

1 **NATIVE AMERICAN CHILD WELFARE AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kevin T. Van Tassell**

5 House Sponsor: John R. Westwood

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**LONG TITLE**

7 **General Description:**

8 This bill amends provisions of law regarding the licensure of tribal foster homes and the  
9 sharing of information with ~~§~~ **[a-Utah]** an ~~§~~ Indian tribe.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ clarifies that full faith and credit of an Indian tribe's licensure of a foster home
- 14 extends to homes located on both state lands and Indian country;

15 ▶ requires the division to cooperate and share relevant information with ~~§~~ **[a-Utah]** an  
16 ~~§~~ Indian  
17 tribe;

- 18 ▶ authorizes the division to provide ~~§~~ **[a-Utah]** an ~~§~~ Indian tribe access to the  
18a Management  
19 Information System; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **62A-2-101**, as last amended by Laws of Utah 2016, Chapters 122, 211, and 342



- 28           62A-2-117, as last amended by Laws of Utah 2005, Chapter 188
- 29           62A-4a-101, as last amended by Laws of Utah 2009, Chapter 75
- 30           62A-4a-105, as last amended by Laws of Utah 2016, Chapter 296
- 31           62A-4a-412, as last amended by Laws of Utah 2016, Chapter 144
- 32           62A-4a-1003, as last amended by Laws of Utah 2009, Chapter 32

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

35           Section 1. Section 62A-2-101 is amended to read:

36           **62A-2-101. Definitions.**

37           As used in this chapter:

38           (1) "Adult day care" means nonresidential care and supervision:

39           (a) for three or more adults for at least four but less than 24 hours a day; and

40           (b) that meets the needs of functionally impaired adults through a comprehensive  
 41 program that provides a variety of health, social, recreational, and related support services in a  
 42 protective setting.

43           (2) "Applicant" means a person who applies for an initial license or a license renewal  
 44 under this chapter.

45           (3) (a) "Associated with the licensee" means that an individual is:

46           (i) affiliated with a licensee as an owner, director, member of the governing body,  
 47 employee, agent, provider of care, department contractor, or volunteer; or

48           (ii) applying to become affiliated with a licensee in a capacity described in Subsection  
 49 (3)(a)(i).

50           (b) "Associated with the licensee" does not include:

51           (i) service on the following bodies, unless that service includes direct access to a child  
 52 or a vulnerable adult:

53           (A) a local mental health authority described in Section 17-43-301;

54           (B) a local substance abuse authority described in Section 17-43-201; or

55           (C) a board of an organization operating under a contract to provide mental health or  
 56 substance abuse programs, or services for the local mental health authority or substance abuse  
 57 authority; or

58           (ii) a guest or visitor whose access to a child or a vulnerable adult is directly supervised

59 at all times.

60 (4) (a) "Boarding school" means a private school that:

61 (i) uses a regionally accredited education program;

62 (ii) provides a residence to the school's students:

63 (A) for the purpose of enabling the school's students to attend classes at the school; and

64 (B) as an ancillary service to educating the students at the school;

65 (iii) has the primary purpose of providing the school's students with an education, as

66 defined in Subsection (4)(b)(i); and

67 (iv) (A) does not provide the treatment or services described in Subsection (28)(a); or

68 (B) provides the treatment or services described in Subsection (28)(a) on a limited

69 basis, as described in Subsection (4)(b)(ii).

70 (b) (i) For purposes of Subsection (4)(a)(iii), "education" means a course of study for

71 one or more of grades kindergarten through 12th grade.

72 (ii) For purposes of Subsection (4)(a)(iv)(B), a private school provides the treatment or

73 services described in Subsection (28)(a) on a limited basis if:

74 (A) the treatment or services described in Subsection (28)(a) are provided only as an

75 incidental service to a student; and

76 (B) the school does not:

77 (I) specifically solicit a student for the purpose of providing the treatment or services

78 described in Subsection (28)(a); or

79 (II) have a primary purpose of providing the treatment or services described in

80 Subsection (28)(a).

81 (c) "Boarding school" does not include a therapeutic school.

82 (5) "Child" means a person under 18 years of age.

83 (6) "Child placing" means receiving, accepting, or providing custody or care for any

84 child, temporarily or permanently, for the purpose of:

85 (a) finding a person to adopt the child;

86 (b) placing the child in a home for adoption; or

87 (c) foster home placement.

88 (7) "Client" means an individual who receives or has received services from a licensee.

89 (8) "Day treatment" means specialized treatment that is provided to:

- 90 (a) a client less than 24 hours a day; and
- 91 (b) four or more persons who:
  - 92 (i) are unrelated to the owner or provider; and
  - 93 (ii) have emotional, psychological, developmental, physical, or behavioral
  - 94 dysfunctions, impairments, or chemical dependencies.
- 95 (9) "Department" means the Department of Human Services.
- 96 (10) "Department contractor" means an individual who:
  - 97 (a) provides services under a contract with the department; and
  - 98 (b) due to the contract with the department, has or will likely have direct access to a
  - 99 child or vulnerable adult.
- 100 (11) "Direct access" means that an individual has, or likely will have:
  - 101 (a) contact with or access to a child or vulnerable adult that provides the individual
  - 102 with an opportunity for personal communication or touch; or
  - 103 (b) an opportunity to view medical, financial, or other confidential personal identifying
  - 104 information of the child, the child's parents or legal guardians, or the vulnerable adult.
- 105 (12) "Directly supervised" means that an individual is being supervised under the
- 106 uninterrupted visual and auditory surveillance of another individual who has a current
- 107 background screening approval issued by the office.
- 108 (13) "Director" means the director of the Office of Licensing.
- 109 (14) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).
- 110 (15) "Domestic violence treatment program" means a nonresidential program designed
- 111 to provide psychological treatment and educational services to perpetrators and victims of
- 112 domestic violence.
- 113 (16) "Elder adult" means a person 65 years of age or older.
- 114 (17) "Executive director" means the executive director of the department.
- 115 (18) "Foster home" means a temporary residential living environment for the care of:
  - 116 (a) (i) fewer than five foster children in the home of a licensed foster parent; or
  - 117 (ii) five or more foster children in the home of a licensed foster parent if there are no
  - 118 foster children or if there is one foster child in the home at the time of the placement of a
  - 119 sibling group; or
  - 120 (b) (i) fewer than four foster children in the home of a certified foster parent; or

121 (ii) four or more foster children in the home of a certified foster parent if there are no  
122 foster children or if there is one foster child in the home at the time of the placement of a  
123 sibling group.

124 (19) (a) "Human services program" means a:

125 (i) foster home;

126 (ii) therapeutic school;

127 (iii) youth program;

128 (iv) resource family home;

129 (v) recovery residence; or

130 (vi) facility or program that provides:

131 (A) secure treatment;

132 (B) inpatient treatment;

133 (C) residential treatment;

134 (D) residential support;

135 (E) adult day care;

136 (F) day treatment;

137 (G) outpatient treatment;

138 (H) domestic violence treatment;

139 (I) child placing services;

140 (J) social detoxification; or

141 (K) any other human services that are required by contract with the department to be  
142 licensed with the department.

143 (b) "Human services program" does not include a boarding school.

144 (20) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

145 (21) "Indian country" means the same as that term is defined in 18 U.S.C. Sec. 1151.

146 (22) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

147 [~~(20)~~] (23) "Licensee" means an individual or a human services program licensed by  
148 the office.

149 [~~(21)~~] (24) "Local government" means a city, town, metro township, or county.

150 [~~(22)~~] (25) "Minor" has the same meaning as "child."

151 [~~(23)~~] (26) "Office" means the Office of Licensing within the Department of Human

152 Services.

153 ~~[(24)]~~ (27) "Outpatient treatment" means individual, family, or group therapy or  
154 counseling designed to improve and enhance social or psychological functioning for those  
155 whose physical and emotional status allows them to continue functioning in their usual living  
156 environment.

157 ~~[(25)]~~ (28) (a) "Recovery residence" means a home, residence, or facility that meets at  
158 least two of the following requirements:

159 (i) provides a supervised living environment for individuals recovering from a  
160 substance abuse disorder;

161 (ii) provides a living environment in which more than half of the individuals in the  
162 residence are recovering from a substance abuse disorder;

163 (iii) provides or arranges for residents to receive services related to their recovery from  
164 a substance abuse disorder, either on or off site;

165 (iv) is held out as a living environment in which individuals recovering from substance  
166 abuse disorders live together to encourage continued sobriety; or

167 (v) (A) receives public funding; or

168 (B) is run as a business venture, either for-profit or not-for-profit.

169 (b) "Recovery residence" does not mean:

170 (i) a residential treatment program;

171 (ii) residential support; or

172 (iii) a home, residence, or facility, in which:

173 (A) residents, by their majority vote, establish, implement, and enforce policies

174 governing the living environment, including the manner in which applications for residence are  
175 approved and the manner in which residents are expelled;

176 (B) residents equitably share rent and housing-related expenses; and

177 (C) a landlord, owner, or operator does not receive compensation, other than fair  
178 market rental income, for establishing, implementing, or enforcing policies governing the  
179 living environment.

180 ~~[(26)]~~ (29) "Regular business hours" means:

181 (a) the hours during which services of any kind are provided to a client; or

182 (b) the hours during which a client is present at the facility of a licensee.

183            [~~(27)~~] (30) (a) "Residential support" means arranging for or providing the necessities of  
184 life as a protective service to individuals or families who have a disability or who are  
185 experiencing a dislocation or emergency that prevents them from providing these services for  
186 themselves or their families.

187            (b) "Residential support" includes providing a supervised living environment for  
188 persons with dysfunctions or impairments that are:

- 189            (i) emotional;
- 190            (ii) psychological;
- 191            (iii) developmental; or
- 192            (iv) behavioral.

193            (c) Treatment is not a necessary component of residential support.

194            (d) "Residential support" does not include:

- 195            (i) a recovery residence; or
- 196            (ii) residential services that are performed:

197            (A) exclusively under contract with the Division of Services for People with  
198 Disabilities; or

199            (B) in a facility that serves fewer than four individuals.

200            [~~(28)~~] (31) (a) "Residential treatment" means a 24-hour group living environment for  
201 four or more individuals unrelated to the owner or provider that offers room or board and  
202 specialized treatment, behavior modification, rehabilitation, discipline, emotional growth, or  
203 habilitation services for persons with emotional, psychological, developmental, or behavioral  
204 dysfunctions, impairments, or chemical dependencies.

205            (b) "Residential treatment" does not include a:

- 206            (i) boarding school;
- 207            (ii) foster home; or
- 208            (iii) recovery residence.

209            [~~(29)~~] (32) "Residential treatment program" means a human services program that  
210 provides:

- 211            (a) residential treatment; or
- 212            (b) secure treatment.

213            [~~(30)~~] (33) (a) "Secure treatment" means 24-hour specialized residential treatment or

214 care for persons whose current functioning is such that they cannot live independently or in a  
215 less restrictive environment.

216 (b) "Secure treatment" differs from residential treatment to the extent that it requires  
217 intensive supervision, locked doors, and other security measures that are imposed on residents  
218 with neither their consent nor control.

219 [~~(31)~~] (34) "Social detoxification" means short-term residential services for persons  
220 who are experiencing or have recently experienced drug or alcohol intoxication, that are  
221 provided outside of a health care facility licensed under Title 26, Chapter 21, Health Care  
222 Facility Licensing and Inspection Act, and that include:

223 (a) room and board for persons who are unrelated to the owner or manager of the  
224 facility;

225 (b) specialized rehabilitation to acquire sobriety; and

226 (c) aftercare services.

227 [~~(32)~~] (35) "Substance abuse treatment program" means a program:

228 (a) designed to provide:

229 (i) specialized drug or alcohol treatment;

230 (ii) rehabilitation; or

231 (iii) habilitation services; and

232 (b) that provides the treatment or services described in Subsection (32)(a) to persons

233 with:

234 (i) a diagnosed substance abuse disorder; or

235 (ii) chemical dependency disorder.

236 [~~(33)~~] (36) "Therapeutic school" means a residential group living facility:

237 (a) for four or more individuals that are not related to:

238 (i) the owner of the facility; or

239 (ii) the primary service provider of the facility;

240 (b) that serves students who have a history of failing to function:

241 (i) at home;

242 (ii) in a public school; or

243 (iii) in a nonresidential private school; and

244 (c) that offers:



- 245 (i) room and board; and
- 246 (ii) an academic education integrated with:
  - 247 (A) specialized structure and supervision; or
  - 248 (B) services or treatment related to:
    - 249 (I) a disability;
    - 250 (II) emotional development;
    - 251 (III) behavioral development;
    - 252 (IV) familial development; or
    - 253 (V) social development.
- 254 [~~(34)~~] (37) "Unrelated persons" means persons other than parents, legal guardians,  
255 grandparents, brothers, sisters, uncles, or aunts.
- 256 [~~(35)~~] (38) "Vulnerable adult" means an elder adult or an adult who has a temporary or  
257 permanent mental or physical impairment that substantially affects the person's ability to:
  - 258 (a) provide personal protection;
  - 259 (b) provide necessities such as food, shelter, clothing, or mental or other health care;
  - 260 (c) obtain services necessary for health, safety, or welfare;
  - 261 (d) carry out the activities of daily living;
  - 262 (e) manage the adult's own resources; or
  - 263 (f) comprehend the nature and consequences of remaining in a situation of abuse,  
264 neglect, or exploitation.
- 265 [~~(36)~~] (39) (a) "Youth program" means a nonresidential program designed to provide  
266 behavioral, substance abuse, or mental health services to minors that:
  - 267 (i) serves adjudicated or nonadjudicated youth;
  - 268 (ii) charges a fee for its services;
  - 269 (iii) may or may not provide host homes or other arrangements for overnight  
270 accommodation of the youth;
  - 271 (iv) may or may not provide all or part of its services in the outdoors;
  - 272 (v) may or may not limit or censor access to parents or guardians; and
  - 273 (vi) prohibits or restricts a minor's ability to leave the program at any time of the  
274 minor's own free will.
- 275 (b) "Youth program" does not include recreational programs such as Boy Scouts, Girl

276 Scouts, 4-H, and other such organizations.

277 Section 2. Section **62A-2-117** is amended to read:

278 **62A-2-117. Licensure of tribal foster homes.**

279 (1) The Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, provides that Indian  
280 tribes may develop and implement tribal foster home standards.

281 (2) The office shall give full faith and credit to an Indian tribe's certification or  
282 licensure of a tribal foster [~~homes~~] home for an Indian child and siblings of that Indian child,  
283 both on and off Indian country, according to standards developed and approved by the Indian  
284 tribe, pursuant to the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963.

285 (3) If the Indian tribe has not developed standards, the office shall license tribal foster  
286 homes pursuant to this chapter.

287 Section 3. Section **62A-4a-101** is amended to read:

288 **62A-4a-101. Definitions.**

289 As used in this chapter:

290 (1) "Abuse" is as defined in Section [78A-6-105](#).

291 (2) "Adoption services" means:

292 (a) placing children for adoption;

293 (b) subsidizing adoptions under Section [62A-4a-105](#);

294 (c) supervising adoption placements until the adoption is finalized by the court;

295 (d) conducting adoption studies;

296 (e) preparing adoption reports upon request of the court; and

297 (f) providing postadoptive placement services, upon request of a family, for the  
298 purpose of stabilizing a possible disruptive placement.

299 (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of  
300 Children, a person under 18 years of age.

301 [~~(5)~~] (4) "Chronic abuse" means repeated or patterned abuse.

302 [~~(6)~~] (5) "Chronic neglect" means repeated or patterned neglect.

303 [~~(4)~~] (6) "Consumer" means a person who receives services offered by the division in  
304 accordance with this chapter.

305 (7) "Custody," with regard to the division, means the custody of a minor in the division  
306 as of the date of disposition.

307 (8) "Day-care services" means care of a child for a portion of the day which is less than  
308 24 hours:

309 (a) in the child's own home by a responsible person; or

310 (b) outside of the child's home in a:

311 (i) day-care center;

312 (ii) family group home; or

313 (iii) family child care home.

314 (9) "Dependent child" or "dependency" means a child, or the condition of a child, who  
315 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

316 (10) "Director" means the director of the Division of Child and Family Services.

317 (11) "Division" means the Division of Child and Family Services.

318 (12) "Domestic violence services" means:

319 (a) temporary shelter, treatment, and related services to:

320 (i) a person who is a victim of abuse, as defined in Section 78B-7-102; and

321 (ii) the dependent children of a person described in Subsection (12)(a)(i); and

322 (b) treatment services for a person who is alleged to have committed, has been

323 convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

324 (13) "Harm" is as defined in Section 78A-6-105.

325 (14) "Homemaking service" means the care of individuals in their domiciles, and help  
326 given to individual caretaker relatives to achieve improved household and family management  
327 through the services of a trained homemaker.

328 (15) "Incest" is as defined in Section 78A-6-105.

329 (16) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

330 (17) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

331 [~~16~~] (18) "Minor" means, except as provided in Part 7, Interstate Compact on  
332 Placement of Children:

333 (a) a child; or

334 (b) a person:

335 (i) who is at least 18 years of age and younger than 21 years of age; and

336 (ii) for whom the division has been specifically ordered by the juvenile court to provide  
337 services.

338 [~~(17)~~] (19) "Molestation" is as defined in Section 78A-6-105.

339 [~~(18)~~] (20) "Natural parent" means a minor's biological or adoptive parent, and  
340 includes a minor's noncustodial parent.

341 [~~(19)~~] (21) "Neglect" is as defined in Section 78A-6-105.

342 [~~(20)~~] (22) "Protective custody," with regard to the division, means the shelter of a  
343 child by the division from the time the child is removed from the child's home until the earlier  
344 of:

345 (a) the shelter hearing; or

346 (b) the child's return home.

347 [~~(21)~~] (23) "Protective services" means expedited services that are provided:

348 (a) in response to evidence of neglect, abuse, or dependency of a child;

349 (b) to a cohabitant who is neglecting or abusing a child, in order to:

350 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the  
351 causes of neglect or abuse; and

352 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

353 (c) in cases where the child's welfare is endangered:

354 (i) to bring the situation to the attention of the appropriate juvenile court and law  
355 enforcement agency;

356 (ii) to cause a protective order to be issued for the protection of the child, when  
357 appropriate; and

358 (iii) to protect the child from the circumstances that endanger the child's welfare  
359 including, when appropriate:

360 (A) removal from the child's home;

361 (B) placement in substitute care; and

362 (C) petitioning the court for termination of parental rights.

363 [~~(22)~~] (24) "Severe abuse" is as defined in Section 78A-6-105.

364 [~~(23)~~] (25) "Severe neglect" is as defined in Section 78A-6-105.

365 [~~(24)~~] (26) "Sexual abuse" is as defined in Section 78A-6-105.

366 [~~(25)~~] (27) "Sexual exploitation" is as defined in Section 78A-6-105.

367 [~~(26)~~] (28) "Shelter care" means the temporary care of a minor in a nonsecure facility.

368 [~~(27)~~] (29) "State" means:

- 369 (a) a state of the United States;
- 370 (b) the District of Columbia;
- 371 (c) the Commonwealth of Puerto Rico;
- 372 (d) the Virgin Islands;
- 373 (e) Guam;
- 374 (f) the Commonwealth of the Northern Mariana Islands; or
- 375 (g) a territory or possession administered by the United States.

376 ~~[(28)]~~ (30) "State plan" means the written description of the programs for children,  
377 youth, and family services administered by the division in accordance with federal law.

378 ~~[(29)]~~ (31) "Status offense" means a violation of the law that would not be a violation  
379 but for the age of the offender.

380 ~~[(30)]~~ (32) "Substance abuse" is as defined in Section [78A-6-105](#).

381 ~~[(31)]~~ (33) "Substantiated" or "substantiation" means a judicial finding based on a  
382 preponderance of the evidence that abuse or neglect occurred. Each allegation made or  
383 identified in a given case shall be considered separately in determining whether there should be  
384 a finding of substantiated.

385 ~~[(32)]~~ (34) "Substitute care" means:

- 386 (a) the placement of a minor in a family home, group care facility, or other placement  
387 outside the minor's own home, either at the request of a parent or other responsible relative, or  
388 upon court order, when it is determined that continuation of care in the minor's own home  
389 would be contrary to the minor's welfare;
- 390 (b) services provided for a minor awaiting placement; and
- 391 (c) the licensing and supervision of a substitute care facility.

392 ~~[(33)]~~ (35) "Supported" means a finding by the division based on the evidence  
393 available at the completion of an investigation that there is a reasonable basis to conclude that  
394 abuse, neglect, or dependency occurred. Each allegation made or identified during the course  
395 of the investigation shall be considered separately in determining whether there should be a  
396 finding of supported.

397 ~~[(34)]~~ (36) "Temporary custody," with regard to the division, means the custody of a  
398 child in the division from the date of the shelter hearing until disposition.

399 ~~[(35)]~~ (37) "Transportation services" means travel assistance given to an individual

400 with escort service, if necessary, to and from community facilities and resources as part of a  
401 service plan.

402 [~~(36)~~] (38) "Unsubstantiated" means a judicial finding that there is insufficient  
403 evidence to conclude that abuse or neglect occurred.

404 [~~(37)~~] (39) "Unsupported" means a finding at the completion of an investigation that  
405 there is insufficient evidence to conclude that abuse, neglect, or dependency occurred.  
406 However, a finding of unsupported means also that the division worker did not conclude that  
407 the allegation was without merit.

408 [~~(38)~~] (40) "Without merit" means a finding at the completion of an investigation by  
409 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,  
410 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

411 Section 4. Section **62A-4a-105** is amended to read:

412 **62A-4a-105. Division responsibilities.**

413 (1) The division shall:

414 (a) administer services to minors and families, including:

415 (i) child welfare services;

416 (ii) domestic violence services; and

417 (iii) all other responsibilities that the Legislature or the executive director may assign  
418 to the division;

419 (b) provide the following services:

420 (i) financial and other assistance to an individual adopting a child with special needs  
421 under Part 9, Adoption Assistance, not to exceed the amount the division would provide for the  
422 child as a legal ward of the state;

423 (ii) non-custodial and in-home services, including:

424 (A) services designed to prevent family break-up; and

425 (B) family preservation services;

426 (iii) reunification services to families whose children are in substitute care in  
427 accordance with the requirements of this chapter and Title 78A, Chapter 6, Juvenile Court Act;

428 (iv) protective supervision of a family, upon court order, in an effort to eliminate abuse  
429 or neglect of a child in that family;

430 (v) shelter care in accordance with the requirements of this chapter and Title 78A,

431 Chapter 6, Juvenile Court Act;

432 (vi) domestic violence services, in accordance with the requirements of federal law;

433 (vii) protective services to victims of domestic violence, as defined in Section 77-36-1,

434 and their children, in accordance with the provisions of this chapter and Title 78A, Chapter 6,

435 Part 3, Abuse, Neglect, and Dependency Proceedings;

436 (viii) substitute care for dependent, abused, neglected, and delinquent children;

437 (ix) programs and services for minors who have been placed in the custody of the

438 division for reasons other than abuse or neglect, under Section 62A-4a-250;

439 (x) services for minors who are victims of human trafficking or human smuggling as

440 described in Sections 76-5-308 through 76-5-310 or who have engaged in prostitution or sexual

441 solicitation as defined in Section 76-10-1302; and

442 (xi) training for staff and providers involved in the administration and delivery of

443 services offered by the division in accordance with this chapter;

444 (c) establish standards for all:

445 (i) contract providers of out-of-home care for minors and families;

446 (ii) facilities that provide substitute care for dependent, abused, neglected, and

447 delinquent children placed in the custody of the division; and

448 (iii) direct or contract providers of domestic violence services described in Subsection

449 (1)(b)(vi);

450 (d) have authority to:

451 (i) contract with a private, nonprofit organization to recruit and train foster care

452 families and child welfare volunteers in accordance with Section 62A-4a-107.5; and

453 (ii) approve facilities that meet the standards established under Subsection (1)(c) to

454 provide substitute care for dependent, abused, neglected, and delinquent children placed in the

455 custody of the division;

456 (e) cooperate with the federal government in the administration of child welfare and

457 domestic violence programs and other human service activities assigned by the department;

458 (f) if there is a privacy agreement with an Indian tribe to protect the confidentiality of

459 division records to the same extent that the division is required to protect division records,

460 cooperate with and share all appropriate information in the division's possession regarding an

461 Indian child, the Indian child's parent or guardian, or a proposed placement for the Indian child

462 with the Indian tribe that is affiliated with the Indian child;

463 [~~(f)~~] (g) in accordance with Subsection (2)(a), promote and enforce state and federal  
464 laws enacted for the protection of abused, neglected, dependent, delinquent, ungovernable, and  
465 runaway children, and status offenders, in accordance with the requirements of this chapter,  
466 unless administration is expressly vested in another division or department of the state;

467 [~~(g)~~] (h) cooperate with the Workforce Development Division in the Department of  
468 Workforce Services in meeting the social and economic needs of an individual who is eligible  
469 for public assistance;

470 [~~(h)~~] (i) compile relevant information, statistics, and reports on child and family service  
471 matters in the state;

472 [~~(i)~~] (j) prepare and submit to the department, the governor, and the Legislature reports  
473 of the operation and administration of the division in accordance with the requirements of  
474 Sections 62A-4a-117 and 62A-4a-118;

475 [~~(j)~~] (k) provide social studies and reports for the juvenile court in accordance with  
476 Section 78A-6-605;

477 [~~(k)~~] (l) within appropriations from the Legislature, provide or contract for a variety of  
478 domestic violence services and treatment methods;

479 [(~~l~~)] (m) ensure regular, periodic publication, including electronic publication,  
480 regarding the number of children in the custody of the division who:

481 (i) have a permanency goal of adoption; or

482 (ii) have a final plan of termination of parental rights, pursuant to Section 78A-6-314,  
483 and promote adoption of those children;

484 [~~(m)~~] (n) subject to Subsection (2)(b), refer an individual receiving services from the  
485 division to the local substance abuse authority or other private or public resource for a  
486 court-ordered drug screening test; and

487 [~~(n)~~] (o) perform other duties and functions required by law.

488 (2) (a) In carrying out the requirements of Subsection (1)(f), the division shall:

489 (i) cooperate with the juvenile courts, the Division of Juvenile Justice Services, and  
490 with all public and private licensed child welfare agencies and institutions[;] to develop and  
491 administer a broad range of services and support;

492 (ii) take the initiative in all matters involving the protection of abused or neglected



493 children, if adequate provisions have not been made or are not likely to be made; and

494 (iii) make expenditures necessary for the care and protection of the children described  
495 in this Subsection (2)(a), within the division's budget.

496 (b) When an individual is referred to a local substance abuse authority or other private  
497 or public resource for court-ordered drug screening under Subsection (1)(n), the court shall  
498 order the individual to pay all costs of the tests unless:

499 (i) the cost of the drug screening is specifically funded or provided for by other federal  
500 or state programs;

501 (ii) the individual is a participant in a drug court; or

502 (iii) the court finds that the individual is impecunious.

503 (3) Except to the extent provided by rule, the division is not responsible for  
504 investigating domestic violence in the presence of a child, as described in Section 76-5-109.1.

505 (4) The division may not require a parent who has a child in the custody of the division  
506 to pay for some or all of the cost of any drug testing the parent is required to undergo.

507 Section 5. Section **62A-4a-412** is amended to read:

508 **62A-4a-412. Reports and information confidential.**

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

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

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

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

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

521 (e) except as provided in Subsection 63G-2-202(10), a subject of the report, the natural  
522 parents of the child, and the guardian ad litem;

523 (f) a court, upon a finding that access to the records may be necessary for the

524 determination of an issue before the court, provided that in a divorce, custody, or related  
525 proceeding between private parties, the record alone is:

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

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

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

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

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

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

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

546 (l) except as provided in Subsection [63G-2-202](#)(10), a person filing a petition for a  
547 child protective order on behalf of a child who is the subject of the report; ~~and~~

548 (m) a licensed child-placing agency or person who is performing a preplacement  
549 adoptive evaluation in accordance with the requirements of Sections [78B-6-128](#) and  
550 [78B-6-130](#)~~[-];~~ or

551 (n) an Indian tribe to:

552 (i) certify or license a foster home;

553 (ii) render services to a subject of a report; or

554 (iii) investigate an allegation of abuse, neglect, or dependency.

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

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

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

564 (b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but  
565 including this chapter and Title 63G, Chapter 2, Government Records Access and Management  
566 Act, when the division makes a report or other information in its possession available under  
567 Subsection (1)(e) to a subject of the report or a parent of a child, the division shall remove from  
568 the report or other information only the names, addresses, and telephone numbers of  
569 individuals or specific information that could:

- 570 (i) identify the referent;  
571 (ii) impede a criminal investigation; or  
572 (iii) endanger a person's safety.

573 (4) Any person who wilfully permits, or aides and abets the release of data or  
574 information obtained as a result of this part, in the possession of the division or contained on  
575 any part of the Management Information System, in violation of this part or Sections  
576 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

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

580 (6) A child-placing agency or person who receives a report in connection with a  
581 preplacement adoptive evaluation pursuant to Sections 78B-6-128 and 78B-6-130:

- 582 (a) may provide this report to the person who is the subject of the report; and  
583 (b) may provide this report to a person who is performing a preplacement adoptive  
584 evaluation in accordance with the requirement of Sections 78B-6-128 and 78B-6-130, or to a  
585 licensed child-placing agency or to an attorney seeking to facilitate an adoption.

586 Section 6. Section **62A-4a-1003** is amended to read:

587 **62A-4a-1003. Management Information System -- Requirements -- Contents --**

588 **Purpose -- Access.**

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

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

592 (i) are protected records under Title 63G, Chapter 2, Government Records Access and  
593 Management Act; and

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

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

599 (i) as provided under Subsection (6) or Section [62A-4a-1006](#); or

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

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

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

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

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

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

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

- 617 (c) the number of times the child has been in the custody of the division;
- 618 (d) the cumulative period of time the child has been in the custody of the division;
- 619 (e) a record of all reports of abuse or neglect received by the division with regard to
- 620 that child's parent, parents, or guardian including:
  - 621 (i) for each report, documentation of the:
    - 622 (A) latest status; or
    - 623 (B) final outcome or determination; and
  - 624 (ii) information that indicates whether each report was found to be:
    - 625 (A) supported;
    - 626 (B) unsupported;
    - 627 (C) substantiated by a juvenile court;
    - 628 (D) unsubstantiated by a juvenile court; or
    - 629 (E) without merit;
  - 630 (f) the number of times the child's parent or parents failed any child and family plan;
  - 631 and
  - 632 (g) the number of different caseworkers who have been assigned to that child in the
  - 633 past.
- 634 (3) The division's Management Information System shall:
  - 635 (a) contain all key elements of each family's current child and family plan, including:
    - 636 (i) the dates and number of times the plan has been administratively or judicially
    - 637 reviewed;
    - 638 (ii) the number of times the parent or parents have failed that child and family plan;
    - 639 and
    - 640 (iii) the exact length of time the child and family plan has been in effect; and
  - 641 (b) alert caseworkers regarding deadlines for completion of and compliance with
  - 642 policy, including child and family plans.
- 643 (4) With regard to all child protective services cases, the Management Information
- 644 System shall:
  - 645 (a) monitor the compliance of each case with:
    - 646 (i) division rule and policy;
    - 647 (ii) state law; and

648 (iii) federal law and regulation; and

649 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or  
650 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of  
651 the alleged perpetrator.

652 (5) Except as provided in Subsection (6) regarding contract providers and Section  
653 62A-4a-1006 regarding limited access to the Licensing Information System, all information  
654 contained in the division's Management Information System is available to the department,  
655 upon the approval of the executive director, on a need-to-know basis.

656 (6) (a) Subject to this Subsection (6), the division may allow [its] the division's  
657 contract providers, court clerks designated by the Administrative Office of the Courts, [~~and~~] the  
658 Office of Guardian Ad Litem, or an Indian tribe to have limited access to the Management  
659 Information System.

660 (b) A division contract provider or Indian tribe has access only to information about a  
661 person who is currently receiving services from that specific contract provider or Indian tribe.

662 (c) (i) Designated court clerks may only have access to information necessary to  
663 comply with Subsection 78B-7-202(2).

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

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

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

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

673 (e) Each contract provider [~~and~~], designated representative of the Office of Guardian  
674 Ad Litem, and Indian tribe who requests access to information contained in the Management  
675 Information System shall:

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

678 (ii) train its employees regarding:

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

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

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

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

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

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**