

1                                   **DCFS MANAGEMENT INFORMATION SYSTEM**

2   **AMENDMENTS**

3   2002 GENERAL SESSION

4   STATE OF UTAH

5   **Sponsor: D. Chris Buttars**

6   **This act amends the Human Services Code. The act adds definitions of various terms used**  
7   **in the Management Information System and Licensing Information System provisions. The**  
8   **act reorganizes, clarifies, and amends statutes governing the Division of Child and Family**  
9   **Services Management Information System. The act requires that a finding of substantiation**  
10 **be determined by a preponderance of evidence, by a committee of at least three division**  
11 **employees. The act provides an opportunity to alleged perpetrators to challenge**  
12 **substantiation and inclusion in the Management Information System. The act prevents the**  
13 **inclusion of the name and other information regarding an alleged perpetrator in the**  
14 **Licensing Information System until after an administrative law judge has ruled that the**  
15 **division's substantiation is justified, unless the alleged perpetrator consents or there has been**  
16 **a court adjudication of child abuse or neglect or a criminal conviction or guilty plea related**  
17 **to neglect, physical abuse, or sexual abuse. The act clarifies the right of judicial review of**  
18 **final agency action. The act clarifies and modifies the circumstances in which a court ruling**  
19 **would require removal of an alleged perpetrator's name from the Licensing Information**  
20 **System. The act makes technical changes.**

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

22 AMENDS:

23           **26-21-9.5**, as last amended by Chapter 276, Laws of Utah 1999

24           **26-39-105.5**, as last amended by Chapter 86, Laws of Utah 2000

25           **62A-2-121**, as last amended by Chapter 164, Laws of Utah 1999

26           **62A-4a-101**, as last amended by Chapter 134, Laws of Utah 2001

27           **62A-4a-116**, as last amended by Chapters 153 and 184, Laws of Utah 2001



28           **62A-4a-116.5**, as last amended by Chapter 153, Laws of Utah 2001

29           **62A-4a-202.7**, as enacted by Chapter 228, Laws of Utah 2000

30           **62A-4a-412**, as last amended by Chapter 9, Laws of Utah 2001

31           **63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000

32 ENACTS:

33           **62A-4a-116.1**, Utah Code Annotated 1953

34           **62A-4a-116.2**, Utah Code Annotated 1953

35           **62A-4a-116.3**, Utah Code Annotated 1953

36           **62A-4a-116.4**, Utah Code Annotated 1953

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

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

39           **26-21-9.5. Criminal background check and substantiated findings of abuse or**  
40 **neglect.**

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

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

46           (i) provides direct care to a patient; and

47           (ii) has been the subject of a criminal background check within the preceding three-year  
48 period by a public or private entity recognized by the department; and

49           (b) submit the name and other identifying information, which may include fingerprints,  
50 of each person associated with the facility who:

51           (i) provides direct care to a patient; and

52           (ii) has not been the subject of a criminal background check in accordance with Subsection  
53 (1)(a)(ii).

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

57           (b) If an individual has not had residency in Utah for the last five years, the individual shall  
58 submit fingerprints for an FBI national criminal history record check. The fingerprints shall be

59 submitted to the FBI through the Criminal Investigations and Technical Services Division. The  
60 individual or licensee is responsible for the cost of the fingerprinting and national criminal history  
61 check.

62 (3) The department may determine whether:

63 (a) an individual whose name and other identifying information has been submitted  
64 pursuant to Subsection (1) and who provides direct care to children has a substantiated finding of  
65 child abuse or neglect by accessing the Licensing Information System, in accordance with  
66 [~~Subsection (4) the licensing part of the management information system created in Section~~  
67 ~~62A-4a-116]~~ Section 62A-4a-116.1, if identification as a possible perpetrator of child abuse or  
68 neglect is relevant to the employment activities of that individual; or

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

75 (4) (a) The department shall:

76 (i) designate two persons within the department to access the licensing part of the  
77 management information system and two persons to access the database described in Subsection  
78 (3); and

79 (ii) adopt measures to:

80 (A) protect the security of the management information system and the database; and

81 (B) strictly limit access to the management information system and the database to those  
82 designated under Subsection (4)(a)(i).

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

85 (i) accessing the management information system and the database;

86 (ii) maintaining strict security; and

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

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

89 (i) are the only ones in the department with the authority to access the management

90 information system and database; and

91 (ii) may only access the management information system and the database for the purpose  
92 of licensing and in accordance with the provisions of Subsection (3).

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

95 (6) The department shall adopt rules defining the circumstances under which a person who  
96 has been convicted of a criminal offense or has a substantiated report of child abuse or neglect or  
97 disabled or elder adult abuse, neglect, or exploitation may provide direct care to a patient in a  
98 covered health care facility, taking into account the nature of the criminal conviction or  
99 substantiated finding and its relation to patient care.

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

102 (8) The department may inform the covered health care facility of the criminal conviction  
103 or substantiated finding of child abuse or neglect of an individual associated with the facility.

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

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

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

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

114 **26-39-105.5. Residential child care certificate.**

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

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

118 (i) the submission of:

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

120 (B) a certification and criminal background fee established in accordance with Section

121 26-1-6; and

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

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

126 (II) to screen for a substantiated finding of child abuse or neglect pursuant to Section  
127 [~~62A-4a-116~~] 62A-4a-116.1;

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

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

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

133 (C) make appropriate recommendations; and

134 (iii) for new providers, completion of:

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

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

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

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

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

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

147 (i) child abuse or neglect;

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

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

150 (2) Notwithstanding this section:

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

152 cares for nine or more children;

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

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

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

159 Section 3. Section **62A-2-121** is amended to read:

160 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

161 (1) With respect to human services licensees, the department may access only the  
162 [~~licensing part~~] Licensing Information System of the Division of Child and Family [~~Service's~~  
163 ~~management information system created by Section 62A-4a-116~~] Services described in Sections  
164 62A-4a-116.1 through 62A-4a-116.5 for the purpose of:

165 (a) determining whether a person associated with a licensee, who provides care described  
166 in Subsection (2), has a substantiated finding of abuse or neglect; or

167 (b) informing a licensee, who provides care described in Subsection (2), that a person  
168 associated with the licensee has a substantiated finding of child abuse or neglect.

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

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

175 (3) The office shall adopt rules defining the circumstances under which a person who has  
176 a substantiated finding of child abuse or neglect may provide child-placing services, foster care,  
177 youth programs, substitute care, or institutionalized care for children in a facility licensed by the  
178 department.

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

180 **62A-4a-101. Definitions.**

181 As used in this chapter:

182 (1) "Abuse" means:

183 (a) actual or threatened nonaccidental physical or mental harm;

184 (b) negligent treatment;

185 (c) sexual exploitation; or

186 (d) any sexual abuse.

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

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

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

195 (5) "Chronic neglect" means repeated, or a pattern of, neglect, as "neglect" is defined in  
196 this section.

197 [~~(4)~~] (6) "Consumer" means a person who receives services offered by the division in  
198 accordance with this chapter.

199 [~~(5)~~] (7) "Custody," with regard to the division, means the custody of a child in the  
200 division as of the date of disposition.

201 [~~(6)~~] (8) "Day-care services" means care of a child for a portion of the day which is less  
202 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care  
203 center, family group home, or family child care home.

204 [~~(7)~~] (9) "Dependent child" or "dependency" means a child, or the condition of a child,  
205 who is homeless or without proper care through no fault of [~~his~~] the child's parent, guardian, or  
206 custodian.

207 [~~(8)~~] (10) "Director" means the director of the Division of Child and Family Services.

208 [~~(9)~~] (11) "Division" means the Division of Child and Family Services.

209 [~~(10)~~] (12) (a) "Domestic violence services" means temporary shelter, treatment, and  
210 related services to persons who are victims of abuse and their dependent children and treatment  
211 services for domestic violence perpetrators.

212 (b) As used in this Subsection [~~(10)~~] (12) "abuse" means the same as that term is defined  
213 in Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have

214 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in  
215 Subsection 77-36-1(2).

216 ~~[(11)]~~ (13) "Homemaking service" means the care of individuals in their domiciles, and  
217 help given to individual caretaker relatives to achieve improved household and family management  
218 through the services of a trained homemaker.

219 ~~[(12)]~~ (14) "Minor" means a person under 18 years of age. "Minor" may also include a  
220 person under 21 years of age for whom the division has been specifically ordered by the juvenile  
221 court to provide services.

222 ~~[(13)]~~ (15) "Natural parent" means a child's biological or adoptive parent, and includes a  
223 child's noncustodial parent.

224 ~~[(14)]~~ (16) (a) "Neglect" means:

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

227 (ii) subjecting a child to mistreatment or abuse;

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

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

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

235 (b) The aspect of neglect relating to education, described in Subsection ~~[(14)]~~ (16)(a)(iv),  
236 means that, after receiving notice that a child has been frequently absent from school without good  
237 cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a  
238 parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate  
239 education.

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

242 (17) "Preponderance of the evidence" means it is more likely than not that abuse, neglect,  
243 or dependency occurred.

244 ~~[(15)]~~ (18) "Protective custody," with regard to the division, means the shelter of a child

245 by the division from the time ~~[he]~~ the child is removed from ~~[his]~~ the child's home until the shelter  
246 hearing, or ~~[his]~~ the child's return home, whichever occurs earlier.

247 ~~[(16)]~~ (19) "Protective services" means expedited services that are provided:

248 (a) in response to evidence of neglect, abuse, or ~~[exploitation]~~ dependency of a minor;

249 (b) in an effort to substantiate evidence of neglect, abuse, or ~~[exploitation]~~ dependency;

250 (c) to a cohabitant who is neglecting or abusing a child, in order to help ~~[him]~~ the  
251 cohabitant develop recognition of ~~[his]~~ the cohabitant's duty of care and of the causes of neglect  
252 or abuse, and to strengthen ~~[his]~~ the cohabitant's ability to provide safe and acceptable care; and

253 (d) in cases where the child's welfare is endangered:

254 (i) to bring the situation to the attention of the appropriate juvenile court and law  
255 enforcement agency;

256 (ii) to cause a protective order to be issued for the protection of the child, when  
257 appropriate; and

258 (iii) to protect the child from the circumstances that endanger ~~[his]~~ the child's welfare  
259 including, when appropriate, removal from ~~[his]~~ the child's home, placement in substitute care, and  
260 petitioning the court for termination of parental rights.

261 ~~[(17)]~~ (20) "Services to unwed parents" means social, educational, and medical services  
262 arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

263 (21) "Severe neglect" means "neglect," as defined in this section, that causes or threatens  
264 to cause serious harm to a child.

265 ~~[(18)]~~ (22) "Shelter care" means the temporary care of minors in nonsecure facilities.

266 ~~[(19)]~~ (23) "State" means a state of the United States, the District of Columbia, the  
267 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern  
268 Mariana Islands, or a territory or possession administered by the United States.

269 ~~[(20)]~~ (24) "State plan" means the written description of the programs for children, youth,  
270 and family services administered by the division in accordance with federal law.

271 ~~[(21)]~~ (25) "Status offender" means a minor who has been declared a runaway or  
272 ungovernable.

273 (26) "Substantiated" or "substantiation" means a finding based on a preponderance of the  
274 evidence available at the completion of an investigation that abuse, neglect, or dependency  
275 occurred. The finding shall be made by a committee of at least three division employees, by a

276 majority vote, at least one of whom shall be a child protective services supervisor and none of  
277 whom shall be persons who have been involved in the investigation. If more than one allegation  
278 is made or identified during the course of the investigation, any allegation determined to meet the  
279 criteria for substantiation requires a case finding of substantiation. A case that has been  
280 adjudicated by a court finding of abuse, neglect, or dependency is a substantiated case whether or  
281 not the division has investigated the case.

282 [~~22~~] (27) "Substitute care" means:

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

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

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

289 [~~23~~] (28) "Temporary custody," with regard to the division, means the custody of a child  
290 in the division from the date of the shelter hearing until disposition.

291 [~~24~~] (29) "Transportation services" means travel assistance given to an individual with  
292 escort service, if necessary, to and from community facilities and resources as part of a service  
293 plan.

294 (30) "Unsubstantiated" means a finding at the completion of an investigation that there is  
295 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding  
296 of unsubstantiated also means that the division worker did not conclude that the allegation was  
297 without merit.

298 (31) "Without merit" means a finding at the completion of an investigation that the alleged  
299 abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for  
300 the abuse, neglect, or dependency.

301 [~~25~~] (32) "Youth services" means services provided to families in crisis when a minor  
302 is ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family  
303 conflict, maintain or reunite minors with their families, and to divert minors from the juvenile  
304 justice system. Those services may include crisis intervention, short-term shelter, time-out  
305 placement, and family counseling.

306 Section 5. Section **62A-4a-116** is amended to read:

307 **62A-4a-116. Management Information System -- Requirements.**

308 (1) The division shall develop and implement a Management Information System that  
309 meets the requirements of this section and the requirements of federal law and regulation. The  
310 information and records contained in the Management Information System are protected records  
311 under Title 63, Chapter 2, Government Records Access and Management Act. However,  
312 notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, except  
313 for the limited, specific, and narrow provisions relating to licensing, contained in Section  
314 62A-4a-116.1, and those provisions relating to contract providers, described in Subsection (6), the  
315 information and records contained in the Management Information System are available only to  
316 those with specific statutory authority for the purpose of assisting the state with state and federal  
317 requirements to maintain information solely for the purpose of protecting minors and providing  
318 services to families in need.

319 (2) With regard to all child welfare cases, the Management Information System shall~~[(a)]~~  
320 provide each caseworker with a complete history of each child in ~~[his]~~ that worker's caseload,  
321 including the following information:

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

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

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

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

329 ~~[(iv)]~~ (e) a record of all reports of abuse or neglect received by the division with regard to  
330 that child's parent, [or] parents, or guardian including documentation [regarding whether each  
331 report was] of the latest status or the final outcome or determination regarding each report,  
332 including whether each report was found to be substantiated, unsubstantiated, or without merit and  
333 the reasons for any finding of substantiation;

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

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

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

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

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

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

347 ~~[(i) a report that is without merit if no subsequent report involving the same alleged~~  
348 ~~perpetrator has occurred within one year; or]~~

349 ~~[(ii) a report that is unsubstantiated if no subsequent report involving the same alleged~~  
350 ~~perpetrator has occurred within five years; and]~~

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

354 ~~[(3)]~~ (4) With regard to all child protective services cases, the Management Information  
355 System shall~~[, in addition to the information required in Subsection (2);]~~ also:

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

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

362 ~~[(5) (a) The division shall develop and maintain a part of the information management~~  
363 ~~system for licensing purposes, which shall be:]~~

364 ~~[(i) limited to:]~~

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

367 ~~[(B) the name of a person who was not sent a notice of agency action under Section~~  
368 ~~62A-4a-116.5 because his location was not available on the management information system or~~

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

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

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

377 [~~(ii) accessible by;]~~

378 [~~(A) the Office of Licensing for licensing purposes only;]~~

379 [~~(B) the division;]~~

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

384 [~~(H) to respond to a request for information from the person who is identified as a~~  
385 ~~perpetrator in the report, after advising the person of the screening prohibition in Subsection~~  
386 ~~(4)(d)(iii);]~~

387 [~~(C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure~~  
388 ~~within the Department of Health only for the purpose of licensing a child care program or provider,~~  
389 ~~or for determining whether a person associated with a covered health care facility, as defined by~~  
390 ~~the Department of Health by rule, who provides direct care to a child has a substantiated finding~~  
391 ~~of child abuse or neglect; and]~~

392 [~~(D) the department as provided in Subsection (6) and Section 62A-1-118;]~~

393 [~~(b) For the purpose of Subsection (5)(a), "substantiated":]~~

394 [~~(i) means a finding that there is a reasonable basis to conclude that;]~~

395 [~~(A) a person 18 years of age or older committed one or more of the following types of~~  
396 ~~child abuse or neglect;]~~

397 [~~(I) physical abuse;]~~

398 [~~(II) sexual abuse;]~~

399 [~~(III) sexual exploitation;]~~

400 ~~[(IV) abandonment;]~~  
401 ~~[(V) medical neglect resulting in death, disability, or serious illness; or]~~  
402 ~~[(VI) chronic or severe neglect; and]~~  
403 ~~[(B) a person under the age of 18;]~~  
404 ~~[(F) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another~~  
405 ~~child which indicates a significant risk to other children; or]~~  
406 ~~[(H) engaged in sexual behavior with or upon another child which indicates a significant~~  
407 ~~risk to other children; and]~~  
408 ~~[(ii) does not include:]~~  
409 ~~[(A) the use of reasonable and necessary physical restraint or force by an educator in~~  
410 ~~accordance with Subsection 53A-11-802(2) or Section 76-2-401;]~~  
411 ~~[(B) a person's conduct that:]~~  
412 ~~[(F) is justified under Section 76-2-401; or]~~  
413 ~~[(H) constituted the use of reasonable and necessary physical restraint or force in~~  
414 ~~self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or~~  
415 ~~other dangerous object in the possession or under the control of a child or to protect the child or~~  
416 ~~another person from physical injury; or]~~  
417 ~~[(C) (F) failure to administer prescribed or recommended medication or to follow a course~~  
418 ~~of treatment prescribed or recommended by a health care provider as defined in Section 78-14-3,~~  
419 ~~if the division has not provided the legal guardian or parent notice of the opportunity to obtain, at~~  
420 ~~the parent's or guardian's expense, a physical examination of the minor by a health care~~  
421 ~~professional licensed under Title 58, Chapter 67, Utah Medical Practice Act, Chapter 68, Utah~~  
422 ~~Osteopathic Medical Practices Act, Chapter 70a, Physician Assistant Act, or licensed as an~~  
423 ~~advance practice registered nurse under Chapter 31b, Nurse Practices Act, to determine if the~~  
424 ~~course of treatment chosen by the legal guardian or parent is a medically acceptable alternative and~~  
425 ~~is in the best interest of the minor under the circumstances;]~~  
426 ~~[(H) Subsection (5)(b)(ii)(C)(F) does not apply in circumstances where a delay in the~~  
427 ~~prescribed or recommended medical treatment may result in death, permanent loss of a body~~  
428 ~~function, or significant physical or mental impairment of the minor; and]~~  
429 ~~[(H) for purposes of this Subsection (5)(b)(ii)(C), if the division has reason to believe that~~  
430 ~~an individual is making medical recommendations concerning the administration of medication;~~

431 and the individual is not licensed as a health care provider, as defined in Section 78-14-3, the  
432 division may report that individual to the appropriate licensing authority.]

433 [~~(iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined  
434 in accordance with risk assessment tools and policies established by the division that focus on age,  
435 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other  
436 related considerations.]~~

437 [~~(B) The division shall train its child protection workers to apply the risk assessment tools  
438 and policies established under Subsection (5)(b)(iii)(A).]~~

439 [~~(c) (i) The Department of Health shall:]~~

440 [~~(A) designate two persons within the Department of Health to access the licensing part  
441 of the management information system; and]~~

442 [~~(B) adopt measures to:]~~

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

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

446 [~~(ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the  
447 department with respect to:]~~

448 [~~(A) accessing the licensing part of the management information system;]~~

449 [~~(B) maintaining strict security; and]~~

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

452 [~~(iii) Those designated under Subsection (5)(c)(i)(A):]~~

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

455 [~~(B) may only access the licensing part of the management information system in  
456 accordance with the provisions of Subsection (5)(a)(ii).]~~

457 [~~(iv) The Department of Health may obtain information in the possession of the division  
458 that relates to a substantiated finding of abuse or neglect of a person screened under this  
459 Subsection (5)(c).]~~

460 [~~(d) (i) Information in the licensing part of the management information system is  
461 confidential and may only be used or disclosed as specifically provided in this section, Section~~

462 ~~62A-2-121, and Section 62A-4a-116.5.]~~

463 ~~[(ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain~~  
464 ~~or release a report or any other information in the possession of the division obtained as a result~~  
465 ~~of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators~~  
466 ~~of child abuse or neglect.]~~

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

469 ~~[(6) AH] (5) Except as provided in Subsection (6) regarding contract providers, and~~  
470 ~~Section 62A-4a-116.1 regarding limited access to the Licensing Information System, all~~  
471 ~~information contained in the division's Management Information System [shall be] is available to~~  
472 ~~the department, upon the approval of the executive director, on a need-to-know basis.~~

473 ~~[(7)] (6) (a) The division may allow its contract providers to have limited access to the~~  
474 ~~Management Information System. [-The division shall limit that] A division contract provider has~~  
475 ~~access only to information about persons who are currently receiving services from [the] that~~  
476 ~~specific contract provider.~~

477 ~~(b) Each contract provider who requests access to information contained in the~~  
478 ~~Management Information System shall:~~

479 ~~(i) take all necessary precautions to safeguard the security of the information contained in~~  
480 ~~the Management Information System;~~

481 ~~(ii) train its employees regarding requirements for [confidentiality] protecting certain~~  
482 ~~information as required by this section and under Title 63, Chapter 2, Government Records Access~~  
483 ~~and Management Act, and the criminal penalties under Sections 62A-4a-412 and 63-2-801 for~~  
484 ~~improper release of information; and~~

485 ~~(iii) monitor its employees to ensure that they [comply with the confidentiality~~  
486 ~~requirements] protect the records as required under Title 63, Chapter 2, Government Records~~  
487 ~~Access and Management Act related to the Management Information System.~~

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

490 ~~[(8)] (7) The division shall take all necessary precautions, including password protection~~  
491 ~~and other appropriate and available technological techniques, to prevent unauthorized access to~~  
492 ~~[the] or release of information contained in the Management Information System.~~

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

496 ~~[(i) the report is false;]~~

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

499 ~~[(iii) the person's address is known or reasonably available.]~~

500 ~~[(b) The letter shall inform the person of:]~~

501 ~~[(i) the determination made under Subsection (9)(a);]~~

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

504 ~~[(iii) the obligation of the division to inform law enforcement and the alleged perpetrator:]~~

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

506 ~~[(B) if the person submits a subsequent false report involving the same alleged perpetrator~~  
507 ~~or victim.]~~

508 ~~[(c) (i) The division may inform law enforcement and the alleged perpetrator of a report~~  
509 ~~for which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified~~  
510 ~~by the facts.]~~

511 ~~[(ii) The division shall inform law enforcement and the alleged perpetrator of a report for~~  
512 ~~which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the~~  
513 ~~person involving the same alleged perpetrator or victim.]~~

514 ~~[(iii) The division shall determine, in consultation with law enforcement:]~~

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

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

518 ~~[(d) Nothing in this Subsection (9) may be construed as requiring the division to conduct~~  
519 ~~an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report~~  
520 ~~is false.]~~

521 Section 6. Section **62A-4a-116.1** is enacted to read:

522 **62A-4a-116.1. Licensing Information System.**

523 **(1) The division shall maintain a sub-part of the Management Information System**

524 established pursuant to Section 62A-4a-116, to be known as the Licensing Information System,  
525 to be used solely for licensing purposes. The information contained in the Licensing Information  
526 System shall be limited to findings of certain types of child abuse or neglect, as described in  
527 Subsection (3), that have been substantiated by the division on or after January 1, 1988.  
528 Information with respect to an alleged perpetrator shall be included in the Licensing Information  
529 System only if:

530 (a) an administrative law judge has ruled, under Section 62A-4a-116.5, that the division's  
531 substantiation is justified;

532 (b) the alleged perpetrator gives the written notice and consent described in Subsection  
533 62A-4a-116.5(1)(b);

534 (c) the alleged perpetrator is the subject of an adjudication of child abuse or neglect, by  
535 a court of competent jurisdiction; or

536 (d) the alleged perpetrator has been criminally convicted with regard to, or has entered a  
537 guilty plea related to, neglect, physical abuse, or sexual abuse of any person.

538 (2) Notwithstanding the disclosure requirements of Title 63, Chapter 2, Government  
539 Records Access and Management Act, the Licensing Information System is only accessible to:

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

541 (b) the division, for the following purposes:

542 (i) to screen a person at the request of the Office of the Guardian Ad Litem Director,  
543 created by Section 78-3a-911, at the time that person seeks a paid or voluntary position with the  
544 Office of the Guardian Ad Litem and each year thereafter that the person remains with that office;  
545 and

546 (ii) to respond to a request for information from a person who is identified as a perpetrator  
547 in a report to the division, after advising the person of the licensing and screening process  
548 described in this section and Sections 62A-4a-116.2 through 62A-4a-116.5;

549 (c) two specifically designated persons within the Department of Health, in accordance  
550 with Subsection (4)(a), only for the following purposes:

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

552 (ii) determining whether a person associated with a covered health care facility, as defined  
553 by the Department of Health by rule, who provides direct care to a child, has a substantiated  
554 finding of child abuse or neglect; and

555 (d) the department, as specifically provided in this section, Section 62A-4a-116, and  
556 Sections 62A-4a-116.2 through 62A-1-116.5.

557 (3) (a) For the purposes of the Licensing Information System only, a finding of  
558 substantiation may occur only with respect to the following types of abuse or neglect:

559 (i) a person 18 years of age or older committed one or more of the following specific and  
560 limited types of child abuse or neglect as defined in this chapter:

561 (A) physical abuse;

562 (B) sexual abuse;

563 (C) sexual exploitation;

564 (D) abandonment;

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

566 (F) chronic or severe neglect; or

567 (ii) a person under the age of 18:

568 (A) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to a child,

569 indicating that the alleged perpetrator presents a significant risk to other children; or

570 (B) engaged in sexual behavior with or upon a minor indicating that the person presents  
571 a significant risk to other children.

572 (b) For purposes of the Licensing Information System only, the term "substantiated" does  
573 not include:

574 (i) the use of reasonable and necessary physical restraint or force by an educator in  
575 accordance with Subsection 53A-11-802(2) or Section 76-2-401(1)(c);

576 (ii) a person's conduct that:

577 (A) is justified under Section 76-2-401;

578 (B) constituted the use of reasonable and necessary physical restraint or force in  
579 self-defense, or that was otherwise appropriate to the circumstances to obtain possession of a  
580 weapon or other dangerous object in the possession of or under the control of a child; or

581 (C) that was reasonable and necessary to protect the minor or another person from physical  
582 injury; or

583 (iii) failure to administer prescribed or recommended medication or to follow a course of  
584 treatment prescribed or recommended by a health care provider, as defined in Section 78-14-3, if  
585 the division has not provided the parent or guardian notice of the opportunity to obtain, at the

586 parent's or guardian's expense, a physical examination of the minor by a health care professional  
587 licensed under Title 58, Chapter 67, Utah Medical Practice Act, Chapter 68, Utah Osteopathic  
588 Medical Practices Act, Chapter 70a, Physician Assistant Act, or licensed as an advance practice  
589 registered nurse under Chapter 31b, Nurse Practices Act, to determine if the course of treatment  
590 chosen by the parent or guardian is a medically acceptable alternative and is in the best interest of  
591 the minor under the circumstances.

592 (c) Subsection (3)(b)(iii) does not apply in circumstances where a delay in the prescribed  
593 or recommended medical treatment may result in death, permanent loss of a body function, or  
594 significant physical or mental impairment of the minor. Additionally, if the division has reason  
595 to believe that a person is making medical recommendations concerning the administration of  
596 medication and the person is not licensed as a health care provider, as defined in Section 78-14-3,  
597 the division may report that person to the appropriate licensing authority.

598 (d) For purposes of the Licensing Information System, "significant risk," as used in  
599 Subsection (3)(a), shall be determined in accordance with risk assessment tools and policies  
600 established by the division that focus on age, social factors, emotional factors, sexual factors,  
601 intellectual factors, family risk factors, and other related considerations. The division shall train  
602 its child protection workers to apply the risk assessment tools and policies described and  
603 established in accordance with this Subsection (3).

604 (4) (a) The Department of Health shall specifically designate two persons within the  
605 Department of Health who shall have access to the Licensing Information System and shall adopt  
606 measures to:

607 (i) protect the security of the Licensing Information System; and

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

610 (b) The Department of Health may obtain information in the possession of the division that  
611 relates to a substantiated finding of abuse or neglect, with regard to a person who is being screened  
612 for licensing purposes in accordance with the provisions of this chapter and other related statutory  
613 provisions.

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

616 (a) accessing the Licensing Information System;

617 (b) maintaining strict security; and

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

620 (6) The two persons designated by the Department of Health pursuant to this section:

621 (a) are the only persons within the Department of Health who have the authority to access  
622 the Licensing Information System; and

623 (b) may only access the Licensing Information System in accordance with the provisions  
624 of this chapter.

625 (7) No person, except those authorized by this chapter, may request another person to  
626 obtain or release a report or any other information in the possession of the division obtained as a  
627 result of the report that is contained in the Licensing Information System to screen for potential  
628 perpetrators of child abuse or neglect. A person who requests information knowing that it is a  
629 violation of this Subsection (7) to do so, is subject to the criminal penalty described in Sections  
630 62A-4a-412 and 63-2-801.

631 Section 7. Section **62A-4a-116.2** is enacted to read:

632 **62A-4a-116.2. False reports -- Penalties.**

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

636 (a) the report is false;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

664 Section 8. Section **62A-4a-116.3** is enacted to read:

665 **62A-4a-116.3. Timeframes for deletion of specified information or reports.**

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

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

671 (b) a report that has been determined to be unsubstantiated, if no subsequent report  
672 involving the same alleged perpetrator has occurred within five years.

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

674 (i) those that are without merit;

675 (ii) those that are unsubstantiated; and

676 (iii) those that are substantiated.

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

679 (3) If an alleged perpetrator's name and other information related to the alleged abuse or  
680 neglect are required by Subsection 62A-4a-116.5(5)(a) or 62A-4a-116.5(6) to be removed from  
681 the Licensing Information System, the applicable report of abuse or neglect shall be considered and  
682 treated under this section as a report that is unsubstantiated or without merit, as determined by the  
683 division.

684 Section 9. Section **62A-4a-116.4** is enacted to read:

685 **62A-4a-116.4. Notice of agency action.**

686 (1) If the division substantiates an occurrence of abuse, neglect, or dependency, the  
687 division shall promptly send a notice of agency action to the alleged perpetrator, in accordance  
688 with Section 63-46b-3. In addition, if the alleged perpetrator is under the age of 18, the division  
689 shall:

690 (a) make reasonable efforts to identify and locate the alleged perpetrator's parent or  
691 guardian; and

692 (b) send a notice to each parent or guardian identified and located under Subsection (1)(a)  
693 unless there is good cause, as defined by rule, for not sending a notice to a parent or guardian.

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

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

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

697 (i) an initial substantiation by the division at the completion of an investigation for any  
698 purpose other than for notification under Subsection (1); or

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

700 (3) (a) The notice described in Subsection (1) shall also state that:

701 (i) the division has conducted an investigation regarding child abuse, neglect, or  
702 dependency;

703 (ii) based upon facts gathered and considered by the division, the division substantiated  
704 the abuse, neglect, or dependency at the conclusion of its investigation; and

705 (iii) the alleged perpetrator has the right to request a copy of the report which prompted  
706 the division's investigation.

707 (b) If the division's substantiation is under Subsection 62A-4a-116.1(3), in addition to the  
708 requirements of Subsection (3)(a) the notice shall also state that:

709 (i) the division has commenced adjudicative proceedings under Title 63, Chapter 46b,

710 Administrative Procedures Act, to prove that the division's substantiation is justified;  
711 (ii) within 15 days after the mailing date of the notice of agency action, the alleged  
712 perpetrator has the right to give written notice and consent, as described in Subsection  
713 62A-4a-116.5(1)(b);  
714 (iii) if the alleged perpetrator gives the written notice and consent described in Subsection  
715 62A-4a-116.5(1)(b), the division will dismiss the adjudicative proceedings; and  
716 (iv) if the alleged perpetrator defaults under Section 63-46b-11 or gives the written waiver  
717 and consent described in Subsection 62A-4a-116.5(1)(b), or if the administrative law judge finds  
718 that the division's substantiation is justified, the alleged perpetrator may be disqualified from  
719 adopting a child or working for or being licensed by:  
720 (A) the department;  
721 (B) a human services licensee;  
722 (C) a child care provider or program; and  
723 (D) a covered health care facility, as defined in Section 26-21-9.5;  
724 (c) If the division's finding of substantiation is not under Subsection 62A-4a-116.1(3), in  
725 addition to the requirements of Subsection 3(a) the notice shall also state that:  
726 (i) the alleged perpetrator has the right to request an opportunity to challenge the  
727 substantiation by the division; and  
728 (ii) failure to request an opportunity to challenge the substantiation by the division within  
729 30 days after the mailing date of the notice of agency action will result in an unappealable finding  
730 of substantiation of child abuse, neglect, or dependency unless the alleged perpetrator can show  
731 good cause why compliance within the 30-day period was virtually impossible or unreasonably  
732 burdensome.

733 Section 10. Section **62A-4a-116.5** is amended to read:  
734 **62A-4a-116.5. Adjudicative proceedings.**  
735 ~~[(1)(a) The division shall send a notice of agency action to a person if the division finds,~~  
736 ~~at the conclusion of an investigation, that, in the opinion of the division, there is a reasonable basis~~  
737 ~~to conclude that the person committed abuse or neglect listed in Subsection 62A-4a-116(5)(b)(i).~~  
738 ~~In the event that the person is under the age of 18, the division shall:]~~  
739 ~~[(i) make reasonable efforts to identify the person's parent or legal guardian; and]~~  
740 ~~[(ii) send a notice to each parent or legal guardian identified under Subsection (1)(a)(i) that~~

741 ~~lives at a different address unless there is good cause, as defined by rule, for not sending a notice~~  
742 ~~to a parent or legal guardian.]~~

743 ~~[(b) For purposes of this section only, which governs the right of a person to challenge the~~  
744 ~~division's initial finding or opinion of abuse or neglect as it pertains to the licensing part of the~~  
745 ~~management information system, the division shall refer to a finding under Subsection (1)(a) as~~  
746 ~~a "finding" or an "initial finding" of abuse or neglect when notifying or explaining a notification~~  
747 ~~to a person.]~~

748 ~~[(c) Nothing in this section may be construed as affecting:]~~

749 ~~[(i) the manner in which the division conducts an investigation; or]~~

750 ~~[(ii) the use or effect, in any other setting, of:]~~

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

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

755 ~~[(2) The notice shall state:]~~

756 ~~[(a) that the division conducted an investigation;]~~

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

759 ~~[(c) the facts that support the finding;]~~

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

762 ~~[(i) the department;]~~

763 ~~[(ii) a human services licensee;]~~

764 ~~[(iii) a child care provider or program; and]~~

765 ~~[(iv) a covered health care facility;]~~

766 ~~[(e) that the person has the right to request:]~~

767 ~~[(i) a copy of the report; and]~~

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

771 ~~[(f) that failure to request an opportunity to challenge the finding within 30 days of the~~

772 ~~notice being received will result in an unappealable finding of substantiation of child abuse or~~  
773 ~~neglect, unless the person can show good cause for why compliance within the 30-day~~  
774 ~~requirement was virtually impossible or unreasonably burdensome.]~~

775 (1) (a) If the division substantiates an occurrence of abuse or neglect under Subsection  
776 62A-4a-116.1(3), the division shall promptly commence adjudicative proceedings in the  
777 department's Office of Administrative Hearings, under Title 63, Chapter 46b, Administrative  
778 Procedures Act.

779 (b) Within 15 days after the mailing date of the notice of agency action, the alleged  
780 perpetrator has the right to give written notice to the division that the alleged perpetrator waives  
781 a hearing, agrees that the division's substantiation is justified, and consents to the entering of the  
782 alleged perpetrator's name and other information with respect to the substantiation into the  
783 Licensing Information System with the same effect as if an administrative law judge had found the  
784 division's substantiation to be justified.

785 (c) If the alleged perpetrator gives the written waiver and consent described in Subsection  
786 (1)(b), the division will dismiss the adjudicative proceedings.

787 ~~[(3)]~~ (2) (a) [A person] Unless the division has already commenced adjudicative  
788 proceedings under Subsection (1) and except as provided in Subsection (4), an alleged perpetrator  
789 may make a request to challenge a finding of substantiation within 30 days [of] after:

790 ~~(i) [a notice being received]~~ (i) the mailing date of the notice of agency action under  
791 [Subsection (2)] Section 62A-4a-116.4;

792 (ii) a finding by a court of competent jurisdiction based on the same, underlying [facts],  
793 alleged occurrence of abuse, neglect, or dependency substantiated by the division that:

794 (A) child abuse [or], neglect, [as described in Subsection 62A-4a-116(5)(b)], or  
795 dependency did not occur, or there is insufficient evidence to conclude that abuse, neglect, or  
796 dependency occurred; or

797 (B) the [person] alleged perpetrator was not responsible, or there is insufficient evidence  
798 to conclude that the alleged perpetrator was responsible, for [the] any child abuse [or], neglect, or  
799 dependency that did occur; or

800 (iii) the dismissal of criminal charges or a verdict of not guilty based on the same,  
801 underlying [facts], alleged occurrence of abuse, neglect, or dependency substantiated by the  
802 division.

803 (b) The 30-day requirement of Subsection ~~[(3)]~~ (2)(a) shall be extended for good cause  
804 shown that compliance was virtually impossible or unreasonably burdensome.

805 (c) The division may approve or deny a request made under Subsection ~~[(3)]~~ (2)(a).

806 (d) If the division denies the request or fails to act within 30 days after receiving a request  
807 submitted under Subsection ~~[(3)]~~ (2)(a), the Office of Administrative Hearings shall hold an  
808 adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

809 ~~[(4)]~~ (3) (a) In an adjudicative proceeding held pursuant to ~~[Subsection (3)(d)]~~ this section,  
810 the division ~~[shall prove]~~ has the burden of proving by a preponderance of the evidence ~~[that there~~  
811 ~~is a reasonable basis to conclude that:]~~ that its substantiation is justified.

812 ~~[(i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred; and]~~

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

814 (b) The administrative hearing officer may make a determination ~~[of]~~ that the division's  
815 substantiation is justified based solely on the out-of-court statement of the child that the officer  
816 finds to be reliable under the standards set forth in:

817 (i) Section 76-5-411;

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

819 (iii) Section 78-3a-116(5);

820 (iv) the Utah Rules of Evidence; or

821 (v) Utah case law.

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

824 ~~[(5)(a)]~~ (4) ~~[Except as provided in Subsection (5)(b), a person]~~ An alleged perpetrator may  
825 not make a request under Subsection (2)(a) to challenge a [finding under Subsection (3)(a),]  
826 substantiation if, at ~~[anytime]~~ any time, a court of competent jurisdiction has made a determination  
827 based on the same, underlying ~~[facts],~~ alleged occurrence of abuse, neglect, or dependency  
828 substantiated by the division that:

829 ~~[(i)]~~ (a) child abuse ~~[or],~~ neglect, ~~[as described in Subsection 62A-4a-116(5)(b);]~~ or  
830 dependency occurred;

831 ~~[(ii)]~~ (b) the ~~[person]~~ alleged perpetrator was substantially responsible for the abuse ~~[or],~~  
832 neglect, or dependency that occurred; and

833 ~~[(iii)]~~ (c) the ~~[person]~~ alleged perpetrator:

834 ~~[(A)]~~ (i) was a party to the proceeding; or

835 ~~[(B)-(F)]~~ (ii) had notice of the proceeding~~[:]~~ and ~~[(H)]~~ was provided a meaningful  
836 opportunity to challenge the facts underlying the court's determination.

837 ~~[(b)]~~ (5) (a) The division shall promptly remove ~~[a person's]~~ from the Licensing  
838 Information System an alleged perpetrator's name ~~[from the database unless the division provides~~  
839 new notice under Subsection (1)(a) and an opportunity to be heard under Subsection (3)(a)] and  
840 other information related to the alleged abuse or neglect when ~~[the]~~ a court of competent  
841 jurisdiction reviewing the same, underlying, alleged occurrence of abuse or neglect substantiated  
842 by the division:

843 (i) enters a finding of not guilty;

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

846 (iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the completion of  
847 a plea in abeyance agreement following a plea of no contest~~[:]~~;

848 (iv) finds that the alleged abuse or neglect did not occur or that there is insufficient  
849 evidence to conclude that abuse or neglect occurred; or

850 (v) finds that the alleged perpetrator was not responsible, or there is insufficient evidence  
851 to conclude that the alleged perpetrator was responsible, for any child abuse or neglect that  
852 occurred.

853 (b) If the division believes that, based upon the abuse and neglect criteria in Subsection  
854 62A-4a-116.1(3) and notwithstanding the court finding described in Subsection (2), the alleged  
855 perpetrator's name and other information related to the alleged occurrence of abuse or neglect  
856 should be entered into the Licensing Information System, the division shall commence adjudicative  
857 proceedings and follow the same procedures described in Subsection (1).

858 (6) The division shall promptly remove from the Licensing Information System an alleged  
859 perpetrator's name and other information related to the alleged abuse or neglect when an  
860 administrative law judge, in adjudicative proceedings under this section:

861 (a) finds that the alleged abuse or neglect did not occur, or that there is insufficient  
862 evidence to conclude that abuse or neglect occurred; or

863 (b) finds that the alleged perpetrator was not responsible, or there is insufficient evidence  
864 to conclude that the alleged perpetrator was responsible, for any abuse or neglect that occurred.

865 ~~[(e)]~~ (7) An adjudicative proceeding held ~~[pursuant to Subsection (4)]~~ under this section  
866 may be stayed during the ~~[time a]~~ pendency of judicial action ~~[is pending]~~ on the same, underlying,  
867 alleged incident of abuse, neglect, or dependency.

868 ~~[(6)]~~ (8) Nothing in this section may affect the inclusion or exclusion of a report or finding  
869 of child abuse ~~[or]~~, neglect, or dependency from, or access by the division, its caseworkers, and  
870 child protective services workers to, that part of the Management Information System used solely  
871 for purposes of child welfare cases and child protective services ~~[as described in Subsections~~  
872 ~~62A-4a-116(2) and (3)]~~.

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

875 ~~[(8)]~~ (9) ~~[A person]~~ An alleged perpetrator who, after receiving notice of agency action,  
876 fails to challenge a ~~[finding of child abuse or neglect]~~ substantiation by the division, as provided  
877 in Subsection (2), may nevertheless request the opportunity to challenge the finding under this  
878 section:

879 (a) if, since the time ~~[that]~~ the ~~[person]~~ alleged perpetrator received notice, state law has  
880 been amended to permit a broader use of or access to information ~~[on]~~ contained in the ~~[licensing~~  
881 ~~part of the]~~ Management Information System; and

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

884 (10) Except as otherwise provided in this section, an alleged perpetrator who, after  
885 receiving notice of agency action, fails to challenge a substantiation in accordance with Subsection  
886 (2), may not further challenge the substantiation and shall have no right to agency review or to an  
887 adjudicative hearing or judicial review of the substantiation.

888 Section 11. Section **62A-4a-202.7** is amended to read:

889 **62A-4a-202.7. Pilot program for differentiated responses to child abuse and neglect**  
890 **reports.**

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

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

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

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

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

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

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

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

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

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

910 (a) accepted for an investigation;

911 (b) accepted for a family assessment; and

912 (c) not accepted.

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

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

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

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

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

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

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

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

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

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

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

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

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

936 (a) the child is ungovernable; or

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

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

940 (ii) lack of proper supervision of a child;

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

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

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

946 (vi) educational neglect.

947 (8) The purpose of a family assessment is to:

948 (a) ensure that the child is safe;

949 (b) seek the cooperation of the family in learning about and participating in state and  
950 community services; and

951 (c) determine with the family whether the family could benefit from division or community  
952 services in view of the specific strengths, challenges, available resources, and needs of the family.

953 (9) (a) The division shall visit the child's home within three working days to begin a family  
954 assessment for a report accepted pursuant to Subsection (7).

955 (b) In accordance with Subsection (8), the division shall seek the cooperation of the family  
956 in participating in a family assessment.

957 (c) If the family declines to participate in a family assessment at the initial point of contact,

958 the division shall, by virtue of the fact that a report was accepted pursuant to Subsection (7):

959 (i) complete the family assessment components provided in Subsection (10); and

960 (ii) initiate an investigation if there is evidence of abuse or neglect for which an  
961 investigation is required under Subsection (6).

962 (10) A family assessment shall consist of the following components:

963 (a) an analysis of the circumstances resulting in the report;

964 (b) a risk assessment designed to ensure the child's safety;

965 (c) a thorough review of the division's records of prior involvement with the family; and

966 (d) speaking face-to-face with the child, which may be conducted outside of the presence  
967 of others if the division believes that it is necessary and appropriate under the circumstances.

968 (11) (a) A family assessment may include additional information from the family as may  
969 be needed and that the family is willing to provide to better understand the family's strengths,  
970 challenges, available resources, and needs.

971 (b) In requesting information under Subsection (11)(a), the division shall explain to the  
972 family how it intends to use the information it collects.

973 (c) In performing a family assessment, the division shall inform the family orally or in  
974 writing before the division contacts persons who are not immediate family members.

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

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

979 (i) the circumstances do not warrant further involvement; or

980 (ii) the family requests the discontinuation of the assessment.

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

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

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

988 (b) Nothing in Subsection (15)(a) may be construed as limiting the information that may

989 be recorded onto the management information system as a result of:

990 (i) a report of child abuse or neglect;

991 (ii) an investigation;

992 (iii) division services provided to the family; or

993 (iv) any other division involvement with the family apart from the family assessment.

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

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

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

1000 (17) In connection with this pilot program, the division shall:

1001 (a) standardize the key elements of the program;

1002 (b) adequately train division employees to:

1003 (i) process and classify incoming reports;

1004 (ii) perform family assessments; and

1005 (iii) conduct investigations;

1006 (c) work within the FACT initiative to identify community partnerships to facilitate  
1007 delivery of services based on family assessments;

1008 (d) establish quality assurance panels to review no less than twice each month the  
1009 appropriateness of classifying reports as unaccepted;

1010 (e) consider the feasibility and, if appropriate, implementation of a system that:

1011 (i) directs incoming reports of child abuse and neglect to a central location; and

1012 (ii) sends reports from the central location to the appropriate regional offices for a  
1013 determination of whether, applying the provisions of this section, a particular report should be  
1014 accepted for investigation, accepted for a family assessment, or not accepted;

1015 (f) contract before July 1, 2001, with an independent entity pursuant to Title 63, Chapter  
1016 56, Utah Procurement Code, to evaluate the outcomes of the pilot program with respect to:

1017 (i) the safety of children;

1018 (ii) the needs and perspectives of families;

1019 (iii) the recurrence of child abuse and neglect;

- 1020 (iv) the perspectives of child welfare and community partners;
- 1021 (v) the perspectives of division employees; and
- 1022 (vi) other areas identified by the division;
- 1023 (g) send a copy of any written report by the independent evaluator to the Child Welfare  
1024 Legislative Oversight Panel within 30 days of receipt; and
- 1025 (h) send a written report to the Child Welfare Legislative Oversight Panel 30 days before  
1026 a region is added to the pilot program pursuant to Subsection (1)(b), identifying:
  - 1027 (i) the overall status of the pilot program; and
  - 1028 (ii) the reasons supporting the executive director's decision to expand the pilot program  
1029 to the region selected.
- 1030 Section 12. Section **62A-4a-412** is amended to read:  
1031 **62A-4a-412. Reports and information protected.**
  - 1032 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well  
1033 as any other information in the possession of the division obtained as the result of a report [~~is~~  
1034 ~~confidential and~~] are protected records under Title 63, Chapter 2, Government Records Access and  
1035 Management Act, and notwithstanding Title 63, Chapter 2, Government Records Access and  
1036 Management Act may only be made available to:
    - 1037 (a) a police or law enforcement agency investigating a report of known or suspected child  
1038 abuse or neglect;
    - 1039 (b) a physician who reasonably believes that a child may be the subject of abuse or neglect;
    - 1040 (c) an agency that has responsibility or authority to care for, treat, or supervise a child who  
1041 is the subject of a report;
    - 1042 (d) a contract provider that has a written contract with the division to render services to  
1043 a child who is the subject of a report;
    - 1044 (e) any subject of the report, the natural parents of the minor, and the guardian ad litem;
    - 1045 (f) a court, upon a finding that access to the records may be necessary for the determination  
1046 of an issue before it, provided that in a divorce, custody, or related proceeding between private  
1047 parties, the record alone is:
      - 1048 (i) limited to objective or undisputed facts that were verified at the time of the  
1049 investigation; and
      - 1050 (ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue

1051 of whether or not a person's acts or omissions constituted any level of abuse or neglect of another  
1052 person;

1053 (g) an office of the public prosecutor or its deputies in performing an official duty;

1054 (h) a person authorized by a Children's Justice Center, for the purposes described in  
1055 Section 67-5b-102;

1056 (i) a person engaged in bona fide research, when approved by the director of the division,  
1057 if the information does not include names and addresses;

1058 (j) the State Office of Education, acting on behalf of itself or on behalf of a school district,  
1059 for the purpose of evaluating whether an individual should be permitted to obtain or retain a  
1060 license as an educator or serve as an employee or volunteer in a school, limited to information with  
1061 substantiated findings involving an alleged sexual offense, an alleged felony or class A  
1062 misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5,  
1063 Offenses Against the Person, and with the understanding that the office must provide the subject  
1064 of a report received under Subsection (1)(k) with an opportunity to respond to the report before  
1065 making a decision concerning licensure or employment; and

1066 (k) any person identified in the report as a perpetrator or possible perpetrator of child abuse  
1067 or neglect, after being advised of the screening prohibition in Subsection (2).

1068 (2) (a) No person, unless listed in Subsection (1), may request another person to obtain or  
1069 release a report or any other information in the possession of the division obtained as a result of  
1070 the report that is available under Subsection (1)(k) to screen for potential perpetrators of child  
1071 abuse or neglect.

1072 (b) A person who requests information knowing that it is a violation of Subsection (2)(a)  
1073 to do so is subject to the criminal penalty in Subsection (4) and Section 63-2-801.

1074 (3) Except as provided in [~~Subsection 62A-4a-116(9)(c)~~] Section 62A-4a-116.2, the  
1075 division and law enforcement officials shall ensure the anonymity of the person or persons making  
1076 the initial report and any others involved in its subsequent investigation.

1077 (4) Any person who wilfully permits, or aides and abets the release of data or information  
1078 obtained as a result of this part, in the possession of the division or contained on any part of the  
1079 Management Information System, in violation of this part or [~~Section~~] Sections 62A-4a-116  
1080 through 62A-4a-116.2, is guilty of a class C misdemeanor.

1081 (5) The physician-patient privilege is not a ground for excluding evidence regarding a

1082 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in  
1083 good faith pursuant to this part.

1084 Section 13. Section **63-2-304** is amended to read:

1085 **63-2-304. Protected records.**

1086 The following records are protected if properly classified by a governmental entity:

1087 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has  
1088 provided the governmental entity with the information specified in Section 63-2-308;

1089 (2) commercial information or nonindividual financial information obtained from a person  
1090 if:

1091 (a) disclosure of the information could reasonably be expected to result in unfair  
1092 competitive injury to the person submitting the information or would impair the ability of the  
1093 governmental entity to obtain necessary information in the future;

1094 (b) the person submitting the information has a greater interest in prohibiting access than  
1095 the public in obtaining access; and

1096 (c) the person submitting the information has provided the governmental entity with the  
1097 information specified in Section 63-2-308;

1098 (3) commercial or financial information acquired or prepared by a governmental entity to  
1099 the extent that disclosure would lead to financial speculations in currencies, securities, or  
1100 commodities that will interfere with a planned transaction by the governmental entity or cause  
1101 substantial financial injury to the governmental entity or state economy;

1102 (4) records the disclosure of which could cause commercial injury to, or confer a  
1103 competitive advantage upon a potential or actual competitor of, a commercial project entity as  
1104 defined in Subsection 11-13-3(3);

1105 (5) test questions and answers to be used in future license, certification, registration,  
1106 employment, or academic examinations;

1107 (6) records the disclosure of which would impair governmental procurement proceedings  
1108 or give an unfair advantage to any person proposing to enter into a contract or agreement with a  
1109 governmental entity, except that this subsection does not restrict the right of a person to see bids  
1110 submitted to or by a governmental entity after bidding has closed;

1111 (7) records that would identify real property or the appraisal or estimated value of real or  
1112 personal property, including intellectual property, under consideration for public acquisition before

1113 any rights to the property are acquired unless:

1114 (a) public interest in obtaining access to the information outweighs the governmental  
1115 entity's need to acquire the property on the best terms possible;

1116 (b) the information has already been disclosed to persons not employed by or under a duty  
1117 of confidentiality to the entity;

1118 (c) in the case of records that would identify property, potential sellers of the described  
1119 property have already learned of the governmental entity's plans to acquire the property; or

1120 (d) in the case of records that would identify the appraisal or estimated value of property,  
1121 the potential sellers have already learned of the governmental entity's estimated value of the  
1122 property;

1123 (8) records prepared in contemplation of sale, exchange, lease, rental, or other  
1124 compensated transaction of real or personal property including intellectual property, which, if  
1125 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of  
1126 the subject property, unless:

1127 (a) the public interest in access outweighs the interests in restricting access, including the  
1128 governmental entity's interest in maximizing the financial benefit of the transaction; or

1129 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the  
1130 value of the subject property have already been disclosed to persons not employed by or under a  
1131 duty of confidentiality to the entity;

1132 (9) records created or maintained for civil, criminal, or administrative enforcement  
1133 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if  
1134 release of the records:

1135 (a) reasonably could be expected to interfere with investigations undertaken for  
1136 enforcement, discipline, licensing, certification, or registration purposes;

1137 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement  
1138 proceedings;

1139 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

1140 (d) reasonably could be expected to disclose the identity of a source who is not generally  
1141 known outside of government and, in the case of a record compiled in the course of an  
1142 investigation, disclose information furnished by a source not generally known outside of  
1143 government if disclosure would compromise the source; or

1144 (e) reasonably could be expected to disclose investigative or audit techniques, procedures,  
1145 policies, or orders not generally known outside of government if disclosure would interfere with  
1146 enforcement or audit efforts;

1147 (10) records the disclosure of which would jeopardize the life or safety of an individual;

1148 (11) records the disclosure of which would jeopardize the security of governmental  
1149 property, governmental programs, or governmental recordkeeping systems from damage, theft, or  
1150 other appropriation or use contrary to law or public policy;

1151 (12) records that, if disclosed, would jeopardize the security or safety of a correctional  
1152 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere  
1153 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

1154 (13) records that, if disclosed, would reveal recommendations made to the Board of  
1155 Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board  
1156 of Pardons and Parole, or the Department of Human Services that are based on the employee's or  
1157 contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

1158 (14) records and audit workpapers that identify audit, collection, and operational  
1159 procedures and methods used by the State Tax Commission, if disclosure would interfere with  
1160 audits or collections;

1161 (15) records of a governmental audit agency relating to an ongoing or planned audit until  
1162 the final audit is released;

1163 (16) records prepared by or on behalf of a governmental entity solely in anticipation of  
1164 litigation that are not available under the rules of discovery;

1165 (17) records disclosing an attorney's work product, including the mental impressions or  
1166 legal theories of an attorney or other representative of a governmental entity concerning litigation;

1167 (18) records of communications between a governmental entity and an attorney  
1168 representing, retained, or employed by the governmental entity if the communications would be  
1169 privileged as provided in Section 78-24-8;

1170 (19) personal files of a legislator, including personal correspondence to or from a member  
1171 of the Legislature, but not correspondence that gives notice of legislative action or policy;

1172 (20) (a) records in the custody or control of the Office of Legislative Research and General  
1173 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or  
1174 contemplated course of action before the legislator has elected to support the legislation or course

1175 of action, or made the legislation or course of action public; and

1176 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of  
1177 Legislative Research and General Counsel is a public document unless a legislator submits the  
1178 "Request For Legislation" with a request that it be maintained as a protected record until such time  
1179 as the legislator elects to make the legislation or course of action public;

1180 (21) research requests from legislators to the Office of Legislative Research and General  
1181 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response  
1182 to these requests;

1183 (22) drafts, unless otherwise classified as public;

1184 (23) records concerning a governmental entity's strategy about collective bargaining or  
1185 pending litigation;

1186 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
1187 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured  
1188 Employers' Fund, or similar divisions in other governmental entities;

1189 (25) records, other than personnel evaluations, that contain a personal recommendation  
1190 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal  
1191 privacy, or disclosure is not in the public interest;

1192 (26) records that reveal the location of historic, prehistoric, paleontological, or biological  
1193 resources that if known would jeopardize the security of those resources or of valuable historic,  
1194 scientific, educational, or cultural information;

1195 (27) records of independent state agencies if the disclosure of the records would conflict  
1196 with the fiduciary obligations of the agency;

1197 (28) records of a public institution of higher education regarding tenure evaluations,  
1198 appointments, applications for admissions, retention decisions, and promotions, which could be  
1199 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public  
1200 Meetings, provided that records of the final decisions about tenure, appointments, retention,  
1201 promotions, or those students admitted, may not be classified as protected under this section;

1202 (29) records of the governor's office, including budget recommendations, legislative  
1203 proposals, and policy statements, that if disclosed would reveal the governor's contemplated  
1204 policies or contemplated courses of action before the governor has implemented or rejected those  
1205 policies or courses of action or made them public;

1206 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,  
1207 revenue estimates, and fiscal notes of proposed legislation before issuance of the final  
1208 recommendations in these areas;

1209 (31) records provided by the United States or by a government entity outside the state that  
1210 are given to the governmental entity with a requirement that they be managed as protected records  
1211 if the providing entity certifies that the record would not be subject to public disclosure if retained  
1212 by it;

1213 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body  
1214 except as provided in Section 52-4-7;

1215 (33) records that would reveal the contents of settlement negotiations but not including  
1216 final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

1217 (34) memoranda prepared by staff and used in the decision-making process by an  
1218 administrative law judge, a member of the Board of Pardons and Parole, or a member of any other  
1219 body charged by law with performing a quasi-judicial function;

1220 (35) records that would reveal negotiations regarding assistance or incentives offered by  
1221 or requested from a governmental entity for the purpose of encouraging a person to expand or  
1222 locate a business in Utah, but only if disclosure would result in actual economic harm to the person  
1223 or place the governmental entity at a competitive disadvantage, but this section may not be used  
1224 to restrict access to a record evidencing a final contract;

1225 (36) materials to which access must be limited for purposes of securing or maintaining the  
1226 governmental entity's proprietary protection of intellectual property rights including patents,  
1227 copyrights, and trade secrets;

1228 (37) the name of a donor or a prospective donor to a governmental entity, including a  
1229 public institution of higher education, and other information concerning the donation that could  
1230 reasonably be expected to reveal the identity of the donor, provided that:

1231 (a) the donor requests anonymity in writing;

1232 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be  
1233 classified protected by the governmental entity under this Subsection (37); and

1234 (c) except for public institutions of higher education, the governmental unit to which the  
1235 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no  
1236 regulatory or legislative authority over the donor, a member of his immediate family, or any entity

1237 owned or controlled by the donor or his immediate family;  
1238 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;  
1239 (39) a notification of workers' compensation insurance coverage described in Section  
1240 34A-2-205; ~~and~~  
1241 (40) the following records of a public institution of education, which have been developed,  
1242 discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:  
1243 unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative  
1244 works in process, scholarly correspondence, and confidential information contained in research  
1245 proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a  
1246 record[-]; and  
1247 (41) information contained in the Management Information System and Licensing  
1248 Information System described in Sections 62A-4a-116 and 62A-41-116.1.

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**Legislative Review Note**  
**as of 11-14-01 4:11 PM**

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

**Office of Legislative Research and General Counsel**

**Committee Note**

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.