

1 **CHILD WELFARE - LICENSING AND**
2 **MANAGEMENT INFORMATION SYSTEMS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Wayne A. Harper**

6 Senate Sponsor: D. Chris Buttar

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions relating to the Licensing Information System and the
11 Management Information System established in the Child and Family Services Chapter
12 of the Utah Human Services Code.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ addresses the contents of the notice provided to an alleged perpetrator when the
17 Division of Child and Family Services makes a supported finding that the alleged
18 perpetrator committed a severe type of child abuse or neglect;
- 19 ▶ describes the circumstances under which a person's name and information should be
20 entered on, or removed from, the Licensing Information System;
- 21 ▶ provides that, in an adjudicative proceeding to determine whether a person has
22 caused a child to suffer abuse, neglect, or dependency, the division shall have the
23 burden of proving, by a preponderance of the evidence, that child abuse, neglect, or
24 dependency occurred and that the alleged perpetrator was substantially responsible
25 for the abuse or neglect;
- 26 ▶ describes the action that must be taken by the division when an alleged perpetrator
27 listed on the Licensing Information System prior to May 6, 2002 requests removal



28 of the alleged perpetrator's name from the Licensing Information System; and

29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 **AMENDS:**

36 **26-21-9.5**, as last amended by Chapter 283, Laws of Utah 2002

37 **26-39-105.5**, as last amended by Chapter 283, Laws of Utah 2002

38 **62A-1-118**, as last amended by Chapter 283, Laws of Utah 2002

39 **62A-2-120**, as last amended by Chapter 188, Laws of Utah 2005

40 **62A-2-121**, as last amended by Chapters 60, 107 and 188, Laws of Utah 2005

41 **62A-4a-412**, as last amended by Chapters 122 and 356, Laws of Utah 2004

42 **62A-5-103.5**, as enacted by Chapter 60, Laws of Utah 2005

43 **62A-11-304.4**, as last amended by Chapters 131, 176 and 190, Laws of Utah 2003

44 **78-3a-206**, as last amended by Chapter 120, Laws of Utah 2001

45 **78-3a-320**, as last amended by Chapters 60, 107 and 188, Laws of Utah 2005

46 **ENACTS:**

47 **62A-4a-1001**, Utah Code Annotated 1953

48 **62A-4a-1002**, Utah Code Annotated 1953

49 **62A-4a-1004**, Utah Code Annotated 1953

50 **RENUMBERS AND AMENDS:**

51 **62A-4a-1003**, (Renumbered from 62A-4a-116, as last amended by Chapter 286, Laws
52 of Utah 2005)

53 **62A-4a-1005**, (Renumbered from 62A-4a-116.1, as last amended by Chapter 95, Laws
54 of Utah 2005)

55 **62A-4a-1006**, (Renumbered from 62A-4a-116.2, as last amended by Chapters 60, 107
56 and 188, Laws of Utah 2005)

57 **62A-4a-1007**, (Renumbered from 62A-4a-116.3, as enacted by Chapter 283, Laws of
58 Utah 2002)

59 **62A-4a-1008**, (Renumbered from 62A-4a-116.4, as last amended by Chapter 95, Laws
60 of Utah 2005)

61 **62A-4a-1009**, (Renumbered from 62A-4a-116.5, as last amended by Chapter 74, Laws
62 of Utah 2004)

63 **62A-4a-1010**, (Renumbered from 62A-4a-116.6, as last amended by Chapter 210, Laws
64 of Utah 2003)

65

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

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

68 **26-21-9.5. Criminal background check and Licensing Information System check.**

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

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

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

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

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

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

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

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

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

90 (3) The department may determine whether:

91 (a) an individual whose name and other identifying information has been submitted
92 pursuant to Subsection (1) and who provides direct care to children is listed in the Licensing
93 Information System described in Section ~~[62A-4a-116.2]~~ 62A-4a-1006 or has a substantiated
94 finding by a court of a severe type of child abuse or neglect under Section 78-3a-320, if
95 identification as a possible perpetrator of child abuse or neglect is relevant to the employment
96 activities of that individual; or

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

103 (4) (a) The department shall:

104 (i) designate two persons within the department to access the Licensing Information
105 System described in Section ~~[62A-4a-116.2]~~ 62A-4a-1006 and court records under Subsection
106 78-3a-320~~(4)~~(6) and two persons to access the database described in Subsection (3)(b); and

107 (ii) adopt measures to:

108 (A) protect the security of the Licensing Information System, the court records, and the
109 database; and

110 (B) strictly limit access to the Licensing Information System, the court records, and the
111 database to those designated under Subsection (4)(a)(i).

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

114 (i) accessing the Licensing Information System, the court records, and the database;

115 (ii) maintaining strict security; and

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

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

119 (i) are the only ones in the department with the authority to access the Licensing
120 Information System, the court records, and database; and

121 (ii) may only access the Licensing Information System, the court records, and the
122 database for the purpose of licensing and in accordance with the provisions of Subsection (3).

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

125 (6) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
126 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
127 who has been convicted of a criminal offense, or a person described in Subsection (3), may
128 provide direct care to a patient in a covered health care facility, taking into account the nature
129 of the criminal conviction or substantiated finding and its relation to patient care.

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

132 (8) The department may inform the covered health care facility of information
133 discovered under Subsection (3) with respect to an individual associated with the facility.

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

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

- 137 (a) home health care agencies;
- 138 (b) hospices;
- 139 (c) nursing care facilities;
- 140 (d) assisted-living facilities;
- 141 (e) small health care facilities; and
- 142 (f) end stage renal disease facilities.

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

144 **26-39-105.5. Residential child care certificate.**

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

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

148 (i) the submission of:

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

150 (B) a certification and criminal background fee established in accordance with Section
151 26-1-6; and

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

154 (I) for processing by the Department of Public Safety to determine whether any such
155 person has been convicted of a crime;

156 (II) to screen for a substantiated finding of child abuse or neglect by a juvenile court;
157 and

158 (III) to discover whether the person is listed in the Licensing Information System
159 described in Section [~~62A-4a-116.2.~~] 62A-4a-1006;

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

162 (A) check the immunization record of each child who receives child care in the
163 provider's home;

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

165 (C) make appropriate recommendations; and

166 (iii) for new providers, completion of:

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

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

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

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

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

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

179 (i) child abuse or neglect;

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

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

182 (2) Notwithstanding this section:

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

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

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

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

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

192 **62A-1-118. Access to abuse and neglect information to screen employees and**
193 **volunteers.**

194 (1) With respect to department employees and volunteers, the department may only
195 access information in the Division of Child and Family Service's Management Information
196 System created by Section [~~62A-4a-116~~] 62A-4a-1003 and the Division of Aging and Adult
197 Services database created by Section 62A-3-311.1 for the purpose of determining at the time of
198 hire and each year thereafter whether a department employee or volunteer has an adjudication
199 of abuse or neglect or since January 1, 1994, a substantiated finding of abuse or neglect after
200 notice and an opportunity for a hearing consistent with Title 63, Chapter 46b, Administrative
201 Procedures Act, but only if identification as a possible perpetrator of abuse or neglect is
202 directly relevant to the employment or volunteer activities of that person.

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

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

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

210 Section 4. Section **62A-2-120** is amended to read:

211 **62A-2-120. Criminal background checks -- Direct access to children or**
212 **vulnerable adults.**

213 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a

214 license renewal under this chapter shall submit to the office the names and other identifying
215 information, which may include fingerprints, of all persons associated with the licensee, as
216 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

217 (b) The Criminal Investigations and Technical Services Division of the Department of
218 Public Safety, or the office as authorized under Section 53-10-108, shall process the
219 information described in Subsection (1)(a) to determine whether the individual has been
220 convicted of any crime.

221 (c) If an individual has not continuously lived in Utah for the five years immediately
222 preceding the day on which the information referred to in Subsection (1)(a) is submitted to the
223 office, the individual shall submit fingerprints for a FBI national criminal history record check.
224 The fingerprints shall be submitted to the FBI through the Criminal Investigations and
225 Technical Services Division.

226 (2) The office shall approve a person for whom identifying information is submitted
227 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
228 program if:

229 (a) (i) the person is found to have no criminal history record; or

230 (ii) (A) the only convictions in the person's criminal history record are misdemeanors
231 or infractions not involving any of the offenses described in Subsection (3); and

232 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
233 before the date of the search;

234 (b) the person is not listed in the statewide database of the Division of Aging and Adult
235 Services created by Section 62A-3-311.1;

236 (c) juvenile court records do not show that a court made a substantiated finding, under
237 Section 78-3a-320, that the person committed a severe type of child abuse or neglect;

238 (d) the person is not listed in the Licensing Information System of the Division of
239 Child and Family Services created by Section ~~[62A-4a-116.2]~~ 62A-4a-1006; and

240 (e) the person has not pled guilty or no contest to a pending charge for any:

241 (i) felony;

242 (ii) misdemeanor listed in Subsection (3); or

243 (iii) infraction listed in Subsection (3).

244 (3) Unless at least ten years have passed since the date of conviction, the office may not

245 approve a person to have direct access to children or vulnerable adults in the licensee's human
246 services program if that person has been convicted of an offense, whether a felony,
247 misdemeanor, or infraction, that is:

248 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;

249 (b) a violation of any pornography law, including sexual exploitation of a minor;

250 (c) prostitution;

251 (d) included in:

252 (i) Title 76, Chapter 5, Offenses Against the Person;

253 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or

254 (iii) Title 76, Chapter 7, Offenses Against the Family; or

255 (e) a conviction in:

256 (i) (A) another state, territory, or district of the United States; or

257 (B) a federal court of the United States; and

258 (ii) for an offense that, if committed in the state, would constitute a violation of an
259 offense described in Subsection (3)(d).

260 (4) (a) If a person for whom identifying information is submitted under Subsection (1)
261 is not approved by the office under Subsection (2) or (3) to have direct access to children or
262 vulnerable adults in the licensee program, the office shall conduct a comprehensive review of
263 criminal and court records and related circumstances if the reason the approval is not granted is
264 due solely to one or more of the following:

265 (i) a conviction for:

266 (A) any felony not listed in Subsection (3);

267 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
268 date of the search;

269 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
270 a similar statute in another state; or

271 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years
272 have passed since the date of conviction;

273 (ii) a plea of guilty or no contest to a pending:

274 (A) felony;

275 (B) misdemeanor not listed in Subsection (3); or

276 (C) infraction not listed in Subsection (3);
277 (iii) the person is listed in the statewide database of the Division of Aging and Adult
278 Services created by Section 62A-3-311.1;
279 (iv) juvenile court records show that a court made a substantiated finding, under
280 Section 78-3a-320, that the person committed a severe type of child abuse or neglect; or
281 (v) the person is listed in the Licensing Information System of the Division of Child
282 and Family Services created by Section [~~62A-4a-116.2~~] 62A-4a-1006.
283 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
284 (i) the date of the offense or incident;
285 (ii) the nature and seriousness of the offense or incident;
286 (iii) the circumstances under which the offense or incident occurred;
287 (iv) the age of the perpetrator when the offense or incident occurred;
288 (v) whether the offense or incident was an isolated or repeated incident;
289 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
290 adult, including:
291 (A) actual or threatened, nonaccidental physical or mental harm;
292 (B) sexual abuse;
293 (C) sexual exploitation; and
294 (D) negligent treatment;
295 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric
296 treatment received, or additional academic or vocational schooling completed, by the person;
297 and
298 (viii) any other pertinent information.
299 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office
300 shall approve the person who is the subject of the review to have direct access to children or
301 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or
302 vulnerable adult.
303 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
304 office may make rules, consistent with this chapter, defining procedures for the comprehensive
305 review described in this Subsection (4).
306 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person

307 being supervised is under the uninterrupted visual and auditory surveillance of the person doing
308 the supervising.

309 (b) A licensee may not permit any person to have direct access to a child or a
310 vulnerable adult unless, subject to Subsection (5)(c), that person is:

311 (i) associated with the licensee and:

312 (A) approved by the office to have direct access to children or vulnerable adults under
313 this section; or

314 (B) (I) the office has not determined whether to approve that person to have direct
315 access to children or vulnerable adults;

316 (II) the information described in Subsection (1)(a), relating to that person, is submitted
317 to the department; and

318 (III) that person is directly supervised by a person associated with the licensee who is
319 approved by the office to have direct access to children or vulnerable adults under this section;

320 (ii) (A) not associated with the licensee; and

321 (B) directly supervised by a person associated with the licensee who is approved by the
322 office to have direct access to children or vulnerable adults under this section;

323 (iii) the parent or guardian of the child or vulnerable adult; or

324 (iv) a person approved by the parent or guardian of the child or vulnerable adult to
325 have direct access to the child or vulnerable adult.

326 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
327 or a vulnerable adult if that person is prohibited by court order from having that access.

328 (6) (a) Within 30 days after receiving the identifying information for a person under
329 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
330 with whom the person is associated of:

331 (i) the office's decision regarding its background screening clearance and findings; and

332 (ii) a list of any convictions found in the search.

333 (b) With the notice described in Subsection (6)(a), the office shall also give to the
334 person the details of any comprehensive review conducted under Subsection (4).

335 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
336 direct access to children or vulnerable adults, the notice shall further advise the persons to
337 whom the notice is given that either the person or the licensee or applicant with whom the

338 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
339 department's Office of Administrative Hearings, to challenge the office's decision.

340 (d) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
341 office shall make rules, consistent with this chapter:

342 (i) defining procedures for the challenge of its background screening decision
343 described in this Subsection (6); and

344 (ii) expediting the process for renewal of a license under the requirements of this
345 section and other applicable sections.

346 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for
347 an initial license, or license renewal, to operate a substance abuse treatment program that
348 provides services to adults only.

349 Section 5. Section **62A-2-121** is amended to read:

350 **62A-2-121. Access to abuse and neglect information.**

351 (1) For purposes of this section:

352 (a) "direct service worker" is as defined in Section 62A-5-101; and

353 (b) "personal care attendant" is as defined in Section 62A-3-101.

354 (2) With respect to a licensee, a certified local inspector applicant, a direct service
355 worker, or a personal care attendant, the department may access only the Licensing Information
356 System of the Division of Child and Family Services created by Section [~~62A-4a-116.2~~
357 62A-4a-1006 and juvenile court records under Subsection 78-3a-320(6), for the purpose of:

358 (a) (i) determining whether a person associated with a licensee, with direct access to
359 children:

360 (A) is listed in the Licensing Information System; or

361 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
362 neglect under Subsections 78-3a-320(1) and (2); and

363 (ii) informing a licensee that a person associated with the licensee:

364 (A) is listed in the Licensing Information System; or

365 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
366 neglect under Subsections 78-3a-320(1) and (2);

367 (b) (i) determining whether a certified local inspector applicant:

368 (A) is listed in the Licensing Information System; or

- 369 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
370 neglect under Subsections 78-3a-320(1) and (2); and
- 371 (ii) informing a local government that a certified local inspector applicant:
- 372 (A) is listed in the Licensing Information System; or
- 373 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
374 neglect under Subsections 78-3a-320(1) and (2); or
- 375 (c) (i) determining whether a direct service worker:
- 376 (A) is listed in the Licensing Information System; or
- 377 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
378 neglect under Subsections 78-3a-320(1) and (2); and
- 379 (ii) informing a direct service worker or the direct service worker's employer that the
380 direct service worker:
- 381 (A) is listed in the Licensing Information System; or
- 382 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
383 neglect under Subsections 78-3a-320(1) and (2); or
- 384 (d) (i) determining whether a personal care attendant:
- 385 (A) is listed in the Licensing Information System; or
- 386 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
387 neglect under Subsections 78-3a-320(1) and (2); and
- 388 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
389 personal care attendant:
- 390 (A) is listed in the Licensing Information System; or
- 391 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
392 neglect under Subsections 78-3a-320(1) and (2).
- 393 (3) Notwithstanding Subsection (2), the department may access the Division of Child
394 and Family Service's Management Information System under Section [~~62A-4a-116~~
395 62A-4a-1003] for the purpose of licensing and monitoring foster parents.
- 396 (4) After receiving identifying information for a person under Subsection
397 62A-2-120(1), the department shall process the information for the purposes described in
398 Subsection (2).
- 399 (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative

400 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
401 may have direct access or provide services to children when:

402 (a) the person is listed in the Licensing Information System of the Division of Child
403 and Family Services created by Section ~~[62A-4a-116.2]~~ 62A-4a-1006; or

404 (b) juvenile court records show that a court made a substantiated finding under Section
405 78-3a-320, that the person committed a severe type of child abuse or neglect.

406 Section 6. Section **62A-4a-412** is amended to read:

407 **62A-4a-412. Reports and information confidential.**

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

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

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

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

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

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

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

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

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

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

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

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

435 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
436 district, for the purpose of evaluating whether an individual should be permitted to obtain or
437 retain a license as an educator or serve as an employee or volunteer in a school, limited to
438 information with substantiated findings involving an alleged sexual offense, an alleged felony
439 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
440 Chapter 5, Offenses Against the Person, and with the understanding that the office must
441 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond
442 to the report before making a decision concerning licensure or employment;

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

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

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

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

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

455 (3) (a) Except as provided in Section [~~62A-4a-116.3~~] 62A-4a-1007 and Subsection
456 (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or
457 persons making the initial report and any others involved in its subsequent investigation.

458 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but
459 including this chapter and Title 63, Chapter 2, Government Records Access and Management
460 Act, when the division makes a report or other information in its possession available under
461 Subsection (1)(e) to a subject of the report or a parent of a minor, the division shall remove

462 from the report or other information only the names, addresses, and telephone numbers of
463 individuals or specific information that could:

- 464 (i) identify the referent;
465 (ii) impede a criminal investigation; or
466 (iii) endanger a person's safety.

467 (4) Any person who wilfully permits, or aides and abets the release of data or
468 information obtained as a result of this part, in the possession of the division or contained on
469 any part of the Management Information System, in violation of this part or Sections
470 ~~[62A-4a-116]~~ 62A-4a-1003 through ~~[62A-4a-116.3]~~ 62A-4a-1007, is guilty of a class C
471 misdemeanor.

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

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

- 477 (a) may provide this report to the person who is the subject of the report; and
478 (b) may provide this report to a person who is performing a preplacement adoptive
479 evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed
480 child-placing agency or to an attorney seeking to facilitate an adoption.

481 Section 7. Section **62A-4a-1001** is enacted to read:

482 **Part 10. Management Information System and Licensing Information System**
483 **62A-4a-1001. Title.**

484 This part is known as the "Management Information System and Licensing Information
485 System."

486 Section 8. Section **62A-4a-1002** is enacted to read:

487 **62A-4a-1002. Definitions.**

488 As used in this part:

489 (1) (a) Except as provided in Subsection (1)(b), "severe type of child abuse or neglect"
490 means:

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

492 (A) severe or chronic physical abuse;

- 493 (B) sexual abuse;
494 (C) sexual exploitation;
495 (D) abandonment;
496 (E) medical neglect resulting in death, disability, or serious illness;
497 (F) chronic neglect;
498 (G) severe neglect;
499 (H) chronic emotional abuse; or
500 (I) severe emotional abuse; or
501 (ii) if committed by a person under the age of 18:
502 (A) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
503 which indicates a significant risk to other children; or
504 (B) sexual behavior with or upon another child which indicates a significant risk to
505 other children.
506 (b) "Severe type of child abuse or neglect" does not include:
507 (i) the use of reasonable and necessary physical restraint or force by an educator in
508 accordance with Subsection 53A-11-802(2) or Section 76-2-401;
509 (ii) a person's conduct that:
510 (A) is justified under Section 76-2-401; or
511 (B) constitutes the use of reasonable and necessary physical restraint or force in
512 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
513 other dangerous object in the possession or under the control of a child or to protect the child or
514 another person from physical injury; or
515 (iii) a health care decision made for a child by the child's parent or guardian, unless,
516 subject to Subsection 62A-4a-1004(2), the state or other party to the proceeding shows, by
517 clear and convincing evidence, that the health care decision is not reasonable and informed.
518 (2) "Significant risk" means a risk of harm that is determined to be significant in
519 accordance with risk assessment tools and rules established by the division that focus on:
520 (a) age;
521 (b) social factors;
522 (c) emotional factors;
523 (d) sexual factors;

- 524 (e) intellectual factors;
- 525 (f) family risk factors; and
- 526 (g) other related considerations.

527 Section 9. Section **62A-4a-1003**, which is renumbered from Section 62A-4a-116 is
 528 renumbered and amended to read:

529 ~~[62A-4a-116].~~ **62A-4a-1003. Management Information System --**
 530 **Requirements -- Contents -- Purpose -- Access.**

531 (1) (a) The division shall develop and implement a Management Information System
 532 that meets the requirements of this section and the requirements of federal law and regulation.

533 (b) The information and records contained in the Management Information System:

534 (i) are protected records under Title 63, Chapter 2, Government Records Access and
 535 Management Act; and

536 (ii) except as provided in Subsection (1)(c), are available only to a person with
 537 statutory authorization under Title 63, Chapter 2, Government Records Access and
 538 Management Act, to review the information and records described in this Subsection (1)(b).

539 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
 540 Subsection (1)(b)(ii) are available to a person:

541 (i) as provided under Subsection (6) or Section ~~[62A-4a-116.2]~~ 62A-4a-1006; or

542 (ii) who has specific statutory authorization to access the information or records for the
 543 purpose of assisting the state with state and federal requirements to maintain information solely
 544 for the purpose of protecting minors and providing services to families in need.

545 (2) With regard to all child welfare cases, the Management Information System shall
 546 provide each caseworker and the department's office of licensing, exclusively for the purposes
 547 of foster parent licensure and monitoring, with a complete history of each child in that worker's
 548 caseload, including:

549 (a) a record of all past action taken by the division with regard to that child and the
 550 child's siblings;

551 (b) the complete case history and all reports and information in the control or keeping
 552 of the division regarding that child and the child's siblings;

553 (c) the number of times the child has been in the custody of the division;

554 (d) the cumulative period of time the child has been in the custody of the division;

- 555 (e) a record of all reports of abuse or neglect received by the division with regard to
556 that child's parent, parents, or guardian including:
- 557 (i) for each report, documentation of the:
- 558 (A) latest status; or
- 559 (B) final outcome or determination; and
- 560 (ii) information that indicates whether each report was found to be:
- 561 (A) supported;
- 562 (B) unsupported;
- 563 (C) substantiated by a juvenile court;
- 564 (D) unsubstantiated by a juvenile court; or
- 565 (E) without merit;
- 566 (f) the number of times the child's parent or parents failed any child and family plan;
- 567 and
- 568 (g) the number of different caseworkers who have been assigned to that child in the
569 past.
- 570 (3) The division's Management Information System shall:
- 571 (a) contain all key elements of each family's current child and family plan, including:
- 572 (i) the dates and number of times the plan has been administratively or judicially
573 reviewed;
- 574 (ii) the number of times the parent or parents have failed that child and family plan;
- 575 and
- 576 (iii) the exact length of time the child and family plan has been in effect; and
- 577 (b) alert caseworkers regarding deadlines for completion of and compliance with
578 policy, including child and family plans.
- 579 (4) With regard to all child protective services cases, the Management Information
580 System shall:
- 581 (a) monitor the compliance of each case with:
- 582 (i) division rule and policy;
- 583 (ii) state law; and
- 584 (iii) federal law and regulation; and
- 585 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or

586 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
587 the alleged perpetrator.

588 (5) Except as provided in Subsection (6) regarding contract providers and Section
589 [~~62A-4a-116.2~~] 62A-4a-1006 regarding limited access to the Licensing Information System, all
590 information contained in the division's Management Information System is available to the
591 department, upon the approval of the executive director, on a need-to-know basis.

592 (6) (a) Subject to this Subsection (6), the division may allow its contract providers,
593 court clerks designated by the Administrative Office of the Courts, and the Office of the
594 Guardian Ad Litem to have limited access to the Management Information System.

595 (b) A division contract provider has access only to information about a person who is
596 currently receiving services from that specific contract provider.

597 (c) (i) Designated court clerks may only have access to information necessary to
598 comply with Subsection 78-3h-102(2).

599 (ii) The Office of the Guardian Ad Litem may access only the information that:

600 (A) relates to children and families where the Office of the Guardian Ad Litem is
601 appointed by a court to represent the interests of the children; and

602 (B) except as provided in Subsection (6)(d), is entered into the Management
603 Information System on or after July 1, 2004.

604 (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of the Guardian Ad Litem
605 shall have access to all child abuse and neglect referrals about children and families where the
606 office has been appointed by a court to represent the interests of the children, regardless of the
607 date that the information is entered into the Management Information System.

608 (e) Each contract provider and designated representative of the Office of the Guardian
609 Ad Litem who requests access to information contained in the Management Information
610 System shall:

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

613 (ii) train its employees regarding:

614 (A) requirements for protecting the information contained in the Management
615 Information System as required by this chapter and under Title 63, Chapter 2, Government
616 Records Access and Management Act; and

617 (B) the criminal penalties under Sections 62A-4a-412 and 63-2-801 for improper
618 release of information; and

619 (iii) monitor its employees to ensure that they protect the information contained in the
620 Management Information System as required by law.

621 (f) The division shall take reasonable precautions to ensure that its contract providers
622 comply with the requirements of this Subsection (6).

623 (7) The division shall take all necessary precautions, including password protection and
624 other appropriate and available technological techniques, to prevent unauthorized access to or
625 release of information contained in the Management Information System.

626 Section 10. Section **62A-4a-1004** is enacted to read:

627 **62A-4a-1004. Risk assessment training -- Second health care opinion.**

628 (1) The division shall train its child protection workers to apply the risk assessment
629 tools and rules established under Subsection 62A-4a-1002(2).

630 (2) Nothing in Subsection 62A-4a-1002(1)(b)(iii) may prohibit a parent or guardian
631 from exercising the right to obtain a second health care opinion.

632 Section 11. Section **62A-4a-1005**, which is renumbered from Section 62A-4a-116.1 is
633 renumbered and amended to read:

634 ~~**[62A-4a-116.1].**~~ **62A-4a-1005. Supported finding of a severe type of child**
635 **abuse or neglect -- Notation in Licensing Information System -- Juvenile court petition or**
636 **notice to alleged perpetrator -- Rights of alleged perpetrator -- Juvenile court finding.**

637 (1) If the division makes a supported finding [~~of one or more of the severe types~~] that a
638 person committed a severe type of child abuse or neglect [described in Subsection (2)], the
639 division shall:

640 (a) [~~(i)~~] serve notice of the finding on the alleged perpetrator; [~~and~~]

641 [~~(ii)~~] (b) enter the following information into the Licensing Information System created
642 in Section [~~62A-4a-116.2~~] 62A-4a-1006:

643 (A) the name and other identifying information of the perpetrator with the supported
644 finding, without identifying the person as a perpetrator or alleged perpetrator; and

645 (B) a notation to the effect that an investigation regarding the person is pending; and

646 [~~(b)~~] (c) if the division considers it advisable, file a petition for substantiation within
647 one year of the supported finding.

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

650 ~~[(a) if committed by a person 18 years of age or older:]~~

651 ~~[(i) severe or chronic physical abuse;]~~

652 ~~[(ii) sexual abuse;]~~

653 ~~[(iii) sexual exploitation;]~~

654 ~~[(iv) abandonment;]~~

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

656 ~~[(vi) chronic or severe neglect; or]~~

657 ~~[(vii) chronic or severe emotional abuse; or]~~

658 ~~[(b) if committed by a person under the age of 18:]~~

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

661 ~~[(ii) sexual behavior with or upon another child which indicates a significant risk to~~
662 ~~other children.]~~

663 ~~[(3) Severe child abuse or neglect in Subsection (2) does not include:]~~

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

666 ~~[(b) a person's conduct that:]~~

667 ~~[(i) is justified under Section 76-2-401; or]~~

668 ~~[(ii) constitutes the use of reasonable and necessary physical restraint or force in~~
669 ~~self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or~~
670 ~~other dangerous object in the possession or under the control of a child or to protect the child or~~
671 ~~another person from physical injury; or]~~

672 ~~[(c) a health care decision made for a child by the child's parent or guardian, unless the~~
673 ~~state or other party to the proceeding shows, by clear and convincing evidence, that the health~~
674 ~~care decision is not reasonable and informed.]~~

675 ~~[(4) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in~~
676 ~~accordance with risk assessment tools and rules established by the division that focus on:]~~

677 ~~[(i) age;]~~

678 ~~[(ii) social factors;]~~

679 ~~[(iii) emotional factors;]~~
680 ~~[(iv) sexual factors;]~~
681 ~~[(v) intellectual factors;]~~
682 ~~[(vi) family risk factors; and]~~
683 ~~[(vii) other related considerations.]~~
684 ~~[(b) The division shall train its child protection workers to apply the risk assessment~~
685 ~~tools and rules established under Subsection (4)(a).]~~
686 ~~[(5)]~~ (2) The notice referred to in Subsection (1)(a):
687 (a) shall state that:
688 ~~[(a)]~~ (i) the division has conducted an investigation regarding alleged child abuse or
689 neglect;
690 ~~[(b)]~~ (ii) the division has made a supported finding ~~[of one of the severe types]~~ that the
691 alleged perpetrator described in Subsection (1) committed a severe type of child abuse or
692 neglect ~~[described in Subsection (2)]~~;
693 ~~[(c)]~~ (iii) facts gathered by the division support the supported finding;
694 ~~[(d)]~~ (iv) as a result of the supported finding, the alleged perpetrator's name and other
695 identifying information have been listed in the Licensing Information System in accordance
696 with Subsection (1)~~[(a)]~~(b);
697 ~~[(e)]~~ (v) the alleged perpetrator may be disqualified from adopting a child or being
698 licensed by:
699 ~~[(i)]~~ (A) the department;
700 ~~[(ii)]~~ (B) a human services licensee;
701 ~~[(iii)]~~ (C) a child care provider or program; ~~[and]~~ or
702 ~~[(iv)]~~ (D) a covered health care facility;
703 ~~[(f)]~~ (vi) the alleged perpetrator has the rights described in Subsection ~~[(6)]~~ (3); and
704 ~~[(g)]~~ (vii) failure to take either action described in Subsection ~~[(6)]~~ (3)(a) within one
705 year after service of the notice will result in the action described in Subsection ~~[(6)]~~ (3)(b)~~[-]~~;
706 (b) shall include a general statement of the nature of the findings; and
707 (c) may not include:
708 (i) the name of a victim or witness; or
709 (ii) any privacy information related to the victim or a witness.

710 ~~[(6)]~~ (3) (a) Upon receipt of the notice described in Subsection ~~[(5)]~~ (2), the alleged
711 perpetrator shall have the right to:

712 (i) file a written request asking the division to review the findings made under
713 Subsection ~~[(2)]~~ (1);

714 (ii) except as provided in Subsection (3)(c), immediately petition the juvenile court
715 under Section 78-3a-320; or

716 (iii) sign a written consent to:

717 (A) the supported finding made under Subsection (1); and

718 (B) entry into the Licensing Information System of:

719 (I) the alleged perpetrator's name; and

720 (II) other information regarding the supported finding ~~[of abuse or neglect into the~~
721 Licensing Information System] made under Subsection (1).

722 (b) Except as provided in Subsection (3)(e), the alleged perpetrator's name and the
723 information described in Subsection (1)(b) shall remain in the Licensing Information System:

724 ~~[(b) If]~~ (i) if the alleged perpetrator fails to take the action [as] described in Subsection
725 ~~[(6)] (3)(a) within one year after service of the notice described in [Subsection (5), the alleged~~
726 ~~perpetrator's name and the notation described in Subsection (1)(a) shall remain in the Licensing~~
727 ~~Information System. This information shall also remain in the Licensing Information System~~
728 ~~while] Subsections (1)(a) and (2);~~

729 (ii) during the time that the division awaits a response from the alleged perpetrator
730 pursuant to Subsection ~~[(6)]~~ (3)(a); and ~~[during the pendency of any proceeding, including an~~
731 ~~appeal of a finding of unsubstantiated or without merit, under Section 78-3a-320.]~~

732 (iii) until a court determines that the severe type of child abuse or neglect upon which
733 the Licensing Information System entry was based is unsubstantiated or without merit.

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

738 (d) Consent under Subsection ~~[(6)]~~ (3)(a)(iii) by a minor shall be given by the minor's
739 parent or guardian.

740 (e) Regardless of whether an appeal on the matter is pending:

741 (i) an alleged perpetrator's name and the information described in Subsection (1)(b)
 742 shall be removed from the Licensing Information System if the severe type of child abuse or
 743 neglect upon which the Licensing Information System entry was based:

744 (A) is found to be unsubstantiated or without merit by the juvenile court under Section
 745 78-3a-320; or

746 (B) is found to be substantiated, but is subsequently reversed on appeal; and

747 (ii) an alleged perpetrator's name and information that is removed from the Licensing
 748 Information System under Subsection (3)(e)(i), shall be placed back on the Licensing
 749 Information System if the court action that was the basis for removing the alleged perpetrator's
 750 name and information is subsequently reversed on appeal.

751 ~~[(7)]~~ (4) Upon the filing of a petition under Subsection (1)~~[(b)]~~(c), the juvenile court
 752 shall make a finding of substantiated, unsubstantiated, or without merit as provided in
 753 Subsections 78-3a-320(1) and (2).

754 ~~[(8)]~~ (5) Service of the notice ~~[under Subsections (1)(a) and (5)]~~ described in
 755 Subsections (1)(a) and (2):

756 (a) shall be personal service in accordance with ~~[Rule 4 of the]~~ Utah Rules of Civil
 757 Procedure, Rule 4; and

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

759 ~~[(9) Nothing in Subsection (3)(c) may prohibit a parent or guardian from exercising the~~
 760 ~~right to obtain a second health care opinion.]~~

761 Section 12. Section **62A-4a-1006**, which is renumbered from Section 62A-4a-116.2 is
 762 renumbered and amended to read:

763 ~~[62A-4a-116.2].~~ **62A-4a-1006. Licensing Information System -- Contents --**
 764 **Juvenile court finding -- Protected record -- Access -- Criminal penalty.**

765 (1) (a) The division shall maintain a sub-part of the Management Information System
 766 established pursuant to Section ~~[62A-4a-116]~~ 62A-4a-1003, to be known as the Licensing
 767 Information System, to be used:

768 (i) for licensing purposes; or

769 (ii) as otherwise specifically provided for by law.

770 (b) The Licensing Information System shall include only the following information:

771 (i) the information described in Subsections ~~[62A-4a-116.1(1)(a) and (6)(b)]~~

772 62A-4a-1005(1)(b) and (3)(b);

773 (ii) consented-to supported findings by alleged perpetrators under Subsection

774 [~~62A-4a-116.1(6)(a)(iii)~~] 62A-4a-1005(3)(a)(iii); and

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

777 (2) Notwithstanding Subsection (1), the department's access to information in the
778 Management Information System for the licensure and monitoring of foster parents is governed
779 by Sections [~~62A-4a-116~~] 62A-4a-1003 and 62A-2-121.

780 (3) [~~(a)~~] Subject to Subsection 62A-4a-1005(3)[~~(b)~~](e), upon receipt of a finding from
781 the juvenile court under Section 78-3a-320, the division shall:

782 [(i)] (a) promptly amend the Licensing Information System; and

783 [(ii)] (b) enter the information in the Management Information System.

784 [~~(b) Notwithstanding Subsection (3)(a), if a finding of unsubstantiated or without merit
785 is appealed, the supported finding shall not be amended until the appeal is concluded.~~]

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

788 (b) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government
789 Records Access and Management Act, the information contained in the Licensing Information
790 System may only be used or disclosed as specifically provided in this chapter and Section
791 62A-2-121.

792 (c) The information described in Subsection (4)(b) is accessible only to:

793 (i) the Office of Licensing within the department:

794 (A) for licensing purposes; or

795 (B) as otherwise specifically provided for by law;

796 (ii) the division to:

797 (A) screen a person at the request of the Office of the Guardian Ad Litem Director:

798 (I) at the time that person seeks a paid or voluntary position with the Office of the
799 Guardian Ad Litem Director; and

800 [~~(II) each year after the person described in Subsection (4)(c)(ii)(A)(I) remains with
801 that office; and]~~

802 (II) on an annual basis, throughout the time that the person remains with the Office of

803 Guardian Ad Litem Director; and

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

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

808 (A) licensing a child care program or provider; or

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

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

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

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

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

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

820 (a) accessing the Licensing Information System;

821 (b) maintaining strict security; and

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

824 (7) (a) A person, except those authorized by this chapter, may not request another
825 person to obtain or release any other information in the Licensing Information System to screen
826 for potential perpetrators of child abuse or neglect.

827 (b) A person who requests information knowing that it is a violation of this Subsection
828 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and 63-2-801.

829 Section 13. Section **62A-4a-1007**, which is renumbered from Section 62A-4a-116.3 is
830 renumbered and amended to read:

831 ~~[62A-4a-116.3]~~. **62A-4a-1007. False reports -- Penalties.**

832 (1) The division shall send a certified letter to any person who submits a report of child
833 abuse or neglect that is placed into or included in any part of the Management Information

834 System, if the division determines, at the conclusion of its investigation, that:

835 (a) the report is false;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

863 Section 14. Section **62A-4a-1008**, which is renumbered from Section 62A-4a-116.4 is
864 renumbered and amended to read:

865 ~~[62A-4a-116.4].~~ 62A-4a-1008. **Timeframes for deletion of specified**
866 **information or reports.**

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

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

872 (b) a report that ~~[has been]~~ is determined by a court of competent jurisdiction to be
873 unsubstantiated or without merit, if no subsequent report involving the same alleged
874 perpetrator has occurred within five years.

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

876 (i) those that are supported;

877 (ii) those that are unsupported;

878 (iii) those that are without merit;

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

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

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

882 ~~[62A-4a-116.1(6)(a)(iii)]~~ 62A-4a-1005(3)(a)(iii).

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

885 Section 15. Section **62A-4a-1009**, which is renumbered from Section 62A-4a-116.5 is
886 renumbered and amended to read:

887 ~~[62A-4a-116.5].~~ 62A-4a-1009. **Notice and opportunity to challenge supported**
888 **finding in Management Information System -- Right of judicial review.**

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

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

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

896 (b) Nothing in this section may be construed as affecting:
897 (i) the manner in which the division conducts an investigation; or
898 (ii) the use or effect, in any other setting, of a supported finding by the division at the
899 completion of an investigation for any purpose other than for notification under Subsection (1)
900 (a).

901 (2) Subsection (1) does not apply to a person who has been served with notice under
902 Subsection ~~[62A-4a-116.1]~~ 62A-4a-1005(1)(a).

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

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

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

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

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

909 (i) a copy of the report; and

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

911 (e) that failure to request an opportunity to challenge the supported finding within 30
912 days of receiving the notice will result in an unappealable supported finding of child abuse,
913 neglect, or dependency unless the person can show good cause for why compliance within the
914 30-day requirement was virtually impossible or unreasonably burdensome.

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

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

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

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

926 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after

927 receiving notice, fails to challenge a supported finding in accordance with this section[-];

928 (a) may not further challenge the finding; and

929 (b) shall have no right to:

930 (i) agency review [~~or to~~] of the finding;

931 (ii) an adjudicative hearing on the finding; or

932 (iii) judicial review of the finding.

933 (7) (a) [~~An~~] Except as provided in Subsection (7)(b), an alleged perpetrator may not
934 make a request under Subsection (4) to challenge a supported finding if a court of competent
935 jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that
936 the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which
937 was also the subject of the supported finding. [~~This~~]

938 (b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

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

941 (8) [~~An~~] Pursuant to Section 78-3a 320, an adjudicative proceeding on a supported
942 finding of [~~one of the nonsevere types~~] a type of abuse or neglect [~~under Section 78-3a-320~~]
943 that does not constitute a severe type of child abuse or neglect may be joined in the juvenile
944 court with an adjudicative proceeding on a supported finding of a severe type of child abuse or
945 neglect.

946 Section 16. Section **62A-4a-1010**, which is renumbered from Section 62A-4a-116.6 is
947 renumbered and amended to read:

948 [~~62A-4a-116.6~~]. **62A-4a-1010. Notice and opportunity for court hearing for**
949 **persons listed in Licensing Information System.**

950 (1) Persons whose names were listed on the Licensing Information System as of May
951 6, 2002 and who have not been the subject of a court determination with respect to the alleged
952 incident of abuse or neglect may at any time:

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

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

957 (2) Subsection (1) does not apply to an individual who has been the subject of any of

958 the following court determinations with respect to the alleged incident of abuse or neglect:

- 959 (a) conviction;
- 960 (b) adjudication under Title 78, Chapter 3a, Juvenile [Courts] Court Act of 1996;
- 961 (c) plea of guilty;
- 962 (d) plea of guilty and mentally ill; or
- 963 (e) no contest.

964 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
965 2002 requests removal of [~~their~~] the alleged perpetrator's name from the Licensing Information
966 System, the division shall, within 30 days:

967 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
968 qualifies as [~~severe or chronic under Subsection 62A-4a-116.1(2) and if it does not, remove~~
969 ~~the~~];

970 (A) a severe type of child abuse or neglect;

971 (B) chronic physical abuse;

972 (C) chronic emotional abuse; or

973 (D) chronic neglect; and

974 (ii) if the alleged abuse or neglect does not qualify as a type of abuse or neglect

975 described in Subsections (3)(a)(i)(A) through (D), remove the alleged perpetrator's name from
976 the Licensing Information System; or

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

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

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

981 (6) If a person whose name appears on the Licensing Information System prior to May
982 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged
983 perpetrator's application for clearance to work with children or vulnerable adults is pending, the
984 court shall hear the matter on an expedited basis.

985 Section 17. Section **62A-5-103.5** is amended to read:

986 **62A-5-103.5. Disbursal of public funds -- Background check of a direct service**
987 **worker.**

988 (1) For purposes of this section:

989 (a) "directly supervised" means that the person being supervised is under the
990 uninterrupted visual and auditory surveillance of the person doing the supervising; and

991 (b) "office" is as defined in Section 62A-2-101.

992 (2) Subject to Subsection (4), public funds may not be disbursed to pay a direct service
993 worker for personal services rendered to a person, unless:

994 (a) the direct service worker is approved by the office to have direct access and provide
995 services to children or vulnerable adults pursuant to Section 62A-2-120;

996 (b) (i) during the time that the direct service worker renders the services described in
997 this Subsection (2), the direct service worker who renders the services is directly supervised by
998 a direct service worker who is approved by the office to have direct access and provide services
999 to children or vulnerable adults pursuant to Section 62A-2-120;

1000 (ii) the direct service worker who renders the services described in this Subsection (2)
1001 has submitted the information required for a background check pursuant to Section 62A-2-120;
1002 and

1003 (iii) the office has not determined whether to approve the direct service worker
1004 described in Subsection (2)(b)(ii) to have direct access and provide services to children or
1005 vulnerable adults; or

1006 (c) the direct service worker:

1007 (i) (A) is a direct ancestor or descendent of the person to whom the services are
1008 rendered, but is not the person's parent;

1009 (B) is the aunt, uncle, or sibling of the person to whom the services are rendered; or

1010 (C) (I) has submitted the information required for a background check pursuant to
1011 Section 62A-2-120; and

1012 (II) the office has not determined whether to approve the direct service worker to have
1013 direct access and provide services to children or vulnerable adults; and

1014 (ii) is not listed in:

1015 (A) the Licensing Information System of the Division of Child and Family Services
1016 created by Section [~~62A-4a-116.2~~] 62A-4a-1006;

1017 (B) the statewide database of the Division of Aging and Adult Services created by
1018 Section 62A-3-311.1 as having a substantiated finding of abuse, neglect, or exploitation; or

1019 (C) juvenile court records as having a substantiated finding under Section 78-3a-320

1020 that the direct service worker committed a severe type of child abuse or neglect.

1021 (3) For purposes of Subsection (2), the office shall conduct a background check of a
1022 direct service worker:

1023 (a) except as provided in Subsection (2)(b) or (c), before public funds are disbursed to
1024 pay the direct service worker for the personal services described in Subsection (2); and

1025 (b) using the same procedures established for a background check of an applicant for
1026 an initial license under Section 62A-2-120.

1027 (4) The background check and the approval determination described in this section
1028 shall be conducted for a direct service worker on an annual basis.

1029 Section 18. Section **62A-11-304.4** is amended to read:

1030 **62A-11-304.4. Filing of location information -- Service of process.**

1031 (1) (a) Upon the entry of an order in a proceeding to establish paternity or to establish,
1032 modify, or enforce a support order, each party shall file identifying information and shall
1033 update that information as changes occur:

1034 (i) with the court or administrative agency that conducted the proceeding; and

1035 (ii) after October 1, 1998, with the state case registry.

1036 (b) The identifying information required under Subsection (1)(a) shall include the
1037 person's social security number, driver's license number, residential and mailing addresses,
1038 telephone numbers, the name, address, and telephone number of employers, and any other data
1039 required by the United States Secretary of Health and Human Services.

1040 (c) In any subsequent child support action involving the office or between the parties,
1041 state due process requirements for notice and service of process shall be satisfied as to a party
1042 upon:

1043 (i) a sufficient showing that diligent effort has been made to ascertain the location of
1044 the party; and

1045 (ii) delivery of notice to the most recent residential or employer address filed with the
1046 court, administrative agency, or state case registry under Subsection (1)(a).

1047 (2) (a) The office shall provide individuals who are applying for or receiving services
1048 under this chapter or who are parties to cases in which services are being provided under this
1049 chapter:

1050 (i) with notice of all proceedings in which support obligations might be established or

1051 modified; and

1052 (ii) with a copy of any order establishing or modifying a child support obligation, or in
1053 the case of a petition for modification, a notice of determination that there should be no change
1054 in the amount of the child support award, within 14 days after issuance of such order or
1055 determination.

1056 (b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall
1057 be provided in accordance with Section 78-45f-614.

1058 (3) Service of all notices and orders under this part shall be made in accordance with
1059 Title 63, Chapter 46b, Administrative Procedures Act, the Utah Rules of Civil Procedure, or
1060 this section.

1061 (4) Consistent with Title 63, Chapter 2, Government Records Access and Management
1062 Act, the office shall adopt procedures to classify records to prohibit the unauthorized use or
1063 disclosure of information relating to a proceeding to:

1064 (a) establish paternity; or

1065 (b) establish or enforce support.

1066 (5) (a) The office shall, upon written request, provide location information available in
1067 its files on a custodial or noncustodial parent to the other party or the other party's legal counsel
1068 provided that:

1069 (i) the party seeking the information produces a copy of the parent-time order signed by
1070 the court;

1071 (ii) the information has not been safeguarded in accordance with Section 454 of the
1072 Social Security Act;

1073 (iii) the party whose location is being sought has been afforded notice in accordance
1074 with this section of the opportunity to contest release of the information;

1075 (iv) the party whose location is being sought has not provided the office with a copy of
1076 a protective order, a current court order prohibiting disclosure, a current court order limiting or
1077 prohibiting the requesting person's contact with the party or child whose location is being
1078 sought, a criminal order, an administrative order pursuant to Section [~~62A-4a-116.5~~]

1079 62A-4a-1009, or documentation of a pending proceeding for any of the above; and

1080 (v) there is no other state or federal law that would prohibit disclosure.

1081 (b) "Location information" shall consist of the current residential address of the

1082 custodial or noncustodial parent and, if different and known to the office, the current residence
1083 of any children who are the subject of the parent-time order. If there is no current residential
1084 address available, the person's place of employment and any other location information shall be
1085 disclosed.

1086 (c) For the purposes of this section, "reason to believe" under Section 454 of the Social
1087 Security Act means that the person seeking to safeguard information has provided to the office
1088 a copy of a protective order, current court order prohibiting disclosure, current court order
1089 prohibiting or limiting the requesting person's contact with the party or child whose location is
1090 being sought, criminal order signed by a court of competent jurisdiction, an administrative
1091 order pursuant to Section [~~62A-4a-116.5~~] 62A-4a-1009, or documentation of a pending
1092 proceeding for any of the above.

1093 (d) Neither the state, the department, the office nor its employees shall be liable for any
1094 information released in accordance with this section.

1095 (6) Custodial or noncustodial parents or their legal representatives who are denied
1096 location information in accordance with Subsection (5) may serve the Office of Recovery
1097 Services to initiate an action to obtain the information.

1098 Section 19. Section **78-3a-206** is amended to read:

1099 **78-3a-206. Court records -- Inspection.**

1100 (1) The court and the probation department shall keep records as required by the board
1101 and the presiding judge.

1102 (2) Court records shall be open to inspection by:

1103 (a) the parents or guardian, other parties in the case, the attorneys, and agencies to
1104 which custody of a minor has been transferred;

1105 (b) for information relating to adult offenders alleged to have committed a sexual
1106 offense, a felony or class A misdemeanor drug offense, or an offense against the person under
1107 Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose
1108 of evaluating whether an individual should be permitted to obtain or retain a license as an
1109 educator or serve as an employee or volunteer in a school, with the understanding that the
1110 office must provide the individual with an opportunity to respond to any information gathered
1111 from its inspection of the records before it makes a decision concerning licensure or
1112 employment;

1113 (c) the Division of Criminal Investigations and Technical Services, established in
1114 Section 53-10-103, for the purpose of a criminal history background check for the purchase of
1115 a firearm and establishing good character for issuance of a concealed firearm permit as
1116 provided in Section 53-5-704; and

1117 (d) the Division of Child and Family Services for the purpose of Child Protective
1118 Services Investigations in accordance with Sections 62A-4a-403 and 62A-4a-409 and
1119 administrative hearings in accordance with Section [~~62A-4a-116.5~~] 62A-4a-1009.

1120 (3) With the consent of the judge, court records may be inspected by the minor, by
1121 persons having a legitimate interest in the proceedings, and by persons conducting pertinent
1122 research studies.

1123 (4) If a petition is filed charging a minor 14 years of age or older with an offense that
1124 would be a felony if committed by an adult, the court shall make available to any person upon
1125 request the petition, any adjudication or disposition orders, and the delinquency history
1126 summary of the minor charged unless the records are closed by the court upon findings on the
1127 record for good cause.

1128 (5) Probation officers' records and reports of social and clinical studies are not open to
1129 inspection, except by consent of the court, given under rules adopted by the board.

1130 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency
1131 history summary of any person charged as an adult with a felony offense shall be made
1132 available to any person upon request.

1133 (b) This provision does not apply to records that have been destroyed or expunged in
1134 accordance with court rules.

1135 (c) The court may charge a reasonable fee to cover the costs associated with retrieving
1136 a requested record that has been archived.

1137 Section 20. Section **78-3a-320** is amended to read:

1138 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**

1139 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the Division
1140 of Child and Family Services or any interested person informing the court, among other things,
1141 that the division has made a supported finding [~~of one or more of the severe types~~] that a
1142 person committed a severe type of child abuse or neglect [~~described in Subsection~~
1143 ~~62A-4a-116.1(2)~~] as defined in Section 62A-4a-1002, the court shall:

- 1144 (a) make a finding of substantiated, unsubstantiated, or without merit;
- 1145 (b) include the finding described in Subsection (1)(a) in a written order; and
- 1146 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- 1147 (2) The judicial finding under Subsection (1) shall be made:
- 1148 (a) as part of the adjudication hearing;
- 1149 (b) at the conclusion of the adjudication hearing; or
- 1150 (c) as part of a court order entered pursuant to a written stipulation of the parties.
- 1151 (3) (a) Any person described in Subsection [~~62A-4a-116.6~~] 62A-4a-1010(1) may at any
- 1152 time file with the court a petition for removal of the person's name from the Licensing
- 1153 Information System.
- 1154 (b) At the conclusion of the hearing on the petition, the court shall:
- 1155 (i) make a finding of substantiated, unsubstantiated, or without merit;
- 1156 (ii) include the finding described in Subsection (1)(a) in a written order; and
- 1157 (iii) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- 1158 (4) A proceeding for adjudication of a supported finding [~~of a nonsevere type of abuse~~
- 1159 ~~or neglect~~] under this section of a type of abuse or neglect that does not constitute a severe type
- 1160 of child abuse or neglect may be joined in the juvenile court with an adjudication of a severe
- 1161 type of child abuse or neglect.
- 1162 (5) If a person whose name appears on the Licensing Information system prior to May
- 1163 6, 2002 files a petition during the time that an alleged perpetrator's application for clearance to
- 1164 work with children or vulnerable adults is pending, the court shall hear the matter and enter a
- 1165 final decision no later than 60 days after the filing of the petition.
- 1166 (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118,
- 1167 and for the purposes described in Section 62A-2-121:
- 1168 (a) the court shall make available records of its findings under Subsections (1) and (2)
- 1169 for licensing purposes, only to those with statutory authority to access also the Licensing
- 1170 Information System created under Section [~~62A-4a-116.2~~] 62A-4a-1006; and
- 1171 (b) any appellate court shall make available court records of appeals from juvenile
- 1172 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those
- 1173 with statutory authority to access also the Licensing Information System.

Legislative Review Note

as of 11-9-05 4:42 PM

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

Interim Committee Note

as of 12-16-05 10:59 AM

The Health and Human Services Interim Committee recommended this bill.

Legislative Committee Note

as of 12-16-05 10:59 AM

The Child Welfare Legislative Oversight Panel recommended this bill.