

1 **DIVISION OF CHILD AND FAMILY**
2 **SERVICES MANAGEMENT INFORMATION**
3 **SYSTEM AMENDMENTS**

4 2003 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: D. Chris Buttars**

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

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

26 AMENDS:

27 **62A-4a-116.1**, as enacted by Chapter 283, Laws of Utah 2002



28 62A-4a-116.2, as enacted by Chapter 283, Laws of Utah 2002

29 62A-4a-116.5, as last amended by Chapter 283, Laws of Utah 2002

30 62A-4a-116.6, as enacted by Chapter 283, Laws of Utah 2002

31 78-3a-320, as enacted by Chapter 283, Laws of Utah 2002

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

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

34 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
35 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
36 **Rights of alleged perpetrator -- Juvenile court finding.**

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

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

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

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

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

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

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

- 59 (vii) chronic or severe emotional abuse; or
- 60 (b) if committed by a person under the age of 18:
- 61 (i) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
- 62 which indicates a significant risk to other children; or
- 63 (ii) sexual behavior with or upon another child which indicates a significant risk to
- 64 other children.
- 65 (3) Severe child abuse or neglect in Subsection (2) does not include:
- 66 (a) the use of reasonable and necessary physical restraint or force by an educator in
- 67 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
- 68 (b) a person's conduct that:
- 69 (i) is justified under Section 76-2-401; or
- 70 (ii) constitutes the use of reasonable and necessary physical restraint or force in
- 71 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
- 72 other dangerous object in the possession or under the control of a child or to protect the child or
- 73 another person from physical injury.
- 74 (4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in
- 75 accordance with risk assessment tools and ~~[policies]~~ rules established by the division that focus
- 76 on age, social factors, emotional factors, sexual factors, intellectual factors, family risk factors,
- 77 and other related considerations.
- 78 (b) The division shall train its child protection workers to apply the risk assessment
- 79 tools and ~~[policies]~~ rules established under Subsection (4)(a).
- 80 (5) The notice referred to in Subsection (1)~~(b)(ii)~~ (a) shall state that:
- 81 (a) the division has conducted an investigation regarding alleged child abuse or
- 82 neglect;
- 83 (b) the division has made a supported finding of one of the severe types of child abuse
- 84 or neglect described in Subsection (2);
- 85 (c) facts gathered by the division support the supported finding;
- 86 (d) as a result of the supported finding, the alleged perpetrator's name and other
- 87 identifying information have been listed in the Licensing Information System in accordance
- 88 with Subsection (1)(a);
- 89 (e) the alleged perpetrator may be disqualified from adopting a child or being licensed

90 by:

- 91 (i) the department;
- 92 (ii) a human services licensee;
- 93 (iii) a child care provider or program; and
- 94 (iv) a covered health care facility;
- 95 (f) the alleged perpetrator has the rights described in Subsection (6); and
- 96 (g) failure to take either action described in Subsection (6)(a) within one year after
- 97 service of the notice will result in the action described in Subsection (6)(b).

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

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

103 (i) file a written request asking the division to review the findings under Subsection
104 (2);

105 (ii) immediately petition the juvenile court under Section 78-3a-320; or

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

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

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

120 (d) Consent under Subsection (6)(a)~~[(ii)]~~ (iii) by a minor shall be given by the minor's

121 parent or guardian.

122 (7) Upon the filing of a petition under Subsection (1)(b)(~~(i)~~), the juvenile court shall
 123 make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
 124 78-3a-320(1) and (2).

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

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

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

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

130 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**
 131 **-- Protected record -- Access -- Criminal penalty.**

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

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

137 (b) consented-to supported findings by alleged perpetrators under Subsection
 138 62A-4a-116.1(6)(a)(~~(ii)~~)(iii); and

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

141 (2) The division shall promptly ~~remove from~~ amend the Licensing Information
 142 System ~~[all information with respect to], upon receipt of a finding [upon receipt of notice that~~
 143 ~~a] from the juvenile court [has made a finding] under Section 78-3a-320, and shall enter the~~
 144 same information in the Management Information System. However, if a ~~[juvenile court]~~
 145 finding of unsubstantiated or without merit is appealed, the ~~[information shall remain in the~~
 146 ~~Licensing Information System]~~ supported finding shall not be amended until the appeal is
 147 concluded.

148 (3) Information contained in the Licensing Information System is classified as a
 149 protected record under Title 63, Chapter 2, Government Records Access and Management Act.
 150 Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government Records Access
 151 and Management Act, the information contained in the Licensing Information System may only

152 be used or disclosed as specifically provided in this chapter and Section 62A-2-121 and is
153 accessible only to:

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

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

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

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

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

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

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

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

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

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

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

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

175 (a) accessing the Licensing Information System;

176 (b) maintaining strict security; and

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

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

183 in Sections 62A-4a-412 and 63-2-801.

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

185 **62A-4a-116.5. Notice and opportunity to challenge supported finding in**
186 **Management Information System -- Right of judicial review.**

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

190 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

191 (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that
192 lives at a different address, unless there is good cause, as defined by rule, for not sending a
193 notice to a parent or guardian.

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

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

196 (ii) the use or effect, in any other setting, of a supported finding by the division at the
197 completion of an investigation for any purpose other than for notification under Subsection
198 (1)~~(b)~~ (a).

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

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

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

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

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

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

207 (i) a copy of the report; and

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

209 (e) that failure to request an opportunity to challenge the supported finding within 30
210 days of receiving the notice will result in an unappealable supported finding of child abuse,
211 neglect, or dependency unless the person can show good cause for why compliance within the
212 30-day requirement was virtually impossible or unreasonably burdensome.

213 (4) (a) A person may make a request to challenge a supported finding within 30 days of

214 a notice being received under this section.

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

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

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

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

228 (7) (a) An alleged perpetrator may not make a request under Subsection (4) to
229 challenge a supported finding if a court of competent jurisdiction has made a determination, in
230 a proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is
231 substantially responsible for the abuse, neglect, or dependency which was also the subject of
232 the supported finding.

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

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

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

239 **62A-4a-116.6. Notice and opportunity for court hearing for persons listed in**
240 **Licensing Information System.**

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

245 may at any time:

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

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

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

252 (a) conviction;

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

254 (c) plea of guilty;

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

256 (e) no contest.

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

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

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

260 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
261 2002 requests removal of their name from the Licensing Information System, the division shall,
262 within 30 days:

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

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

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

269 [~~(3)~~] (5) The juvenile court shall act on the petition as provided in Subsection
270 78-3a-320(3).

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

276 ~~concluded.]~~

277 (6) If a person whose name appears on the Licensing Information System prior to May
278 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged
279 perpetrator's application for clearance to work with children or vulnerable adults is pending, the
280 court shall hear the matter on an expedited basis.

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

282 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

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

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

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

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

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

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

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

303 (5) If a person whose name appears on the Licensing Information system prior to May
304 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
305 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
306 final decision no later than 60 days after the filing of the petition.

307 [~~(4)~~] (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5,
308 62A-1-118, and 62A-2-121:

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

312 (b) any appellate court shall make available court records of appeals from juvenile
313 court decisions under Subsections (1), (2), [~~and~~] (3), and (4) for licensing purposes, only to
314 those with statutory authority to access also the Licensing Information System.

Legislative Review Note
as of 2-4-03 2:34 PM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0158

**Division of Child and Family Services Management Information
System Amendments**

14-Feb-03
10:14 AM

State Impact

Provisions of this legislation can be handled with existing resources.

Individual and Business Impact

In certain cases, individuals may find it easier to have their names removed from the Lincensing Information System data base.

Office of the Legislative Fiscal Analyst