

CHILD AND FAMILY SERVICES RECORDS

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Steven R. Mascaro

LONG TITLE

General Description:

This bill adds specific items to what can be redacted from Child and Family Services records.

Highlighted Provisions:

This bill:

- ▶ adds the following information to the list of what can be redacted from requested records:
 - information received from BCI or NCIC;
 - psychological or psychiatric records; and
 - discussions between a division employee and attorney.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-4a-412, as last amended by Chapters 122 and 356, Laws of Utah 2004

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

Section 1. Section **62A-4a-412** is amended to read:

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



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

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

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

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

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

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

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony

or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

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

(l) a person filing a petition for a child protective order on behalf of a minor who is the subject of the report; and

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

(2) (a) A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

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

(3) (a) Except as provided in Section 62A-4a-116.3 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but including this chapter and Title 63, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a minor, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information ~~[that could]~~:

(i) that could identify the referent;

(ii) that could impede a criminal investigation; ~~[or]~~

(iii) that could endanger a person's safety~~[-]~~;

(iv) received from the Bureau of Criminal Identification or the National Crime Information Center;

(v) related to psychological or psychiatric diagnosis or treatment; or

90 (vi) detailing discussions between a division employee and their attorney.

91 (4) Any person who wilfully permits, or aides and abets the release of data or
92 information obtained as a result of this part, in the possession of the division or contained on
93 any part of the Management Information System, in violation of this part or Sections
94 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

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

98 (6) A child-placing agency or person who receives a report in connection with a
99 preplacement adoptive evaluation pursuant to Section 78-30-3.5:

100 (a) may provide this report to the person who is the subject of the report; and

101 (b) may provide this report to a person who is performing a preplacement adoptive
102 evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed
103 child-placing agency or to an attorney seeking to facilitate an adoption.

Legislative Review Note

as of 2-11-05 9:45 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note**Bill Number HB0341****Child and Family Services Records***15-Feb-05**3:15 PM*

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst