

Senator D. Chris Butters proposes the following substitute bill:

DCFS MANAGEMENT INFORMATION SYSTEM

AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Butters

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

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



26 AMENDS:

- 27 **26-21-9.5**, as last amended by Chapter 276, Laws of Utah 1999
- 28 **26-39-105.5**, as last amended by Chapter 86, Laws of Utah 2000
- 29 **62A-1-118**, as enacted by Chapter 358, Laws of Utah 1998
- 30 **62A-2-121**, as last amended by Chapter 164, Laws of Utah 1999
- 31 **62A-4a-101**, as last amended by Chapter 134, Laws of Utah 2001
- 32 **62A-4a-116**, as last amended by Chapters 153 and 184, Laws of Utah 2001
- 33 **62A-4a-116.5**, as last amended by Chapter 153, Laws of Utah 2001
- 34 **62A-4a-202.7**, as enacted by Chapter 228, Laws of Utah 2000
- 35 **62A-4a-412**, as last amended by Chapter 9, Laws of Utah 2001
- 36 **63-2-304**, as last amended by Chapters 232 and 335, Laws of Utah 2000
- 37 **78-3a-103**, as last amended by Chapters 134 and 255, Laws of Utah 2001
- 38 **78-3a-104**, as last amended by Chapters 213 and 255, Laws of Utah 2001

39 ENACTS:

- 40 **62A-4a-116.1**, Utah Code Annotated 1953
- 41 **62A-4a-116.2**, Utah Code Annotated 1953
- 42 **62A-4a-116.3**, Utah Code Annotated 1953
- 43 **62A-4a-116.4**, Utah Code Annotated 1953
- 44 **62A-4a-116.6**, Utah Code Annotated 1953
- 45 **78-3a-320**, Utah Code Annotated 1953

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

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

48 **26-21-9.5. Criminal background check and Licensing Information System check.**

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

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

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

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

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

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

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

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

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

70 (3) The department may determine whether:

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

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

84 (4) (a) The department shall:

85 (i) designate two persons within the department to access the [~~licensing part of the~~
86 ~~management information system]~~ Licensing Information System described in Section
87 62A-4a-116.2 and court records under Subsection 78-3a-320(4) and two persons to access the

88 database described in Subsection (3)(b); and

89 (ii) adopt measures to:

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

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

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

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

98 (ii) maintaining strict security; and

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

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

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

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

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

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

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

117 (8) The department may inform the covered health care facility of [~~the criminal conviction~~
118 ~~or substantiated finding of child abuse or neglect of an individual associated with the facility]~~

119 information discovered under Subsection (3) with respect to an individual associated with the
120 facility.

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

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

124 (a) home health care agencies;

125 (b) hospices;

126 (c) nursing care facilities;

127 (d) assisted-living facilities;

128 (e) small health care facilities; and

129 (f) end stage renal disease facilities.

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

131 **26-39-105.5. Residential child care certificate.**

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

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

135 (i) the submission of:

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

137 (B) a certification and criminal background fee established in accordance with Section
138 26-1-6; and

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

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

143 (II) to screen for a substantiated finding of child abuse or neglect ~~[pursuant to Section~~
144 ~~62A-4a-116]~~ by a juvenile court; and

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

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

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

150 home;

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

152 (C) make appropriate recommendations; and

153 (iii) for new providers, completion of:

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

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

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

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

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

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

166 (i) child abuse or neglect;

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

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

169 (2) Notwithstanding this section:

170 (a) a license under Section 26-39-105 is required of a residential child care provider who
171 cares for nine or more children;

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

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

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

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

179 **62A-1-118. Access to abuse and neglect information to screen employees and**
180 **volunteers.**

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

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

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

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

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

198 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

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

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

206 (b) informing a licensee, who provides care described in Subsection (2), that a person
207 associated with the licensee is listed in the Licensing Information System or has a substantiated
208 finding by a juvenile court of a severe type of child abuse or neglect under Subsections
209 78-3a-320(1) and (2).

210 (2) (a) A licensee or individual applying for or renewing a license to provide child-placing
211 services, youth programs, substitute care, foster care, or institutionalized care to children shall

212 submit to the department the name and other identifying information of a person associated with
213 the licensee.

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

217 (3) The [~~office~~] department shall adopt rules under Title 63, Chapter 46a, Utah
218 Administrative Rulemaking Act, consistent with this chapter, defining the circumstances under
219 which a person associated with a licensee who is listed in the Licensing Information System or has
220 a substantiated finding by a court of a severe type of child abuse or neglect under Subsections
221 78-3a-320(1) and (2) may provide [~~child-placing services, foster care, youth programs, substitute~~
222 ~~care, or institutionalized care for children in a facility licenced by the department~~] services to
223 children.

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

225 **62A-4a-101. Definitions.**

226 As used in this chapter:

227 (1) "Abuse" means:

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

229 (b) negligent treatment;

230 (c) sexual exploitation; or

231 (d) any sexual abuse.

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

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

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

240 [~~(4)~~] (5) "Consumer" means a person who receives services offered by the division in
241 accordance with this chapter.

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

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

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

246 ~~(5)~~ (9) "Custody," with regard to the division, means the custody of a child in the
247 division as of the date of disposition.

248 ~~(6)~~ (10) "Day-care services" means care of a child for a portion of the day which is less
249 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care
250 center, family group home, or family child care home.

251 ~~(7)~~ (11) "Dependent child" or "dependency" means a child, or the condition of a child,
252 who is homeless or without proper care through no fault of ~~[his]~~ the child's parent, guardian, or
253 custodian.

254 ~~(8)~~ (12) "Director" means the director of the Division of Child and Family Services.

255 ~~(9)~~ (13) "Division" means the Division of Child and Family Services.

256 ~~(10)~~ (14) (a) "Domestic violence services" means temporary shelter, treatment, and
257 related services to persons who are victims of abuse and their dependent children and treatment
258 services for domestic violence perpetrators.

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

263 ~~(11)~~ (15) "Homemaking service" means the care of individuals in their domiciles, and
264 help given to individual caretaker relatives to achieve improved household and family management
265 through the services of a trained homemaker.

266 (16) "Household" means residing within the home of the minor whether or not related to
267 the minor.

268 ~~(12)~~ (17) "Minor" means a person under 18 years of age. "Minor" may also include a
269 person under 21 years of age for whom the division has been specifically ordered by the juvenile
270 court to provide services.

271 ~~(13)~~ (18) "Natural parent" means a ~~[child's]~~ minor's biological or adoptive parent, and
272 includes a ~~[child's]~~ minor's noncustodial parent.

273 ~~(14)~~ (19) (a) "Neglect" means:

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

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

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

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

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

284 (b) The aspect of neglect relating to education, described in Subsection [~~(14)~~] (19)(a)(iv),
285 means that, after receiving notice that a child has been frequently absent from school without good
286 cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a
287 parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate
288 education.

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

291 [~~(15)~~] (20) "Protective custody," with regard to the division, means the shelter of a child
292 by the division from the time [~~he~~] the child is removed from [~~his~~] the child's home until the shelter
293 hearing, or [~~his~~] the child's return home, whichever occurs earlier.

294 [~~(16)~~] (21) "Protective services" means expedited services that are provided:

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

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

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

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

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

303 (ii) to cause a protective order to be issued for the protection of the [~~child~~] minor, when
304 appropriate; and

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

308 ~~[(17)]~~ (22) "Services to unwed parents" means social, educational, and medical services
309 arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

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

312 ~~[(18)]~~ (24) "Shelter care" means the temporary care of minors in nonsecure facilities.

313 ~~[(19)]~~ (25) "State" means a state of the United States, the District of Columbia, the
314 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
315 Mariana Islands, or a territory or possession administered by the United States.

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

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

320 ~~[(20)]~~ (28) "State plan" means the written description of the programs for children, youth,
321 and family services administered by the division in accordance with federal law.

322 ~~[(21)]~~ (29) "Status offender" means a minor who has been declared a runaway or
323 ungovernable.

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

327 ~~[(22)]~~ (31) "Substitute care" means:

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

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

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

334 (32) "Supported" means a finding by the division based on the evidence available at the
335 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or

336 dependency occurred. Each allegation made or identified during the course of the investigation
337 shall be considered separately in determining whether there should be a finding of supported.

338 [~~(23)~~] (33) "Temporary custody," with regard to the division, means the custody of a child
339 in the division from the date of the shelter hearing until disposition.

340 [~~(24)~~] (34) "Transportation services" means travel assistance given to an individual with
341 escort service, if necessary, to and from community facilities and resources as part of a service
342 plan.

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

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

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

352 [~~(25)~~] (38) "Youth services" means services provided to families in crisis when a minor
353 is ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family
354 conflict, maintain or reunite minors with their families, and to divert minors from the juvenile
355 justice system. Those services may include crisis intervention, short-term shelter, time-out
356 placement, and family counseling.

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

358 **62A-4a-116. Management Information System -- Requirements.**

359 (1) The division shall develop and implement a Management Information System that
360 meets the requirements of this section and the requirements of federal law and regulation. The
361 information and records contained in the Management Information System are protected records
362 under Title 63, Chapter 2, Government Records Access and Management Act, and except for the
363 limited, specific, and narrow provisions relating to licensing, contained in Section 62A-4a-116.2,
364 and those provisions relating to contract providers, described in Subsection (6), they are available
365 only to those with statutory authorization to review under that law. They are also available to those
366 who have a specific statutory authorization to access the record for the purpose of assisting the

367 state with state and federal requirements to maintain information solely for the purpose of
368 protecting minors and providing services to families in need.

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

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

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

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

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

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

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

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

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

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

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

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

397 ~~[(i)] a report that is without merit if no subsequent report involving the same alleged~~

398 ~~perpetrator has occurred within one year; or]~~

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

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

404 ~~[(3)]~~ (4) With regard to all child protective services cases, the Management Information
405 System shall~~[, in addition to the information required in Subsection (2);]~~ also:

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

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

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

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

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

417 ~~[(B) the name of a person who was not sent a notice of agency action under Section~~
418 ~~62A-4a-116.5 because his location was not available on the management information system or~~
419 ~~who was sent a notice of agency action that was returned to the division as undelivered for the sole~~
420 ~~purpose of alerting the division of the need to afford the person an opportunity to challenge the~~
421 ~~finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond~~
422 ~~delaying the person's licensing application to provide an opportunity for challenge, may be taken;]~~

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

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

427 ~~[(ii) accessible by:]~~

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

429 ~~[(B) the division:]~~

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

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

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

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

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

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

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

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

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

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

450 ~~[(IV) abandonment;]~~

451 ~~[(V) medical neglect resulting in death, disability, or serious illness; or]~~

452 ~~[(VI) chronic or severe neglect; and]~~

453 ~~[(B) a person under the age of 18:]~~

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

456 ~~[(H) engaged in sexual behavior with or upon another child which indicates a significant~~
457 ~~risk to other children; and]~~

458 ~~[(ii) does not include:]~~

459 ~~[(A) the use of reasonable and necessary physical restraint or force by an educator in~~

460 accordance with Subsection 53A-11-802(2) or Section 76-2-401;]

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

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

463 [~~(H) constituted the use of reasonable and necessary physical restraint or force in~~
464 ~~self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or~~
465 ~~other dangerous object in the possession or under the control of a child or to protect the child or~~
466 ~~another person from physical injury; or]~~

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

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

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

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

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

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

490 [~~(A) designate two persons within the Department of Health to access the licensing part~~

491 of the management information system; and]

492 [~~(B) adopt measures to;~~]

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

494 [~~(H) strictly limit access to the licensing part of the management information system to~~

495 ~~those designated under Subsection (5)(c)(i)(A).]~~

496 [~~(ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the~~

497 ~~department with respect to:]~~

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

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

500 [~~(C) the criminal provisions in Section 62A-4a-412 for the improper release of~~

501 ~~information.]~~

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

503 [~~(A) are the only ones in the Department of Health with the authority to access the~~

504 ~~licensing part of the management information system; and]~~

505 [~~(B) may only access the licensing part of the management information system in~~

506 ~~accordance with the provisions of Subsection (5)(a)(ii).]~~

507 [~~(iv) The Department of Health may obtain information in the possession of the division~~

508 ~~that relates to a substantiated finding of abuse or neglect of a person screened under this~~

509 ~~Subsection (5)(c).]~~

510 [~~(d) (i) Information in the licensing part of the management information system is~~

511 ~~confidential and may only be used or disclosed as specifically provided in this section, Section~~

512 ~~62A-2-121, and Section 62A-4a-116.5.]~~

513 [~~(ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain~~

514 ~~or release a report or any other information in the possession of the division obtained as a result~~

515 ~~of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators~~

516 ~~of child abuse or neglect.]~~

517 [~~(iii) A person who requests information knowing that it is a violation of Subsection~~

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

519 [~~(6) All~~ (5) Except as provided in Subsection (6) regarding contract providers and

520 Section 62A-4a-116.2 regarding limited access to the Licensing Information System, all

521 information contained in the division's Management Information System [shall be] is available to

522 the department, upon the approval of the executive director, on a need-to-know basis.

523 ~~[(7)]~~ (6) (a) The division may allow its contract providers to have limited access to the
524 Management Information System. ~~[-The division shall limit that]~~ A division contract provider has
525 access only to information about persons who are currently receiving services from ~~[the]~~ that
526 specific contract provider.

527 (b) Each contract provider who requests access to information contained in the
528 Management Information System shall:

529 (i) take all necessary precautions to safeguard the security of the information contained in
530 the Management Information System;

531 (ii) train its employees regarding requirements for ~~[confidentiality]~~ protecting the
532 information contained in the Management Information System as required by this chapter and
533 under Title 63, Chapter 2, Government Records Access and Management Act, and the criminal
534 penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

535 (iii) monitor its employees to ensure that they ~~[comply with the confidentiality~~
536 ~~requirements related to the Management Information System]~~ protect the information contained
537 in the Management Information System as required by law.

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

540 ~~[(8)]~~ (7) The division shall take all necessary precautions, including password protection
541 and other appropriate and available technological techniques, to prevent unauthorized access to
542 ~~[the]~~ or release of information contained in the Management Information System.

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

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

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

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

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

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

552 ~~[(ii) the penalty for submitting false information under Section 76-8-506 and other~~

553 applicable laws;]

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

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

556 [~~(B) if the person submits a subsequent false report involving the same alleged perpetrator~~

557 ~~or victim.~~]

558 [~~(c) (i) The division may inform law enforcement and the alleged perpetrator of a report~~

559 ~~for which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified~~

560 ~~by the facts.~~]

561 [~~(ii) The division shall inform law enforcement and the alleged perpetrator of a report for~~

562 ~~which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the~~

563 ~~person involving the same alleged perpetrator or victim.~~]

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

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

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

567 ~~about a false claim.~~]

568 [~~(d) Nothing in this Subsection (9) may be construed as requiring the division to conduct~~

569 ~~an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report~~

570 ~~is false.~~]

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

572 **62A-4a-116.1. Referral to court -- Notice of severe types of abuse or neglect.**

573 (1) If the division makes a supported finding of one or more of the severe types of child

574 abuse or neglect described in Subsection (2) the division shall:

575 (a) enter into the Licensing Information System created in Section 62A-4a-116.2 the name

576 and other identifying information of the perpetrator with the supported finding, without identifying

577 the person as a perpetrator or alleged perpetrator, and a notation to the effect that an investigation

578 regarding the person is pending; and

579 (b) (i) if the alleged perpetrator is a minor or is not a member of the alleged victim's

580 household, cause the notice described in Subsection (7) to be served on the alleged perpetrator; or

581 (ii) if the alleged perpetrator is not one described in Subsection (1)(b)(i), file a petition

582 with the juvenile court a petition under Section 78-3a-305 regarding the supported finding of abuse

583 or neglect.

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

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

587 (i) severe or chronic physical abuse;

588 (ii) sexual abuse;

589 (iii) sexual exploitation;

590 (iv) abandonment;

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

592 (vi) chronic or severe neglect; or

593 (vii) chronic or severe emotional abuse; or

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

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

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

599 (3) Severe child abuse or neglect in Subsection (2) does not include:

600 (a) the use of reasonable and necessary physical restraint or force by an educator in
601 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or

602 (b) a person's conduct that:

603 (i) is justified under Section 76-2-401; or

604 (ii) constitutes the use of reasonable and necessary physical restraint or force in
605 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
606 other dangerous object in the possession or under the control of a child or to protect the child or
607 another person from physical injury.

608 (4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in
609 accordance with risk assessment tools and policies established by the division that focus on age,
610 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other
611 related considerations.

612 (b) The division shall train its child protection workers to apply the risk assessment tools
613 and policies established under Subsection (4)(a).

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

- 615 (a) the division has conducted an investigation regarding alleged child abuse or neglect;
616 (b) the division has make a supported finding of one of the severe types of child abuse or
617 neglect described in Subsection (2);
618 (c) facts gathered by the division support the supported finding;
619 (d) as a result of the supported finding, the alleged perpetrator's name and other identifying
620 information have been listed in the Licensing Information System in accordance with Subsection
621 (1)(a);
622 (e) the alleged perpetrator may be disqualified from adopting a child or being licensed by:
623 (i) the department;
624 (ii) a human services licensee;
625 (iii) a child care provider or program; and
626 (iv) a covered health care facility;
627 (f) the alleged perpetrator has the rights described in Subsection (6); and
628 (g) failure to take either action described in Subsection (6)(a) within three years after
629 service of the notice will result in the action described in Subsection (6)(b).
630 (6) (a) Upon receipt of the notice described in Subsection (5), the alleged perpetrator shall
631 have the right to:
632 (i) petition the juvenile court to hold an evidentiary hearing to determine whether the
633 alleged perpetrator's name and other information related to the alleged incident of abuse or neglect
634 should be removed from the Licensing Information System; or
635 (ii) sign a written consent to the supported finding and entry of the alleged perpetrator's
636 name and other information regarding the supported finding of abuse or neglect into the Licensing
637 Information System.
638 (b) If the alleged perpetrator fails to take either action described in Subsection (6)(a) within
639 three years after service of the notice described in Subsection (5), the alleged perpetrator's name
640 and the notation described in Subsection (1)(a) shall remain in the Licensing Information System.
641 This information shall also remain in the Licensing Information System while the division awaits
642 a response from the alleged perpetrator pursuant to Subsection (6)(a) and during the pendency of
643 any proceeding, including an appeal of a finding of unsubstantiated or without merit, under Section
644 78-3a-320.
645 (c) The alleged perpetrator shall have no right to petition the juvenile court under

646 Subsection (6)(b) if the court has previously held a hearing on the same alleged incident of abuse
647 or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other party.

648 (7) Upon the filing of a petition under Subsection (1)(b)(ii), the juvenile court shall make
649 a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
650 78-3a-320(1) and (2).

651 (8) Service of the notice under Subsection (1)(b)(i):

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

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

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

656 **62A-4a-116.2. Licensing Information System.**

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

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

662 (b) consented-to supported findings by alleged perpetrators under Subsection
663 62A-4a-116.1(6)(a)(ii); and

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

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

671 (3) Information contained in the Licensing Information System is classified as a protected
672 record under Title 63, Chapter 2, Government Records Access and Management Act.

673 Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government Records Access and
674 Management Act, the information contained in the Licensing Information System may only be
675 used or disclosed as specifically provided in this chapter and Section 62A-2-121 and is accessible
676 only to:

- 677 (a) the Office of Licensing within the department, for licensing purposes only;
678 (b) the division, for the following purposes:
679 (i) to screen a person at the request of the Office of the Guardian Ad Litem Director, at the
680 time that person seeks a paid or voluntary position with the Office of the Guardian Ad Litem
681 Director and each year thereafter that the person remains with that office; and
682 (ii) to respond to a request for information from a person whose name is listed in the
683 Licensing Information System;
684 (c) two persons designated by and within the Department of Health, only for the following
685 purposes:
686 (i) licensing a child care program or provider; or
687 (ii) determining whether a person associated with a covered health care facility, as defined
688 by the Department of Health by rule, who provides direct care to a child, has a supported finding
689 of severe child abuse or neglect; and
690 (d) the department, as specifically provided in this chapter.
691 (4) The two persons designated by the Department of Health under Subsection (3)(c) shall
692 adopt measures to:
693 (a) protect the security of the Licensing Information System; and
694 (b) strictly limit access to the Licensing Information System to those persons designated
695 by statute.
696 (5) All persons designated by statute as having access to information contained in the
697 Licensing Information System shall receive training from the department with respect to:
698 (a) accessing the Licensing Information System;
699 (b) maintaining strict security; and
700 (c) the criminal provisions of Section 62A-4a-412 and Section 63-2-801 pertaining to the
701 improper release of information.
702 (6) No person, except those authorized by this chapter, may request another person to
703 obtain or release any other information in the Licensing Information System to screen for potential
704 perpetrators of child abuse or neglect. A person who requests information knowing that it is a
705 violation of this subsection to do so is subject to the criminal penalty described in Section
706 62A-4a-412 and Section 63-2-801.
707 Section 9. Section **62A-4a-116.3** is enacted to read:

708 62A-4a-116.3. False reports -- Penalties.

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

712 (a) the report is false;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

739 false.

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

741 **62A-4a-116.4. Timeframes for deletion of specified information or reports.**

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

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

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

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

751 (i) those that are supported;

752 (ii) those that are unsupported;

753 (iii) those that are without merit;

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

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

756 (vi) those that are consented-to supported findings under Subsection

757 62A-4a-116.1(6)(a)(ii).

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

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

761 **62A-4a-116.5. Notice and opportunity to challenge supported finding in**
762 **Management Information System.**

763 (1) (a) ~~[The]~~ Except as provided in Subsection (2), the division shall send a notice of
764 agency action to a person [if] with respect to whom the division [finds, at the conclusion of an
765 investigation, that, in the opinion of the division, there is a reasonable basis to conclude that the
766 person committed abuse or neglect listed in Subsection 62A-4a-116(5)(b)(i). In the event that the
767 person] makes a supported finding. In addition, if the alleged perpetrator is under the age of 18,
768 the division shall:

769 (i) make reasonable efforts to identify the ~~[person's]~~ alleged perpetrator's parent or [legal]

770 guardian; and

771 (ii) send a notice to each parent or ~~[legal]~~ guardian identified under Subsection (1)(a)(i)
772 that lives at a different address, unless there is good cause, as defined by rule, for not sending a
773 notice to a parent or ~~[legal]~~ guardian.

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

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

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

781 (ii) the use or effect, in any other setting, of ~~[(A) an initial division finding or
782 substantiation of child abuse or neglect]~~ a supported finding by the division at the completion of
783 an investigation for any purpose other than for notification under Subsection (1)(b) ~~[, or]~~.

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

785 (2) Subsection (1) does not apply to a person who has been served with notice under
786 Subsection 62A-4a-116.1(1)(b)(i).

787 ~~[(2)]~~ (3) The notice described in Subsection (1) shall state:

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

790 (b) that the division ~~[found, at the conclusion of the investigation, that there was, in the
791 opinion of the division, a reasonable basis to conclude that]~~ has made a supported finding of abuse
792 [or], neglect [occurred], or dependency;

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

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

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

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

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

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

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

801 (i) a copy of the report; and
802 (ii) an opportunity to challenge the ~~[finding and its inclusion on the licensing part of the~~
803 ~~management information system described in Subsection 62A-4a-116(5), except as provided in~~
804 ~~Subsection (5)(b); and] supported finding by the division; and~~

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

810 ~~[(3)] (4)~~ (a) A person may make a request to challenge a supported finding within 30 days
811 of ~~[(i)]~~ a notice being received under ~~[Subsection (2);]~~ this section.

812 ~~[(ii) a finding by a court of competent jurisdiction based on the same underlying facts~~
813 ~~that:]~~

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

816 ~~[(B) the person was not responsible for the child abuse or neglect that did occur; or]~~

817 ~~[(iii) the dismissal of criminal charges or a verdict of not guilty based on the same~~
818 ~~underlying facts:]~~

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

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

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

826 ~~[(4)] (5)~~ (a) In an adjudicative proceeding held pursuant to ~~[Subsection (3)(d)]~~ this section,
827 the division shall ~~[prove]~~ have the burden of proving, by a preponderance of the evidence, that
828 there is a reasonable basis to conclude that ~~[(i)]~~ child abuse ~~[or]~~, neglect, ~~[as described in~~
829 ~~Subsection 62A-4a-116(5)(b), occurred; and (ii) the person]~~ or dependency occurred and that the
830 alleged perpetrator was substantially responsible for the abuse or neglect that occurred.

831 ~~[(b) The administrative hearing officer may make a determination of substantiation based~~

832 solely on the out-of-court statement of the child that the officer finds to be reliable under the
833 standards set forth in:]

834 [~~(i) Section 76-5-411;~~]

835 [~~(ii) Utah Rules of Criminal Procedure, Rule 15.5;~~]

836 [~~(iii) Section 78-3a-116(5);~~]

837 [~~(iv) the Utah Rules of Evidence; or~~]

838 [~~(v) Utah case law.~~]

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

841 [~~(5) (a) Except as provided in Subsection (5)(b), a person may not make a request to~~
842 ~~challenge a finding under Subsection (3)(a), if, at any time, a court of competent jurisdiction has~~
843 ~~made a determination based on the same underlying facts that:]~~

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

845 [~~(ii) the person was substantially responsible for the abuse or neglect that occurred; and]~~

846 [~~(iii) the person:]~~

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

848 [~~(B) (I) had notice of the proceeding; and]~~

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

851 [~~(b) The division shall remove a person's name from the database unless the division~~
852 ~~provides new notice under Subsection (1)(a) and an opportunity to be heard under Subsection~~
853 ~~(3)(a) when the court of competent jurisdiction:]~~

854 [~~(i) enters a finding of not guilty;~~]

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

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

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

861 [~~(6) Nothing in this section may affect the inclusion or exclusion of a report or finding of~~
862 ~~child abuse or neglect from or access by the division, its caseworkers, and child protective services~~

863 workers to that part of the Management Information System used for purposes of child welfare
864 cases and child protective services as described in Subsections 62A-4a-116(2) and (3).]

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

867 [~~(8) A person who, after receiving notice, fails to challenge a finding of child abuse or
868 neglect may request the opportunity to challenge the finding under this section.~~]

869 [~~(a) if since the time that the person received notice, state law has been amended to permit
870 a broader use of or access to information on the licensing part of the Management Information
871 System; and]~~

872 [~~(b) before the finding may be used against the person in connection with the broader use
873 or access.~~]

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

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

879 **62A-4a-116.6. Notice and opportunity for court hearing for persons listed in**
880 **Licensing Information System.**

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

884 (a) conviction;

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

886 (c) plea of guilty;

887 (d) plea of guilty and mentally ill; or

888 (e) no contest.

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

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

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

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

893 (4) After the division receives notice that the juvenile court has made a finding under

894 Section 78-3a-320, the division shall promptly remove from the Licensing Information System all
895 information with respect to the alleged incident of abuse or neglect which was the subject of the
896 court determination. However, if a finding of unsubstantiated or without merit is appealed, the
897 information shall remain in the Licensing Information System until the appeals process is
898 concluded.

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

900 **62A-4a-202.7. Pilot program for differentiated responses to child abuse and neglect**
901 **reports.**

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

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

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

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

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

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

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

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

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

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

921 (a) accepted for an investigation;

922 (b) accepted for a family assessment; and

923 (c) not accepted.

924 (5) The division may only initiate contact with a family member in connection with a

925 report if the report has been officially accepted by the division for investigation or family
926 assessment in accordance with this section.

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

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

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

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

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

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

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

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

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

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

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

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

947 (a) the child is ungovernable; or

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

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

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

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

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

954 (v) a parent and child conflict indicating a significant breakdown in the parent-child

955 relationship and the need for direct intervention to prevent a foreseeable risk of violence or abuse;

956 or

957 (vi) educational neglect.

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

959 (a) ensure that the child is safe;

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

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

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

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

968 (c) If the family declines to participate in a family assessment at the initial point of contact,
969 the division shall, by virtue of the fact that a report was accepted pursuant to Subsection (7):

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

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

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

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

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

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

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

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

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

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

986 (12) (a) The division shall initiate an investigation if it determines during the course of a

987 family assessment that an investigation is required under Subsection (6).

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

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

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

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

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

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

999 (b) Nothing in Subsection (15)(a) may be construed as limiting the information that may
1000 be recorded onto the management information system as a result of:

1001 (i) a report of child abuse or neglect;

1002 (ii) an investigation;

1003 (iii) division services provided to the family; or

1004 (iv) any other division involvement with the family apart from the family assessment.

1005 (16) All references to a report accepted for a family assessment shall be deleted from the
1006 management information system after five years unless:

1007 (a) the executive director determines that there is good cause for keeping the report on the
1008 management information system based on standards established by rule; or

1009 (b) a subsequent report involving the same alleged initiator has occurred within that
1010 five-year period.

1011 (17) In connection with this pilot program, the division shall:

1012 (a) standardize the key elements of the program;

1013 (b) adequately train division employees to:

1014 (i) process and classify incoming reports;

1015 (ii) perform family assessments; and

1016 (iii) conduct investigations;

1017 (c) work within the FACT initiative to identify community partnerships to facilitate

1018 delivery of services based on family assessments;

1019 (d) establish quality assurance panels to review no less than twice each month the
1020 appropriateness of classifying reports as unaccepted;

1021 (e) consider the feasibility and, if appropriate, implementation of a system that:

1022 (i) directs incoming reports of child abuse and neglect to a central location; and

1023 (ii) sends reports from the central location to the appropriate regional offices for a
1024 determination of whether, applying the provisions of this section, a particular report should be
1025 accepted for investigation, accepted for a family assessment, or not accepted;

1026 (f) contract before July 1, 2001, with an independent entity pursuant to Title 63, Chapter
1027 56, Utah Procurement Code, to evaluate the outcomes of the pilot program with respect to:

1028 (i) the safety of children;

1029 (ii) the needs and perspectives of families;

1030 (iii) the recurrence of child abuse and neglect;

1031 (iv) the perspectives of child welfare and community partners;

1032 (v) the perspectives of division employees; and

1033 (vi) other areas identified by the division;

1034 (g) send a copy of any written report by the independent evaluator to the Child Welfare
1035 Legislative Oversight Panel within 30 days of receipt; and

1036 (h) send a written report to the Child Welfare Legislative Oversight Panel 30 days before
1037 a region is added to the pilot program pursuant to Subsection (1)(b), identifying:

1038 (i) the overall status of the pilot program; and

1039 (ii) the reasons supporting the executive director's decision to expand the pilot program
1040 to the region selected.

1041 Section 14. Section **62A-4a-412** is amended to read:

1042 **62A-4a-412. Reports and information confidential.**

1043 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well
1044 as any other information in the possession of the division obtained as the result of a report [~~is~~
1045 ~~confidential and~~] are private, protected, or controlled records under Title 63, Chapter 2,
1046 Government Records Access and Management Act, and may only be made available to:

1047 (a) a police or law enforcement agency investigating a report of known or suspected child
1048 abuse or neglect;

- 1049 (b) a physician who reasonably believes that a child may be the subject of abuse or neglect;
- 1050 (c) an agency that has responsibility or authority to care for, treat, or supervise a child who
- 1051 is the subject of a report;
- 1052 (d) a contract provider that has a written contract with the division to render services to
- 1053 a child who is the subject of a report;
- 1054 (e) any subject of the report, the natural parents of the minor, and the guardian ad litem;
- 1055 (f) a court, upon a finding that access to the records may be necessary for the determination
- 1056 of an issue before it, provided that in a divorce, custody, or related proceeding between private
- 1057 parties, the record alone is:
- 1058 (i) limited to objective or undisputed facts that were verified at the time of the
- 1059 investigation; and
- 1060 (ii) devoid of conclusions drawn by the division or any of its workers on the ultimate issue
- 1061 of whether or not a person's acts or omissions constituted any level of abuse or neglect of another
- 1062 person;
- 1063 (g) an office of the public prosecutor or its deputies in performing an official duty;
- 1064 (h) a person authorized by a Children's Justice Center, for the purposes described in
- 1065 Section 67-5b-102;
- 1066 (i) a person engaged in bona fide research, when approved by the director of the division,
- 1067 if the information does not include names and addresses;
- 1068 (j) the State Office of Education, acting on behalf of itself or on behalf of a school district,
- 1069 for the purpose of evaluating whether an individual should be permitted to obtain or retain a
- 1070 license as an educator or serve as an employee or volunteer in a school, limited to information with
- 1071 substantiated findings involving an alleged sexual offense, an alleged felony or class A
- 1072 misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5,
- 1073 Offenses Against the Person, and with the understanding that the office must provide the subject
- 1074 of a report received under Subsection (1)(k) with an opportunity to respond to the report before
- 1075 making a decision concerning licensure or employment; and
- 1076 (k) any person identified in the report as a perpetrator or possible perpetrator of child abuse
- 1077 or neglect, after being advised of the screening prohibition in Subsection (2).
- 1078 (2) (a) No person, unless listed in Subsection (1), may request another person to obtain or
- 1079 release a report or any other information in the possession of the division obtained as a result of

1080 the report that is available under Subsection (1)(k) to screen for potential perpetrators of child
1081 abuse or neglect.

1082 (b) A person who requests information knowing that it is a violation of Subsection (2)(a)
1083 to do so is subject to the criminal penalty in Subsection (4).

1084 (3) Except as provided in [~~Subsection 62A-4a-116(9)(e)~~] Section 62A-4a-116.3, the
1085 division and law enforcement officials shall ensure the anonymity of the person or persons making
1086 the initial report and any others involved in its subsequent investigation.

1087 (4) Any person who wilfully permits, or aides and abets the release of data or information
1088 obtained as a result of this part, in the possession of the division or contained on any part of the
1089 Management Information System, in violation of this part or [~~Section~~] Sections 62A-4a-116
1090 through 62A-4a-116.3, is guilty of a class C misdemeanor.

1091 (5) The physician-patient privilege is not a ground for excluding evidence regarding a
1092 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in
1093 good faith pursuant to this part.

1094 Section 15. Section **63-2-304** is amended to read:

1095 **63-2-304. Protected records.**

1096 The following records are protected if properly classified by a governmental entity:

1097 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has
1098 provided the governmental entity with the information specified in Section 63-2-308;

1099 (2) commercial information or nonindividual financial information obtained from a person
1100 if:

1101 (a) disclosure of the information could reasonably be expected to result in unfair
1102 competitive injury to the person submitting the information or would impair the ability of the
1103 governmental entity to obtain necessary information in the future;

1104 (b) the person submitting the information has a greater interest in prohibiting access than
1105 the public in obtaining access; and

1106 (c) the person submitting the information has provided the governmental entity with the
1107 information specified in Section 63-2-308;

1108 (3) commercial or financial information acquired or prepared by a governmental entity to
1109 the extent that disclosure would lead to financial speculations in currencies, securities, or
1110 commodities that will interfere with a planned transaction by the governmental entity or cause

1111 substantial financial injury to the governmental entity or state economy;

1112 (4) records the disclosure of which could cause commercial injury to, or confer a
1113 competitive advantage upon a potential or actual competitor of, a commercial project entity as
1114 defined in Subsection 11-13-3(3);

1115 (5) test questions and answers to be used in future license, certification, registration,
1116 employment, or academic examinations;

1117 (6) records the disclosure of which would impair governmental procurement proceedings
1118 or give an unfair advantage to any person proposing to enter into a contract or agreement with a
1119 governmental entity, except that this subsection does not restrict the right of a person to see bids
1120 submitted to or by a governmental entity after bidding has closed;

1121 (7) records that would identify real property or the appraisal or estimated value of real or
1122 personal property, including intellectual property, under consideration for public acquisition before
1123 any rights to the property are acquired unless:

1124 (a) public interest in obtaining access to the information outweighs the governmental
1125 entity's need to acquire the property on the best terms possible;

1126 (b) the information has already been disclosed to persons not employed by or under a duty
1127 of confidentiality to the entity;

1128 (c) in the case of records that would identify property, potential sellers of the described
1129 property have already learned of the governmental entity's plans to acquire the property; or

1130 (d) in the case of records that would identify the appraisal or estimated value of property,
1131 the potential sellers have already learned of the governmental entity's estimated value of the
1132 property;

1133 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
1134 compensated transaction of real or personal property including intellectual property, which, if
1135 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of
1136 the subject property, unless:

1137 (a) the public interest in access outweighs the interests in restricting access, including the
1138 governmental entity's interest in maximizing the financial benefit of the transaction; or

1139 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the
1140 value of the subject property have already been disclosed to persons not employed by or under a
1141 duty of confidentiality to the entity;

1142 (9) records created or maintained for civil, criminal, or administrative enforcement
1143 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
1144 release of the records:

1145 (a) reasonably could be expected to interfere with investigations undertaken for
1146 enforcement, discipline, licensing, certification, or registration purposes;

1147 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
1148 proceedings;

1149 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

1150 (d) reasonably could be expected to disclose the identity of a source who is not generally
1151 known outside of government and, in the case of a record compiled in the course of an
1152 investigation, disclose information furnished by a source not generally known outside of
1153 government if disclosure would compromise the source; or

1154 (e) reasonably could be expected to disclose investigative or audit techniques, procedures,
1155 policies, or orders not generally known outside of government if disclosure would interfere with
1156 enforcement or audit efforts;

1157 (10) records the disclosure of which would jeopardize the life or safety of an individual;

1158 (11) records the disclosure of which would jeopardize the security of governmental
1159 property, governmental programs, or governmental recordkeeping systems from damage, theft, or
1160 other appropriation or use contrary to law or public policy;

1161 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
1162 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
1163 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

1164 (13) records that, if disclosed, would reveal recommendations made to the Board of
1165 Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board
1166 of Pardons and Parole, or the Department of Human Services that are based on the employee's or
1167 contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;

1168 (14) records and audit workpapers that identify audit, collection, and operational
1169 procedures and methods used by the State Tax Commission, if disclosure would interfere with
1170 audits or collections;

1171 (15) records of a governmental audit agency relating to an ongoing or planned audit until
1172 the final audit is released;

1173 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
1174 litigation that are not available under the rules of discovery;

1175 (17) records disclosing an attorney's work product, including the mental impressions or
1176 legal theories of an attorney or other representative of a governmental entity concerning litigation;

1177 (18) records of communications between a governmental entity and an attorney
1178 representing, retained, or employed by the governmental entity if the communications would be
1179 privileged as provided in Section 78-24-8;

1180 (19) personal files of a legislator, including personal correspondence to or from a member
1181 of the Legislature, but not correspondence that gives notice of legislative action or policy;

1182 (20) (a) records in the custody or control of the Office of Legislative Research and General
1183 Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or
1184 contemplated course of action before the legislator has elected to support the legislation or course
1185 of action, or made the legislation or course of action public; and

1186 (b) for purposes of this subsection, a "Request For Legislation" submitted to the Office of
1187 Legislative Research and General Counsel is a public document unless a legislator submits the
1188 "Request For Legislation" with a request that it be maintained as a protected record until such time
1189 as the legislator elects to make the legislation or course of action public;

1190 (21) research requests from legislators to the Office of Legislative Research and General
1191 Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response
1192 to these requests;

1193 (22) drafts, unless otherwise classified as public;

1194 (23) records concerning a governmental entity's strategy about collective bargaining or
1195 pending litigation;

1196 (24) records of investigations of loss occurrences and analyses of loss occurrences that
1197 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured
1198 Employers' Fund, or similar divisions in other governmental entities;

1199 (25) records, other than personnel evaluations, that contain a personal recommendation
1200 concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal
1201 privacy, or disclosure is not in the public interest;

1202 (26) records that reveal the location of historic, prehistoric, paleontological, or biological
1203 resources that if known would jeopardize the security of those resources or of valuable historic,

1204 scientific, educational, or cultural information;

1205 (27) records of independent state agencies if the disclosure of the records would conflict
1206 with the fiduciary obligations of the agency;

1207 (28) records of a public institution of higher education regarding tenure evaluations,
1208 appointments, applications for admissions, retention decisions, and promotions, which could be
1209 properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public
1210 Meetings, provided that records of the final decisions about tenure, appointments, retention,
1211 promotions, or those students admitted, may not be classified as protected under this section;

1212 (29) records of the governor's office, including budget recommendations, legislative
1213 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
1214 policies or contemplated courses of action before the governor has implemented or rejected those
1215 policies or courses of action or made them public;

1216 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
1217 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
1218 recommendations in these areas;

1219 (31) records provided by the United States or by a government entity outside the state that
1220 are given to the governmental entity with a requirement that they be managed as protected records
1221 if the providing entity certifies that the record would not be subject to public disclosure if retained
1222 by it;

1223 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
1224 except as provided in Section 52-4-7;

1225 (33) records that would reveal the contents of settlement negotiations but not including
1226 final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;

1227 (34) memoranda prepared by staff and used in the decision-making process by an
1228 administrative law judge, a member of the Board of Pardons and Parole, or a member of any other
1229 body charged by law with performing a quasi-judicial function;

1230 (35) records that would reveal negotiations regarding assistance or incentives offered by
1231 or requested from a governmental entity for the purpose of encouraging a person to expand or
1232 locate a business in Utah, but only if disclosure would result in actual economic harm to the person
1233 or place the governmental entity at a competitive disadvantage, but this section may not be used
1234 to restrict access to a record evidencing a final contract;

1235 (36) materials to which access must be limited for purposes of securing or maintaining the
1236 governmental entity's proprietary protection of intellectual property rights including patents,
1237 copyrights, and trade secrets;

1238 (37) the name of a donor or a prospective donor to a governmental entity, including a
1239 public institution of higher education, and other information concerning the donation that could
1240 reasonably be expected to reveal the identity of the donor, provided that:

1241 (a) the donor requests anonymity in writing;

1242 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
1243 classified protected by the governmental entity under this Subsection (37); and

1244 (c) except for public institutions of higher education, the governmental unit to which the
1245 donation is made is primarily engaged in educational, charitable, or artistic endeavors, and has no
1246 regulatory or legislative authority over the donor, a member of his immediate family, or any entity
1247 owned or controlled by the donor or his immediate family;

1248 (38) accident reports, except as provided in Sections 41-6-40, 41-12a-202, and 73-18-13;

1249 (39) a notification of workers' compensation insurance coverage described in Section
1250 34A-2-205; ~~and~~

1251 (40) the following records of a public institution of education, which have been developed,
1252 discovered, or received by or on behalf of faculty, staff, employees, or students of the institution:
1253 unpublished lecture notes, unpublished research notes and data, unpublished manuscripts, creative
1254 works in process, scholarly correspondence, and confidential information contained in research
1255 proposals. Nothing in this Subsection (40) shall be construed to affect the ownership of a
1256 record[-]; and

1257 (41) information contained in the Management Information System and Licensing
1258 Information System described in Title 62A, Chapter 4a, Child and Family Services.

1259 Section 16. Section **78-3a-103** is amended to read:

1260 **78-3a-103. Definitions.**

1261 (1) As used in this chapter:

1262 (a) "Abused child" includes a minor less than 18 years of age who:

1263 (i) has suffered or been threatened with nonaccidental physical or mental harm, negligent
1264 treatment, or sexual exploitation; or

1265 (ii) has been the victim of any sexual abuse.

1266 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
1267 alleged in the petition have been proved.

1268 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or over
1269 under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall be
1270 referred to as minors.

1271 (d) "Board" means the Board of Juvenile Court Judges.

1272 (e) "Child placement agency" means:

1273 (i) a private agency licensed to receive minors for placement or adoption under this code;

1274 or

1275 (ii) a private agency receiving minors for placement or adoption in another state, which
1276 agency is licensed or approved where such license or approval is required by law.

1277 (f) "Commit" means to transfer legal custody.

1278 (g) "Court" means the juvenile court.

1279 (h) "Dependent child" includes a minor who is homeless or without proper care through
1280 no fault of his parent, guardian, or custodian.

1281 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent or
1282 the parents or a previous legal custodian to another person, agency, or institution.

1283 (j) "Detention" means home detention and secure detention as defined in Section
1284 62A-7-101 for the temporary care of minors who require secure custody in physically restricting
1285 facilities:

1286 (i) pending court disposition or transfer to another jurisdiction; or

1287 (ii) while under the continuing jurisdiction of the court.

1288 (k) "Division" means the Division of Child and Family Services.

1289 [~~(k)~~] (l) "Formal referral" means a written report from a peace officer or other person
1290 informing the court that a minor is or appears to be within the court's jurisdiction and that a
1291 petition may be filed.

1292 [~~(h)~~] (m) "Group rehabilitation therapy" means psychological and social counseling of one
1293 or more persons in the group, depending upon the recommendation of the therapist.

1294 [~~(m)~~] (n) "Guardianship of the person" includes the authority to consent to marriage, to
1295 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
1296 custody, if legal custody is not vested in another person, agency, or institution.

1297 [~~(n)~~] (o) "Habitual truant" is a school-age minor who has received more than two truancy
1298 citations within one school year from the school in which the minor is or should be enrolled and
1299 eight absences without a legitimate or valid excuse or who, in defiance of efforts on the part of
1300 school authorities as required under Section 53A-11-103, refuses to regularly attend school or any
1301 scheduled period of the school day.

1302 [~~(o)~~] (p) "Legal custody" means a relationship embodying the following rights and duties:

1303 (i) the right to physical custody of the minor;

1304 (ii) the right and duty to protect, train, and discipline the minor;

1305 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
1306 medical care;

1307 (iv) the right to determine where and with whom the minor shall live; and

1308 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

1309 [~~(p)~~] (q) "Minor" means a person under the age of 18 years. It includes the term "child"
1310 as used in other parts of this chapter.

1311 [~~(q)~~] (r) "Natural parent" means a minor's biological or adoptive parent, and includes the
1312 minor's noncustodial parent.

1313 [~~(r)~~] (s) (i) "Neglected child" means a minor:

1314 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided in
1315 Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

1316 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or abuse;

1317 (C) who lacks proper parental care by reason of the fault or habits of the parent, guardian,
1318 or custodian;

1319 (D) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
1320 subsistence, education, or medical care, including surgery or psychiatric services when required,
1321 or any other care necessary for health, safety, morals, or well-being; or

1322 (E) who is at risk of being a neglected or abused child as defined in this chapter because
1323 another minor in the same home is a neglected or abused child as defined in this chapter.

1324 (ii) The aspect of neglect related to education, described in Subsection (1)(r)(i)(D), means
1325 that, after receiving notice that a minor has been frequently absent from school without good cause,
1326 or that the minor has failed to cooperate with school authorities in a reasonable manner, a parent
1327 or guardian fails to make a good faith effort to ensure that the minor receives an appropriate

1328 education.

1329 (iii) A parent or guardian legitimately practicing religious beliefs and who, for that reason,
1330 does not provide specified medical treatment for a minor, is not guilty of neglect.

1331 [~~(s)~~] (t) "Nonjudicial adjustment" means closure of the case by the assigned probation
1332 officer without judicial determination upon the consent in writing of the minor, the parent, legal
1333 guardian or custodian, and the assigned probation officer.

1334 [~~(t)~~] (u) "Probation" means a legal status created by court order following an adjudication
1335 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
1336 to remain in his home under prescribed conditions and under supervision by the probation
1337 department or other agency designated by the court, subject to return to the court for violation of
1338 any of the conditions prescribed.

1339 [~~(u)~~] (v) "Protective supervision" means a legal status created by court order following an
1340 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
1341 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
1342 is provided by the probation department or other agency designated by the court.

1343 [~~(v)~~] (w) "Residual parental rights and duties" means those rights and duties remaining
1344 with the parent after legal custody or guardianship, or both, have been vested in another person or
1345 agency, including the responsibility for support, the right to consent to adoption, the right to
1346 determine the child's religious affiliation, and the right to reasonable parent-time unless restricted
1347 by the court. If no guardian has been appointed, "residual parental rights and duties" also include
1348 the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric
1349 treatment.

1350 [~~(w)~~] (x) "Secure facility" means any facility operated by or under contract with the
1351 Division of Youth Corrections, that provides 24-hour supervision and confinement for youth
1352 offenders committed to the division for custody and rehabilitation.

1353 [~~(x)~~] (y) "Shelter" means the temporary care of minors in physically unrestricted facilities
1354 pending court disposition or transfer to another jurisdiction.

1355 [~~(y)~~] (z) "State supervision" means a disposition which provides a more intensive level of
1356 intervention than standard probation but is less intensive or restrictive than a community placement
1357 with the Division of Youth Corrections.

1358 (aa) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

1359 (bb) "Supported" has the same meaning as defined in Section 62A-4a-101.

1360 [~~(z)~~] (cc) "Termination of parental rights" means the permanent elimination of all parental
1361 rights and duties, including residual parental rights and duties, by court order.

1362 [~~(aa)~~] (dd) "Therapist" means a person employed by a state division or agency for the
1363 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
1364 other person licensed or approved by the state for the purpose of conducting psychological
1365 treatment and counseling.

1366 (ee) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

1367 (ff) "Without merit" has the same meaning as defined in Section 62A-4a-101.

1368 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
1369 Division of Child and Family Services:

1370 (a) "Custody" means the custody of a minor in the Division of Child and Family Services
1371 as of the date of disposition.

1372 (b) "Protective custody" means the shelter of a minor by the Division of Child and Family
1373 Services from the time the minor is removed from home until the shelter hearing, or the minor's
1374 return home, whichever occurs earlier.

1375 (c) "Temporary custody" means the custody of a minor in the Division of Child and Family
1376 Services from the date of the shelter hearing until disposition.

1377 Section 17. Section **78-3a-104** is amended to read:

1378 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

1379 (1) Except as otherwise provided by law, the juvenile court has exclusive original
1380 jurisdiction in proceedings concerning:

1381 (a) a minor who has violated any federal, state, or local law or municipal ordinance or a
1382 person younger than 21 years of age who has violated any law or ordinance before becoming 18
1383 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

1384 (b) a person 21 years of age or older who has failed or refused to comply with an order of
1385 the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st
1386 birthday; however, the continuing jurisdiction is limited to causing compliance with existing
1387 orders;

1388 (c) a minor who is an abused child, neglected child, or dependent child, as those terms are
1389 defined in Section 78-3a-103;

1390 (d) a protective order for a minor who is alleged to be an abused child or neglected child,
1391 except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent or
1392 stepparent of the minor against a natural parent or stepparent of the minor;

1393 (e) the determination of the custody of a minor or to appoint a guardian of the person or
1394 other guardian of a minor who comes within the court's jurisdiction under other provisions of this
1395 section;

1396 (f) the termination of the legal parent-child relationship in accordance with Part 4,
1397 Termination of Parental Rights Act, including termination of residual parental rights and duties;

1398 (g) the treatment or commitment of a mentally retarded minor;

1399 (h) a minor who is a habitual truant from school;

1400 (i) the judicial consent to the marriage of a minor under age 16 upon a determination of
1401 voluntariness or where otherwise required by law, employment, or enlistment of a minor when
1402 consent is required by law;

1403 (j) any parent or parents of a minor committed to a secure youth corrections facility, to
1404 order, at the discretion of the court and on the recommendation of a secure youth corrections
1405 facility, the parent or parents of a minor committed to a secure youth corrections facility for a
1406 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth
1407 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other
1408 therapist the court may direct, for a period directed by the court as recommended by a secure youth
1409 corrections facility;

1410 (k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

1411 (l) the treatment or commitment of a mentally ill child. The court may commit a child to
1412 the physical custody of a local mental health authority or to the legal custody of the Division of
1413 Mental Health in accordance with the procedures and requirements of Title 62A, Chapter 12, Part
1414 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The court may not
1415 commit a child directly to the Utah State Hospital;

1416 (m) the commitment of a minor in accordance with Section 62A-8-501;

1417 (n) de novo review of final agency actions resulting from an informal adjudicative
1418 proceeding as provided in Section 63-46b-15; and

1419 (o) adoptions conducted in accordance with the procedures described in Title 78, Chapter
1420 30, Adoption, when the juvenile court has previously entered an order terminating the rights of a

1421 parent and finds that adoption is in the best interest of the minor.

1422 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
1423 jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent
1424 jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except
1425 that the court shall have exclusive jurisdiction over the following traffic offenses committed by
1426 a minor under 18 years of age:

1427 (a) Section 76-5-207, automobile homicide;

1428 (b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;

1429 (c) Section 41-6-45, reckless driving;

1430 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer
1431 for an extended period of time; and

1432 (e) Section 41-6-13.5, fleeing a peace officer.

1433 (3) The court also has jurisdiction over traffic offenses that are part of a single criminal
1434 episode filed in a petition that contains an offense over which the court has jurisdiction.

1435 (4) The juvenile court has jurisdiction over questions of custody, support, parent-time, and
1436 visitation certified to it by the district court pursuant to Section 78-3a-105.

1437 (5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is
1438 referred to it by the Division of Child and Family Services or by public or private agencies that
1439 contract with the division to provide services to that minor where, despite earnest and persistent
1440 efforts by the division or agency, the minor has demonstrated that he:

1441 (a) is beyond the control of his parent, guardian, lawful custodian, or school authorities
1442 to the extent that his behavior or condition endangers his own welfare or the welfare of others; or

1443 (b) has run away from home.

1444 (6) This section does not restrict the right of access to the juvenile court by private
1445 agencies or other persons.

1446 (7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising
1447 under Section 78-3a-602.

1448 (8) The juvenile court has jurisdiction to make a finding of substantiated, unsubstantiated,
1449 or without merit, in accordance with Section 78-3a-320.

1450 Section 18. Section **78-3a-320** is enacted to read:

1451 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

1452 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division
1453 of Child and Family Services or any interested person informing the court, among other things, that
1454 the division has made a supported finding of one or more of the severe types of child abuse or
1455 neglect described in Subsection 62A-4a-116.1(2), the court shall:

- 1456 (a) make a finding of substantiated, unsubstantiated, or without merit;
1457 (b) include the finding described in Subsection (1)(a) in a written order; and
1458 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

1459 (2) The judicial finding under Subsection (1) shall be made:

- 1460 (a) as part of or at the conclusion of the adjudication hearing; or
1461 (b) as part of a court order entered pursuant to a written stipulation of the parties.

1462 (3) Any person described in Subsection 62A-4a-116.6(1), whether or not that person has
1463 received the notice described in Subsection 62A-4a-116.6(2), may at any time file with the court
1464 a petition for removal of the person's name from the Licensing Information System. At the
1465 conclusion of the hearing on the petition, the court shall:

- 1466 (a) make a finding of substantiated, unsubstantiated, or without merit;
1467 (b) include the finding described in Subsection (1)(a) in a written order; and
1468 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.

1469 (4) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118, and
1470 62A-2-121:

1471 (a) the court shall make available records of its findings under Subsections (1) and (2) for
1472 licensing purposes, only to those with statutory authority to access also the Licensing Information
1473 System created under Section 62A-4a-116.2; and

1474 (b) any appellate court shall make available court records of appeals from juvenile court
1475 decisions under Subsections (1), (2), and (3) for licensing purposes, only to those with statutory
1476 authority to access also the Licensing Information System.