator may not make a request under Subsection (4) to challenge a

supported finding if a court of competent jurisdiction has made a determination, in a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which was also the subject of the supported finding.

(b) An adjudicative proceeding under Subsection (5) may be stayed during the time a judicial action on the same matter is pending.

Section 12. Section **62A-4a-116.6** is enacted to read:

62A-4a-116.6. Notice and opportunity for court hearing for persons listed in Licensing Information System.

(1) The division shall send a notice described in Subsection (2) to each person whose name is on the Licensing Information System as of May 6, 2002 but who has not been the subject of any of the following court determinations with respect to the alleged incident of abuse or neglect:

(a) conviction;

(b) adjudication under Title 78, Chapter 3a, Juvenile Courts;

(c) plea of guilty;

(d) plea of guilty and mentally ill; or

(e) no contest.

(2) The notice described in Subsection (1) shall advise the person:

(a) that the person has the right to request a hearing in the juvenile court; and

(b) of the procedures to be followed in petitioning for a hearing.

(3) The juvenile court shall act on the petition as provided in Subsection 78-3a-320(3).

(4) After the division receives notice that the juvenile court has made a finding under Section 78-3a-320, the division shall promptly remove from the Licensing Information System all information with respect to the alleged incident of abuse or neglect which was the subject of the court determination. However, if a finding of unsubstantiated or without merit is appealed, the information shall remain in the Licensing Information System until the appeals process is concluded.

Section 13. Section **62A-4a-202.7** is amended to read:

62A-4a-202.7. Pilot program for differentiated responses to child abuse and neglect reports.

(1) (a) Before July 1, 2000, the executive director shall select no less than one and no more than three regions within the division to establish a pilot program that complies with the provisions of this section.

(b) After July 1, 2001, the executive director may add one region, in addition to those selected under Subsection (1)(a), to the pilot program every four months.

(2) This section shall be repealed in accordance with Section 63-55-262.

(3) (a) This section applies only to:

(i) those regions that have been selected under Subsection (1) to participate in this pilot program; and

(ii) the response of the division to reports of child abuse or neglect in the participating regions.

(b) Except as provided in Subsection (3)(a), nothing in this section may be construed as:

(i) superceding or otherwise altering the provisions of this chapter or Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings; or

(ii) as restricting the ability of the division to provide services, remove the child, or otherwise proceed in accordance with this chapter and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Hearings.

(4) Within each region selected, the division shall establish a process that classifies reports of child abuse and neglect into one of the following three categories:

(a) accepted for an investigation;

(b) accepted for a family assessment; and

(c) not accepted.

(5) The division may only initiate contact with a family member in connection with a report if the report has been officially accepted by the division for investigation or family assessment in accordance with this section.

(6) (a) Except as provided in Subsection (7), a report shall be accepted for an investigation if:

(i) required by Section 62A-4a-409; or

(ii) three prior reports involving the same family have been accepted by the division for either an investigation or a family assessment.

(b) Except as provided in Subsection (6)(c), the division shall conduct an investigation of a report accepted pursuant to Subsection (6)(a) in accordance with Section 62A-4a-409.

(c) The division may refer a case for a family assessment if at any time during the investigation, the division determines that:

(i) the case is limited to a form of abuse or neglect listed in Subsection (7); or

(ii) (A) the harm to the child is minor; and

(B) the family indicates a willingness to participate in a family assessment.

(d) The division shall conduct an investigation anytime that it receives a report accepted for investigation under this Subsection (6), even if:

(i) the report also includes allegations that would qualify for a family assessment under Subsection (7); or

(ii) a second report is received before the investigation has occurred that would qualify for a family assessment under Subsection (7).

(7) A report shall be accepted for a family assessment if there is a reasonable basis to suspect that:

(a) the child is ungovernable; or

(b) one or more of the following has occurred:

(i) neglect involving a verbal child who is six years of age or older that is not serious or chronic;

(ii) lack of proper supervision of a child;

(iii) domestic violence outside of a child's presence;

(iv) the receipt of three unaccepted reports involving the same family;

(v) a parent and child conflict indicating a significant breakdown in the parent-child relationship and the need for direct intervention to prevent a foreseeable risk of violence or abuse;

or

(vi) educational neglect.

- (8) The purpose of a family assessment is to:
- (a) ensure that the child is safe;
 - (b) seek the cooperation of the family in learning about and participating in state and community services; and
 - (c) determine with the family whether the family could benefit from division or community services in view of the specific strengths, challenges, available resources, and needs of the family.
- (9) (a) The division shall visit the child's home within three working days to begin a family assessment for a report accepted pursuant to Subsection (7).
- (b) In accordance with Subsection (8), the division shall seek the cooperation of the family in participating in a family assessment.
- (c) If the family declines to participate in a family assessment at the initial point of contact, the division shall, by virtue of the fact that a report was accepted pursuant to Subsection (7):
- (i) complete the family assessment components provided in Subsection (10); and
 - (ii) initiate an investigation if there is evidence of abuse or neglect for which an investigation is required under Subsection (6).
- (10) A family assessment shall consist of the following components:
- (a) an analysis of the circumstances resulting in the report;
 - (b) a risk assessment designed to ensure the child's safety;
 - (c) a thorough review of the division's records of prior involvement with the family; and
 - (d) speaking face-to-face with the child, which may be conducted outside of the presence of others if the division believes that it is necessary and appropriate under the circumstances.
- (11) (a) A family assessment may include additional information from the family as may be needed and that the family is willing to provide to better understand the family's strengths, challenges, available resources, and needs.
- (b) In requesting information under Subsection (11)(a), the division shall explain to the family how it intends to use the information it collects.
- (c) In performing a family assessment, the division shall inform the family orally or in writing before the division contacts persons who are not immediate family members.

(12) (a) The division shall initiate an investigation if it determines during the course of a family assessment that an investigation is required under Subsection (6).

(b) A family assessment may be discontinued if after completing the family assessment components the division determines that:

- (i) the circumstances do not warrant further involvement; or
- (ii) the family requests the discontinuation of the assessment.

(13) The division may perform a family assessment for a family that requests one, even if a report has not been accepted for a family assessment.

(14) A family assessment shall be completed within 30 days of the initial contact with the family.

(15) (a) With respect to information acquired from a family assessment, the division may only record the family assessment components described in Subsection (10) onto the Management Information System described in [~~Subsection~~] Section 62A-4a-116~~(2)~~.

(b) Nothing in Subsection (15)(a) may be construed as limiting the information that may be recorded onto the management information system as a result of:

- (i) a report of child abuse or neglect;
- (ii) an investigation;
- (iii) division services provided to the family; or
- (iv) any other division involvement with the family apart from the family assessment.

(16) All references to a report accepted for a family assessment shall be deleted from the management information system after five years unless:

(a) the executive director determines that there is good cause for keeping the report on the management information system based on standards established by rule; or

(b) a subsequent report involving the same alleged initiator has occurred within that five-year period.

(17) In connection with this pilot program, the division shall:

- (a) standardize the key elements of the program;
- (b) adequately train division employees to:

- (i) process and classify incoming reports;
- (ii) perform family assessments; and
- (iii) conduct investigations;
- (c) work within the FACT initiative to identify community partnerships to facilitate delivery of services based on family assessments;
- (d) establish quality assurance panels to review no less than twice each month the appropriateness of classifying reports as unaccepted;
- (e) consider the feasibility and, if appropriate, implementation of a system that:
 - (i) directs incoming reports of child abuse and neglect to a central location; and
 - (ii) sends reports from the central location to the appropriate regional offices for a determination of whether, applying the provisions of this section, a particular report should be accepted for investigation, accepted for a family assessment, or not accepted;
- (f) contract before July 1, 2001, with an independent entity pursuant to Title 63, Chapter 56, Utah Procurement Code, to evaluate the outcomes of the pilot program with respect to:
 - (i) the safety of children;
 - (ii) the needs and perspectives of families;
 - (iii) the recurrence of child abuse and neglect;
 - (iv) the perspectives of child welfare and community partners;
 - (v) the perspectives of division employees; and
 - (vi) other areas identified by the division;
- (g) send a copy of any written report by the independent evaluator to the Child Welfare Legislative Oversight Panel within 30 days of receipt; and
- (h) send a written report to the Child Welfare Legislative Oversight Panel 30 days before a region is added to the pilot program pursuant to Subsection (1)(b), identifying:
 - (i) the overall status of the pilot program; and
 - (ii) the reasons supporting the executive director's decision to expand the pilot program to the region selected.

Section 14. 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~~] are private, protected, or controlled records under Title 63, 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 child abuse or neglect;
- (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 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;
- (e) any subject of the report, the natural parents of the minor, 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 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;
- (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 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)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment; and

(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)(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(9)(c)~~] Section 62A-4a-116.3, 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~~] Sections 62A-4a-116 through 62A-4a-116.3, 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.

Section 15. Section **63-2-304** is amended to read:

63-2-304. Protected records.

The following records are protected if properly classified by a governmental entity:

(1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has

provided the governmental entity with the information specified in Section 63-2-308;

(2) commercial information or nonindividual financial information obtained from a person if:

(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

(c) the person submitting the information has provided the governmental entity with the information specified in Section 63-2-308;

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

(4) records the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-3(3);

(5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except that this subsection does not restrict the right of a person to see bids submitted to or by a governmental entity after bidding has closed;

(7) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information outweighs the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property; or

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property;

(8) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access outweighs the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(9) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or

(e) reasonably could be expected to disclose investigative or audit techniques, procedures,

policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;

(10) records the disclosure of which would jeopardize the life or safety of an individual;

(11) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

(12) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;

(13) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

(14) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

(15) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;

(16) records prepared by or on behalf of a governmental entity solely in anticipation of litigation that are not available under the rules of discovery;

(17) records disclosing an attorney's work product, including the mental impressions or legal theories of an attorney or other representative of a governmental entity concerning litigation;

(18) records of communications between a governmental entity and an attorney representing, retained, or employed by the governmental entity if the communications would be privileged as provided in Section 78-24-8;

(19) personal files of a legislator, including personal correspondence to or from a member of the Legislature, but not correspondence that gives notice of legislative action or policy;

(20) (a) records in the custody or control of the Office of Legislative Research and General

Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and

(b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator submits the "Request For Legislation" with a request that it be maintained as a protected record until such time as the legislator elects to make the legislation or course of action public;

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about collective bargaining or pending litigation;

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

(25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of a public institution of higher education regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings, provided that records of the final decisions about tenure, appointments, retention,

promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-7;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

(34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;

(35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;

(36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;

(37) the name of a donor or a prospective donor to a governmental entity, including a public

institution of higher education, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

(b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

(c) except for public institutions of higher education, the governmental unit to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over the donor, a member of his immediate family, or any entity owned or controlled by the donor or his immediate family;

(38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

(39) a notification of workers' compensation insurance coverage described in Section 34A-2-205; ~~and~~

(40) the following records of a public institution of education, which have been developed, discovered, or received by or on behalf of faculty, staff, employees, or students of the institution: unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative works in process, scholarly correspondence, and confidential information contained in research proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a record[-]; and

(41) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services.

Section 16. Section **78-3a-103** is amended to read:

78-3a-103. Definitions.

(1) As used in this chapter:

(a) "Abused child" includes a minor less than 18 years of age who:

(i) has suffered or been threatened with nonaccidental physical or mental harm, negligent treatment, or sexual exploitation; or

(ii) has been the victim of any sexual abuse.

(b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts

alleged in the petition have been proved.

(c) "Adult" means a person 18 years of age or over, except that persons 18 years or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be referred to as minors.

(d) "Board" means the Board of Juvenile Court Judges.

(e) "Child placement agency" means:

(i) a private agency licensed to receive minors for placement or adoption under this code;

or

(ii) a private agency receiving minors for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(f) "Commit" means to transfer legal custody.

(g) "Court" means the juvenile court.

(h) "Dependent child" includes a minor who is homeless or without proper care through no fault of his parent, guardian, or custodian.

(i) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(j) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of minors who require secure custody in physically restricting facilities:

(i) pending court disposition or transfer to another jurisdiction; or

(ii) while under the continuing jurisdiction of the court.

(k) "Division" means the Division of Child and Family Services.

~~(l)~~ (l) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is or appears to be within the court's jurisdiction and that a petition may be filed.

~~(m)~~ (m) "Group rehabilitation therapy" means psychological and social counseling of one or more persons in the group, depending upon the recommendation of the therapist.

~~(n)~~ (n) "Guardianship of the person" includes the authority to consent to marriage, to enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal

custody, if legal custody is not vested in another person, agency, or institution.

~~[(n)]~~ (o) "Habitual truant" is a school-age minor who has received more than two truancy citations within one school year from the school in which the minor is or should be enrolled and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of school authorities as required under Section 53A-11-103, refuses to regularly attend school or any scheduled period of the school day.

~~[(o)]~~ (p) "Legal custody" means a relationship embodying the following rights and duties:

- (i) the right to physical custody of the minor;
- (ii) the right and duty to protect, train, and discipline the minor;
- (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
- (iv) the right to determine where and with whom the minor shall live; and
- (v) the right, in an emergency, to authorize surgery or other extraordinary care.

~~[(p)]~~ (q) "Minor" means a person under the age of 18 years. It includes the term "child" as used in other parts of this chapter.

~~[(q)]~~ (r) "Natural parent" means a minor's biological or adoptive parent, and includes the minor's noncustodial parent.

~~[(r)]~~ (s) (i) "Neglected child" means a minor:

- (A) whose parent, guardian, or custodian has abandoned the minor, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;
- (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse;
- (C) who lacks proper parental care by reason of the fault or habits of the parent, guardian, or custodian;
- (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required, or any other care necessary for health, safety, morals, or well-being; or
- (E) who is at risk of being a neglected or abused child as defined in this chapter because another minor in the same home is a neglected or abused child as defined in this chapter.

(ii) The aspect of neglect related to education, described in Subsection (1)[~~(r)~~] (s)(i)(D), means that, after receiving notice that a minor has been frequently absent from school without good cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate education.

(iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a minor, is not guilty of neglect.

[~~(s)~~] (t) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of the minor, the parent, legal guardian or custodian, and the assigned probation officer.

[~~(t)~~] (u) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted to remain in his home under prescribed conditions and under supervision by the probation department or other agency designated by the court, subject to return to the court for violation of any of the conditions prescribed.

[~~(u)~~] (v) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

[~~(v)~~] (w) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable parent-time unless restricted by the court. If no guardian has been appointed, "residual parental rights and duties" also include the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric treatment.

[~~(w)~~] (x) "Secure facility" means any facility operated by or under contract with the Division of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation.

~~[(x)]~~ (y) "Shelter" means the temporary care of minors in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

~~[(y)]~~ (z) "State supervision" means a disposition which provides a more intensive level of intervention than standard probation but is less intensive or restrictive than a community placement with the Division of Youth Corrections.

(aa) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

(bb) "Supported" has the same meaning as defined in Section 62A-4a-101.

~~[(z)]~~ (cc) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

~~[(aa)]~~ (dd) "Therapist" means a person employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody, or any other person licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(ee) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

(ff) "Without merit" has the same meaning as defined in Section 62A-4a-101.

(2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the Division of Child and Family Services:

(a) "Custody" means the custody of a minor in the Division of Child and Family Services as of the date of disposition.

(b) "Protective custody" means the shelter of a minor by the Division of Child and Family Services from the time the minor is removed from home until the shelter hearing, or the minor's return home, whichever occurs earlier.

(c) "Temporary custody" means the custody of a minor in the Division of Child and Family Services from the date of the shelter hearing until disposition.

Section 17. Section **78-3a-104** is amended to read:

78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.

(1) Except as otherwise provided by law, the juvenile court has exclusive original jurisdiction in proceedings concerning:

(a) a minor who has violated any federal, state, or local law or municipal ordinance or a person younger than 21 years of age who has violated any law or ordinance before becoming 18 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

(b) a person 21 years of age or older who has failed or refused to comply with an order of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing orders;

(c) a minor who is an abused child, neglected child, or dependent child, as those terms are defined in Section 78-3a-103;

(d) a protective order for a minor who is alleged to be an abused child or neglected child, except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or stepparent of the minor against a natural parent or stepparent of the minor;

(e) the determination of the custody of a minor or to appoint a guardian of the person or other guardian of a minor who comes within the court's jurisdiction under other provisions of this section;

(f) the termination of the legal parent-child relationship in accordance with Part 4, Termination of Parental Rights Act, including termination of residual parental rights and duties;

(g) the treatment or commitment of a mentally retarded minor;

(h) a minor who is a habitual truant from school;

(i) the judicial consent to the marriage of a minor under age 16 upon a determination of voluntariness or where otherwise required by law, employment, or enlistment of a minor when consent is required by law;

(j) any parent or parents of a minor committed to a secure youth corrections facility, to order, at the discretion of the court and on the recommendation of a secure youth corrections facility, the parent or parents of a minor committed to a secure youth corrections facility for a custodial term, to undergo group rehabilitation therapy under the direction of a secure youth corrections facility therapist, who has supervision of that parent's or parents' minor, or any other therapist the court may direct, for a period directed by the court as recommended by a secure youth corrections facility;

(k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

(l) the treatment or commitment of a mentally ill child. The court may commit a child to the physical custody of a local mental health authority or to the legal custody of the Division of Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not commit a child directly to the Utah State Hospital;

(m) the commitment of a minor in accordance with Section 62A-8-501;

(n) de novo review of final agency actions resulting from an informal adjudicative proceeding as provided in Section 63-46b-15; and

(o) adoptions conducted in accordance with the procedures described in Title 78, Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the rights of a parent and finds that adoption is in the best interest of the minor.

(2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except that the court shall have exclusive jurisdiction over the following traffic offenses committed by a minor under 18 years of age:

(a) Section 76-5-207, automobile homicide;

(b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

(c) Section 41-6-45, reckless driving;

(d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer for an extended period of time; and

(e) Section 41-6-13.5, fleeing a peace officer.

(3) The court also has jurisdiction over traffic offenses that are part of a single criminal episode filed in a petition that contains an offense over which the court has jurisdiction.

(4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and visitation certified to it by the district court pursuant to Section 78-3a-105.

(5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is referred to it by the Division of Child and Family Services or by public or private agencies that

contract with the division to provide services to that minor where, despite earnest and persistent efforts by the division or agency, the minor has demonstrated that he:

(a) is beyond the control of his parent, guardian, lawful custodian, or school authorities to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

(b) has run away from home.

(6) This section does not restrict the right of access to the juvenile court by private agencies or other persons.

(7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising under Section 78-3a-602.

(8) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated, or without merit, in accordance with Section 78-3a-320.

Section 18. Section **78-3a-320** is enacted to read:

78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.

(1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division of Child and Family Services or any interested person informing the court, among other things, that the division has made a supported finding of one or more of the severe types of child abuse or neglect described in Subsection 62A-4a-116.1(2), the court shall:

(a) make a finding of substantiated, unsubstantiated, or without merit;

(b) include the finding described in Subsection (1)(a) in a written order; and

(c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(2) The judicial finding under Subsection (1) shall be made:

(a) as part of or at the conclusion of the adjudication hearing; or

(b) as part of a court order entered pursuant to a written stipulation of the parties.

(3) Any person described in Subsection 62A-4a-116.6(1) may at any time, within one year after the notice is sent by the Division of Child and Family Services, file with the court a petition for removal of the person's name from the Licensing Information System. At the conclusion of the hearing on the petition, the court shall:

(a) make a finding of substantiated, unsubstantiated, or without merit;

(b) include the finding described in Subsection (1)(a) in a written order; and

(c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

(4) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118, and 62A-2-121:

(a) the court shall make available records of its findings under Subsections (1) and (2) for licensing purposes, only to those with statutory authority to access also the Licensing Information System created under Section 62A-4a-116.2; and

(b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), and (3) for licensing purposes, only to those with statutory authority to access also the Licensing Information System.

Section 19. Coordination clause.

If this bill and S.B. 101, Criminal Background Checks for Licensed Providers of Human Services, both pass, it is the intent of the Legislature that Subsection 62A-2-121(3) read as follows:

"(3) The [~~office~~] department shall adopt rules under Title 63, Chapter 46a, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under which a person who has direct access to children and who is listed in the Licensing Information System or has a substantiated finding by a court of a severe type of child abuse or neglect under Subsections 78-3a-320(1) and (2) may provide [~~child-placing services, foster care, youth programs, substitute care, or institutionalized care for children in a facility licensed by the department~~] services to children."