

1 **CHILD AND FAMILY SERVICES - PLEA IN**
2 **ABEYANCE**

3 2004 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Parley G. Hellewell**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends child and family services provisions in the Utah Human Services
10 Code.

11 **Highlighted Provisions:**

12 This bill:
13 ▶ makes a technical change that requires a court to enter a finding rather than make a
14 determination.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **62A-4a-116.5**, as last amended by Chapter 210, Laws of Utah 2003

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

24 Section 1. Section **62A-4a-116.5** is amended to read:

25 **62A-4a-116.5. Notice and opportunity to challenge supported finding in**
26 **Management Information System -- Right of judicial review.**

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



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

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

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

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

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

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

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

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

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

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

- 47 (i) a copy of the report; and
- 48 (ii) an opportunity to challenge the supported finding by the division; and

49 (e) that failure to request an opportunity to challenge the supported finding within 30
50 days of receiving the notice will result in an unappealable supported finding of child abuse,
51 neglect, or dependency unless the person can show good cause for why compliance within the
52 30-day requirement was virtually impossible or unreasonably burdensome.

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

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

58 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall

59 have the burden of proving, by a preponderance of the evidence, that there is a reasonable basis
 60 to conclude that child abuse, neglect, or dependency occurred and that the alleged perpetrator
 61 was substantially responsible for the abuse or neglect that occurred.

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

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

68 (7) (a) An alleged perpetrator may not make a request under Subsection (4) to
 69 challenge a supported finding if a court of competent jurisdiction [~~has made a determination~~]
 70 entered a finding, in a proceeding in which the alleged perpetrator was a party, that the alleged
 71 perpetrator is substantially responsible for the abuse, neglect, or dependency which was also
 72 the subject of the supported finding. **§ THIS SUBSECTION (7)(a) DOES NOT APPLY TO PLEAS IN**

72a **ABEYANCE OR DIVERSION AGREEMENTS. §**

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

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

Legislative Review Note

as of 12-22-03 7:37 AM

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 SB0081

Child and Family Services - Plela in Abeyance

20-Jan-04

11:09 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst