

CHILD INTERVIEW AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ralph Okerlund

House Sponsor: Keven J. Stratton

LONG TITLE

General Description:

This bill amends provisions relating to an interview conducted at a Children's Justice Center.

Highlighted Provisions:

This bill:

▶ provides that a video or audio recording of an interview, or a transcript of the video or audio recording, that is conducted at a Children's Justice Center is not a record under the Government Records Access and Management Act;

▶ clarifies the right of child victims to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings;

▶ clarifies that a parent or guardian of the child victim may petition a juvenile or district court for an order allowing the parent or guardian to view a recording or transcript upon a finding of good cause;

▶ clarifies who can distribute, display, receive, and view a recording or transcript without a court order; and

▶ provides that it is a class B misdemeanor for any individual to distribute, release, or display any recording or transcript, except as otherwise provided in this bill.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 This bill provides an immediate effective date.

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **63G-2-103**, as last amended by Laws of Utah 2012, Chapters 369 and 377

33 **63G-2-305**, as last amended by Laws of Utah 2013, Chapters 12, 445, and 447

34 **77-37-4**, as last amended by Laws of Utah 2010, Chapter 247

35 **78A-6-317**, as last amended by Laws of Utah 2010, Chapter 247



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

38 Section 1. Section **63G-2-103** is amended to read:

39 **63G-2-103. Definitions.**

40 As used in this chapter:

41 (1) "Audit" means:

42 (a) a systematic examination of financial, management, program, and related records
43 for the purpose of determining the fair presentation of financial statements, adequacy of
44 internal controls, or compliance with laws and regulations; or

45 (b) a systematic examination of program procedures and operations for the purpose of
46 determining their effectiveness, economy, efficiency, and compliance with statutes and
47 regulations.

48 (2) "Chronological logs" mean the regular and customary summary records of law
49 enforcement agencies and other public safety agencies that show:

50 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
51 and

52 (b) any arrests or jail bookings made by the agency.

53 (3) "Classification," "classify," and their derivative forms mean determining whether a
54 record series, record, or information within a record is public, private, controlled, protected, or
55 exempt from disclosure under Subsection **63G-2-201(3)(b)**.

56 (4) (a) "Computer program" means:

57 (i) a series of instructions or statements that permit the functioning of a computer
58 system in a manner designed to provide storage, retrieval, and manipulation of data from the

59 computer system; and

60 (ii) any associated documentation and source material that explain how to operate the
61 computer program.

62 (b) "Computer program" does not mean:

63 (i) the original data, including numbers, text, voice, graphics, and images;

64 (ii) analysis, compilation, and other manipulated forms of the original data produced by
65 use of the program; or

66 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
67 algorithms contained in the program, that would be used if the manipulated forms of the
68 original data were to be produced manually.

69 (5) (a) "Contractor" means:

70 (i) any person who contracts with a governmental entity to provide goods or services
71 directly to a governmental entity; or

72 (ii) any private, nonprofit organization that receives funds from a governmental entity.

73 (b) "Contractor" does not mean a private provider.

74 (6) "Controlled record" means a record containing data on individuals that is controlled
75 as provided by Section [63G-2-304](#).

76 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
77 governmental entity's familiarity with a record series or based on a governmental entity's
78 review of a reasonable sample of a record series, the primary classification that a majority of
79 records in a record series would be given if classified and the classification that other records
80 typically present in the record series would be given if classified.

81 (8) "Elected official" means each person elected to a state office, county office,
82 municipal office, school board or school district office, local district office, or special service
83 district office, but does not include judges.

84 (9) "Explosive" means a chemical compound, device, or mixture:

85 (a) commonly used or intended for the purpose of producing an explosion; and

86 (b) that contains oxidizing or combustive units or other ingredients in proportions,
87 quantities, or packing so that:

88 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
89 compound or mixture may cause a sudden generation of highly heated gases; and

- 90 (ii) the resultant gaseous pressures are capable of:
- 91 (A) producing destructive effects on contiguous objects; or
- 92 (B) causing death or serious bodily injury.
- 93 (10) "Government audit agency" means any governmental entity that conducts an audit.
- 94 (11) (a) "Governmental entity" means:
- 95 (i) executive department agencies of the state, the offices of the governor, lieutenant
- 96 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
- 97 the Board of Examiners, the National Guard, the Career Service Review Office, the State
- 98 Board of Education, the State Board of Regents, and the State Archives;
- 99 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
- 100 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
- 101 committees, except any political party, group, caucus, or rules or sifting committee of the
- 102 Legislature;
- 103 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
- 104 administrative units in the judicial branch;
- 105 (iv) any state-funded institution of higher education or public education; or
- 106 (v) any political subdivision of the state, but, if a political subdivision has adopted an
- 107 ordinance or a policy relating to information practices pursuant to Section 63G-2-701, this
- 108 chapter shall apply to the political subdivision to the extent specified in Section 63G-2-701 or
- 109 as specified in any other section of this chapter that specifically refers to political subdivisions.
- 110 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
- 111 department, advisory board, or commission of an entity listed in Subsection (11)(a) that is
- 112 funded or established by the government to carry out the public's business.
- 113 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
- 114 in Section 53B-8a-103.
- 115 (12) "Gross compensation" means every form of remuneration payable for a given
- 116 period to an individual for services provided including salaries, commissions, vacation pay,
- 117 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
- 118 similar benefit received from the individual's employer.
- 119 (13) "Individual" means a human being.
- 120 (14) (a) "Initial contact report" means an initial written or recorded report, however

121 titled, prepared by peace officers engaged in public patrol or response duties describing official
122 actions initially taken in response to either a public complaint about or the discovery of an
123 apparent violation of law, which report may describe:

- 124 (i) the date, time, location, and nature of the complaint, the incident, or offense;
- 125 (ii) names of victims;
- 126 (iii) the nature or general scope of the agency's initial actions taken in response to the
127 incident;
- 128 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- 129 (v) the name, address, and other identifying information about any person arrested or
130 charged in connection with the incident; or
- 131 (vi) the identity of the public safety personnel, except undercover personnel, or
132 prosecuting attorney involved in responding to the initial incident.

133 (b) Initial contact reports do not include follow-up or investigative reports prepared
134 after the initial contact report. However, if the information specified in Subsection (14)(a)
135 appears in follow-up or investigative reports, it may only be treated confidentially if it is
136 private, controlled, protected, or exempt from disclosure under Subsection [63G-2-201](#)(3)(b).

137 (15) "Legislative body" means the Legislature.

138 (16) "Notice of compliance" means a statement confirming that a governmental entity
139 has complied with a records committee order.

140 (17) "Person" means:

- 141 (a) an individual;
- 142 (b) a nonprofit or profit corporation;
- 143 (c) a partnership;
- 144 (d) a sole proprietorship;
- 145 (e) other type of business organization; or
- 146 (f) any combination acting in concert with one another.

147 (18) "Private provider" means any person who contracts with a governmental entity to
148 provide services directly to the public.

149 (19) "Private record" means a record containing data on individuals that is private as
150 provided by Section [63G-2-302](#).

151 (20) "Protected record" means a record that is classified protected as provided by

152 Section 63G-2-305.

153 (21) "Public record" means a record that is not private, controlled, or protected and that
154 is not exempt from disclosure as provided in Subsection 63G-2-201(3)(b).

155 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
156 card, tape, recording, electronic data, or other documentary material regardless of physical form
157 or characteristics:

158 (i) that is prepared, owned, received, or retained by a governmental entity or political
159 subdivision; and

160 (ii) where all of the information in the original is reproducible by photocopy or other
161 mechanical or electronic means.

162 (b) "Record" does not mean:

163 (i) a personal note or personal communication prepared or received by an employee or
164 officer of a governmental entity:

165 (A) in a capacity other than the employee's or officer's governmental capacity; or

166 (B) that is unrelated to the conduct of the public's business;

167 (ii) a temporary draft or similar material prepared for the originator's personal use or
168 prepared by the originator for the personal use of an individual for whom the originator is
169 working;

170 (iii) material that is legally owned by an individual in the individual's private capacity;

171 (iv) material to which access is limited by the laws of copyright or patent unless the
172 copyright or patent is owned by a governmental entity or political subdivision;

173 (v) proprietary software;

174 (vi) junk mail or a commercial publication received by a governmental entity or an
175 official or employee of a governmental entity;

176 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
177 of a library open to the public;

178 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
179 of a library open to the public, regardless of physical form or characteristics of the material;

180 (ix) a daily calendar or other personal note prepared by the originator for the
181 originator's personal use or for the personal use of an individual for whom the originator is
182 working;

183 (x) a computer program that is developed or purchased by or for any governmental
184 entity for its own use;

185 (xi) a note or internal memorandum prepared as part of the deliberative process by:

186 (A) a member of the judiciary;

187 (B) an administrative law judge;

188 (C) a member of the Board of Pardons and Parole; or

189 (D) a member of any other body charged by law with performing a quasi-judicial
190 function;

191 (xii) a telephone number or similar code used to access a mobile communication
192 device that is used by an employee or officer of a governmental entity, provided that the
193 employee or officer of the governmental entity has designated at least one business telephone
194 number that is a public record as provided in Section [63G-2-301](#);

195 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
196 created in Section [49-20-103](#), to a county to enable the county to calculate the amount to be
197 paid to a health care provider under Subsection [17-50-319\(2\)\(e\)\(ii\)](#); [~~or~~]

198 (xiv) information that an owner of unimproved property provides to a local entity as
199 provided in Section [11-42-205](#)~~[-]~~; or

200 (xv) a video or audio recording of an interview, or a transcript of the video or audio
201 recording, that is conducted at a Children's Justice Center established under Section [67-5b-102](#).

202 (23) "Record series" means a group of records that may be treated as a unit for
203 purposes of designation, description, management, or disposition.

204 (24) "Records committee" means the State Records Committee created in Section
205 [63G-2-501](#).

206 (25) "Records officer" means the individual appointed by the chief administrative
207 officer of each governmental entity, or the political subdivision to work with state archives in
208 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
209 records.

210 (26) "Schedule," "scheduling," and their derivative forms mean the process of
211 specifying the length of time each record series should be retained by a governmental entity for
212 administrative, legal, fiscal, or historical purposes and when each record series should be
213 transferred to the state archives or destroyed.

214 (27) "Sponsored research" means research, training, and other sponsored activities as
215 defined by the federal Executive Office of the President, Office of Management and Budget:

216 (a) conducted:

217 (i) by an institution within the state system of higher education defined in Section

218 [53B-1-102](#); and

219 (ii) through an office responsible for sponsored projects or programs; and

220 (b) funded or otherwise supported by an external:

221 (i) person that is not created or controlled by the institution within the state system of
222 higher education; or

223 (ii) federal, state, or local governmental entity.

224 (28) "State archives" means the Division of Archives and Records Service created in
225 Section [63A-12-101](#).

226 (29) "State archivist" means the director of the state archives.

227 (30) "Summary data" means statistical records and compilations that contain data
228 derived from private, controlled, or protected information but that do not disclose private,
229 controlled, or protected information.

230 Section 2. Section **63G-2-305** is amended to read:

231 **63G-2-305. Protected records.**

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

233 (1) trade secrets as defined in Section [13-24-2](#) if the person submitting the trade secret
234 has provided the governmental entity with the information specified in Section [63G-2-309](#);

235 (2) commercial information or nonindividual financial information obtained from a
236 person if:

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

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

242 (c) the person submitting the information has provided the governmental entity with
243 the information specified in Section [63G-2-309](#);

244 (3) commercial or financial information acquired or prepared by a governmental entity

245 to the extent that disclosure would lead to financial speculations in currencies, securities, or
246 commodities that will interfere with a planned transaction by the governmental entity or cause
247 substantial financial injury to the governmental entity or state economy;

248 (4) records, the disclosure of which could cause commercial injury to, or confer a
249 competitive advantage upon a potential or actual competitor of, a commercial project entity as
250 defined in Subsection 11-13-103(4);

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

253 (6) records, the disclosure of which would impair governmental procurement
254 proceedings or give an unfair advantage to any person proposing to enter into a contract or
255 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
256 Subsection (6) does not restrict the right of a person to have access to, after the contract or
257 grant has been awarded and signed by all parties, a bid, proposal, application, or other
258 information submitted to or by a governmental entity in response to:

259 (a) an invitation for bids;

260 (b) a request for proposals;

261 (c) a request for quotes;

262 (d) a grant; or

263 (e) other similar document;

264 (7) information submitted to or by a governmental entity in response to a request for
265 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
266 the right of a person to have access to the information, after:

267 (a) a contract directly relating to the subject of the request for information has been
268 awarded and signed by all parties; or

269 (b) (i) a final determination is made not to enter into a contract that relates to the
270 subject of the request for information; and

271 (ii) at least two years have passed after the day on which the request for information is
272 issued;

273 (8) records that would identify real property or the appraisal or estimated value of real
274 or personal property, including intellectual property, under consideration for public acquisition
275 before any rights to the property are acquired unless:

276 (a) public interest in obtaining access to the information is greater than or equal to the
277 governmental entity's need to acquire the property on the best terms possible;

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

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

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

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

288 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
289 compensated transaction of real or personal property including intellectual property, which, if
290 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
291 of the subject property, unless:

292 (a) the public interest in access is greater than or equal to the interests in restricting
293 access, including the governmental entity's interest in maximizing the financial benefit of the
294 transaction; or

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

298 (10) records created or maintained for civil, criminal, or administrative enforcement
299 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
300 release of the records:

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

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

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

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

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

314 (11) records the disclosure of which would jeopardize the life or safety of an
315 individual;

316 (12) records the disclosure of which would jeopardize the security of governmental
317 property, governmental programs, or governmental recordkeeping systems from damage, theft,
318 or other appropriation or use contrary to law or public policy;

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

322 (14) records that, if disclosed, would reveal recommendations made to the Board of
323 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
324 Board of Pardons and Parole, or the Department of Human Services that are based on the
325 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
326 jurisdiction;

327 (15) records and audit workpapers that identify audit, collection, and operational
328 procedures and methods used by the State Tax Commission, if disclosure would interfere with
329 audits or collections;

330 (16) records of a governmental audit agency relating to an ongoing or planned audit
331 until the final audit is released;

332 (17) records that are subject to the attorney client privilege;

333 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
334 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
335 quasi-judicial, or administrative proceeding;

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

338 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
339 legislative action or policy may not be classified as protected under this section; and
340 (b) (i) an internal communication that is part of the deliberative process in connection
341 with the preparation of legislation between:
342 (A) members of a legislative body;
343 (B) a member of a legislative body and a member of the legislative body's staff; or
344 (C) members of a legislative body's staff; and
345 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
346 legislative action or policy may not be classified as protected under this section;
347 (20) (a) records in the custody or control of the Office of Legislative Research and
348 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
349 legislation or contemplated course of action before the legislator has elected to support the
350 legislation or course of action, or made the legislation or course of action public; and
351 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
352 Office of Legislative Research and General Counsel is a public document unless a legislator
353 asks that the records requesting the legislation be maintained as protected records until such
354 time as the legislator elects to make the legislation or course of action public;
355 (21) research requests from legislators to the Office of Legislative Research and
356 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
357 in response to these requests;
358 (22) drafts, unless otherwise classified as public;
359 (23) records concerning a governmental entity's strategy about:
360 (a) collective bargaining; or
361 (b) imminent or pending litigation;
362 (24) records of investigations of loss occurrences and analyses of loss occurrences that
363 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
364 Uninsured Employers' Fund, or similar divisions in other governmental entities;
365 (25) records, other than personnel evaluations, that contain a personal recommendation
366 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
367 personal privacy, or disclosure is not in the public interest;
368 (26) records that reveal the location of historic, prehistoric, paleontological, or

369 biological resources that if known would jeopardize the security of those resources or of
370 valuable historic, scientific, educational, or cultural information;

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

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

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

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

386 (31) records provided by the United States or by a government entity outside the state
387 that are given to the governmental entity with a requirement that they be managed as protected
388 records if the providing entity certifies that the record would not be subject to public disclosure
389 if retained by it;

390 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
391 except as provided in Section [52-4-206](#);

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

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

398 (35) records that would reveal negotiations regarding assistance or incentives offered
399 by or requested from a governmental entity for the purpose of encouraging a person to expand

400 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
401 person or place the governmental entity at a competitive disadvantage, but this section may not
402 be used to restrict access to a record evidencing a final contract;

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

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

410 (a) the donor requests anonymity in writing;

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

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

418 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
419 73-18-13;

420 (39) a notification of workers' compensation insurance coverage described in Section
421 34A-2-205;

422 (40) (a) the following records of an institution within the state system of higher
423 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
424 or received by or on behalf of faculty, staff, employees, or students of the institution:

425 (i) unpublished lecture notes;

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

427 (A) relating to research; and

428 (B) of:

429 (I) the institution within the state system of higher education defined in Section
430 53B-1-102; or

- 431 (II) a sponsor of sponsored research;
- 432 (iii) unpublished manuscripts;
- 433 (iv) creative works in process;
- 434 (v) scholarly correspondence; and
- 435 (vi) confidential information contained in research proposals;
- 436 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 437 information required pursuant to Subsection [53B-16-302\(2\)\(a\)](#) or (b); and
- 438 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 439 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 440 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 441 date that audit is completed and made public; and
- 442 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 443 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 444 the records in the custody or control of the Office of Legislative Auditor General that would
- 445 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 446 protected records until the audit is completed and made public;
- 447 (42) records that provide detail as to the location of an explosive, including a map or
- 448 other document that indicates the location of:
- 449 (a) a production facility; or
- 450 (b) a magazine;
- 451 (43) information:
- 452 (a) contained in the statewide database of the Division of Aging and Adult Services
- 453 created by Section [62A-3-311.1](#); or
- 454 (b) received or maintained in relation to the Identity Theft Reporting Information
- 455 System (IRIS) established under Section [67-5-22](#);
- 456 (44) information contained in the Management Information System and Licensing
- 457 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 458 (45) information regarding National Guard operations or activities in support of the
- 459 National Guard's federal mission;
- 460 (46) records provided by any pawn or secondhand business to a law enforcement
- 461 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and

462 Secondhand Merchandise Transaction Information Act;

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

465 (48) except to the extent that the record is exempt from this chapter pursuant to Section
466 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
467 prepared or maintained by the Division of Emergency Management, and the disclosure of
468 which would jeopardize:

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

470 (b) the security of:

471 (i) governmental property;

472 (ii) governmental programs; or

473 (iii) the property of a private person who provides the Division of Emergency

474 Management information;

475 (49) records of the Department of Agriculture and Food that provides for the
476 identification, tracing, or control of livestock diseases, including any program established under
477 Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Control of
478 Animal Disease;

479 (50) as provided in Section 26-39-501:

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

483 (b) information or records related to a complaint received by the Department of Health
484 from an anonymous complainant regarding a child care program or residential child care;

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

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

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

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

- 493 (ii) the individual complying with the law, ordinance, rule, or order;
- 494 (52) the name, home address, work addresses, and telephone numbers of an individual
495 that is engaged in, or that provides goods or services for, medical or scientific research that is:
- 496 (a) conducted within the state system of higher education, as defined in Section
497 [53B-1-102](#); and
- 498 (b) conducted using animals;
- 499 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
500 Private Proposal Program, to the extent not made public by rules made under that chapter;
- 501 (54) in accordance with Section [78A-12-203](#), any record of the Judicial Performance
502 Evaluation Commission concerning an individual commissioner's vote on whether or not to
503 recommend that the voters retain a judge;
- 504 (55) information collected and a report prepared by the Judicial Performance
505 Evaluation Commission concerning a judge, unless Section [20A-7-702](#) or Title 78A, Chapter
506 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
507 the information or report;
- 508 (56) records contained in the Management Information System created in Section
509 [62A-4a-1003](#);
- 510 (57) records provided or received by the Public Lands Policy Coordinating Office in
511 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);
- 512 (58) information requested by and provided to the Utah State 911 Committee under
513 Section [53-10-602](#);
- 514 ~~[(59) recorded Children's Justice Center investigative interviews, both video and audio,
515 the release of which are governed by Section [77-37-4](#);~~
- 516 ~~[(60)]~~ (59) in accordance with Section [73-10-33](#):
- 517 (a) a management plan for a water conveyance facility in the possession of the Division
518 of Water Resources or the Board of Water Resources; or
- 519 (b) an outline of an emergency response plan in possession of the state or a county or
520 municipality;
- 521 ~~[(61)]~~ (60) the following records in the custody or control of the Office of Inspector
522 General of Medicaid Services, created in Section [63A-13-201](#):
- 523 (a) records that would disclose information relating to allegations of personal

524 misconduct, gross mismanagement, or illegal activity of a person if the information or
525 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
526 through other documents or evidence, and the records relating to the allegation are not relied
527 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
528 report or final audit report;

529 (b) records and audit workpapers to the extent they would disclose the identity of a
530 person who, during the course of an investigation or audit, communicated the existence of any
531 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
532 regulation adopted under the laws of this state, a political subdivision of the state, or any
533 recognized entity of the United States, if the information was disclosed on the condition that
534 the identity of the person be protected;

535 (c) before the time that an investigation or audit is completed and the final
536 investigation or final audit report is released, records or drafts circulated to a person who is not
537 an employee or head of a governmental entity for the person's response or information;

538 (d) records that would disclose an outline or part of any investigation, audit survey
539 plan, or audit program; or

540 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
541 investigation or audit;

542 ~~[(62)]~~ (61) records that reveal methods used by the Office of Inspector General of
543 Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud,
544 waste, or abuse;

545 ~~[(63)]~~ (62) information provided to the Department of Health or the Division of
546 Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);

547 ~~[(64)]~~ (63) a record described in Section 63G-12-210; and

548 ~~[(65)]~~ (64) captured plate data that is obtained through an automatic license plate
549 reader system used by a governmental entity as authorized in Section 41-6a-2003.

550 Section 3. Section 77-37-4 is amended to read:

551 **77-37-4. Additional rights -- Children.**

552 In addition to all rights afforded to victims and witnesses under this chapter, child
553 victims and witnesses shall be afforded these rights:

554 (1) Children have the right to protection from physical and emotional abuse during

555 their involvement with the criminal justice process.

556 (2) Children are not responsible for inappropriate behavior adults commit against them
557 and have the right not to be questioned, in any manner, nor to have allegations made, implying
558 this responsibility. Those who interview children have the responsibility to consider the
559 interests of the child in this regard.

560 (3) Child victims and witnesses have the right to have interviews relating to a criminal
561 prosecution kept to a minimum. All agencies shall coordinate interviews and ensure that they
562 are conducted by persons sensitive to the needs of children.

563 (4) Child victims have the right to be informed of available community resources that
564 might assist them and how to gain access to those resources. Law enforcement and prosecutors
565 have the duty to ensure that child victims are informed of community resources, including
566 counseling prior to the court proceeding, and have those services available throughout the
567 criminal justice process.

568 (5) (a) Child victims have the right, once an investigation has been initiated by law
569 enforcement or the Division of Child and Family Services, to ~~[have]~~ keep confidential their
570 ~~[investigative]~~ interviews that are conducted at a Children's Justice Center, including ~~[both]~~
571 video and audio recordings, ~~[protected]~~ and transcripts of those recordings. Except as provided
572 in Subsection ~~[(5)(b) and (c)]~~ (6), recordings and transcripts of interviews may not be
573 distributed, released, or displayed to anyone without a court order.

574 ~~[(a) The]~~ (b) A court order described in Subsection (5)(a):

575 (i) shall describe with particularity to whom the recording or transcript of the interview
576 may be released and prohibit further distribution or viewing by anyone not named in the order;
577 and

578 (ii) may impose restrictions on access to the materials considered reasonable to protect
579 the privacy of the child victim.

580 (c) A parent or guardian of the child victim may petition a juvenile or district court for
581 an order allowing the parent or guardian to view a recording or transcript upon a finding of
582 good cause. The order shall designate the agency that is required to display the recording or
583 transcript to the parent or guardian and shall prohibit viewing by anyone not named in the
584 order.

585 ~~[(b)]~~ (d) Following the conclusion of any legal proceedings in which the recordings or

586 transcripts are used, the court shall order the recordings and transcripts in the court's file sealed
587 and preserved.

588 ~~[(c) (i) The Division of Child and Family Services or law enforcement may distribute a
589 copy of the interview:]~~

590 ~~[(A) to the prosecutor's office;]~~

591 ~~[(B) the Attorney General's child protection division;]~~

592 ~~[(C) to another law enforcement agency; and]~~

593 ~~[(D) to the attorney for the child who is the subject of the interview.]~~

594 ~~[(ii) Any further distribution, release, or display is subject to this Subsection (5).]~~

595 ~~[(d) In a criminal case, the prosecutor may distribute a copy of the interview to the
596 attorney for the defendant or a pro se defendant pursuant to a valid request for discovery. The
597 attorney for the defendant in a criminal case may permit the defendant to view the interview,
598 but may not distribute or release the interview to their client. Any further distribution, release,
599 or display is subject to this Subsection (5).]~~

600 ~~[(e) Pro se defendants shall be advised by the court that an interview received as part of
601 discovery is confidential and may not be distributed, released, or displayed without prior
602 authorization from the court. A court's failure to give this notice may not be used as a defense
603 to prosecution for a violation of the disclosure rule.]~~

604 ~~[(f) Multidisciplinary teams or other state agencies that provide services to children and
605 families may view interviews of children, and families for whom they are providing services,
606 but may not receive copies.]~~

607 ~~[(g) Violation of this section is:]~~

608 ~~[(i) punishable by contempt if distribution, release, or display occurs before the
609 resolution of the case and the court still has jurisdiction over the defendant; or]~~

610 ~~[(ii) a class B misdemeanor if the case has been resolved and the court no longer has
611 jurisdiction over the defendant.]~~

612 (6) (a) The following offices and their designated employees may distribute and receive
613 a recording or transcript to and from one another without a court order:

614 (i) the Division of Child and Family Services;

615 (ii) administrative law judges employed by the Department of Human Services;

616 (iii) Department of Human Services investigators investigating the Division of Child

617 and Family Services or investigators authorized to investigate under Section 62A-4a-202.6;
618 (iv) an office of the city attorney, county attorney, district attorney, or attorney general;
619 (v) a law enforcement agency;
620 (vi) a Children's Justice Center established under Section 67-5b-102; or
621 (vii) the attorney for the child who is the subject of the interview.
622 (b) In a criminal case or in a juvenile court in which the state is a party:
623 (i) the parties may display and enter into evidence a recording or transcript in the
624 course of a prosecution;
625 (ii) the state's attorney may distribute a recording or transcript to the attorney for the
626 defendant, pro se defendant, respondent, or pro se respondent pursuant to a valid request for
627 discovery;
628 (iii) the attorney for the defendant or respondent may permit the defendant or
629 respondent to view the recording or transcript, but may not distribute or release the recording or
630 transcript to the defendant or respondent; and
631 (iv) the court shall advise a pro se defendant or respondent that a recording or
632 transcript received as part of discovery is confidential and may not be distributed, released, or
633 displayed without prior authorization from the court.
634 (c) A court's failure to advise a pro se defendant or respondent that a recording or
635 transcript received as part of discovery is confidential and may not be used as a defense to
636 prosecution for a violation of the disclosure rule.
637 (d) In an administrative case, pursuant to a written request, the Division of Child and
638 Family Services may display, but may not distribute or release, a recording or transcript to the
639 respondent or an attorney for the respondent.
640 (e) A multidisciplinary team assembled by a Children's Justice Center or an
641 interdisciplinary team assembled by the Division of Child and Family Services may view a
642 recording or transcript, but may not receive a recording or transcript.
643 (f) A Children's Justice Center:
644 (i) may distribute or display a recording or transcript to an authorized trainer or
645 evaluator for purposes of training or evaluation; and
646 (ii) may display, but may not distribute, a recording or transcript to an authorized
647 trainee.

648 (g) An authorized trainer or instructor may display a recording or transcript according
649 to the terms of the authorized trainer's or instructor's contract with the Children's Justice Center
650 or according to the authorized trainer's or instructor's scope of employment.

651 (7) Except as otherwise provided in this section, it is a class B misdemeanor for any
652 individual to distribute, release, or display any recording or transcript of an interview of a child
653 victim conducted at a Children's Justice Center.

654 Section 4. Section 78A-6-317 is amended to read:

655 **78A-6-317. All proceedings -- Persons entitled to be present.**

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

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

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

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

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

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

672 (4) In every abuse, neglect, or dependency proceeding under this chapter, the court
673 shall order that the child be represented by a guardian ad litem, in accordance with Section
674 78A-6-902. The guardian ad litem shall represent the best interest of the child, in accordance
675 with the requirements of that section, at the shelter hearing and at all subsequent court and
676 administrative proceedings, including any proceeding for termination of parental rights in
677 accordance with Part 5, Termination of Parental Rights Act.

678 (5) (a) Except as provided in Subsection (5)(b), and notwithstanding any other

679 provision of law:

680 (i) counsel for all parties to the action shall be given access to all records, maintained
681 by the division or any other state or local public agency, that are relevant to the abuse, neglect,
682 or dependency proceeding under this chapter; and

683 (ii) if the natural parent of a child is not represented by counsel, the natural parent shall
684 have access to the records described in Subsection (5)(a)(i).

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

687 (i) subject to Subsection (5)(c), the division or other state or local public agency did not
688 originally create the record being requested;

689 (ii) disclosure of the record would jeopardize the life or physical safety of a child who
690 has been a victim of abuse or neglect, or any person who provided substitute care for the child;

691 (iii) disclosure of the record would jeopardize the anonymity of the person or persons
692 making the initial report of abuse or neglect or any others involved in the subsequent
693 investigation;

694 (iv) disclosure of the record would jeopardize the life or physical safety of a person
695 who has been a victim of domestic violence;

696 (v) the record is a report maintained in the Management Information System, for which
697 a finding of unsubstantiated, unsupported, or without merit has been made, unless the person
698 requesting the information is the alleged perpetrator in the report or counsel for the alleged
699 perpetrator in the report; or

700 (vi) the record is a Children's Justice Center [~~investigative~~] interview, including a
701 video or audio recording, and a transcript of the recording, the release of which is governed by
702 Section [77-37-4](#).

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

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

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

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

710 Section 5. **Effective date.**

711 If approved by two-thirds of all the members elected to each house, this bill takes effect
712 upon approval by the governor, or the day following the constitutional time limit of Utah
713 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
714 the date of veto override.

Legislative Review Note
as of 2-10-14 10:57 AM

Office of Legislative Research and General Counsel