

**DIVISION OF CHILD AND FAMILY
SERVICES MANAGEMENT INFORMATION
SYSTEM AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: D. Chris Buttars

This act amends the Utah Human Services Code and the Judicial Code. The act provides that when the Division of Child and Family Services makes a supported finding of certain types of severe child abuse or neglect that finding is referred to the juvenile court or notice is personally served upon the alleged perpetrator. The act provides that in certain circumstances the alleged perpetrator has the right to consent to the entry of the alleged perpetrator's name on the Licensing Information System, petition the juvenile court, or file a written request asking the division to review the findings. The act provides that the division remove information from the Licensing Information System after a juvenile court makes a finding. However, if a finding of unsubstantiated or without merit is appealed the supported finding shall not be amended until the appeal is concluded. The act provides that an adjudicative proceeding on a supported finding of one of the nonsevere types of abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a supported finding of a severe type of abuse or neglect. The act provides that if an alleged perpetrator requests removal of their name from the Licensing Information System prior to May 6, 2002 the division shall determine whether to file a petition. The act places a time limit on the division for filing a petition. The act provides that the perpetrator's name shall stay on the Licensing Information System pending the outcome of the petition. The act makes technical changes.

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

AMENDS:

62A-4a-116.1, as enacted by Chapter 283, Laws of Utah 2002

62A-4a-116.2, as enacted by Chapter 283, Laws of Utah 2002

62A-4a-116.5, as last amended by Chapter 283, Laws of Utah 2002

62A-4a-116.6, as enacted by Chapter 283, Laws of Utah 2002

78-3a-320, as enacted by Chapter 283, Laws of Utah 2002

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

Section 1. Section **62A-4a-116.1** is amended to read:

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

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

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

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

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

(b) if the division considers it advisable file a petition for substantiation within one year of the supported finding.

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

- (a) if committed by a person 18 years of age or older:
 - (i) severe or chronic physical abuse;
 - (ii) sexual abuse;
 - (iii) sexual exploitation;
 - (iv) abandonment;
 - (v) medical neglect resulting in death, disability, or serious illness;

- (vi) chronic or severe neglect; or
- (vii) chronic or severe emotional abuse; or
- (b) if committed by a person under the age of 18:
 - (i) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child which indicates a significant risk to other children; or
 - (ii) sexual behavior with or upon another child which indicates a significant risk to other children.
- (3) Severe child abuse or neglect in Subsection (2) does not include:
 - (a) the use of reasonable and necessary physical restraint or force by an educator in accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
 - (b) a person's conduct that:
 - (i) is justified under Section 76-2-401; or
 - (ii) constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the possession or under the control of a child or to protect the child or another person from physical injury.
- (4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in accordance with risk assessment tools and [~~policies~~] rules established by the division that focus on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other related considerations.
- (b) The division shall train its child protection workers to apply the risk assessment tools and [~~policies~~] rules established under Subsection (4)(a).
- (5) The notice referred to in Subsection (1)[~~(b)(ii)~~] (a) shall state that:
 - (a) the division has conducted an investigation regarding alleged child abuse or neglect;
 - (b) the division has made a supported finding of one of the severe types of child abuse or neglect described in Subsection (2);
 - (c) facts gathered by the division support the supported finding;
 - (d) as a result of the supported finding, the alleged perpetrator's name and other

identifying information have been listed in the Licensing Information System in accordance with Subsection (1)(a);

(e) the alleged perpetrator may be disqualified from adopting a child or being licensed by:

- (i) the department;
 - (ii) a human services licensee;
 - (iii) a child care provider or program; and
 - (iv) a covered health care facility;
- (f) the alleged perpetrator has the rights described in Subsection (6); and
- (g) failure to take either action described in Subsection (6)(a) within one year after

service of the notice will result in the action described in Subsection (6)(b).

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

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

- (i) file a written request asking the division to review the findings under Subsection (2);
- (ii) immediately petition the juvenile court under Section 78-3a-320; or

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

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

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

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

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

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

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

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

Section 2. Section **62A-4a-116.2** is amended to read:

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

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

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

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

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

(2) The division shall promptly ~~remove from~~ amend the Licensing Information System ~~[all information with respect to], upon receipt of a finding [upon receipt of notice that a]~~ from the juvenile court [has made a finding] under Section 78-3a-320, and shall enter the same information in the Management Information System. However, if a ~~[juvenile court]~~ finding of

unsubstantiated or without merit is appealed, the [~~information shall remain in the Licensing Information System~~] supported finding shall not be amended until the appeal is concluded.

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

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

(b) the division, for the following purposes:

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

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

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

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

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

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

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

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

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

(5) All persons designated by statute as having access to information contained in the

Licensing Information System shall receive training from the department with respect to:

- (a) accessing the Licensing Information System;
- (b) maintaining strict security; and
- (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the

improper release of information.

(6) No person, except those authorized by this chapter, may request another person to obtain or release any other information in the Licensing Information System to screen for potential perpetrators of child abuse or neglect. A person who requests information knowing that it is a violation of this Subsection (6) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

Section 3. Section **62A-4a-116.5** is amended to read:

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

(1) (a) Except as provided in Subsection (2), the division shall send a notice of agency action to a person with respect to whom the division makes a supported finding. In addition, if the alleged perpetrator is under the age of 18, the division shall:

- (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and
- (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that lives at a different address, unless there is good cause, as defined by rule, for not sending a notice to a parent or guardian.

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

- (i) the manner in which the division conducts an investigation; or
- (ii) the use or effect, in any other setting, of a supported finding by the division at the completion of an investigation for any purpose other than for notification under Subsection (1)~~(b)~~ (a).

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

(3) The notice described in Subsection (1) shall state:

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

(b) that the division has made a supported finding of abuse, neglect, or dependency;

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

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

(i) a copy of the report; and

(ii) an opportunity to challenge the supported finding by the division; and

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

(4) (a) A person may make a request to challenge a supported finding within 30 days of a notice being received under this section.

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

(5) (a) In an adjudicative proceeding held pursuant to this section, the division shall have the burden of proving, by a preponderance of the evidence, that there is a reasonable basis to conclude that child abuse, neglect, or dependency occurred and that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred.

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

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

(7) (a) An alleged perpetrator may not make a request under Subsection (4) to challenge a supported finding if a court of competent jurisdiction has made a determination, in a

proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which was also the subject of the supported finding.

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

(8) An adjudicative proceeding on a supported finding of one of the nonsevere types of abuse or neglect under Section 78-3a-320 may be joined in the juvenile court with an adjudicative proceeding on a supported finding of a severe type of abuse or neglect.

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

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

(1) [~~The division shall send a notice described in Subsection (2) to each person whose name is on the~~] Persons whose names were listed on the Licensing Information System as of May 6, 2002 [~~but~~] and who [~~has~~] have not been the subject of [~~any of the following court determinations~~] a court determination with respect to the alleged incident of abuse or neglect may at any time:

(a) request review by the division of their case and removal of their name from the Licensing Information System pursuant to Subsection (3); or

(b) file a petition for an evidentiary hearing and a request for a finding of unsubstantiated or without merit.

(2) Subsection (1) does not apply to an individual who has been the subject of any of the following court determinations with respect to the alleged incident of abuse or neglect:

- (a) conviction;
- (b) adjudication under Title 78, Chapter 3a, Juvenile Courts;
- (c) plea of guilty;
- (d) plea of guilty and mentally ill; or
- (e) no contest.

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

~~[(a) that the person has the right to request a hearing in the juvenile court, and]~~

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

(3) If an alleged perpetrator listed on the Licensing Information System prior to May 6, 2002 requests removal of their name from the Licensing Information System, the division shall, within 30 days:

(a) review the case to determine whether the incident of alleged abuse or neglect qualifies as severe or chronic under Subsection 62A-4a-116.1(2) and if it does not, remove the name from the Licensing Information System; or

(b) determine whether to file a petition for substantiation.

(4) If the division decides to file a petition, that petition must be filed no more than 14 days after the decision.

~~[(3)]~~ (5) The juvenile court shall act on the petition as provided in Subsection 78-3a-320(3).

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

(6) If a person whose name appears on the Licensing Information System prior to May 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter on an expedited basis.

Section 5. Section **78-3a-320** is amended to read:

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

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

or neglect described in Subsection 62A-4a-116.1(2), the court shall:

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

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

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

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

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

(4) A proceeding for adjudication of a supported finding of a nonsevere type of abuse or neglect under this section may be joined in the juvenile court with an adjudication of a severe type of abuse or neglect.

(5) If a person whose name appears on the Licensing Information system prior to May 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to work with children or vulnerable adults is pending, the court shall hear the matter and enter a final decision no later than 60 days after the filing of the petition.

~~[(4)]~~ (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118, and 62A-2-121:

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

(b) any appellate court shall make available court records of appeals from juvenile court decisions under Subsections (1), (2), ~~[and] (3), and (4)~~ for licensing purposes, only to those with

statutory authority to access also the Licensing Information System.