

## SB0099S03 compared with SB0099S01

~~{deleted text}~~ shows text that was in SB0099S01 but was deleted in SB0099S03.

inserted text shows text that was not in SB0099S01 but was inserted into SB0099S03.

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~~{Representative Keven J}~~Senator Wayne A. ~~{Stratton}~~Harper proposes the following substitute bill:

### CHILD WELFARE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

House Sponsor: Paul Ray

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#### LONG TITLE

##### General Description:

This bill addresses provisions related to child welfare.

##### Highlighted Provisions:

This bill:

- ▶ modifies definitions and defines terms;
- ▶ repeals a requirement that the Child Welfare Training Coordinator be appointed by the director of the Division of Child and Family Services;
- ▶ modifies the training requirements for caseworkers of the Division of Child and Family Services;

~~{~~ → clarifies that the Division of Child and Family Services may share a record related to an investigation of a report of child abuse or neglect with certain persons;

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~~→ modifies provisions that require the Division of Child and Family Services to remove certain information from a record related to a report or an investigation of child abuse or neglect before disclosing the record to the subject of the report or a parent or guardian;~~

- † ▶ allows certain information and records contained in the Management Information System developed by the Division of Child and Family Services to be classified as private or controlled under the Government Records Access and Management Act;
- ▶ allows the Division of Child and Family Services to share a record related to a report or an investigation of child abuse or neglect with the Division of Substance Abuse and Mental Health, the Department of Health, or a local substance abuse authority for the purpose of providing substance abuse treatment to a parent of a newborn child;
- ▶ directs the Division of Substance Abuse and Mental Health to coordinate with the Department of Health and other health care providers to develop a program to reduce substance abuse by parents of a newborn child;
- ▶ requires the Department of Human Services to perform a review of a child who has suffered a near fatality and is the subject of an open case for child welfare services within one year of the near fatality;
- ▶ modifies the fatality review process of the Department of Human Services to allow review of near fatalities of children;
- ▶ modifies the requirements giving notice of a summons for a parent or guardian of a juvenile proceeding;
- ▶ modifies the requirements for returning a child to the custody of a parent or guardian in a shelter hearing;
- ▶ repeals provisions that prohibit disclosure of child abuse, neglect, or dependency reports that are unsubstantiated, unsupported, or without merit to an individual who is not the alleged perpetrator;
- ▶ prohibits a court from receiving certain child abuse, neglect, or dependency reports that are unsubstantiated, unsupported, or without merit into evidence without a finding of good cause;
- ▶ clarifies that an adjudication for abuse, neglect, or dependency of a child, or

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termination or restoration of parental rights may not be expunged;

- ▶ modifies the type of records that a court may order sealed in a juvenile expungement proceeding; and
- ▶ makes technical and conforming changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

This bill provides a coordination clause.

### **Utah Code Sections Affected:**

AMENDS:

**52-4-205**, as last amended by Laws of Utah 2020, Chapters 12 and 201

**62A-4a-101**, as last amended by Laws of Utah 2019, Chapters 259 and 335

**62A-4a-107**, as last amended by Laws of Utah 2013, Chapter 171

**62A-4a-402**, as last amended by Laws of Utah 2008, Chapter 299

**62A-4a-404**, as last amended by Laws of Utah 2020, Chapter 193

**62A-4a-412**, as last amended by Laws of Utah 2020, Chapters 193 and 258

**62A-4a-1003**, as last amended by Laws of Utah 2019, Chapter 335

**62A-15-103**, as last amended by Laws of Utah 2020, Chapter 193

**62A-16-102**, as last amended by Laws of Utah 2019, Chapter 139

**62A-16-201**, as last amended by Laws of Utah 2019, Chapter 139

**62A-16-202**, as enacted by Laws of Utah 2010, Chapter 239

**62A-16-203**, as enacted by Laws of Utah 2010, Chapter 239

**62A-16-204**, as last amended by Laws of Utah 2019, Chapter 139

**62A-16-301**, as last amended by Laws of Utah 2019, Chapter 139

**62A-16-302**, as last amended by Laws of Utah 2011, Chapter 343

**63G-2-202**, as last amended by Laws of Utah 2020, Chapter 255

**63G-2-305**, as last amended by Laws of Utah 2020, Chapters 112, 198, 339, 349, 382, and 393

**63G-2-305.5**, as enacted by Laws of Utah 2020, Chapter 349

**78A-6-105**, as last amended by Laws of Utah 2020, Chapters 214, 312 and last amended by Coordination Clause, Laws of Utah 2020, Chapter 214

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**78A-6-109**, as last amended by Laws of Utah 2017, Chapter 330

**78A-6-306**, as last amended by Laws of Utah 2020, Chapters 158 and 214

**78A-6-317**, as last amended by Laws of Utah 2019, Chapters 326 and 335

**78A-6-1503**, as renumbered and amended by Laws of Utah 2020, Chapter 218

### **Utah Code Sections Affected by Coordination Clause:**

**80-3-107**, Utah Code Annotated 1953

**80-3-110**, Utah Code Annotated 1953

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

Section 1. Section **52-4-205** is amended to read:

**52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed meetings.**

(1) A closed meeting described under Section 52-4-204 may only be held for:

(a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;

(b) strategy sessions to discuss collective bargaining;

(c) strategy sessions to discuss pending or reasonably imminent litigation;

(d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, if public discussion of the transaction would:

(i) disclose the appraisal or estimated value of the property under consideration; or

(ii) prevent the public body from completing the transaction on the best possible terms;

(e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:

(i) public discussion of the transaction would:

(A) disclose the appraisal or estimated value of the property under consideration; or

(B) prevent the public body from completing the transaction on the best possible terms;

(ii) the public body previously gave public notice that the property would be offered for sale; and

(iii) the terms of the sale are publicly disclosed before the public body approves the sale;

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- (f) discussion regarding deployment of security personnel, devices, or systems;
- (g) investigative proceedings regarding allegations of criminal misconduct;
- (h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
- (i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);
- (j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;
- (k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
- (l) as relates to the Utah Higher Education Assistance Authority and its appointed board of directors, discussing fiduciary or commercial information as defined in Section 53B-12-102;
- (m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:
  - (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
  - (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
  - (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;
- (n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary in order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
- (o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:
  - (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and
  - (ii) the public body needs to review or discuss the information in order to properly

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fulfill its role and responsibilities in the procurement process;

(p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:

(i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and

(ii) discussion of the information is necessary for the governing board to properly discharge the board's duties and conduct the board's business; or

(q) a purpose for which a meeting is required to be closed under Subsection (2).

(2) The following meetings shall be closed:

(a) a meeting of the Health and Human Services Interim Committee to review a [fatality review] report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4);

(b) a meeting of the Child Welfare Legislative Oversight Panel to:

(i) review a [fatality review] report described in Subsection 62A-16-301(1)(a), and the responses to the report described in Subsections 62A-16-301(2) and (4); or

(ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);

(c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section 26-7-13, to review and discuss an individual case, as described in Subsection 26-7-13(10); [and]

(d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose of advising the Natural Resource Conservation Service of the United States Department of Agriculture on a farm improvement project if the discussed information is protected information under federal law; and

(e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for the purpose of reviewing petitions for a medical cannabis card in accordance with Section 26-61a-105.

(3) In a closed meeting, a public body may not:

(a) interview a person applying to fill an elected position;

(b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;

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or

(c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Section 2. Section **62A-4a-101** is amended to read:

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

As used in this chapter:

- (1) "Abuse" means the same as that term is defined in Section 78A-6-105.
- (2) "Adoption services" means:
  - (a) placing children for adoption;
  - (b) subsidizing adoptions under Section 62A-4a-105;
  - (c) supervising adoption placements until the adoption is finalized by the court;
  - (d) conducting adoption studies;
  - (e) preparing adoption reports upon request of the court; and
  - (f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.
- (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of Children, [~~a person~~] an individual under 18 years [~~of age~~] old.
- (4) "Child protection team" means a team consisting of:
  - (a) the caseworker assigned to the case;
  - (b) the caseworker who made the decision to remove the child;
  - (c) a representative of the school or school district where the child attends school;
  - (d) the peace officer who removed the child from the home;
  - (e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;
  - (f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;
  - (g) members of a child protection unit; and
  - (h) any other individuals determined appropriate and necessary by the team coordinator and chair.

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(5) "Child protection unit" means any unit created by a chief of police or a sheriff of a city, town, metro township, or county that is composed of at least the following individuals who are trained in the prevention, identification, and treatment of abuse or neglect:

(a) a law enforcement officer, as defined in Section 53-13-103; and

(b) a child advocate selected by the chief of police or a sheriff.

(6) (a) "Chronic abuse" means repeated or patterned abuse.

(b) "Chronic abuse" does not mean an isolated incident of abuse.

(7) (a) "Chronic neglect" means repeated or patterned neglect.

(b) "Chronic neglect" does not mean an isolated incident of neglect.

(8) "Consult" means an interaction between two persons in which the initiating person:

(a) provides information to another person;

(b) provides the other person an opportunity to respond; and

(c) takes the other person's response, if any, into consideration.

(9) "Consumer" means a person who receives services offered by the division in accordance with this chapter.

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

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

(a) in the child's own home by a responsible ~~[person]~~ individual; or

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

(i) day-care center;

(ii) family group home; or

(iii) family child care home.

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

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

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

(15) "Domestic violence services" means:

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



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(i) [~~a person~~] an individual who is a victim of abuse, as defined in Section 78B-7-102; and

(ii) the dependent children of [~~a person~~] an individual who is a victim of abuse, as defined in Section 78B-7-102; and

(b) treatment services for [~~a person~~] an individual who is alleged to have committed, has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section 77-36-1.

(16) "Harm" means the same as that term is defined in Section 78A-6-105.

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

(18) "Incest" means the same as that term is defined in Section 78A-6-105.

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

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

(21) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of Children:

(a) a child; or

(b) [~~a person~~] an individual:

(i) who is at least 18 years [~~of age~~] old and younger than 21 years [~~of age~~] old; and

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

(22) "Molestation" means the same as that term is defined in Section 78A-6-105.

(23) "Mutual case" means a case that has been:

(a) opened by the division under the division's discretion and procedures;

(b) opened by the law enforcement agency with jurisdiction over the case; and

(c) accepted for investigation by the child protection unit established by the chief of police or sheriff, as applicable.

(24) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.

(25) "Neglect" means the same as that term is defined in Section 78A-6-105.

(26) "Protective custody," with regard to the division, means the shelter of a child by

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the division from the time the child is removed from the child's home until the earlier of:

- (a) the shelter hearing; or
- (b) the child's return home.

(27) "Protective services" means expedited services that are provided:

- (a) in response to evidence of neglect, abuse, or dependency of a child;
- (b) to a cohabitant who is neglecting or abusing a child, in order to:
  - (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the

causes of neglect or abuse; and

- (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and
  - (c) in cases where the child's welfare is endangered:

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

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

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

- (A) removal from the child's home;
- (B) placement in substitute care; and
- (C) petitioning the court for termination of parental rights.

(28) "Severe abuse" means the same as that term is defined in Section 78A-6-105.

(29) "Severe neglect" means the same as that term is defined in Section 78A-6-105.

(30) "Sexual abuse" means the same as that term is defined in Section 78A-6-105.

(31) "Sexual exploitation" means the same as that term is defined in Section 78A-6-105.

(32) "Shelter care" means the temporary care of a minor in a nonsecure facility.

(33) "Sibling" means a child who shares or has shared at least one parent in common either by blood or adoption.

(34) "Sibling visitation" means services provided by the division to facilitate the interaction between a child in division custody with a sibling of that child.

(35) "State" means:

- (a) a state of the United States;

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- (b) the District of Columbia;
- (c) the Commonwealth of Puerto Rico;
- (d) the Virgin Islands;
- (e) Guam;
- (f) the Commonwealth of the Northern Mariana Islands; or
- (g) a territory or possession administered by the United States.

(36) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

(37) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(38) "Substance abuse" means, except as provided in Section 62A-4a-404, the same as that term is defined in Section 78A-6-105.

(39) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

(40) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the minor's own home would be contrary to the minor's welfare;

(b) services provided for a minor awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

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

(42) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

(43) "Threatened harm" means the same as that term is defined in Section 78A-6-105.

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(44) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

(45) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

(46) "Unsupported" means a finding by the division at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division did not conclude that the allegation was without merit.

(47) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 3. Section **62A-4a-107** is amended to read:

### **62A-4a-107. Mandatory education and training of caseworkers -- Development of curriculum.**

(1) There is created within the division a full-time position of [~~Child Welfare Training Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee in that position~~] a child welfare training coordinator.

(2) The child welfare training coordinator is not responsible for direct casework services or the supervision of those services, but is required to:

- (a) develop child welfare curriculum that:
  - (i) is current and effective, consistent with the division's mission and purpose for child welfare; and
  - (ii) utilizes curriculum and resources from a variety of sources including those from:
    - (A) the public sector;
    - (B) the private sector; and
    - (C) inside and outside of the state;
- (b) recruit, select, and supervise child welfare trainers;
- (c) develop a statewide training program, including a budget and identification of sources of funding to support that training;
- (d) evaluate the efficacy of training in improving job performance;

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(e) assist child protective services and foster care workers in developing and fulfilling their individual training plans;

(f) monitor staff compliance with division training requirements and individual training plans; and

(g) expand the collaboration between the division and schools of social work within institutions of higher education in developing child welfare services curriculum, and in providing and evaluating training.

~~[(2)(a)]~~ (3) The director shall, with the assistance of the child welfare training coordinator, establish and ensure caseworker competency regarding a core curriculum for child welfare services that ~~[is substantially equivalent to the Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.]:~~

(a) is driven by child safety and family well-being;

(b) emphasizes child and family voice;

(c) is trauma-informed, as defined in Section 63M-7-209; and

(d) is consistent with national child welfare practice standards.

~~[(b) Any child welfare caseworker who is employed by the division for the first time after July 1, 1999, shall, before assuming significant independent casework responsibilities, successfully complete:]~~

~~[(i) the core curriculum; and]~~

~~[(ii) except as provided in Subsection (2)(c), on-the-job training that consists of observing and accompanying at least two capable and experienced child welfare caseworkers as they perform work-related functions:]~~

~~[(A) for three months if the caseworker has less than six months of on-the-job experience as a child welfare caseworker; or]~~

~~[(B) for two months if the caseworker has six months or more but less than 24 months of on-the-job experience as a child welfare caseworker.]~~

~~[(c) A child welfare caseworker with at least 24 months of on-the-job experience is not required to receive on-the-job training under Subsection (2)(b)(ii).]~~

~~[(3) Child welfare caseworkers]~~

(4) A child welfare caseworker shall complete training in:

(a) the legal duties of a child welfare caseworker;

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(b) the responsibility of a child welfare caseworker to protect the safety and legal rights of children, parents, and families at all stages of a case, including:

- (i) initial contact;
- (ii) [~~investigation~~] safety and risk assessment; and
- (iii) [~~treatment~~] intervention;

(c) recognizing situations involving:

- (i) substance abuse;
- (ii) domestic violence;
- (iii) abuse; and
- (iv) neglect; and

(d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of the United States to the child welfare caseworker's job, including:

- (i) search and seizure of evidence;
- (ii) the warrant requirement;
- (iii) exceptions to the warrant requirement; and
- (iv) removing a child from the custody of the child's parent or guardian.

~~[(4)]~~ (5) The division shall train [~~its~~] the division's child welfare caseworkers to apply the [~~risk assessment tools~~] safety, risk, needs, and strength assessment tools and rules described in Subsection 62A-4a-1002(2).

~~[(5)]~~ (6) The division shall use the training of child welfare caseworkers to emphasize:

(a) the importance of maintaining the parent-child relationship [~~whenever possible~~];

(b) the preference for providing in-home services over taking a child into protective custody, both for the emotional well-being of the child and the efficient allocation of resources; and

(c) the importance and priority of:

(i) kinship placement in the event a child must be taken into protective custody; and

(ii) guardianship placement, in the event the parent-child relationship is legally terminated and no appropriate adoptive placement is available.

~~[(6)]~~ (7) When a child welfare caseworker is hired, before assuming [~~significant~~] independent casework responsibilities, [~~the child welfare caseworker shall complete the training described in Subsections (3) through (5).~~] the division shall ensure that the child

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welfare caseworker has:

- (a) completed the training described in Subsections (4), (5), and (6); and
- (b) participated in sufficient skills development for a child welfare caseworker.

Section 4. Section **62A-4a-402** is amended to read:

### **62A-4a-402. Definitions.**

As used in this part:

(1) "A person responsible for a child's care" means the child's parent, guardian, or other person responsible for the child's care, whether in the same home as the child, a relative's home, a group, family, or center day care facility, a foster care home, or a residential institution.

(2) "Newborn child" means a child who is 30 days old or younger.

~~[(2)]~~ (3) "Subject" or "subject of the report" means any person reported under this part, including, but not limited to, a child, parent, guardian, or other person responsible for a child's care.

Section 5. Section **62A-4a-404** is amended to read:

### **62A-4a-404. Fetal alcohol syndrome or spectrum disorder and drug dependency -- Reporting requirements.**

(1) As used in this section:

(a) "Health care provider" means:

(i) an individual licensed under:

(A) Title 58, Chapter 31b, Nurse Practice Act;

(B) Title 58, Chapter 44a, Nurse Midwife Practice Act;

(C) Title 58, Chapter 67, Utah Medical Practice Act;

(D) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

(E) Title 58, Chapter 70a, Utah Physician Assistant Act; or

(F) Title 58, Chapter 77, Direct-Entry Midwife Act; or

(ii) an unlicensed individual who practices midwifery.

~~[(b) "Newborn child" means a child who is 30 days of age or younger.]~~

~~[(c)]~~ (b) "Qualified medical provider" means the same as that term is defined in Section 26-61a-102.

~~[(d)]~~ (c) (i) "Substance abuse" means ~~[the misuse or excessive use of alcohol or other~~

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~~drugs or substances~~], except as provided in Subsection (1)(c)(ii), the same as that term is defined in Section 78A-6-105.

(ii) "Substance abuse" does not include use of drugs or other substances that are:

(A) obtained by lawful prescription and used as prescribed; or

(B) obtained in accordance with Title 26, Chapter 61a, Utah Medical Cannabis Act, and used as recommended by a qualified medical provider.

(2) A health care provider who attends the birth of a newborn child or cares for a newborn child and determines ~~[any of]~~ the following, shall report the determination to the division as soon as possible:

(a) the newborn child:

(i) is adversely affected by the child's mother's substance abuse during pregnancy;

(ii) has fetal alcohol syndrome or fetal alcohol spectrum disorder; or

(iii) demonstrates drug or alcohol withdrawal symptoms; or

(b) the parent of the newborn child or a person responsible for the child's care demonstrates functional impairment or an inability to care for the child as a result of the parent's or person's substance abuse.

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

### **62A-4a-412. Reports, information, and referrals confidential.**

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

(a) a police or law enforcement agency investigating a report of known or suspected abuse or neglect, including members of a child protection unit;

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

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

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



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

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

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

(ii) devoid of conclusions drawn by the division or any of the division's workers on the ultimate issue of whether or not [~~a person's~~] an individual's acts or omissions constituted any level of abuse or neglect of another [~~person~~] individual;

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

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

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

(j) the State Board of Education, acting on behalf of itself or on behalf of a local education agency, as defined in Section 63J-5-102, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated or supported findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

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

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

(m) a licensed child-placing agency or person who is performing a preplacement adoptive evaluation in accordance with the requirements of Sections 78B-6-128 and

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78B-6-130;

(n) an Indian tribe to:

(i) certify or license a foster home;

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

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

(o) the Division of Substance Abuse and Mental Health, the Department of Health, or a local substance abuse authority, described in Section 17-43-201, for the purpose of providing substance abuse treatment to a pregnant woman or a parent of a newborn child, or the services described in Subsection 62A-15-103(2)(o).

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

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

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

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

(i) identify the referent;

(ii) impede a criminal investigation; or

(iii) endanger ~~[a person's]~~ an individual's safety.

(4) Any person who ~~[willfully]~~ willfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections

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62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

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

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

(a) may provide this report to the person who is the subject of the report; and

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

(7) (a) Except as provided in Subsection (7)(b), in a divorce, custody, or related proceeding between private parties, a court may not receive into evidence a report that:

(i) is provided to the court:

(A) under Subsection (1)(f); or

(B) by a parent of the child after the record is made available to the parent under Subsection (1)(e);

(ii) describes a parent of the child as the alleged perpetrator; and

(iii) ~~{the division finds is}~~ **is found to be** unsubstantiated, unsupported, or without merit.

(b) (i) After a motion to admit the report described in Subsection (7)(a) is made, the court shall allow sufficient time for all subjects of the record to respond before making a finding on the motion.

(ii) After considering the motion described in Subsection (7)(b), the court may receive the report into evidence upon a finding on the record of good cause.

Section 7. Section **62A-4a-1003** is amended to read:

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

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

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

(i) are private, controlled, or protected records under Title 63G, Chapter 2, Government

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Records Access and Management Act; and

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

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

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

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

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

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

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

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

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

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

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

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

(e) a record of all reports of abuse or neglect received by the division with regard to that child's parent, parents, or guardian including:

(i) for each report, documentation of the:

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- (A) latest status; or
  - (B) final outcome or determination; and
  - (ii) information that indicates whether each report was found to be:
    - (A) supported;
    - (B) unsupported;
    - (C) substantiated;
    - (D) unsubstantiated; or
    - (E) without merit;
  - (f) the number of times the child's parent or parents failed any child and family plan;
- and
- (g) the number of different caseworkers who have been assigned to that child in the past.
- (3) The division's Management Information System shall:
- (a) contain all key elements of each family's current child and family plan, including:
    - (i) the dates and number of times the plan has been administratively or judicially reviewed;
    - (ii) the number of times the parent or parents have failed that child and family plan;
- and
- (iii) the exact length of time the child and family plan has been in effect; and
  - (b) alert caseworkers regarding deadlines for completion of and compliance with policy, including child and family plans.
- (4) With regard to all child protective services cases, the Management Information System shall:
- (a) monitor the compliance of each case with:
    - (i) division rule;
    - (ii) state law; and
    - (iii) federal law and regulation; and
  - (b) include the age and date of birth of the alleged perpetrator at the time the abuse or neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of the alleged perpetrator.
- (5) Except as provided in Subsection (6) regarding contract providers and Section

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62A-4a-1006 regarding limited access to the Licensing Information System, all information contained in the division's Management Information System is available to the department, upon the approval of the executive director, on a need-to-know basis.

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

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

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

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

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

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

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

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

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

(ii) train its employees regarding:

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

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

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

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

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

Section 8. Section **62A-15-103** is amended to read:

### **62A-15-103. Division -- Creation -- Responsibilities.**

(1) (a) There is created the Division of Substance Abuse and Mental Health within the department, under the administration and general supervision of the executive director.

(b) The division is the substance abuse authority and the mental health authority for this state.

(2) The division shall:

(a) (i) educate the general public regarding the nature and consequences of substance abuse by promoting school and community-based prevention programs;

(ii) render support and assistance to public schools through approved school-based substance abuse education programs aimed at prevention of substance abuse;

(iii) promote or establish programs for the prevention of substance abuse within the community setting through community-based prevention programs;

(iv) cooperate with and assist treatment centers, recovery residences, and other organizations that provide services to individuals recovering from a substance abuse disorder, by identifying and disseminating information about effective practices and programs;

(v) except as provided in Section 62A-15-103.5, make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to develop, in collaboration with public and private programs, minimum standards for public and private providers of substance abuse and mental health programs licensed by the department under Title 62A, Chapter 2, Licensure of Programs and Facilities;

(vi) promote integrated programs that address an individual's substance abuse, mental health, physical health, and criminal risk factors;

(vii) establish and promote an evidence-based continuum of screening, assessment,

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prevention, treatment, and recovery support services in the community for individuals with substance use disorder and mental illness that addresses criminal risk factors;

(viii) evaluate the effectiveness of programs described in this Subsection (2);

(ix) consider the impact of the programs described in this Subsection (2) on:

(A) emergency department utilization;

(B) jail and prison populations;

(C) the homeless population; and

(D) the child welfare system; and

(x) promote or establish programs for education and certification of instructors to educate ~~[persons]~~ individuals convicted of driving under the influence of alcohol or drugs or driving with any measurable controlled substance in the body;

(b) (i) collect and disseminate information pertaining to mental health;

(ii) provide direction over the state hospital including approval of the state hospital's budget, administrative policy, and coordination of services with local service plans;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote family involvement, when appropriate, and with patient consent, in the treatment program of a family member; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to direct that an individual receiving services through a local mental health authority or the Utah State Hospital be informed about and, if desired by the individual, provided assistance in the completion of a declaration for mental health treatment in accordance with Section 62A-15-1002;

(c) (i) consult and coordinate with local substance abuse authorities and local mental health authorities regarding programs and services;

(ii) provide consultation and other assistance to public and private agencies and groups working on substance abuse and mental health issues;

(iii) promote and establish cooperative relationships with courts, hospitals, clinics, medical and social agencies, public health authorities, law enforcement agencies, education and research organizations, and other related groups;

(iv) promote or conduct research on substance abuse and mental health issues, and



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submit to the governor and the Legislature recommendations for changes in policy and legislation;

(v) receive, distribute, and provide direction over public funds for substance abuse and mental health services;

(vi) monitor and evaluate programs provided by local substance abuse authorities and local mental health authorities;

(vii) examine expenditures of local, state, and federal funds;

(viii) monitor the expenditure of public funds by:

(A) local substance abuse authorities;

(B) local mental health authorities; and

(C) in counties where they exist, a private contract provider that has an annual or otherwise ongoing contract to provide comprehensive substance abuse or mental health programs or services for the local substance abuse authority or local mental health authority;

(ix) contract with local substance abuse authorities and local mental health authorities to provide a comprehensive continuum of services that include community-based services for individuals involved in the criminal justice system, in accordance with division policy, contract provisions, and the local plan;

(x) contract with private and public entities for special statewide or nonclinical services, or services for individuals involved in the criminal justice system, according to division rules;

(xi) review and approve each local substance abuse authority's plan and each local mental health authority's plan in order to ensure:

(A) a statewide comprehensive continuum of substance abuse services;

(B) a statewide comprehensive continuum of mental health services;

(C) services result in improved overall health and functioning;

(D) a statewide comprehensive continuum of community-based services designed to reduce criminal risk factors for individuals who are determined to have substance abuse or mental illness conditions or both, and who are involved in the criminal justice system;

(E) compliance, where appropriate, with the certification requirements in Subsection (2)(j); and

(F) appropriate expenditure of public funds;

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(xii) review and make recommendations regarding each local substance abuse authority's contract with the local substance abuse authority's provider of substance abuse programs and services and each local mental health authority's contract with the local mental health authority's provider of mental health programs and services to ensure compliance with state and federal law and policy;

(xiii) monitor and ensure compliance with division rules and contract requirements;  
and

(xiv) withhold funds from local substance abuse authorities, local mental health authorities, and public and private providers for contract noncompliance, failure to comply with division directives regarding the use of public funds, or for misuse of public funds or money;

(d) ensure that the requirements of this part are met and applied uniformly by local substance abuse authorities and local mental health authorities across the state;

(e) require each local substance abuse authority and each local mental health authority, in accordance with Subsections 17-43-201(5)(b) and 17-43-301(6)(a)(ii), to submit a plan to the division on or before May 15 of each year;

(f) conduct an annual program audit and review of each local substance abuse authority and each local substance abuse authority's contract provider, and each local mental health authority and each local mental health authority's contract provider, including:

(i) a review and determination regarding whether:

(A) public funds allocated to the local substance abuse authority or the local mental health authorities are consistent with services rendered by the authority or the authority's contract provider, and with outcomes reported by the authority's contract provider; and

(B) each local substance abuse authority and each local mental health authority is exercising sufficient oversight and control over public funds allocated for substance use disorder and mental health programs and services; and

(ii) items determined by the division to be necessary and appropriate; and

(g) define "prevention" by rule as required under Title 32B, Chapter 2, Part 4, Alcoholic Beverage and Substance Abuse Enforcement and Treatment Restricted Account Act;

(h) (i) train and certify an adult as a peer support specialist, qualified to provide peer supports services to an individual with:

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(A) a substance use disorder;

(B) a mental health disorder; or

(C) a substance use disorder and a mental health disorder;

(ii) certify a person to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist;

(iii) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) establish training and certification requirements for a peer support specialist;

(B) specify the types of services a peer support specialist is qualified to provide;

(C) specify the type of supervision under which a peer support specialist is required to operate; and

(D) specify continuing education and other requirements for maintaining or renewing certification as a peer support specialist; and

(iv) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

(A) establish the requirements for a person to be certified to carry out, as needed, the division's duty to train and certify an adult as a peer support specialist; and

(B) specify how the division shall provide oversight of a person certified to train and certify a peer support specialist;

(i) except as provided in Section 62A-15-103.5, establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, minimum standards and requirements for the provision of substance use disorder and mental health treatment to an individual who is incarcerated or who is required to participate in treatment by a court or by the Board of Pardons and Parole, including:

(i) collaboration with the Department of Corrections and the Utah Substance Use and Mental Health Advisory Council to develop and coordinate the standards, including standards for county and state programs serving individuals convicted of class A and class B misdemeanors;

(ii) determining that the standards ensure available treatment, including the most current practices and procedures demonstrated by recognized scientific research to reduce recidivism, including focus on the individual's criminal risk factors; and

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(iii) requiring that all public and private treatment programs meet the standards established under this Subsection (2)(i) in order to receive public funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice for the costs of providing screening, assessment, prevention, treatment, and recovery support;

(j) except as provided in Section 62A-15-103.5, establish by rule, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the requirements and procedures for the certification of licensed public and private providers, including individuals licensed by the Division of Occupational and Professional Licensing, programs licensed by the department, and health care facilities licensed by the Department of Health, who provide, as part of their practice, substance use disorder and mental health treatment to an individual involved in the criminal justice system, including:

(i) collaboration with the Department of Corrections, the Utah Substance Use and Mental Health Advisory Council, and the Utah Association of Counties to develop, coordinate, and implement the certification process;

(ii) basing the certification process on the standards developed under Subsection (2)(i) for the treatment of an individual involved in the criminal justice system; and

(iii) the requirement that a public or private provider of treatment to an individual involved in the criminal justice system shall obtain certification on or before July 1, 2016, and shall renew the certification every two years, in order to qualify for funds allocated to the division, the Department of Corrections, or the Commission on Criminal and Juvenile Justice on or after July 1, 2016;

(k) collaborate with the Commission on Criminal and Juvenile Justice to analyze and provide recommendations to the Legislature regarding:

(i) pretrial services and the resources needed to reduce recidivism;

(ii) county jail and county behavioral health early-assessment resources needed for an offender convicted of a class A or class B misdemeanor; and

(iii) the replacement of federal dollars associated with drug interdiction law enforcement task forces that are reduced;

(l) (i) establish performance goals and outcome measurements for all treatment programs for which minimum standards are established under Subsection (2)(i), including recidivism data and data regarding cost savings associated with recidivism reduction and the

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reduction in the number of inmates, that are obtained in collaboration with the Administrative Office of the Courts and the Department of Corrections; and

(ii) collect data to track and determine whether the goals and measurements are being attained and make this information available to the public;

(m) in the division's discretion, use the data to make decisions regarding the use of funds allocated to the division, the Administrative Office of the Courts, and the Department of Corrections to provide treatment for which standards are established under Subsection (2)(i);

(n) annually, on or before August 31, submit the data collected under Subsection (2)(k) to the Commission on Criminal and Juvenile Justice, which shall compile a report of findings based on the data and provide the report to the Judiciary Interim Committee, the Health and Human Services Interim Committee, the Law Enforcement and Criminal Justice Interim Committee, and the related appropriations subcommittees; and

(o) consult and coordinate with the Department of Health and the Division of Child and Family Services to develop and manage the operation of a program designed to reduce substance abuse during pregnancy and by parents of a newborn child that includes:

(i) providing education and resources to health care providers and individuals in the state regarding prevention of substance abuse during pregnancy;

(ii) providing training to health care providers in the state regarding screening of a pregnant woman or pregnant minor to identify a substance abuse disorder; and

(iii) providing referrals to pregnant women [or], pregnant minors, or parents of a newborn child in need of substance [use] abuse treatment services to a facility that has the capacity to provide the treatment services.

(3) In addition to the responsibilities described in Subsection (2), the division shall, within funds appropriated by the Legislature for this purpose, implement and manage the operation of a firearm safety and suicide prevention program, in consultation with the Bureau of Criminal Identification created in Section 53-10-201, including:

(a) coordinating with the Department of Health, local mental health and substance abuse authorities, a nonprofit behavioral health advocacy group, and a representative from a Utah-based nonprofit organization with expertise in the field of firearm use and safety that represents firearm owners, to:

(i) produce and periodically review and update a firearm safety brochure and other

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educational materials with information about the safe handling and use of firearms that includes:

- (A) information on safe handling, storage, and use of firearms in a home environment;
- (B) information about at-risk individuals and individuals who are legally prohibited from possessing firearms;
- (C) information about suicide prevention awareness; and
- (D) information about the availability of firearm safety packets;
- (ii) procure cable-style gun locks for distribution [~~pursuant to~~] under this section;
- (iii) produce a firearm safety packet that includes the firearm safety brochure and the cable-style gun lock described in this Subsection (3); and
- (iv) create a suicide prevention education course that:
  - (A) provides information for distribution regarding firearm safety education;
  - (B) incorporates current information on how to recognize suicidal behaviors and identify individuals who may be suicidal; and
  - (C) provides information regarding crisis intervention resources;
- (b) distributing, free of charge, the firearm safety packet to the following persons, who shall make the firearm safety packet available free of charge:
  - (i) health care providers, including emergency rooms;
  - (ii) mobile crisis outreach teams;
  - (iii) mental health practitioners;
  - (iv) other public health suicide prevention organizations;
  - (v) entities that teach firearm safety courses;
  - (vi) school districts for use in the seminar, described in Section 53G-9-702, for parents of students in the school district; and
  - (vii) firearm dealers to be distributed in accordance with Section 76-10-526;
- (c) creating and administering a redeemable coupon program described in this Subsection (3) and Section 76-10-526 that includes:
  - (i) producing a redeemable coupon that offers between \$10 and \$200 off the purchase price of a firearm safe from a participating firearms dealer or a person engaged in the business of selling firearm safes in Utah, by a Utah resident who has filed an application for a concealed firearm permit; and

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(ii) collecting the receipts described in Section 76-10-526 from the participating dealers and persons and reimbursing the dealers and persons;

(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, making rules that establish procedures for:

(i) producing and distributing the suicide prevention education course and the firearm safety brochures and packets;

(ii) procuring the cable-style gun locks for distribution; and

(iii) administering the redeemable coupon program; and

(e) reporting to the Health and Human Services Interim Committee regarding implementation and success of the firearm safety program and suicide prevention education course at or before the November meeting each year.

(4) (a) The division may refuse to contract with and may pursue legal remedies against any local substance abuse authority or local mental health authority that fails, or has failed, to expend public funds in accordance with state law, division policy, contract provisions, or directives issued in accordance with state law.

(b) The division may withhold funds from a local substance abuse authority or local mental health authority if the authority's contract provider of substance abuse or mental health programs or services fails to comply with state and federal law or policy.

(5) (a) Before reissuing or renewing a contract with any local substance abuse authority or local mental health authority, the division shall review and determine whether the local substance abuse authority or local mental health authority is complying with the oversight and management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and 17-43-309.

(b) Nothing in this Subsection (5) may be used as a defense to the responsibility and liability described in Section 17-43-303 and to the responsibility and liability described in Section 17-43-203.

(6) In carrying out the division's duties and responsibilities, the division may not duplicate treatment or educational facilities that exist in other divisions or departments of the state, but shall work in conjunction with those divisions and departments in rendering the treatment or educational services that those divisions and departments are competent and able to provide.

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(7) The division may accept in the name of and on behalf of the state donations, gifts, devises, or bequests of real or personal property or services to be used as specified by the donor.

(8) The division shall annually review with each local substance abuse authority and each local mental health authority the authority's statutory and contract responsibilities regarding:

- (a) use of public funds;
- (b) oversight of public funds; and
- (c) governance of substance use disorder and mental health programs and services.

(9) The Legislature may refuse to appropriate funds to the division upon the division's failure to comply with the provisions of this part.

(10) If a local substance abuse authority contacts the division under Subsection 17-43-201(10) for assistance in providing treatment services to a pregnant woman or pregnant minor, the division shall:

- (a) refer the pregnant woman or pregnant minor to a treatment facility that has the capacity to provide the treatment services; or
- (b) otherwise ensure that treatment services are made available to the pregnant woman or pregnant minor.

(11) The division shall employ a school-based mental health specialist to be housed at the State Board of Education who shall work with the State Board of Education to:

- (a) provide coordination between a local education agency and local mental health authority;
- (b) recommend evidence-based and evidence informed mental health screenings and intervention assessments for a local education agency; and
- (c) coordinate with the local community, including local departments of health, to enhance and expand mental health related resources for a local education agency.

Section 9. Section **62A-16-102** is amended to read:

### **62A-16-102. Definitions.**

(1) "Abuse" means the same as that term is defined in Section 78A-6-105.

(2) "Child" means the same as that term is defined in Section 62A-4a-101.

[~~(1)~~] (3) "Committee" means a fatality review committee[;] that is formed under



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Section 62A-16-202 or 62A-16-203.

(4) "Dependency" means the same as that term is defined in Section 62A-4a-101.

(5) "Formal review" means a review of a death or a near fatality that is ordered under Subsection 62A-16-201(6).

(6) "Near fatality" means alleged abuse or neglect that, as certified by a physician, places a child in serious or critical condition.

~~(2)~~ (7) "Qualified individual" means an individual who:

(a) at the time that the individual dies, is a resident of a facility or program that is owned or operated by the department or a division of the department;

(b) (i) is in the custody of the department or a division of the department; and

(ii) is placed in a residential placement by the department or a division of the department;

(c) at the time that the individual dies, has an open case for the receipt of child welfare services, including:

(i) an investigation for abuse, neglect, or dependency;

(ii) foster care;

(iii) in-home services; or

(iv) substitute care;

(d) had an open case for the receipt of child welfare services within one year ~~[immediately preceding]~~ before the day on which the individual dies;

(e) was the subject of an accepted referral received by Adult Protective Services within one year ~~[immediately preceding]~~ before the day on which the individual dies, if:

(i) the department or a division of the department is aware of the death; and

(ii) the death is reported as a homicide, suicide, or an undetermined cause;

(f) received services from, or under the direction of, the Division of Services for People with Disabilities within one year ~~[immediately preceding]~~ before the day on which the individual dies, unless the individual:

(i) lived in the individual's home at the time of death; and

(ii) the director of the Office of Quality and Design determines that the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department;

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(g) dies within 60 days after the day on which the individual is discharged from the Utah State Hospital, if the department is aware of the death; [or]

(h) is a child who:

(i) suffers a near fatality; and

(ii) is the subject of an open case for the receipt of child welfare services within one year before the day on which the child suffered the near fatality, including:

(A) an investigation for abuse, neglect, or dependency;

(B) foster care;

(C) in-home services; or

(D) substitute care; or

~~(h)~~ (i) is designated as a qualified individual by the executive director.

(8) "Neglect" means the same as that term is defined in Section 78A-6-105.

(9) "Substitute care" means the same as that term is defined in Section 62A-4a-101.

Section 10. Section **62A-16-201** is amended to read:

### **62A-16-201. Initial review.**

(1) Within seven days after the day on which the department knows that a qualified individual has died or is an individual described in Subsection 62A-16-102(7)(h), a person designated by the department shall:

(a) (i) for a death, complete a deceased client report form, created by the department; ~~and~~ or

(ii) for an individual described in Subsection 62A-16-102(7)(h), complete a near fatality client report form, created by the department; and

(b) forward the completed client report form to the director of the office or division that has jurisdiction over the region or facility.

(2) The director of the office or division described in Subsection (1) shall, upon receipt of a near fatality client report form or a deceased client report form, immediately provide a copy of the form to:

(a) the executive director; and

(b) the fatality review coordinator or the fatality review coordinator's designee.

(3) Within 10 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives a copy of the near fatality client report form or the

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deceased client report form, the fatality review coordinator or the fatality review coordinator's designee shall request a copy of all relevant department case records regarding the individual who is the subject of the [~~deceased~~] client report form.

(4) Each person who receives a request for a record described in Subsection (3) shall provide a copy of the record to the fatality review coordinator or the fatality review coordinator's designee, by a secure method, within seven days after the day on which the request is made.

(5) Within 30 days after the day on which the fatality review coordinator or the fatality review coordinator's designee receives the case records requested under Subsection (3), the fatality review coordinator, or the fatality review coordinator's designee, shall:

(a) review the [~~deceased~~] client report form, the case files, and other relevant information received by the fatality review coordinator; and

(b) make a recommendation to the director of the Office of Quality and Design regarding whether a formal [~~fatality~~] review of the death or near fatality should be conducted.

(6) (a) In accordance with Subsection (6)(b), within seven days after the day on which the fatality review coordinator or the fatality review coordinator's designee makes the recommendation described in Subsection (5)(b), the director of the Office of Quality and Design or the director's designee shall determine whether to order that a [~~formal fatality~~] review of the death or near fatality be conducted.

(b) The director of the Office of Quality and Design or the director's designee shall order that a formal [~~fatality~~] review of the death or near fatality be conducted if:

(i) at the time of the near fatality or the death, the qualified individual is:

(A) an individual described in Subsection 62A-16-102[~~(2)~~](6)(a) or (b), unless:

(I) the near fatality or the death is due to a natural cause; or

(II) the director of the Office of Quality and Design or the director's designee determines that the near fatality or the death was not in any way related to services that were provided by, or under the direction of, the department or a division of the department; or

(B) a child in foster care or substitute care, unless the near fatality or the death is due to:

(I) a natural cause; or

(II) an accident;

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(ii) it appears, based on the information provided to the director of the Office of Quality and Design or the director's designee, that:

(A) a provision of law, rule, policy, or procedure relating to the ~~[deceased]~~ qualified individual or the ~~[deceased]~~ individual's family may not have been complied with;

(B) the near fatality or the fatality was not responded to properly;

(C) a law, rule, policy, or procedure may need to be changed; or

(D) additional training is needed;

(iii) (A) the death is caused by suicide; or

(B) the near fatality is caused by attempted suicide; or

(iv) the director of the Office of Quality and Design or the director's designee determines that another reason exists to order that a ~~[formal fatality]~~ review of the near fatality or the death be conducted.

Section 11. Section **62A-16-202** is amended to read:

**62A-16-202. Fatality Review Committee for a qualified individual who was not a resident of the Utah State Hospital or the Utah State Developmental Center.**

(1) Except for a fatality review committee described in Section 62A-16-203, the fatality review coordinator shall organize a fatality review committee for each formal ~~[fatality review that is ordered to be conducted under Subsection 62A-16-201(6)]~~ review.

(2) Except as provided in Subsection (5), a committee described in Subsection (1):

(a) shall include the following members:

(i) the department's fatality review coordinator, who shall designate a member of the committee to serve as chair of the committee;

(ii) a member of the board, if there is a board, of the relevant division or office;

(iii) the attorney general or the attorney general's designee;

(iv) (A) a member of the management staff of the relevant division or office; or

(B) a person who is a supervisor, or a higher level position, from a region that did not have jurisdiction over the qualified individual; and

(v) a member of the department's risk management services; and

(b) may include the following members:

(i) a health care professional;

(ii) a law enforcement officer; or

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(iii) a representative of the Office of Public Guardian.

(3) If a death that is subject to formal review involves a qualified individual described in Subsection 62A-16-102~~[(2)(c) or (d)]~~(7)(c), (d), or (h), the committee may also include:

(a) a health care professional;

(b) a law enforcement officer;

(c) the director of the Office of Guardian ad Litem;

(d) an employee of the division who may be able to provide information or expertise that would be helpful to the formal review; or

(e) a professional whose knowledge or expertise may significantly contribute to the formal review.

(4) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.

(5) A committee described in this section may not include an individual who was involved in, or who supervises a person who was involved in, the ~~[fatality:]~~ near fatality or the death.

(6) Each member of a committee described in this section who is not an employee of the department shall sign a form, created by the department, indicating that the member agrees to:

(a) keep all information relating to ~~[a fatality]~~ the formal review confidential; and

(b) not release any information relating to a ~~[fatality]~~ formal review, unless required or permitted by law to release the information.

Section 12. Section **62A-16-203** is amended to read:

**62A-16-203. Fatality Review Committees for a resident of the Utah State Hospital or the Utah State Developmental Center.**

(1) If a qualified individual who is the subject of a formal ~~[fatality review that is ordered to be conducted under Subsection 62A-16-201(6)]~~ review was a resident of the Utah State Hospital or the Utah State Developmental Center, the fatality review coordinator of that facility shall organize a fatality review committee to review the ~~[fatality:]~~ near fatality or the death.

(2) Except as provided in Subsection (4), a committee described in Subsection (1) shall include the following members:

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- (a) the fatality review coordinator for the facility, who shall serve as chair of the committee;
  - (b) a member of the management staff of the facility;
  - (c) a supervisor of a unit other than the one in which the qualified individual resided;
  - (d) a physician;
  - (e) a representative from the administration of the division that oversees the facility;
  - (f) the department's fatality review coordinator;
  - (g) a member of the department's risk management services; and
  - (h) a citizen who is not an employee of the department.
- (3) A committee described in Subsection (1) may also include a person whose knowledge or expertise may significantly contribute to the formal review.
- (4) A committee described in this section may not include an individual who:
- (a) was involved in, or who supervises a person who was involved in, the [fatality] near fatality or the death; or
  - (b) has a conflict with the fatality review.

Section 13. Section **62A-16-204** is amended to read:

### **62A-16-204. Fatality Review Committee proceedings.**

- (1) A majority vote of committee members present constitutes the action of the committee.
- (2) The department shall give the committee access to all reports, records, and other documents that are relevant to the [fatality] near fatality or the death under investigation, including:
- (a) narrative reports;
  - (b) case files;
  - (c) autopsy reports; and
  - (d) police reports, unless the report is protected from disclosure under Subsection 63G-2-305(10) or (11).
- (3) The Utah State Hospital and the Utah State Developmental Center shall provide protected health information to the committee if requested by a fatality review coordinator.
- (4) A committee shall convene its first meeting within 14 days after the day on which a formal ~~[fatality review is ordered under Subsection 62A-16-201(6)]~~ review is ordered, unless

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this time is extended, for good cause, by the director of the Office of Quality and Design.

(5) A committee may interview a staff member, a provider, or any other person who may have knowledge or expertise that is relevant to the [fatality] formal review.

(6) A committee shall render an advisory opinion regarding:

(a) whether the provisions of law, rule, policy, and procedure relating to the [deceased] qualified individual and the [deceased] individual's family were complied with;

(b) whether the [fatality] near fatality or the death was responded to properly;

(c) whether to recommend that a law, rule, policy, or procedure be changed; and

(d) whether additional training is needed.

Section 14. Section **62A-16-301** is amended to read:

### **62A-16-301. Fatality review committee report -- Response to report.**

(1) Within 20 days after the day on which the committee proceedings described in Section 62A-16-204 end, the committee shall submit:

(a) a written report to the executive director that includes:

(i) the advisory opinions made under Subsection 62A-16-204(6); and

(ii) any recommendations regarding action that should be taken in relation to an employee of the department or a person who contracts with the department;

(b) a copy of the report described in Subsection (1)(a) to:

(i) the director, or the director's designee, of the office or division to which the [fatality] near fatality or the death relates; and

(ii) the regional director, or the regional director's designee, of the region to which the [fatality] near fatality or the death relates; and

(c) a copy of the report described in Subsection (1)(a), with only identifying information redacted, to the Office of Legislative Research and General Counsel.

(2) Within 20 days after the day on which the director described in Subsection (1)(b)(i) receives a copy of the report described in Subsection (1)(a), the director shall provide a written response to the director of the Office of Quality and Design and a copy of the response, with only identifying information redacted, to the Office of Legislative Research and General Counsel, if the report:

(a) indicates that a law, rule, policy, or procedure was not complied with;

(b) indicates that the [fatality] near fatality or the death was not responded to properly;

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- (c) recommends that a law, rule, policy, or procedure be changed; or
- (d) indicates that additional training is needed.

(3) The response described in Subsection (2) shall include a plan of action to implement any recommended improvements within the office or division.

(4) Within 30 days after the day on which the executive director receives the response described in Subsection (2), the executive director, or the executive director's designee shall:

(a) review the plan of action described in Subsection (3);

(b) make any written response that the executive director or the executive director's designee determines is necessary;

(c) provide a copy of the written response described in Subsection (4)(b), with only identifying information redacted, to the Office of Legislative Research and General Counsel; and

(d) provide an unredacted copy of the response described in Subsection (4)(b) to the director of the Office of Quality and Design.

(5) A report described in Subsection (1) and each response described in this section is a protected record.

(6) (a) As used in this Subsection (6), "fatality review document" means any document created in connection with, or as a result of, a [fatality] formal review of a near fatality or a death, or a decision whether to conduct a [fatality] formal review of a near fatality or a death, including:

(i) a report described in Subsection (1);

(ii) a response described in this section;

(iii) a recommendation regarding whether a [fatality] formal review should be conducted;

(iv) a decision to conduct a [fatality] formal review;

(v) notes of a person who participates in a [fatality] formal review;

(vi) notes of a person who reviews a [fatality] formal review report;

(vii) minutes of a [fatality] formal review;

(viii) minutes of a meeting where a [fatality] formal review report is reviewed; and

(ix) minutes of, documents received in relation to, and documents generated in relation to, the portion of a meeting of the Health and Human Services Interim Committee or the Child



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Welfare Legislative Oversight Panel that a [fatality] formal review report or a document described in this Subsection (6)(a) is reviewed or discussed.

(b) A fatality review document is not subject to discovery, subpoena, or similar compulsory process in any civil, judicial, or administrative proceeding, nor shall any individual or organization with lawful access to the data be compelled to testify with regard to a report described in Subsection (1) or a response described in this section.

(c) The following are not admissible as evidence in a civil, judicial, or administrative proceeding:

(i) a fatality review document; and

(ii) an executive summary described in Subsection 62A-16-302(4).

Section 15. Section **62A-16-302** is amended to read:

### **62A-16-302. Reporting to, and review by, legislative committees.**

(1) The Office of Legislative Research and General Counsel shall provide a copy of the report described in Subsection 62A-16-301(1)(b), and the responses described in Subsections 62A-16-301(2) and (4)(c) to the chairs of:

(a) the Health and Human Services Interim Committee; or

(b) if the qualified individual who is the subject of the report [~~was, at the time of death, a person~~] is an individual described in Subsection 62A-16-102[(2)(c) or (d)](7)(c), (d), or (h), the Child Welfare Legislative Oversight Panel.

(2) (a) The Health and Human Services Interim Committee may, in a closed meeting, review a report described in Subsection 62A-16-301(1)(b).

(b) The Child Welfare Legislative Oversight Panel shall, in a closed meeting, review a report described in Subsection (1)(b).

(3) (a) [~~Neither the~~] The Health and Human Services Interim Committee [~~nor~~] and the Child Welfare Legislative Oversight Panel may not interfere with, or make recommendations regarding, the resolution of a particular case.

(b) The purpose of a review described in Subsection (2) is to assist a committee or panel described in Subsection (2) in determining whether to recommend a change in the law.

(c) Any recommendation, described in Subsection (3)(b), by a committee or panel for a change in the law shall be made in an open meeting.

(4) (a) On or before September 1 of each year, the department shall provide an

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executive summary of all [fatality] formal review reports for the preceding state fiscal year to the Office of Legislative Research and General Counsel.

(b) The Office of Legislative Research and General Counsel shall forward a copy of the executive summary described in Subsection (4)(a) to:

(i) the Health and Human Services Interim Committee; and

(ii) the Child Welfare Legislative Oversight Panel.

(5) The executive summary described in Subsection (4):

(a) may not include any names or identifying information;

(b) shall include:

(i) all recommendations regarding changes to the law that were made during the preceding fiscal year under Subsection 62A-16-204(6);

(ii) all changes made, or in the process of being made, to a law, rule, policy, or procedure in response to a [fatality] formal review that occurred during the preceding fiscal year;

(iii) a description of the training that has been completed in response to a [fatality] formal review that occurred during the preceding fiscal year;

(iv) statistics for the preceding fiscal year regarding:

(A) the number of qualified individuals and the type of [~~fatalities of qualified individuals~~] deaths and near fatalities that are known to the department;

(B) the number of formal [fatality] reviews conducted;

(C) the categories[;] described in Subsection 62A-16-102(2) of qualified individuals [~~who died~~];

(D) the gender, age, race, and other significant categories of qualified individuals [~~who died~~]; and

(E) the number of fatalities of qualified individuals known to the department that are identified as suicides; and

(v) action taken by the Office of Licensing and the Bureau of Internal Review and Audits in response to the [fatality] near fatality or the death of a qualified individual; and

(c) is a public document.

(6) The Division of Child and Family Services shall, to the extent required by the federal Child Abuse Prevention and Treatment Act, as amended, allow public disclosure of the

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findings or information relating to a case of child abuse or neglect that results in a child fatality or a near fatality.

Section 16. Section **63G-2-202** is amended to read:

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

(1) Except as provided in Subsection (11)(a), a governmental entity:

(a) shall, upon request, disclose a private record to:

(i) the subject of the record;

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

(iii) the legal guardian of a legally incapacitated individual who is the subject of the record;

(iv) any other individual who:

(A) has a power of attorney from the subject of the record;

(B) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

(C) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(v) any person to whom the record must be provided pursuant to:

(A) court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; and

(b) may disclose a private record described in Subsections 63G-2-302(1)(j) through (m), without complying with Section 63G-2-206, to another governmental entity for a purpose related to:

(i) voter registration; or

(ii) the administration of an election.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, physician assistant, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to

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the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection [~~(10)~~ or] (11)(b), a governmental entity shall disclose a protected record to:

(a) the person that submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) Except as provided in Subsection (1)(b), a governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, state, the United States, or a foreign government only as provided by Section 63G-2-206.

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(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

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

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

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

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

(iv) prohibits the researcher from:

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

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

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

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

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

(d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a record described in Subsection 63G-2-302(1)(w).

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

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

(ii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

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

(i) private under Section 63G-2-302;

(ii) controlled under Section 63G-2-304; or

(iii) protected under Section 63G-2-305, subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(7), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

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

~~[(11)]~~ (10) (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(a)(v).

(b) A protected record described in Subsection 63G-2-305(43) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

~~[(12)]~~ (11) (a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:

(i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

(ii) Subsections 62A-16-302(1) and (6).

(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

Section 17. Section **63G-2-305** is amended to read:

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

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

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

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

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

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

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

(3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause

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substantial financial injury to the governmental entity or state economy;

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

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

(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:

(a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

- (i) an invitation for bids;
- (ii) a request for proposals;
- (iii) a request for quotes;
- (iv) a grant; or
- (v) other similar document; or

(b) an unsolicited proposal, as defined in Section 63G-6a-712;

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

## **SB0099S03 compared with SB0099S01**

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) members of a legislative body;

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

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

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

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

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

(21) research requests from legislators to the Office of Legislative Research and General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in response to these requests;

(22) drafts, unless otherwise classified as public;

(23) records concerning a governmental entity's strategy about:

(a) collective bargaining; or

(b) imminent or pending litigation;

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

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

(26) records that reveal the location of historic, prehistoric, paleontological, or

## **SB0099S03 compared with SB0099S01**

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

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

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

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

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

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

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

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

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

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

## **SB0099S03 compared with SB0099S01**

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

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

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

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

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- (II) a sponsor of sponsored research;
- (iii) unpublished manuscripts;
- (iv) creative works in process;
- (v) scholarly correspondence; and
- (vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

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

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

- (a) a production facility; or
- (b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

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

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

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and

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Secondhand Merchandise Transaction Information Act;

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

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

- (a) the safety of the general public; or
- (b) the security of:
  - (i) governmental property;
  - (ii) governmental programs; or
  - (iii) the property of a private person who provides the Division of Emergency

Management information;

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

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

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

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

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

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

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

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

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(ii) the individual complying with the law, ordinance, rule, or order;

(52) the portion of the following documents that contains a candidate's residential or mailing address, if the candidate provides to the filing officer another address or phone number where the candidate may be contacted:

(a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section 20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502, or 20A-9-601;

(b) an affidavit of impecuniosity, described in Section 20A-9-201; or

(c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;

(53) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge including information disclosed under Subsection 78A-12-203(5)(e);

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

~~[(56) records contained in the Management Information System created in Section 62A-4a-1003;]~~

~~[(57)]~~ (56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

~~[(58)]~~ (57) information requested by and provided to the 911 Division under Section 63H-7a-302;

~~[(59)]~~ (58) in accordance with Section 73-10-33:



## **SB0099S03 compared with SB0099S01**

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

~~[(60)]~~ (59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

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

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

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

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

~~[(61)]~~ (60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

~~[(62)]~~ (61) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);

## SB0099S03 compared with SB0099S01

~~[(63)]~~ (62) a record described in Section 63G-12-210;

~~[(64)]~~ (63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;

~~[(65)]~~ (64) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund;

~~[(66)]~~ (65) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 62A-2-101, except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;

~~[(67)]~~ (66) a record pertaining to the search process for a president of an institution of higher education described in Section 53B-2-102, except for application materials for a publicly announced finalist;

~~[(68)]~~ (67) an audio recording that is:

(a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;

## SB0099S03 compared with SB0099S01

(b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:

(i) is responding to an individual needing resuscitation or with a life-threatening condition; and

(ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and

(c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;

~~[(69)]~~ (68) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;

~~[(70)]~~ (69) work papers as defined in Section 31A-2-204;

~~[(71)]~~ (70) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;

~~[(72)]~~ (71) a record submitted to the Insurance Department in accordance with Section 31A-37-201 or 31A-22-653;

~~[(73)]~~ (72) a record described in Section 31A-37-503[-];

~~[(74)]~~ (73) any record created by the Division of Occupational and Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);

~~[(75)]~~ (74) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;

~~[(76)]~~ (75) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:

(a) Title 10, Utah Municipal Code;

(b) Title 17, Counties;

(c) Title 17B, Limited Purpose Local Government Entities - Local Districts;

(d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and

(e) Title 20A, Election Code;

~~[(77)]~~ (76) except as provided in Subsection 63G-2-305.5(2), the signature of an

## SB0099S03 compared with SB0099S01

individual in a voter registration record;

~~[(78)]~~ (77) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection ~~[(76)]~~ (75) or ~~[(77)]~~ (76), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;

~~[(79)]~~ (78) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;

~~[(80)]~~ (79) a record submitted to the Insurance Department under Subsection ~~[31A-47-103]~~ 31A-48-103(1)(b); and

~~[(81)]~~ (80) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103.

Section 18. Section **63G-2-305.5** is amended to read:

### **63G-2-305.5. Viewing or obtaining lists of signatures.**

(1) The records custodian of a signature described in Subsection 63G-2-305~~[(76)]~~(75) shall, upon request, except for a name or signature classified as private under Title 20A, Chapter 2, Voter Registration:

(a) provide a list of the names of the individuals who signed the petition or request; and  
(b) permit an individual to view, but not take a copy or other image of, the signatures on a political petition described in Subsection 63G-2-305~~[(76)]~~(75).

(2) The records custodian of a signature described in Subsection 63G-2-305~~[(77)]~~(76) shall, upon request, except for a name or signature classified as private under Title 20A, Chapter 2, Voter Registration:

(a) provide a list of the names of registered voters, excluding the names that are classified as private under Title 20A, Chapter 2, Voter Registration; and  
(b) except for a signature classified as private under Title 20A, Chapter 2, Voter Registration, permit an individual to view, but not take a copy or other image of, the signature on a voter registration record.

(3) Except for a signature classified as private under Title 20A, Chapter 2, Voter Registration, the records custodian of a signature described in Subsection 63G-2-305~~[(78)]~~(77) shall, upon request, permit an individual to view, but not take a copy or other image of, a signature.

## **SB0099S03 compared with SB0099S01**

Section 19. Section **78A-6-105** is amended to read:

### **78A-6-105. Definitions.**

As used in this chapter:

(1) (a) "Abuse" means:

(i) (A) nonaccidental harm of a child;

(B) threatened harm of a child;

(C) sexual exploitation;

(D) sexual abuse; or

(E) human trafficking of a child in violation of Section 76-5-308.5; or

(ii) that a child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) "Abuse" does not include:

(i) reasonable discipline or management of a child, including withholding privileges;

(ii) conduct described in Section 76-2-401; or

(iii) the use of reasonable and necessary physical restraint or force on a child:

(A) in self-defense;

(B) in defense of others;

(C) to protect the child; or

(D) to remove a weapon in the possession of a child for any of the reasons described in Subsections (1)(b)(iii)(A) through (C).

(2) "Abused child" means a child who has been subjected to abuse.

(3) (a) "Adjudication" means a finding by the court, incorporated in a decree, that the facts alleged in the petition have been proved.

(b) "Adjudication" does not mean a finding of not competent to proceed in accordance with Section 78A-6-1302.

(4) (a) "Adult" means an individual who is 18 years old or older.

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(b) "Adult" does not include an individual:

(i) who is 18 years old or older; and

(ii) whose case is under the continuing jurisdiction of the juvenile court in accordance with Section 78A-6-120.

(5) "Board" means the Board of Juvenile Court Judges.

(6) "Child" means an individual who is under 18 years old.

(7) "Child placement agency" means:

(a) a private agency licensed to receive a child for placement or adoption under this code; or

(b) a private agency that receives a child for placement or adoption in another state, which agency is licensed or approved where such license or approval is required by law.

(8) "Clandestine laboratory operation" means the same as that term is defined in Section 58-37d-3.

(9) "Commit" means, unless specified otherwise:

(a) with respect to a child, to transfer legal custody; and

(b) with respect to a minor who is at least 18 years old, to transfer custody.

(10) "Court" means the juvenile court.

(11) "Criminogenic risk factors" means evidence-based factors that are associated with a minor's likelihood of reoffending.

(12) "Delinquent act" means an act that would constitute a felony or misdemeanor if committed by an adult.

(13) "Department" means the Department of Human Services created in Section 62A-1-102.

(14) "Dependent child" includes a child who is [~~homeless or~~] without proper care through no fault of the child's parent, guardian, or custodian.

(15) "Deprivation of custody" means transfer of legal custody by the court from a parent or the parents or a previous legal custodian to another person, agency, or institution.

(16) "Detention" means home detention and secure detention as defined in Section 62A-7-101 for the temporary care of a minor who requires secure custody in a physically restricting facility:

(a) pending court disposition or transfer to another jurisdiction; or

## **SB0099S03 compared with SB0099S01**

(b) while the minor's case is under the continuing jurisdiction of the court.

(17) "Detention risk assessment tool" means an evidence-based tool established under Section 78A-6-124, on and after July 1, 2018, that assesses a minor's risk of failing to appear in court or reoffending pre-adjudication and designed to assist in making detention determinations.

(18) "Developmental immaturity" means incomplete development in one or more domains which manifests as a functional limitation in the minor's present ability to consult with counsel with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings.

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

(20) "Educational neglect" means that, after receiving a notice of compulsory education violation under Section 53G-6-202, the parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(21) "Educational series" means an evidence-based instructional series:

(a) obtained at a substance abuse program that is approved by the Division of Substance Abuse and Mental Health in accordance with Section 62A-15-105; and

(b) designed to prevent substance use or the onset of a mental health disorder.

(22) "Evidence-based" means a program or practice that has had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population or has been rated as effective by a standardized program evaluation tool.

(23) "Forensic evaluator" means the same as that term is defined in Section 77-15-2.

(24) "Formal probation" means a minor is under field supervision by the probation department or other agency designated by the court and subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

(25) "Formal referral" means a written report from a peace officer or other person informing the court that a minor is, or appears to be, within the court's jurisdiction and that the minor's case must be reviewed by the court's probation department or a prosecuting attorney.

(26) "Group rehabilitation therapy" means psychological and social counseling of one or more individuals in the group, depending upon the recommendation of the therapist.

(27) "Guardianship of the person" includes the authority to consent to:

(a) marriage;

## **SB0099S03 compared with SB0099S01**

- (b) enlistment in the armed forces;
- (c) major medical, surgical, or psychiatric treatment; or
- (d) legal custody, if legal custody is not vested in another individual, agency, or

institution.

(28) "Habitual truant" means the same as that term is defined in Section 53G-6-201.

(29) "Harm" means:

- (a) physical or developmental injury or damage;
- (b) emotional damage that results in a serious impairment in the child's growth,

development, behavior, or psychological functioning;

- (c) sexual abuse; or
- (d) sexual exploitation.

(30) (a) "Incest" means engaging in sexual intercourse with an individual whom the perpetrator knows to be the perpetrator's ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin.

(b) The relationships described in Subsection (30)(a) include:

- (i) blood relationships of the whole or half blood, without regard to legitimacy;
- (ii) relationships of parent and child by adoption; and
- (iii) relationships of stepparent and stepchild while the marriage creating the

relationship of a stepparent and stepchild exists.

(31) "Intake probation" means a period of court monitoring that does not include field supervision, but is overseen by a juvenile probation officer, during which a minor is subject to return to the court in accordance with Section 78A-6-123 on and after July 1, 2018.

(32) "Intellectual disability" means a significant subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior that constitutes a substantial limitation to the individual's ability to function in society.

(33) "Legal custody" means a relationship embodying the following rights and duties:

- (a) the right to physical custody of the minor;
- (b) the right and duty to protect, train, and discipline the minor;
- (c) the duty to provide the minor with food, clothing, shelter, education, and ordinary medical care;
- (d) the right to determine where and with whom the minor shall live; and



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(e) the right, in an emergency, to authorize surgery or other extraordinary care.

(34) "Material loss" means an uninsured:

(a) property loss;

(b) out-of-pocket monetary loss for property that is stolen, damaged, or destroyed;

(c) lost wages because of an injury, time spent as a witness, or time spent assisting the police or prosecution; or

(d) medical expense.

(35) "Mental illness" means:

(a) a psychiatric disorder that substantially impairs an individual's mental, emotional, behavioral, or related functioning; or

(b) the same as that term is defined in:

(i) the current edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or

(ii) the current edition of the International Statistical Classification of Diseases and Related Health Problems.

(36) "Minor" means:

(a) for the purpose of juvenile delinquency:

(i) a child; or

(ii) an individual:

(A) who is at least 18 years old and younger than 25 years old; and

(B) whose case is under the jurisdiction of the juvenile court; and

(b) for all other purposes in this chapter:

(i) a child; or

(ii) an individual:

(A) who is at least 18 years old and younger than 21 years old; and

(B) whose case is under the jurisdiction of the juvenile court.

(37) "Mobile crisis outreach team" means a crisis intervention service for a minor or the family of a minor experiencing a behavioral health or psychiatric emergency.

(38) "Molestation" means that an individual, with the intent to arouse or gratify the sexual desire of any individual, touches the anus, buttocks, pubic area, or genitalia of any child, or the breast of a female child, or takes indecent liberties with a child as defined in Section

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76-5-416.

(39) (a) "Natural parent" means a minor's biological or adoptive parent.

(b) "Natural parent" includes the minor's noncustodial parent.

(40) (a) "Neglect" means action or inaction causing:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) lack of proper parental care of a child by reason of the fault or habits of the parent, guardian, or custodian;

(iii) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence or medical care, or any other care necessary for the child's health, safety, morals, or well-being;

(iv) a child to be at risk of being neglected or abused because another child in the same home is neglected or abused;

(v) abandonment of a child through an unregulated custody transfer; or

(vi) educational neglect.

(b) "Neglect" does not include:

(i) a parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child;

(ii) a health care decision made for a child by the child's parent or guardian, unless the state or other party to a proceeding shows, by clear and convincing evidence, that the health care decision is not reasonable and informed;

(iii) a parent or guardian exercising the right described in Section 78A-6-301.5; or

(iv) permitting a child, whose basic needs are met and who is of sufficient age and maturity to avoid harm or unreasonable risk of harm, to engage in independent activities, including:

(A) traveling to and from school, including by walking, running, or bicycling;

(B) traveling to and from nearby commercial or recreational facilities;

(C) engaging in outdoor play;

(D) remaining in a vehicle unattended, except under the conditions described in Subsection 76-10-2202(2);

(E) remaining at home unattended; or

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(F) engaging in a similar independent activity.

(41) "Neglected child" means a child who has been subjected to neglect.

(42) "Nonjudicial adjustment" means closure of the case by the assigned probation officer without judicial determination upon the consent in writing of:

(a) the assigned probation officer; and

(b) (i) the minor; or

(ii) the minor and the minor's parent, legal guardian, or custodian.

(43) "Not competent to proceed" means that a minor, due to a mental illness, intellectual disability or related condition, or developmental immaturity, lacks the ability to:

(a) understand the nature of the proceedings against the minor or of the potential disposition for the offense charged; or

(b) consult with counsel and participate in the proceedings against the minor with a reasonable degree of rational understanding.

(44) "Physical abuse" means abuse that results in physical injury or damage to a child.

(45) "Probation" means a legal status created by court order following an adjudication on the ground of a violation of law or under Section 78A-6-103, whereby the minor is permitted to remain in the minor's home under prescribed conditions.

(46) "Prosecuting attorney" means:

(a) the attorney general and any assistant attorney general;

(b) any district attorney or deputy district attorney;

(c) any county attorney or assistant county attorney; and

(d) any other attorney authorized to commence an action on behalf of the state.

(47) "Protective supervision" means a legal status created by court order following an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to remain in the minor's home, and supervision and assistance to correct the abuse, neglect, or dependency is provided by the probation department or other agency designated by the court.

(48) (a) "Related condition" means a condition that:

(i) is found to be closely related to intellectual disability;

(ii) results in impairment of general intellectual functioning or adaptive behavior similar to that of an intellectually disabled individual;

(iii) is likely to continue indefinitely; and

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(iv) constitutes a substantial limitation to the individual's ability to function in society.

(b) "Related condition" does not include mental illness, psychiatric impairment, or serious emotional or behavioral disturbance.

(49) (a) "Residual parental rights and duties" means those rights and duties remaining with the parent after legal custody or guardianship, or both, have been vested in another person or agency, including:

(i) the responsibility for support;

(ii) the right to consent to adoption;

(iii) the right to determine the child's religious affiliation; and

(iv) the right to reasonable parent-time unless restricted by the court.

(b) If no guardian has been appointed, "residual parental rights and duties" includes the right to consent to:

(i) marriage;

(ii) enlistment; and

(iii) major medical, surgical, or psychiatric treatment.

(50) "Secure facility" means any facility operated by or under contract with the Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth offenders committed to the division for custody and rehabilitation in accordance with Subsection 78A-6-117(2)(d).

(51) "Severe abuse" means abuse that causes or threatens to cause serious harm to a child.

(52) "Severe neglect" means neglect that causes or threatens to cause serious harm to a child.

(53) "Sexual abuse" means:

(a) an act or attempted act of sexual intercourse, sodomy, incest, or molestation by an adult directed towards a child;

(b) an act or attempted act of sexual intercourse, sodomy, incest, or molestation committed by a child towards another child if:

(i) there is an indication of force or coercion;

(ii) the children are related, as described in Subsection (30), including siblings by marriage while the marriage exists or by adoption;

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(iii) there have been repeated incidents of sexual contact between the two children, unless the children are 14 years old or older; or

(iv) there is a disparity in chronological age of four or more years between the two children;

(c) engaging in any conduct with a child that would constitute an offense under any of the following, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense:

(i) Title 76, Chapter 5, Part 4, Sexual Offenses, except for Section 76-5-401, if the alleged perpetrator of an offense described in Section 76-5-401 is a minor;

(ii) child bigamy, Section 76-7-101.5;

(iii) incest, Section 76-7-102;

(iv) lewdness, Section 76-9-702;

(v) sexual battery, Section 76-9-702.1;

(vi) lewdness involving a child, Section 76-9-702.5; or

(vii) voyeurism, Section 76-9-702.7; or

(d) subjecting a child to participate in or threatening to subject a child to participate in a sexual relationship, regardless of whether that sexual relationship is part of a legal or cultural marriage.

(54) "Sexual exploitation" means knowingly:

(a) employing, using, persuading, inducing, enticing, or coercing any child to:

(i) pose in the nude for the purpose of sexual arousal of any individual; or

(ii) engage in any sexual or simulated sexual conduct for the purpose of photographing, filming, recording, or displaying in any way the sexual or simulated sexual conduct;

(b) displaying, distributing, possessing for the purpose of distribution, or selling material depicting a child:

(i) in the nude, for the purpose of sexual arousal of any individual; or

(ii) engaging in sexual or simulated sexual conduct; or

(c) engaging in any conduct that would constitute an offense under Section 76-5b-201, sexual exploitation of a minor, regardless of whether the individual who engages in the conduct is actually charged with, or convicted of, the offense.

(55) "Shelter" means the temporary care of a child in a physically unrestricted facility

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pending court disposition or transfer to another jurisdiction.

(56) "Single criminal episode" means the same as that term is defined in Section 76-1-401.

(57) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(58) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(59) "Substantiated" means the same as that term is defined in Section 62A-4a-101.

(60) "Supported" means the same as that term is defined in Section 62A-4a-101.

(61) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order.

(62) "Therapist" means:

(a) an individual employed by a state division or agency for the purpose of conducting psychological treatment and counseling of a minor in its custody; or

(b) any other individual licensed or approved by the state for the purpose of conducting psychological treatment and counseling.

(63) "Threatened harm" means actions, inactions, or credible verbal threats, indicating that the child is at an unreasonable risk of harm or neglect.

(64) "Unregulated custody transfer" means the placement of a child:

(a) with an individual who is not the child's parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian, or a friend of the family who is an adult and with whom the child is familiar, or a member of the child's federally recognized tribe;

(b) with the intent of severing the child's existing parent-child or guardian-child relationship; and

(c) without taking:

(i) reasonable steps to ensure the safety of the child and permanency of the placement; and

(ii) the necessary steps to transfer the legal rights and responsibilities of parenthood or guardianship to the individual taking custody of the child.

(65) "Unsupported" means the same as that term is defined in Section 62A-4a-101.

(66) "Unsubstantiated" means the same as that term is defined in Section 62A-4a-101.

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(67) "Validated risk and needs assessment" means an evidence-based tool that assesses a minor's risk of reoffending and a minor's criminogenic needs.

(68) (a) "Victim" means a person that the court determines has suffered a material loss as a result of a minor's wrongful act or conduct.

(b) "Victim" includes the Utah Office for Victims of Crime.

(69) "Without merit" means the same as that term is defined in Section 62A-4a-101.

Section 20. Section **78A-6-109** is amended to read:

**78A-6-109. Summons -- Service and process -- Issuance and contents -- Notice to absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory process for attendance of witnesses when authorized.**

(1) After a petition is filed the court shall promptly issue a summons, unless the judge directs that a further investigation is needed. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the clerk of the court at or before the hearing.

(2) The summons shall contain:

(a) the name of the court;

(b) the title of the proceedings; and

(c) except for a published summons, a brief statement of the substance of the allegations in the petition.

(3) A published summons shall state:

(a) that a proceeding concerning the minor is pending in the court; and

(b) an adjudication will be made.

(4) The summons shall require the person or persons who have physical custody of the minor to appear personally and bring the minor before the court at a time and place stated. If the person or persons summoned are not the parent, parents, or guardian of the minor, the summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing.

(5) Summons may be issued requiring the appearance of any other person whose presence the court finds necessary.

(6) If it appears to the court that the welfare of the minor or of the public requires that the minor be taken into custody, and it does not conflict with Section 78A-6-106.5, the court

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may by endorsement upon the summons direct that the person serving the summons take the minor into custody at once.

(7) Subject to Subsection 78A-6-117(2), upon the sworn testimony of one or more reputable physicians, the court may order emergency medical or surgical treatment that is immediately necessary for a minor concerning whom a petition has been filed pending the service of summons upon the minor's parents, guardian, or custodian.

(8) A parent or guardian is entitled to the issuance of compulsory process for the attendance of witnesses on the parent's or guardian's own behalf or on behalf of the minor. A guardian ad litem or a probation officer is entitled to compulsory process for the attendance of witnesses on behalf of the minor.

(9) Service of summons and process and proof of service shall be made in the manner provided in the Utah Rules of Civil Procedure.

(10) (a) Service of summons or process shall be made by the sheriff of the county where the service is to be made, or by the sheriff's deputy.

(b) Notwithstanding Subsection (10)(a), upon request of the court, service shall be made by any other peace officer, or by another suitable person selected by the court.

(11) Service of summons in the state shall be made personally, by delivering a copy to the person summoned; provided, however, that parents of a minor living together at their usual place of abode may both be served by personal delivery to either parent of copies of the summons, one copy for each parent.

(12) If the judge makes a written finding that the judge has reason to believe that personal service of the summons will be unsuccessful, or will not accomplish notification within a reasonable time after issuance of the summons, the judge may order service by registered mail, with a return receipt to be signed by the addressee only, to be addressed to the last-known address of the person to be served in the state. Service shall be complete upon return to the court of the signed receipt.

(13) If the parents, parent, or guardian required to be summoned under Subsection (4) cannot be found within the state, the fact of their minor's presence within the state shall confer jurisdiction on the court in proceedings in a minor's case under this chapter as to any absent parent or guardian, provided that due notice has been given in the following manner:

(a) If the address of the parent or guardian is known, due notice is given by sending the



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parent or guardian a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil Procedure. Service by registered mail shall be complete upon return to the court of the signed receipt.

(b) (i) If the address or whereabouts of the parent or guardian outside the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons:

(A) in a newspaper having general circulation in the county in which the proceeding is pending once a week for four successive weeks; ~~and~~ or

(B) in accordance with Section 45-1-101 for four weeks.

(ii) Service shall be complete on the day of the last publication.

(c) Service of summons as provided in this subsection shall vest the court with jurisdiction over the parent or guardian served in the same manner and to the same extent as if the person served was served personally within the state.

(14) In the case of service in the state, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In the case of service outside the state, service completed not less than five days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

(15) Computation of periods of time under this chapter shall be made in accordance with the Utah Rules of Civil Procedure.

Section 21. Section **78A-6-306** is amended to read:

### **78A-6-306. Shelter hearing.**

(1) A shelter hearing shall be held within 72 hours excluding weekends and holidays after any one or all of the following occur:

(a) removal of the child from the child's home by the division;

(b) placement of the child in the protective custody of the division;

(c) emergency placement under Subsection 62A-4a-202.1(4);

(d) as an alternative to removal of the child, a parent enters a domestic violence shelter at the request of the division; or

(e) a "Motion for Expedited Placement in Temporary Custody" is filed under Subsection 78A-6-106(4).

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(2) If one of the circumstances described in Subsections (1)(a) through (e) occurs, the division shall issue a notice that contains all of the following:

- (a) the name and address of the person to whom the notice is directed;
- (b) the date, time, and place of the shelter hearing;
- (c) the name of the child on whose behalf a petition is being brought;
- (d) a concise statement regarding:
  - (i) the reasons for removal or other action of the division under Subsection (1); and
  - (ii) the allegations and code sections under which the proceeding has been instituted;
- (e) a statement that the parent or guardian to whom notice is given, and the child, are

entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be provided in accordance with Title 78B, Chapter 22, Indigent Defense Act; and

(f) a statement that the parent or guardian is liable for the cost of support of the child in the protective custody, temporary custody, and custody of the division, and the cost for legal counsel appointed for the parent or guardian under Subsection (2)(e), according to the financial ability of the parent or guardian.

(3) The notice described in Subsection (2) shall be personally served as soon as possible, but no later than one business day after removal of the child from the child's home, or the filing of a "Motion for Expedited Placement in Temporary Custody" under Subsection 78A-6-106(4), on:

- (a) the appropriate guardian ad litem; and
- (b) both parents and any guardian of the child, unless the parents or guardians cannot

be located.

(4) The following persons shall be present at the shelter hearing:

- (a) the child, unless it would be detrimental for the child;
- (b) the child's parents or guardian, unless the parents or guardian cannot be located, or

fail to appear in response to the notice;

- (c) counsel for the parents, if one is requested;
- (d) the child's guardian ad litem;
- (e) the caseworker from the division who is assigned to the case; and
- (f) the attorney from the attorney general's office who is representing the division.

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(5) (a) At the shelter hearing, the court shall:

(i) provide an opportunity to provide relevant testimony to:

(A) the child's parent or guardian, if present; and

(B) any other person having relevant knowledge;

(ii) subject to Section 78A-6-305, provide an opportunity for the child to testify; and

(iii) in accordance with Subsections 78A-6-307(18)(c) through (e), grant preferential consideration to a relative or friend for the temporary placement of the child.

(b) The court:

(i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile Procedure;

(ii) shall hear relevant evidence presented by the child, the child's parent or guardian, the requesting party, or their counsel; and

(iii) may in its discretion limit testimony and evidence to only that which goes to the issues of removal and the child's need for continued protection.

(6) If the child is in the protective custody of the division, the division shall report to the court:

(a) the reason why the child was removed from the parent's or guardian's custody;

(b) any services provided to the child and the child's family in an effort to prevent removal;

(c) the need, if any, for continued shelter;

(d) the available services that could facilitate the return of the child to the custody of the child's parent or guardian; and

(e) subject to Subsections 78A-6-307(18)(c) through (e), whether any relatives of the child or friends of the child's parents may be able and willing to accept temporary placement of the child.

(7) The court shall consider all relevant evidence provided by persons or entities authorized to present relevant evidence pursuant to this section.

(8) (a) If necessary to protect the child, preserve the rights of a party, or for other good cause shown, the court may grant no more than one continuance, not to exceed five judicial days.

(b) A court shall honor, as nearly as practicable, the request by a parent or guardian for

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a continuance under Subsection (8)(a).

(c) Notwithstanding Subsection (8)(a), if the division fails to provide the notice described in Subsection (2) within the time described in Subsection (3), the court may grant the request of a parent or guardian for a continuance, not to exceed five judicial days.

(9) (a) If the child is in the protective custody of the division, the court shall order that the child be returned to the custody of the parent or guardian unless it finds, by a preponderance of the evidence, consistent with the protections and requirements provided in Subsection 62A-4a-201(1), that any one of the following exists:

(i) subject to Subsection (9)(b)(i), there is a serious danger to the physical health or safety of the child and the child's physical health or safety may not be protected without removing the child from the custody of the child's parent;

(ii) (A) the child is suffering emotional damage that results in a serious impairment in the child's growth, development, behavior, or psychological functioning;

(B) the parent or guardian is unwilling or unable to make reasonable changes that would sufficiently prevent future damage; and

(C) there are no reasonable means available by which the child's emotional health may be protected without removing the child from the custody of the child's parent or guardian;

(iii) there is a substantial risk that the child will suffer abuse or neglect if the child is not removed from the custody of the child's parent or guardian;

(iv) subject to Subsection (9)(b)(ii), the child or a minor residing in the same household has been, or is considered to be at substantial risk of being, physically abused, sexually abused, or sexually exploited by a:

(A) parent or guardian;

(B) member of the parent's household or the guardian's household; or

(C) person known to the parent or guardian;

(v) the parent or guardian is unwilling to have physical custody of the child;

(vi) the parent or guardian is unable to have physical custody of the child;

~~(vi)~~ (vii) the child is without any provision for the child's support;

~~(vii)~~ (viii) a parent who is incarcerated or institutionalized has not or cannot arrange for safe and appropriate care for the child;

~~(viii)~~ (ix) (A) a relative or other adult custodian with whom the child is left by the

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parent or guardian is unwilling or unable to provide care or support for the child;

(B) the whereabouts of the parent or guardian are unknown; and

(C) reasonable efforts to locate the parent or guardian are unsuccessful;

~~[(ix)]~~ (x) subject to Subsections 78A-6-105(40)(b) and 78A-6-117(2) and Section 78A-6-301.5, the child is in immediate need of medical care;

~~[(x)]~~ (xi) (A) the physical environment or the fact that the child is left unattended beyond a reasonable period of time poses a threat to the child's health or safety; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the threat;

~~[(xi)]~~ (xii) (A) the child or a minor residing in the same household has been neglected; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would prevent the neglect;

~~[(xii)]~~ (xiii) the parent, guardian, or an adult residing in the same household as the parent or guardian, is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine laboratory operation was located in the residence or on the property where the child resided;

~~[(xiii)]~~ (xiv) (A) the child's welfare is substantially endangered; and

(B) the parent or guardian is unwilling or unable to make reasonable changes that would remove the danger; or

~~[(xiv)]~~ (xv) the child's natural parent:

(A) intentionally, knowingly, or recklessly causes the death of another parent of the child;

(B) is identified by a law enforcement agency as the primary suspect in an investigation for intentionally, knowingly, or recklessly causing the death of another parent of the child; or

(C) is being prosecuted for or has been convicted of intentionally, knowingly, or recklessly causing the death of another parent of the child.

(b) (i) Prima facie evidence of the finding described in Subsection (9)(a)(i) is established if:

(A) a court previously adjudicated that the child suffered abuse, neglect, or dependency involving the parent; and

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(B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

(ii) For purposes of Subsection (9)(a)(iv), if the court finds that the parent knowingly allowed the child to be in the physical care of a person after the parent received actual notice that the person physically abused, sexually abused, or sexually exploited the child, that fact constitutes prima facie evidence that there is a substantial risk that the child will be physically abused, sexually abused, or sexually exploited.

(10) (a) (i) The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from the child's home and whether there are available services that would prevent the need for continued removal.

(ii) If the court finds that the child can be safely returned to the custody of the child's parent or guardian through the provision of those services, the court shall place the child with the child's parent or guardian and order that those services be provided by the division.

(b) In making the determination described in Subsection (10)(a), and in ordering and providing services, the child's health, safety, and welfare shall be the paramount concern, in accordance with federal law.

(11) Where the division's first contact with the family occurred during an emergency situation in which the child could not safely remain at home, the court shall make a finding that any lack of preplacement preventive efforts was appropriate.

(12) In cases where actual sexual abuse, sexual exploitation, abandonment, severe abuse, or severe neglect are involved, neither the division nor the court has any duty to make "reasonable efforts" or to, in any other way, attempt to maintain a child in the child's home, return a child to the child's home, provide reunification services, or attempt to rehabilitate the offending parent or parents.

(13) The court may not order continued removal of a child solely on the basis of educational neglect as defined in Section 78A-6-105, truancy, or failure to comply with a court order to attend school.

(14) (a) Whenever a court orders continued removal of a child under this section, the court shall state the facts on which that decision is based.

(b) If no continued removal is ordered and the child is returned home, the court shall state the facts on which that decision is based.

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(15) If the court finds that continued removal and temporary custody are necessary for the protection of a child pursuant to Subsection (9)(a), the court shall order continued removal regardless of:

- (a) any error in the initial removal of the child;
- (b) the failure of a party to comply with notice provisions; or
- (c) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child and Family Services.

Section 22. Section **78A-6-317** is amended to read:

### **78A-6-317. All proceedings -- Persons entitled to be present -- Legal representation -- Records sharing -- Admissibility of evidence.**

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

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

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

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

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

(b) A court may appoint an indigent defense service provider as provided in Title 78B, Chapter 22, Indigent Defense Act.

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

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

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provision of law:

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

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

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

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

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

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

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

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

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

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

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

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

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



## SB0099S03 compared with SB0099S01

Section 23. Section **78A-6-1503** is amended to read:

### **78A-6-1503. Requirements to apply to expunge an adjudication.**

(1) (a) ~~[Am]~~ Except as provided in Subsection (4), an individual who has been adjudicated by a juvenile court may petition the court for an order to expunge the individual's juvenile court record and any related records in the custody of an agency if:

(i) the individual has reached 18 years old; and

(ii) at least one year has passed from the date of:

(A) termination of the continuing jurisdiction of the juvenile court; or

(B) the individual's unconditional release from the custody of the Division of Juvenile Justice Services if the individual was committed to a secure youth corrections facility.

(b) The court may waive the requirements in Subsection (1)(a) if the court finds, and states on the record, the reason why the waiver is appropriate.

(c) The petitioner shall include in the petition described in Subsection (1)(a):

(i) any agency known or alleged to have any records related to the offense for which expungement is being sought; and

(ii) the original criminal history report obtained from the Bureau of Criminal Identification in accordance with Section 53-10-108.

(d) The petitioner shall send a copy of the petition described in Subsection (1)(a) to the county attorney or, if within a prosecution district, the district attorney.

(e) (i) Upon the filing of a petition described in Subsection (1)(a), the court shall:

(A) set a date for a hearing;

(B) notify the county attorney or district attorney and the agency with custody of the records at least 30 days before the day on which the hearing of the pendency of the petition is scheduled; and

(C) notify the county attorney or district attorney and the agency with records that the petitioner is asking the court to expunge of the date of the hearing.

(ii) (A) The court shall provide a victim with the opportunity to request notice of a petition described in Subsection (1)(a).

(B) Upon the victim's request under Subsection (1)(e)(ii)(A), the victim shall receive notice of the petition at least 30 days before the day on which the hearing is scheduled if, before the day on which an expungement order is made, the victim or, in the case of a child or

## SB0099S03 compared with SB0099S01

an individual who is incapacitated or deceased, the victim's next of kin or authorized representative submits a written and signed request for notice to the court in the judicial district in which the offense occurred or judgment is entered.

(C) The notice described in Subsection (1)(e)(ii)(B) shall include a copy of the petition described in Subsection (1)(a) and any statutes and rules applicable to the petition.

(2) (a) At the hearing described in Subsection (1)(e)(i), the county attorney or district attorney, a victim, and any other individual who may have relevant information about the petitioner may testify.

(b) In deciding whether to grant a petition described in Subsection (1)(a) for expungement, the court shall consider whether the rehabilitation of the petitioner has been attained to the satisfaction of the court, including the petitioner's response to programs and treatment, the petitioner's behavior subsequent to the adjudication, and the nature and seriousness of the conduct.

(c) ~~[(The)] (i) Except as provided in Subsection (2)(c)(ii),~~ a court may order sealed all of the petitioner's records under the control of the juvenile court and an agency or an official~~[- including any record contained in the Management Information System created in Section 62A-4a-1003 and the Licensing Information System created in Section 62A-4a-1005,]~~ if the court finds that:

~~[(i)] (A)~~ the petitioner has not, in the five years preceding the day on which the petition described in Subsection (1)(a) is filed, been convicted of a violent felony, as defined in Section 76-3-203.5;

~~[(ii)] (B)~~ there are no delinquency or criminal proceedings pending against the petitioner; and

~~[(iii)] (C)~~ a judgment for restitution entered by the court on the conviction for which the expungement is sought has been satisfied.

(ii) A court may not order the Division of Child and Family Services to seal a petitioner's record that is contained in the Management Information System created in Section 62A-4a-1003 or the Licensing Information System created in Section 62A-4a-1005 unless:

(A) the record is unsupported; or

(B) after notice and an opportunity to be heard, the Division of Child and Family Services stipulates in writing to sealing the record.

## SB0099S03 compared with SB0099S01

(3) (a) The petitioner is responsible for service of the expungement order issued under Subsection (2) to any affected agency or official.

(b) To avoid destruction or sealing of the records in whole or in part, the agency or the official receiving the expungement order described in Subsection (3)(a) shall only expunge all references to the petitioner's name in the records pertaining to the petitioner's juvenile court record.

(4) (a) The court may not expunge a record if the record contains an adjudication of:

~~[(a)]~~ (i) Section 76-5-202, aggravated murder; or

~~[(b)]~~ (ii) Section 76-5-203, murder.

(b) This section does not apply to an adjudication under Part 3, Abuse, Neglect, or Dependency Proceedings, Part 5, Termination of Parental Rights Act, or Part 14, Restoration of Parental Rights Act.

Section 24. **Coordinating S.B. 99 with H.B. 285 -- Technical and substantive amendments.**

If this S.B. 99 and H.B. 285, Juvenile Recodification, both pass and become law, the Legislature intends that, on September 1, 2021, the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by amending Subsection 80-3-107(2)(b) to read:

"(b) The disclosures described in Subsection (2)(a) are not required if:

(i) subject to Subsection (2)(c), the division or other state or local public agency did not originally create the record being requested;

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

(iii) disclosure of the record would jeopardize the anonymity of the individual making the initial report of abuse or neglect or any others involved in the subsequent investigation;

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

(v) the record is a Children's Justice Center interview, including a video or audio recording, and a transcript of the recording, the release of which is governed by Section 77-37-4."

**SB0099S03 compared with SB0099S01**