

Representative Wayne A. Harper proposes the following substitute bill:

1 **CHILD ABUSE AND NEGLECT REGISTRY -**
2 **MANAGEMENT AND LICENSING**
3 **INFORMATION SYSTEMS AMENDMENTS**

4 2008 GENERAL SESSION

5 STATE OF UTAH

6 **Chief Sponsor: Gene Davis**

7 House Sponsor: Wayne A. Harper

8
9 **LONG TITLE**

10 **General Description:**

11 This bill amends provisions of the Utah Human Services Code and the Juvenile Court
12 Act of 1996 relating to the Management Information System maintained by the
13 Department of Human Services.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ provides that reports that are found to be without merit and false may not be
17 included in the Management Information System;
- 18 ▶ provides that contract providers for the Division of Child and Family Services and
19 designated court clerks may only have access to reports on the Management
20 Information System that are substantiated or supported;
- 21 ▶ requires that, when the division or a court makes a finding that a report is without
22 merit, the division or the court must also determine whether the report is false;
- 23 ▶ describes how long a report remains on the Management Information System;
- 24 ▶ provides that proceedings for judicial review of a final agency action relating to a
25 report on the Management Information System are closed to the public;



26 ▶ grants rulemaking authority to the Judicial Council to ensure the confidentiality of
27 the proceedings described above; and

28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 **AMENDS:**

35 **26-21-9.5**, as last amended by Chapter 43, Laws of Utah 2007

36 **62A-2-121**, as last amended by Chapter 152, Laws of Utah 2007

37 **62A-4a-1003**, as last amended by Laws of Utah 2007, Chapter 152

38 **62A-4a-1008**, as renumbered and amended by Laws of Utah 2006, Chapter 77

39 **62A-4a-1009**, as renumbered and amended by Laws of Utah 2006, Chapter 77

40 **78A-6-103**, as renumbered and amended by Laws of Utah 2008, Chapter 3

41 **78A-6-323**, as renumbered and amended by Laws of Utah 2008, Chapter 3

42 **ENACTS:**

43 **62A-4a-1003.5**, Utah Code Annotated 1953



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

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

47 **26-21-9.5. Criminal background check and Licensing Information System check.**

48 (1) For purposes of this section:

49 (a) "Covered health care facility" means:

50 (i) home health care agencies;

51 (ii) hospices;

52 (iii) nursing care facilities;

53 (iv) assisted-living facilities;

54 (v) small health care facilities; and

55 (vi) end stage renal disease facilities.

56 (b) "Covered person" includes:

57 (i) the following people who provide direct patient care:

58 (A) employees;

59 (B) volunteers; and

60 (C) people under contract with the facility; and

61 (ii) for residential settings, any individual residing in the home where the assisted
62 living or small health care program is to be licensed who:

63 (A) is 18 years of age or older; or

64 (B) is a child between the age of 12 and 17 years of age; however, the identifying
65 information required for a child between the age of 12 and 17 does not include fingerprints.

66 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
67 covered health care facility at the time of initial application for a license and license renewal
68 shall:

69 (a) submit the name and other identifying information of each covered person at the
70 covered facility who:

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

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

74 (b) submit the name and other identifying information, which may include fingerprints,
75 of each covered person at the covered facility who has not been the subject of a criminal
76 background check in accordance with Subsection (1)(a)(ii).

77 (3) (a) The department shall forward the information received under Subsection (2)(b)
78 to the Criminal Investigations and Technical Services Division of the Department of Public
79 Safety for processing to determine whether the covered individual has been convicted of any
80 crime.

81 (b) Except for individuals described in Subsection (1)(b)(ii)(B), if an individual has not
82 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
83 national criminal history record check. The fingerprints shall be submitted to the FBI through
84 the Criminal Investigations and Technical Services Division. The individual or licensee is
85 responsible for the cost of the fingerprinting and national criminal history check.

86 (4) The department may determine whether:

87 (a) an individual whose name and other identifying information has been submitted

88 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
89 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
90 of a severe type of child abuse or neglect under Section ~~[78-3a-320]~~ 78A-6-323, if
91 identification as a possible perpetrator of child abuse or neglect is relevant to the employment
92 activities of that individual;

93 (b) an individual whose name and other identifying information has been submitted
94 pursuant to Subsection (2) and who provides direct care to disabled or elder adults, or who is
95 residing in a residential home that is a facility licensed to provide direct care to disabled or
96 elder adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or elder
97 adult by accessing in accordance with Subsection (5) the database created in Section
98 62A-3-311.1 if identification as a possible perpetrator of disabled or elder adult abuse, neglect,
99 or exploitation is relevant to the employment activities or residence of that person; or

100 (c) an individual whose name or other identifying information has been submitted
101 pursuant to Subsection (2) has been adjudicated in a juvenile court of committing an act which
102 if committed by an adult would be a felony or a misdemeanor if:

103 (i) the individual is under the age of 28 years; or

104 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
105 or is currently subject to a plea in abeyance or diversion agreement for any felony or
106 misdemeanor.

107 (5) (a) The department shall:

108 (i) designate two persons within the department to access:

109 (A) the Licensing Information System described in Section 62A-4a-1006;

110 (B) court records under Subsection ~~[78-3a-320(6)]~~ 78A-6-323(7);

111 (C) the database described in Subsection (4)(b); and

112 (D) juvenile court records as permitted by Subsection (4)(c); and

113 (ii) adopt measures to:

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

116 (B) strictly limit access to the Licensing Information System, the court records, and the
117 database to those designated under Subsection (5)(a)(i).

118 (b) Those designated under Subsection (5)(a)(i) shall receive training from the

119 Department of Human Services with respect to:

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

121 (ii) maintaining strict security; and

122 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of

123 information.

124 (c) Those designated under Subsection (5)(a)(i):

125 (i) are the only ones in the department with the authority to access the Licensing

126 Information System, the court records, and database; and

127 (ii) may only access the Licensing Information System, the court records, and the
128 database for the purpose of licensing and in accordance with the provisions of Subsection (4).

129 (6) Within ten days of initially hiring a covered individual, a covered health care
130 facility shall submit the covered individual's information to the department in accordance with
131 Subsection (2).

132 (7) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
133 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
134 who has been convicted of a criminal offense, or a person described in Subsection (4), may
135 provide direct care to a patient in a covered health care facility, taking into account the nature
136 of the criminal conviction or substantiated finding and its relation to patient care.

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

139 (9) The department may inform the covered health care facility of information
140 discovered under Subsection (4) with respect to a covered individual.

141 (10) A covered health care facility is not civilly liable for submitting information to the
142 department as required by this section.

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

144 **62A-2-121. Access to abuse and neglect information.**

145 (1) For purposes of this section:

146 (a) "Direct service worker" is as defined in Section 62A-5-101.

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

148 (2) With respect to a licensee, a certified local inspector applicant, a direct service
149 worker, or a personal care attendant, the department may access only the Licensing Information

150 System of the Division of Child and Family Services created by Section 62A-4a-1006 and
151 juvenile court records under Subsection [~~78-3a-320(6)~~ 78A-6-323(7)], for the purpose of:

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

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

155 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
156 neglect under Subsections [~~78-3a-320~~ 78A-6-323(1) and (2); and

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

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

159 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
160 neglect under Subsections [~~78-3a-320~~ 78A-6-323(1) and (2);

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

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

163 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
164 neglect under Subsections [~~78-3a-320~~ 78A-6-323(1) and (2); and

165 (ii) informing a local government that a certified local inspector applicant:

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

167 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
168 neglect under Subsections [~~78-3a-320~~ 78A-6-323(1) and (2);

169 (c) (i) determining whether a direct service worker:

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

171 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
172 neglect under Subsections [~~78-3a-320~~ 78A-6-323(1) and (2); and

173 (ii) informing a direct service worker or the direct service worker's employer that the
174 direct service worker:

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

176 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
177 neglect under Subsections [~~78-3a-320~~ 78A-6-323(1) and (2); or

178 (d) (i) determining whether a personal care attendant:

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

180 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or

181 neglect under Subsections [~~78-3a-320~~] 78A-6-323(1) and (2); and

182 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
183 personal care attendant:

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

185 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
186 neglect under Subsections [~~78-3a-320~~] 78A-6-323(1) and (2).

187 (3) Notwithstanding Subsection (2), the department may access the Division of Child
188 and Family Service's Management Information System under Section 62A-4a-1003:

189 (a) for the purpose of licensing and monitoring foster parents; and

190 (b) for the purposes described in Subsection 62A-4a-1003(1)(d).

191 (4) After receiving identifying information for a person under Subsection
192 62A-2-120(1), the department shall process the information for the purposes described in
193 Subsection (2).

194 (5) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
195 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
196 may have direct access or provide services to children when:

197 (a) the person is listed in the Licensing Information System of the Division of Child
198 and Family Services created by Section 62A-4a-1006; or

199 (b) juvenile court records show that a court made a substantiated finding under Section
200 [~~78-3a-320~~] 78A-6-323, that the person committed a severe type of child abuse or neglect.

201 Section 3. Section **62A-4a-1003** is amended to read:

202 **62A-4a-1003. Management Information System -- Requirements -- Contents --**

203 **Purpose -- Access.**

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

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

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

209 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with
210 statutory authorization under Title 63, Chapter 2, Government Records Access and

211 Management Act, to review the information and records described in this Subsection (1)(b).

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

214 (i) as provided under Subsection [~~(6)~~] (7) or Section 62A-4a-1006; or

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

218 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in
219 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,
220 be provided by the division:

221 (i) to comply with child abuse and neglect registry checks requested by other states;
222 and

223 (ii) to the United States Department of Health and Human Services for purposes of
224 maintaining an electronic national registry of substantiated cases of child abuse and neglect.

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

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

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

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

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

235 (e) except as provided in Subsection (3), a record of all reports of abuse or neglect
236 received by the division with regard to that child's parent, parents, or guardian including:

237 (i) for each report, documentation of the:

238 (A) latest status; or

239 (B) final outcome or determination; and

240 (ii) information that indicates whether each report was found to be:

241 (A) supported;

242 (B) unsupported;

- 243 (C) substantiated by a juvenile court;
- 244 (D) unsubstantiated by a juvenile court; or
- 245 (E) without merit;
- 246 (f) the number of times the child's parent or parents failed any child and family plan;
- 247 and
- 248 (g) the number of different caseworkers who have been assigned to that child in the
- 249 past.

250 (3) The Management Information System may not include a report, or any reference to
251 a report, that is:

- 252 (a) found by the division to be:
- 253 (i) without merit; and
- 254 (ii) false, under Section 62A-4a-1003.5; or
- 255 (b) found by a court to be:
- 256 (i) without merit; and
- 257 (ii) false, under Subsection 78A-6-323(4).

258 [~~(3)~~] (4) The [division's] Management Information System shall:

- 259 (a) contain all key elements of each family's current child and family plan, including:
- 260 (i) the dates and number of times the plan has been administratively or judicially
- 261 reviewed;
- 262 (ii) the number of times the parent or parents have failed that child and family plan;
- 263 and
- 264 (iii) the exact length of time the child and family plan has been in effect; and
- 265 (b) alert caseworkers regarding deadlines for completion of and compliance with
- 266 policy, including child and family plans.

267 [~~(4)~~] (5) With regard to all child protective services cases, the Management
268 Information System shall:

- 269 (a) monitor the compliance of each case with:
- 270 (i) division rule and policy;
- 271 (ii) state law; and
- 272 (iii) federal law and regulation; and
- 273 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or

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

276 ~~[(5)] (6)~~ Except as provided in Subsection ~~[(6)] (7)~~ regarding contract providers and
277 Section 62A-4a-1006 regarding limited access to the Licensing Information System, all
278 information contained in the division's Management Information System is available to the
279 department, upon the approval of the executive director, on a need-to-know basis.

280 ~~[(6)] (7)~~ (a) Subject to this Subsection ~~[(6)] (7)~~, the division may allow its contract
281 providers, court clerks designated by the Administrative Office of the Courts, and the Office of
282 the Guardian Ad Litem to have limited access to the Management Information System.

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

285 (c) (i) Designated court clerks may only have access to information necessary to
286 comply with Subsection ~~[78-3h-102]~~ 78B-7-202(2).

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

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

290 (B) except as provided in Subsection ~~[(6)] (7)~~(d), is entered into the Management
291 Information System on or after July 1, 2004.

292 (d) Notwithstanding Subsection ~~[(6)] (7)~~(c)(ii)(B), the Office of the Guardian Ad Litem
293 shall have access to all child abuse and neglect referrals about children and families where the
294 office has been appointed by a court to represent the interests of the children, regardless of the
295 date that the information is entered into the Management Information System.

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

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

301 (ii) train its employees regarding:

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

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

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

309 (f) The division shall take reasonable precautions to ensure that its contract providers
310 comply with the requirements of this Subsection [~~(6)~~] (7).

311 (g) The contract providers and designated court clerks described in this Subsection (7)
312 may not have access to reports, or references to reports, that are found to be unsubstantiated,
313 unsupported, or without merit.

314 [~~(7)~~] (8) The division shall take all necessary precautions, including password
315 protection and other appropriate and available technological techniques, to prevent
316 unauthorized access to or release of information contained in the Management Information
317 System.

318 Section 4. Section **62A-4a-1003.5** is enacted to read:

319 **62A-4a-1003.5. Report without merit -- Additional finding.**

320 If the division finds that a report is without merit, the division shall make an additional
321 finding regarding whether the report is false.

322 Section 5. Section **62A-4a-1008** is amended to read:

323 **62A-4a-1008. Timeframes for deletion of specified information or reports.**

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

327 [~~(a) a report that is without merit, if no subsequent report involving the same alleged~~
328 ~~perpetrator has occurred within one year; or]~~

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

332 (1) Except as provided in Subsection (3) or (4), the division shall delete from the
333 Management Information System a report that is unsubstantiated or unsupported:

334 (a) after the report has been on the Management Information system for three years,
335 unless the alleged perpetrator is listed on the Management Information System as the

336 perpetrator in a previous substantiated or supported report; or

337 (b) after the report has been on the Management Information System for five years, if
338 the alleged perpetrator is listed on the Management Information System as the perpetrator in a
339 previous substantiated or supported report.

340 (2) Except as provided in Subsection (3), (4), or 62A-4a-1003(3), the division shall
341 delete from the Management Information System a report that is without merit after the report
342 has been on the Management Information System one year.

343 (3) The time periods described in Subsections (1) and (2) shall start over, beginning on
344 the day that a subsequent report is placed on the Management Information System, if:

345 (a) the alleged perpetrator in the subsequent report is the same as the alleged
346 perpetrator in the report described in Subsection (1) or (2); and

347 (b) the subsequent report is found to be:

348 (i) supported;

349 (ii) unsupported;

350 (iii) substantiated;

351 (iv) unsubstantiated; or

352 (v) without merit, unless the report is:

353 (A) found by the division to be false, under Section 62A-4a-1003.5; or

354 (B) found by a court to be false, under Subsection 78A-6-323(4).

355 (4) (a) Except for a report described in Subsection 62A-4a-1003(3), a report described
356 in this section may not be deleted, unless otherwise ordered by a court, if the executive director
357 determines, based on standards established by rule, that there is good cause for keeping the
358 report in the Management Information System.

359 (b) A court may order the division to delete a report before the time periods described
360 in this section, if the court finds, by clear and convincing evidence, that it is in the interests of
361 justice to order deletion of the report at an earlier time.

362 (5) When the division deletes a report under this section, the division shall also delete
363 all references to the report, and information contained in the report, from the Management
364 Information System.

365 [~~2~~] (6) (a) The division shall maintain a separation of reports as follows:

366 (i) those that are supported;

- 367 (ii) those that are unsupported;
- 368 (iii) those that are without merit;
- 369 (iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;
- 370 (v) those that are substantiated under the law in effect prior to May 6, 2002; and
- 371 (vi) those that are consented-to supported findings under Subsection
- 372 62A-4a-1005(3)(a)(iii).

373 (b) Only persons with statutory authority [~~have~~] may access [~~to~~] the information
374 contained in any of the reports identified in Subsection [~~(2)~~] (6)(a).

375 Section 6. Section **62A-4a-1009** is amended to read:

376 **62A-4a-1009. Notice and opportunity to challenge supported finding in**
377 **Management Information System -- Right of judicial review.**

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

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

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

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

390 (2) Subsection (1) does not apply to a person who has been served with notice under
391 Subsection 62A-4a-1005(1)(a).

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

- 393 (a) that the division has conducted an investigation regarding alleged child abuse,
394 neglect, or dependency;
- 395 (b) that the division has made a supported finding of abuse, neglect, or dependency;
- 396 (c) that facts gathered by the division support the supported finding;
- 397 (d) that the person has the right to request:

398 (i) a copy of the report; and
399 (ii) an opportunity to challenge the supported finding by the division; and
400 (e) that failure to request an opportunity to challenge the supported finding within 30
401 days of receiving the notice will result in an unappealable supported finding of child abuse,
402 neglect, or dependency unless the person can show good cause for why compliance within the
403 30-day requirement was virtually impossible or unreasonably burdensome.

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

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

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

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

415 (c) Proceedings for judicial review of a final agency action under this section shall be
416 closed to the public.

417 (d) The Judicial Council shall make rules that ensure the confidentiality of the
418 proceedings described in Subsection (5)(c) and the records related to the proceedings.

419 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after
420 receiving notice, fails to challenge a supported finding in accordance with this section:

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

422 (b) shall have no right to:

423 (i) agency review of the finding;

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

425 (iii) judicial review of the finding.

426 (7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a
427 request under Subsection (4) to challenge a supported finding if a court of competent
428 jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that

429 the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which
430 was also the subject of the supported finding.

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

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

434 (8) Pursuant to Section [~~78-3a-320~~] 78A-6-323, an adjudicative proceeding on a
435 supported finding of a type of abuse or neglect that does not constitute a severe type of child
436 abuse or neglect may be joined in the juvenile court with an adjudicative proceeding on a
437 supported finding of a severe type of child abuse or neglect.

438 Section 7. Section **78A-6-103** is amended to read:

439 **78A-6-103. Jurisdiction of juvenile court -- Original -- Exclusive.**

440 (1) Except as otherwise provided by law, the juvenile court has exclusive original
441 jurisdiction in proceedings concerning:

442 (a) a child who has violated any federal, state, or local law or municipal ordinance or a
443 person younger than 21 years of age who has violated any law or ordinance before becoming
444 18 years of age, regardless of where the violation occurred, excluding traffic laws and boating
445 and ordinances;

446 (b) a person 21 years of age or older who has failed or refused to comply with an order
447 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's
448 21st birthday; however, the continuing jurisdiction is limited to causing compliance with
449 existing orders;

450 (c) a child who is an abused child, neglected child, or dependent child, as those terms
451 are defined in Section 78A-6-105;

452 (d) a protective order for a child pursuant to the provisions of Title 78B, Chapter 7,
453 Part 2, Child Protective Orders, which the juvenile court may transfer to the district court if the
454 juvenile court has entered an ex parte protective order and finds that:

455 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
456 parent of the child who is the object of the petition;

457 (ii) the district court has a petition pending or an order related to custody or parent-time
458 entered under Title 30, Chapter 3, Divorce, Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act,
459 or Title 78B, Chapter 15, Utah Uniform Parentage Act, in which the petitioner and the

460 respondent are parties; and

461 (iii) the best interests of the child will be better served in the district court;

462 (e) appointment of a guardian of the person or other guardian of a minor who comes

463 within the court's jurisdiction under other provisions of this section;

464 (f) the emancipation of a minor in accordance with Part 8, Emancipation;

465 (g) the termination of the legal parent-child relationship in accordance with Part 5,

466 Termination of Parental Rights Act, including termination of residual parental rights and

467 duties;

468 (h) the treatment or commitment of a mentally retarded minor;

469 (i) a minor who is a habitual truant from school;

470 (j) the judicial consent to the marriage of a child under age 16 upon a determination of

471 voluntariness or where otherwise required by law, employment, or enlistment of a child when

472 consent is required by law;

473 (k) any parent or parents of a child committed to a secure youth corrections facility, to

474 order, at the discretion of the court and on the recommendation of a secure facility, the parent

475 or parents of a child committed to a secure facility for a custodial term, to undergo group

476 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of

477 that parent's or parents' child, or any other therapist the court may direct, for a period directed

478 by the court as recommended by a secure facility;

479 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

480 (m) the treatment or commitment of a mentally ill child. The court may commit a child

481 to the physical custody of a local mental health authority in accordance with the procedures and

482 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to

483 Division of Substance Abuse and Mental Health. The court may not commit a child directly to

484 the Utah State Hospital;

485 (n) the commitment of a child in accordance with Section 62A-15-301;

486 (o) de novo review of final agency actions resulting from an informal adjudicative

487 proceeding as provided in Section 63-46b-15; and

488 (p) adoptions conducted in accordance with the procedures described in Title 78B,

489 Chapter 6, Part 1, Utah Adoption Act, when the juvenile court has previously entered an order

490 terminating the rights of a parent and finds that adoption is in the best interest of the child.

491 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
492 jurisdiction over any traffic or boating offense committed by a person under 16 years of age
493 and concurrent jurisdiction over all other traffic or boating offenses committed by a person 16
494 years of age or older, except that the court shall have exclusive jurisdiction over the following
495 offenses committed by a child:

- 496 (a) Section 76-5-207, automobile homicide;
- 497 (b) Section 41-6a-502, operating a vehicle while under the influence of alcohol or
498 drugs;
- 499 (c) Section 41-6a-528, reckless driving or Section 73-18-12, reckless operation;
- 500 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or
501 semitrailer for an extended period of time; and
- 502 (e) Section 41-6a-210 or 73-18-20, fleeing a peace officer.

503 (3) The court also has jurisdiction over traffic and boating offenses that are part of a
504 single criminal episode filed in a petition that contains an offense over which the court has
505 jurisdiction.

506 (4) The juvenile court has jurisdiction over an ungovernable or runaway child who is
507 referred to it by the Division of Child and Family Services or by public or private agencies that
508 contract with the division to provide services to that child where, despite earnest and persistent
509 efforts by the division or agency, the child has demonstrated that the child:

- 510 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school
511 authorities to the extent that the child's behavior or condition endangers the child's own welfare
512 or the welfare of others; or
- 513 (b) has run away from home.

514 (5) This section does not restrict the right of access to the juvenile court by private
515 agencies or other persons.

516 (6) The juvenile court has jurisdiction of all magistrate functions relative to cases
517 arising under Section 78A-6-702.

518 (7) The juvenile court has jurisdiction to make a finding of substantiated,
519 unsubstantiated, [or] without merit, or false in accordance with Section 78A-6-323.

520 Section 8. Section **78A-6-323** is amended to read:

521 **78A-6-323. Additional finding at adjudication hearing -- Petition -- Court**

522 records.

523 (1) Upon the filing with the court of a petition under Section 78A-6-304 by the
524 Division of Child and Family Services or any interested person informing the court, among
525 other things, that the division has made a supported finding that a person committed a severe
526 type of child abuse or neglect as defined in Section 62A-4a-1002, the court shall:

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

530 (2) ~~[The]~~ A judicial finding under ~~[Subsection]~~ Subsections (1), (3), and (4) shall be
531 made:

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

535 (3) (a) Any person described in Subsection 62A-4a-1010(1) may at any time file with
536 the court a petition for removal of the person's name from the Licensing Information System.

537 (b) At the conclusion of the hearing on the petition, the court shall:

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

541 (4) (a) If the court makes a finding of without merit under Subsection (1) or (3)(b), the
542 court shall:

- 543 (i) make an additional finding regarding whether the report is false; and
- 544 (ii) include the finding described in Subsection (4)(a)(i) in the orders described in
545 Subsections (1)(b) and (3)(b)(ii).

546 (b) The finding described in Subsection (4)(a)(i) shall be made solely for the purpose
547 of determining, under Subsection 62A-4a-1003(3), whether the report upon which the finding
548 is based, or any reference to the report, will be included in the Management Information
549 System.

550 ~~[(4)]~~ (5) A proceeding for adjudication of a supported finding under this section of a
551 type of abuse or neglect that does not constitute a severe type of child abuse or neglect may be
552 joined in the juvenile court with an adjudication of a severe type of child abuse or neglect.

553 [~~(5)~~] (6) If a person whose name appears on the Licensing Information system prior to
554 May 6, 2002 files a petition during the time that an alleged perpetrator's application for
555 clearance to work with children or vulnerable adults is pending, the court shall hear the matter
556 and enter a final decision no later than 60 days after the filing of the petition.

557 [~~(6)~~] (7) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5,
558 62A-1-118, and for the purposes described in Section 62A-2-121:

559 (a) the court shall make available records of its findings under Subsections (1) and (2)
560 for licensing purposes, only to those with statutory authority to access also the Licensing
561 Information System created under Section 62A-4a-1006; and

562 (b) any appellate court shall make available court records of appeals from juvenile
563 court decisions under Subsections (1)[, (2), (3), and (4)] through (5) for licensing purposes,
564 only to those with statutory authority to access also the Licensing Information System.

Fiscal Note

**S.B. 17 2nd Sub. (Salmon) - Child Abuse and Neglect Registry - Management
and Licensing Information Systems Amendments**

2008 General Session

State of Utah

State Impact

It is estimated that the Division of Child and Family Services will require a one-time General Fund appropriation of \$9,200 and a one-time federal funds appropriation of \$2,800 to implement provisions of this bill in FY 2009.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund, One-Time	\$0	\$9,200	\$0	\$0	\$0	\$0
Federal Funds	\$0	\$2,800	\$0	\$0	\$0	\$0
Total	\$0	\$12,000	\$0	\$0	\$0	\$0

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.