

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 Government
12 Records Access and Management Act relating to the Management Information System
13 maintained by the Department of Human Services.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ modifies provisions related to access to records in the Management Information
17 System;
- 18 ▶ provides that proceedings for judicial review of a final agency action relating to a
19 report on the Management Information System are closed to the public;
- 20 ▶ grants rulemaking authority to the Judicial Council to ensure the confidentiality of
21 the proceedings described above; and
- 22 ▶ makes technical changes.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**



26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **62A-4a-412**, as last amended by Laws of Utah 2006, Chapters 77 and 281

30 **62A-4a-1009**, as renumbered and amended by Laws of Utah 2006, Chapter 77

31 **63-2-202**, as last amended by Laws of Utah 2005, Chapter 201

32 **63-2-304**, as last amended by Laws of Utah 2008, Chapter 3

33 **78A-6-317**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

37 **62A-4a-412. Reports and information confidential.**

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

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

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

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

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

50 (e) ~~any~~ except as provided in Subsection 63-2-202(10), a subject of the report, the
51 natural parents of the child, and the guardian ad litem;

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

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

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

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

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

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

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

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

75 (l) except as provided in Subsection 63-2-202(10), a person filing a petition for a child
76 protective order on behalf of a child who is the subject of the report; and

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

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

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

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

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

- 94 (i) identify the referent;
- 95 (ii) impede a criminal investigation; or
- 96 (iii) endanger a person's safety.

97 (4) Any person who wilfully permits, or aides and abets the release of data or
98 information obtained as a result of this part, in the possession of the division or contained on
99 any part of the Management Information System, in violation of this part or Sections
100 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

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

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

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

110 Section 2. Section **62A-4a-1009** is amended to read:

111 **62A-4a-1009. Notice and opportunity to challenge supported finding in**
112 **Management Information System -- Right of judicial review.**

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

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

119 notice to a parent or guardian.

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

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

122 (ii) the use or effect, in any other setting, of a supported finding by the division at the
123 completion of an investigation for any purpose other than for notification under Subsection (1)
124 (a).

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

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

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

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

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

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

133 (i) a copy of the report; and

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

135 (e) that failure to request an opportunity to challenge the supported finding within 30
136 days of receiving the notice will result in an unappealable supported finding of child abuse,
137 neglect, or dependency unless the person can show good cause for why compliance within the
138 30-day requirement was virtually impossible or unreasonably burdensome.

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

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

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

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

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

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

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

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

157 (b) shall have no right to:

158 (i) agency review of the finding;

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

160 (iii) judicial review of the finding.

161 (7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a
162 request under Subsection (4) to challenge a supported finding if a court of competent
163 jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that
164 the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which
165 was also the subject of the supported finding.

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

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

169 (8) Pursuant to Section 78-3a-320, an adjudicative proceeding on a supported finding
170 of a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may
171 be joined in the juvenile court with an adjudicative proceeding on a supported finding of a
172 severe type of child abuse or neglect.

173 Section 3. Section **63-2-202** is amended to read:

174 **63-2-202. Access to private, controlled, and protected documents.**

175 (1) Upon request, a governmental entity shall disclose a private record to:

176 (a) the subject of the record;

177 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
178 record;

179 (c) the legal guardian of a legally incapacitated individual who is the subject of the
180 record;

- 181 (d) any other individual who:
- 182 (i) has a power of attorney from the subject of the record;
- 183 (ii) submits a notarized release from the subject of the record or his legal representative
- 184 dated no more than 90 days before the date the request is made; or
- 185 (iii) if the record is a medical record described in Subsection 63-2-302(1)(b), is a health
- 186 care provider, as defined in Section 26-33a-102, if releasing the record or information in the
- 187 record is consistent with normal professional practice and medical ethics; or
- 188 (e) any person to whom the record must be provided pursuant to:
- 189 (i) court order as provided in Subsection (7); or
- 190 (ii) a legislative subpoena as provided in Title 36, Chapter 14.
- 191 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:
- 192 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
- 193 a government public health agency upon submission of:
- 194 (A) a release from the subject of the record that is dated no more than 90 days prior to
- 195 the date the request is made; and
- 196 (B) a signed acknowledgment of the terms of disclosure of controlled information as
- 197 provided by Subsection (2)(b); and
- 198 (ii) any person to whom the record must be disclosed pursuant to:
- 199 (A) a court order as provided in Subsection (7); or
- 200 (B) a legislative subpoena as provided in Title 36, Chapter 14.
- 201 (b) A person who receives a record from a governmental entity in accordance with
- 202 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
- 203 including the subject of the record.
- 204 (3) If there is more than one subject of a private or controlled record, the portion of the
- 205 record that pertains to another subject shall be segregated from the portion that the requester is
- 206 entitled to inspect.
- 207 (4) Upon request, and except as provided in Subsection (10), a governmental entity
- 208 shall disclose a protected record to:
- 209 (a) the person who submitted the record;
- 210 (b) any other individual who:
- 211 (i) has a power of attorney from all persons, governmental entities, or political

212 subdivisions whose interests were sought to be protected by the protected classification; or
213 (ii) submits a notarized release from all persons, governmental entities, or political
214 subdivisions whose interests were sought to be protected by the protected classification or from
215 their legal representatives dated no more than 90 days prior to the date the request is made;
216 (c) any person to whom the record must be provided pursuant to:
217 (i) a court order as provided in Subsection (7); or
218 (ii) a legislative subpoena as provided in Title 36, Chapter 14; or
219 (d) the owner of a mobile home park, subject to the conditions of Subsection
220 41-1a-116(5).
221 (5) A governmental entity may disclose a private, controlled, or protected record to
222 another governmental entity, political subdivision, another state, the United States, or a foreign
223 government only as provided by Section 63-2-206.
224 (6) Before releasing a private, controlled, or protected record, the governmental entity
225 shall obtain evidence of the requester's identity.
226 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
227 signed by a judge from a court of competent jurisdiction, provided that:
228 (a) the record deals with a matter in controversy over which the court has jurisdiction;
229 (b) the court has considered the merits of the request for access to the record; and
230 (c) the court has considered and, where appropriate, limited the requester's use and
231 further disclosure of the record in order to protect:
232 (i) privacy interests in the case of private or controlled records;
233 (ii) business confidentiality interests in the case of records protected under Subsection
234 63-2-304(1), (2), (40)(a)(ii), or (40)(a)(vi); and
235 (iii) privacy interests or the public interest in the case of other protected records;
236 (d) to the extent the record is properly classified private, controlled, or protected, the
237 interests favoring access, considering limitations thereon, outweigh the interests favoring
238 restriction of access; and
239 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
240 63-2-201(3)(b), the court has authority independent of this chapter to order disclosure.
241 (8) (a) A governmental entity may disclose or authorize disclosure of private or
242 controlled records for research purposes if the governmental entity:

243 (i) determines that the research purpose cannot reasonably be accomplished without
244 use or disclosure of the information to the researcher in individually identifiable form;

245 (ii) determines that:

246 (A) the proposed research is bona fide; and

247 (B) the value of the research outweighs the infringement upon personal privacy;

248 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
249 the records; and

250 (B) requires the removal or destruction of the individual identifiers associated with the
251 records as soon as the purpose of the research project has been accomplished;

252 (iv) prohibits the researcher from:

253 (A) disclosing the record in individually identifiable form, except as provided in
254 Subsection (8)(b); or

255 (B) using the record for purposes other than the research approved by the governmental
256 entity; and

257 (v) secures from the researcher a written statement of the researcher's understanding of
258 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
259 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
260 under Section 63-2-801.

261 (b) A researcher may disclose a record in individually identifiable form if the record is
262 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
263 or disclosure of the record in individually identifiable form will be made by the auditor or
264 evaluator except as provided by this section.

265 (c) A governmental entity may require indemnification as a condition of permitting
266 research under this Subsection (8).

267 (9) (a) Under Subsections 63-2-201(5)(b) and 63-2-401(6), a governmental entity may
268 disclose to persons other than those specified in this section records that are:

269 (i) private under Section 63-2-302; or

270 (ii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
271 business confidentiality has been made under Section 63-2-308.

272 (b) Under Subsection 63-2-403(11)(b), the records committee may require the
273 disclosure to persons other than those specified in this section of records that are:

- 274 (i) private under Section 63-2-302;
- 275 (ii) controlled under Section 63-2-303; or
- 276 (iii) protected under Section 63-2-304 subject to Section 63-2-308 if a claim for
277 business confidentiality has been made under Section 63-2-308.

278 (c) Under Subsection 63-2-404(8), the court may require the disclosure of records that
279 are private under Section 63-2-302, controlled under Section 63-2-303, or protected under
280 Section 63-2-304 to persons other than those specified in this section.

281 (10) A record contained in the Management Information System, created in Section
282 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be
283 disclosed to any person except the person who is alleged in the report to be a perpetrator of
284 abuse, neglect, or dependency.

285 Section 4. Section **63-2-304** is amended to read:

286 **63-2-304. Protected records.**

287 The following records are protected if properly classified by a governmental entity:

288 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
289 has provided the governmental entity with the information specified in Section 63-2-308;

290 (2) commercial information or nonindividual financial information obtained from a
291 person if:

292 (a) disclosure of the information could reasonably be expected to result in unfair
293 competitive injury to the person submitting the information or would impair the ability of the
294 governmental entity to obtain necessary information in the future;

295 (b) the person submitting the information has a greater interest in prohibiting access
296 than the public in obtaining access; and

297 (c) the person submitting the information has provided the governmental entity with
298 the information specified in Section 63-2-308;

299 (3) commercial or financial information acquired or prepared by a governmental entity
300 to the extent that disclosure would lead to financial speculations in currencies, securities, or
301 commodities that will interfere with a planned transaction by the governmental entity or cause
302 substantial financial injury to the governmental entity or state economy;

303 (4) records the disclosure of which could cause commercial injury to, or confer a
304 competitive advantage upon a potential or actual competitor of, a commercial project entity as

305 defined in Subsection 11-13-103(4);

306 (5) test questions and answers to be used in future license, certification, registration,
307 employment, or academic examinations;

308 (6) records the disclosure of which would impair governmental procurement
309 proceedings or give an unfair advantage to any person proposing to enter into a contract or
310 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
311 of a person to see bids submitted to or by a governmental entity after bidding has closed;

312 (7) records that would identify real property or the appraisal or estimated value of real
313 or personal property, including intellectual property, under consideration for public acquisition
314 before any rights to the property are acquired unless:

315 (a) public interest in obtaining access to the information outweighs the governmental
316 entity's need to acquire the property on the best terms possible;

317 (b) the information has already been disclosed to persons not employed by or under a
318 duty of confidentiality to the entity;

319 (c) in the case of records that would identify property, potential sellers of the described
320 property have already learned of the governmental entity's plans to acquire the property;

321 (d) in the case of records that would identify the appraisal or estimated value of
322 property, the potential sellers have already learned of the governmental entity's estimated value
323 of the property; or

324 (e) the property under consideration for public acquisition is a single family residence
325 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
326 the property as required under Section 78B-6-505;

327 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
328 compensated transaction of real or personal property including intellectual property, which, if
329 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
330 of the subject property, unless:

331 (a) the public interest in access outweighs the interests in restricting access, including
332 the governmental entity's interest in maximizing the financial benefit of the transaction; or

333 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
334 the value of the subject property have already been disclosed to persons not employed by or
335 under a duty of confidentiality to the entity;

336 (9) records created or maintained for civil, criminal, or administrative enforcement
337 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
338 release of the records:

339 (a) reasonably could be expected to interfere with investigations undertaken for
340 enforcement, discipline, licensing, certification, or registration purposes;

341 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
342 proceedings;

343 (c) would create a danger of depriving a person of a right to a fair trial or impartial
344 hearing;

345 (d) reasonably could be expected to disclose the identity of a source who is not
346 generally known outside of government and, in the case of a record compiled in the course of
347 an investigation, disclose information furnished by a source not generally known outside of
348 government if disclosure would compromise the source; or

349 (e) reasonably could be expected to disclose investigative or audit techniques,
350 procedures, policies, or orders not generally known outside of government if disclosure would
351 interfere with enforcement or audit efforts;

352 (10) records the disclosure of which would jeopardize the life or safety of an
353 individual;

354 (11) records the disclosure of which would jeopardize the security of governmental
355 property, governmental programs, or governmental recordkeeping systems from damage, theft,
356 or other appropriation or use contrary to law or public policy;

357 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
358 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
359 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

360 (13) records that, if disclosed, would reveal recommendations made to the Board of
361 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
362 Board of Pardons and Parole, or the Department of Human Services that are based on the
363 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
364 jurisdiction;

365 (14) records and audit workpapers that identify audit, collection, and operational
366 procedures and methods used by the State Tax Commission, if disclosure would interfere with

367 audits or collections;

368 (15) records of a governmental audit agency relating to an ongoing or planned audit
369 until the final audit is released;

370 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
371 litigation that are not available under the rules of discovery;

372 (17) records disclosing an attorney's work product, including the mental impressions or
373 legal theories of an attorney or other representative of a governmental entity concerning
374 litigation;

375 (18) records of communications between a governmental entity and an attorney
376 representing, retained, or employed by the governmental entity if the communications would be
377 privileged as provided in Section 78B-1-137;

378 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
379 from a member of the Legislature; and

380 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
381 legislative action or policy may not be classified as protected under this section; and

382 (b) (i) an internal communication that is part of the deliberative process in connection
383 with the preparation of legislation between:

384 (A) members of a legislative body;

385 (B) a member of a legislative body and a member of the legislative body's staff; or

386 (C) members of a legislative body's staff; and

387 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
388 legislative action or policy may not be classified as protected under this section;

389 (20) (a) records in the custody or control of the Office of Legislative Research and
390 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
391 legislation or contemplated course of action before the legislator has elected to support the
392 legislation or course of action, or made the legislation or course of action public; and

393 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
394 Office of Legislative Research and General Counsel is a public document unless a legislator
395 asks that the records requesting the legislation be maintained as protected records until such
396 time as the legislator elects to make the legislation or course of action public;

397 (21) research requests from legislators to the Office of Legislative Research and

398 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
399 in response to these requests;

400 (22) drafts, unless otherwise classified as public;

401 (23) records concerning a governmental entity's strategy about collective bargaining or
402 pending litigation;

403 (24) records of investigations of loss occurrences and analyses of loss occurrences that
404 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
405 Uninsured Employers' Fund, or similar divisions in other governmental entities;

406 (25) records, other than personnel evaluations, that contain a personal recommendation
407 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
408 personal privacy, or disclosure is not in the public interest;

409 (26) records that reveal the location of historic, prehistoric, paleontological, or
410 biological resources that if known would jeopardize the security of those resources or of
411 valuable historic, scientific, educational, or cultural information;

412 (27) records of independent state agencies if the disclosure of the records would
413 conflict with the fiduciary obligations of the agency;

414 (28) records of an institution within the state system of higher education defined in
415 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
416 retention decisions, and promotions, which could be properly discussed in a meeting closed in
417 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
418 the final decisions about tenure, appointments, retention, promotions, or those students
419 admitted, may not be classified as protected under this section;

420 (29) records of the governor's office, including budget recommendations, legislative
421 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
422 policies or contemplated courses of action before the governor has implemented or rejected
423 those policies or courses of action or made them public;

424 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
425 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
426 recommendations in these areas;

427 (31) records provided by the United States or by a government entity outside the state
428 that are given to the governmental entity with a requirement that they be managed as protected

429 records if the providing entity certifies that the record would not be subject to public disclosure
430 if retained by it;

431 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
432 except as provided in Section 52-4-206;

433 (33) records that would reveal the contents of settlement negotiations but not including
434 final settlements or empirical data to the extent that they are not otherwise exempt from
435 disclosure;

436 (34) memoranda prepared by staff and used in the decision-making process by an
437 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
438 other body charged by law with performing a quasi-judicial function;

439 (35) records that would reveal negotiations regarding assistance or incentives offered
440 by or requested from a governmental entity for the purpose of encouraging a person to expand
441 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
442 person or place the governmental entity at a competitive disadvantage, but this section may not
443 be used to restrict access to a record evidencing a final contract;

444 (36) materials to which access must be limited for purposes of securing or maintaining
445 the governmental entity's proprietary protection of intellectual property rights including patents,
446 copyrights, and trade secrets;

447 (37) the name of a donor or a prospective donor to a governmental entity, including an
448 institution within the state system of higher education defined in Section 53B-1-102, and other
449 information concerning the donation that could reasonably be expected to reveal the identity of
450 the donor, provided that:

451 (a) the donor requests anonymity in writing;

452 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
453 classified protected by the governmental entity under this Subsection (37); and

454 (c) except for an institution within the state system of higher education defined in
455 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
456 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
457 over the donor, a member of the donor's immediate family, or any entity owned or controlled
458 by the donor or the donor's immediate family;

459 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and

460 73-18-13;

461 (39) a notification of workers' compensation insurance coverage described in Section

462 34A-2-205;

463 (40) (a) the following records of an institution within the state system of higher

464 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,

465 or received by or on behalf of faculty, staff, employees, or students of the institution:

466 (i) unpublished lecture notes;

467 (ii) unpublished notes, data, and information:

468 (A) relating to research; and

469 (B) of:

470 (I) the institution within the state system of higher education defined in Section

471 53B-1-102; or

472 (II) a sponsor of sponsored research;

473 (iii) unpublished manuscripts;

474 (iv) creative works in process;

475 (v) scholarly correspondence; and

476 (vi) confidential information contained in research proposals;

477 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public

478 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

479 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

480 (41) (a) records in the custody or control of the Office of Legislative Auditor General

481 that would reveal the name of a particular legislator who requests a legislative audit prior to the

482 date that audit is completed and made public; and

483 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the

484 Office of the Legislative Auditor General is a public document unless the legislator asks that

485 the records in the custody or control of the Office of Legislative Auditor General that would

486 reveal the name of a particular legislator who requests a legislative audit be maintained as

487 protected records until the audit is completed and made public;

488 (42) records that provide detail as to the location of an explosive, including a map or

489 other document that indicates the location of:

490 (a) a production facility; or

491 (b) a magazine;

492 (43) information contained in the database described in Section 62A-3-311.1;

493 (44) information contained in the Management Information System and Licensing
494 Information System described in Title 62A, Chapter 4a, Child and Family Services;

495 (45) information regarding National Guard operations or activities in support of the
496 National Guard's federal mission;

497 (46) records provided by any pawn or secondhand business to a law enforcement
498 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
499 Secondhand Merchandise Transaction Information Act;

500 (47) information regarding food security, risk, and vulnerability assessments performed
501 by the Department of Agriculture and Food;

502 (48) except to the extent that the record is exempt from this chapter pursuant to Section
503 63-2-106, records related to an emergency plan or program prepared or maintained by the
504 Division of Homeland Security the disclosure of which would jeopardize:

505 (a) the safety of the general public; or

506 (b) the security of:

507 (i) governmental property;

508 (ii) governmental programs; or

509 (iii) the property of a private person who provides the Division of Homeland Security
510 information;

511 (49) records of the Department of Agriculture and Food relating to the National
512 Animal Identification System or any other program that provides for the identification, tracing,
513 or control of livestock diseases, including any program established under Title 4, Chapter 24,
514 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
515 Quarantine;

516 (50) as provided in Section 26-39-109:

517 (a) information or records held by the Department of Health related to a complaint
518 regarding a child care program or residential child care which the department is unable to
519 substantiate; and

520 (b) information or records related to a complaint received by the Department of Health
521 from an anonymous complainant regarding a child care program or residential child care; [and]

522 (51) unless otherwise classified as public under Section 63-2-301 and except as
523 provided under Section 41-1a-116, an individual's home address, home telephone number, or
524 personal mobile phone number, if:

525 (a) the individual is required to provide the information in order to comply with a law,
526 ordinance, rule, or order of a government entity; and

527 (b) the subject of the record has a reasonable expectation that this information will be
528 kept confidential due to:

529 (i) the nature of the law, ordinance, rule, or order; and

530 (ii) the individual complying with the law, ordinance, rule, or order[-]; and

531 (52) records contained in the Management Information System, created in Section
532 62A-4a-1003.

533 Section 5. Section **78A-6-317** is amended to read:

534 **78A-6-317. All proceedings -- Persons entitled to be present.**

535 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
536 pursuant to Section 78A-6-306 or 78A-6-310, preadoptive parents, foster parents, and any
537 relative providing care for the child, are:

538 (a) entitled to notice of, and to be present at, each hearing and proceeding held under
539 this part, including administrative and citizen reviews; and

540 (b) have a right to be heard at each hearing and proceeding described in Subsection
541 (1)(a).

542 (2) A child shall be represented at each hearing by the guardian ad litem appointed to
543 the child's case by the court. The child has a right to be present at each hearing, subject to the
544 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

545 (3) (a) The parent or guardian of a child who is the subject of a petition under this part
546 has the right to be represented by counsel, and to present evidence, at each hearing.

547 (b) When it appears to the court that a parent or guardian of the child desires counsel
548 but is financially unable to afford and cannot for that reason employ counsel, and the child has
549 been placed in out-of-home care, or the petitioner is recommending that the child be placed in
550 out-of-home care, the court shall appoint counsel.

551 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court
552 shall order that the child be represented by a guardian ad litem, in accordance with Section

553 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance
 554 with the requirements of that section, at the shelter hearing and at all subsequent court and
 555 administrative proceedings, including any proceeding for termination of parental rights in
 556 accordance with Part 5, Termination of Parental Rights Act.

557 ~~(5) [Notwithstanding]~~ (a) Except as provided in Subsection (5)(b), and
 558 notwithstanding any other provision of law[;];

559 (i) counsel for all parties to the action shall be given access to all records, maintained
 560 by the division or any other state or local public agency, that are relevant to the abuse, neglect,
 561 or dependency proceeding under this chapter[-If]; and

562 (ii) if the natural parent of a child is representing himself, the natural parent shall have
 563 access to [those records. The above disclosures] the records described in Subsection (5)(a)(i).

564 (b) The disclosures described in Subsection (5)(a) are not required in the following
 565 circumstances:

566 ~~[(a) The]~~ (i) subject to Subsection (5)(c), the division or other state or local public
 567 agency did not originally create the record being requested[-In those circumstances, the person
 568 making the request under this section shall be informed of the following:];

569 ~~[(i) the existence of all records in the possession of the division or any other state or~~
 570 ~~local public agency;]~~

571 ~~[(ii) the name and address of the person or agency that originally created the record;~~
 572 ~~and]~~

573 ~~[(iii) that the person must seek access to the record from the person or agency that~~
 574 ~~originally created the record.]~~

575 ~~[(b)]~~ (ii) disclosure of the record would jeopardize the life or physical safety of a child
 576 who has been a victim of child abuse or neglect, or any person who provided substitute care for
 577 the child[-];

578 ~~[(c)]~~ (iii) disclosure of the record would jeopardize the anonymity of the person or
 579 persons making the initial report of abuse or neglect or any others involved in the subsequent
 580 investigation[-];

581 ~~[(d)]~~ (iv) disclosure of the record would jeopardize the life or physical safety of a
 582 person who has been a victim of domestic violence[-]; or

583 (v) the record is a report maintained in the Management Information System, for which

584 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person
585 requesting the information is the alleged perpetrator in the report or counsel for the alleged
586 perpetrator in the report.

587 (c) If a disclosure is denied under Subsection (5)(b)(i), the division shall inform the
588 person making the request of the following:

589 (i) the existence of all records in the possession of the division or any other state or
590 local public agency;

591 (ii) the name and address of the person or agency that originally created the record; and

592 (iii) that the person must seek access to the record from the person or agency that
593 originally created the record.

594 (6) (a) The appropriate foster care citizen review board shall be given access to all
595 records, maintained by the division or any other state or local public agency, that are relevant to
596 an abuse, neglect, or dependency proceeding under this chapter.

597 (b) Representatives of the appropriate foster care citizen review board are entitled to be
598 present at each hearing held under this part, but notice is not required to be provided.

Fiscal Note**S.B. 17 3rd Sub. (Ivory) - Child Abuse and Neglect Registry - Management
and Licensing Information Systems Amendments**

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
