



FERBRACHE  
LAW

February 12, 2021

RE: SB 99

Greeting to Committee Chair Representative Nelson, House Health & Human Services Committee Members, SB99 Sponsor Paul Ray, SB99 Senate Sponsor Wayne Harper, and my District Representatives and Senators:

I am requesting this House Health and Human Services Committee **remove from SB 99 its proposed revisions to §62A-4a-412**, the statute DCFS turns to when making disclosures in response to GRAMA requests.

I am corresponding to each of you as a prior prosecutor with the Salt Lake County District Attorney's Office, a prior prosecutor and Division Director of the Justice Division within the Utah Attorney General's Office and currently a private attorney. As of 2018, my practice involves advocating for victims and defending those charged within the criminal justice system. I reside in House District 28 and Senate District 4, and my firm is located in House District 25 and Senate District 3.

During my past three years in private practice, I have experienced the importance of transparency and access to government records and have seen the harm caused when essential records are not fully produced in a timely manner. In particular to DCFS, access to DCFS records is essential to properly advocate for victims, defend against false accusations, to protect the child, to better understand the allegation and/or to ensure the decisions made by a DCFS worker is sound and based in fact, and that it adheres to policy and best practice.

Under the current version of §412(3)(b), DCFS has almost no discretion to withhold/redact information when providing a record to a parent as it is "only" permitted to withhold/redact the specific information referred to in the statute. On the other hand, SB 99 lines 522-23 and 527 remove the word "only" as well as the language establishing that §412(3)(b) preempts GRAMA. These seemingly minor changes would give DCFS broad discretion to withhold information, such as its communications with the other parent and other parties, that it currently has no option but to disclose under existing law.

In addition to further restricting access to some records, the changes would make the process for obtaining DCFS records much more arduous and expensive. Broadening DCFS's discretion in determining what to withhold from and what to provide to a parent would inevitably lead to more appeals and delay in disclosure of important records through the lengthy appeal process. I do not see a fiscal note on the Bill and I am concerned that with the volume of cases there would be a substantial fiscal impact not currently recognized in the fiscal note.

Part of my concern with SB 99 is that by making the process to obtain records more arduous and expensive it would be also be restricting the right of access in the same way charging parents for their records would. SB 99 would also disparately impact those families with limited time and money and especially disadvantage those dealing with financial and other types of abuse in the context of litigation.

PL.L.C.

☎ (801) 440-7476

✉ Gregory@FerberbracheLaw.com

🌐 FerbracheLaw.com

TRIAL LITIGATION  
ADVOCACY  
CRIMINAL DEFENSE  
GOVERNMENT RELATIONS



FERBRACHE  
LAW

It is with great respect to the legislative process that I inform you of my concern with SB99. I have reviewed the Senate committee testimony relating to SB99. I have conferred with informed colleagues. The consensus is that there is a disagreement with DCFS as to the application of the referred to revisions in SB99.

It is for this reason that I respectfully ask this Committee remove them. These lines are not material to the overall policy of the Bill. If passed, and the above unintended consequence be true, the overall negative impact and unintended harm to the families will never be restored. Let's agree to get it right before enactment rather than fix it after passage.

Thank you for your time and consideration.

/s/

Gregory Ferbrache  
Ferbrache Law

P.L.L.C.

☎ (801) 440-7476

✉ Gregory@FerbracheLaw.com

🌐 FerbracheLaw.com

TRIAL LITIGATION  
ADVOCACY  
CRIMINAL DEFENSE  
GOVERNMENT RELATIONS



FERBRACHE  
LAW

P.L.L.C.

☎ (801) 440-7476

✉ [Gregory@FerbracheLaw.com](mailto:Gregory@FerbracheLaw.com)

🌐 [FerbracheLaw.com](http://FerbracheLaw.com)

TRIAL LITIGATION  
ADVOCACY  
CRIMINAL DEFENSE  
GOVERNMENT RELATIONS



FERBRACHE  
LAW

P.L.L.C.

☎ (801) 440-7476

✉ [Gregory@FerbracheLaw.com](mailto:Gregory@FerbracheLaw.com)

🌐 [FerbracheLaw.com](http://FerbracheLaw.com)

TRIAL LITIGATION  
ADVOCACY  
CRIMINAL DEFENSE  
GOVERNMENT RELATIONS



FERBRACHE  
LAW

P.L.L.C.

☎ (801) 440-7476

✉ [Gregory@FerbracheLaw.com](mailto:Gregory@FerbracheLaw.com)

🌐 [FerbracheLaw.com](http://FerbracheLaw.com)

TRIAL LITIGATION  
ADVOCACY  
CRIMINAL DEFENSE  
GOVERNMENT RELATIONS



FERBRACHE  
LAW

P.L.L.C.

☎ (801) 440-7476

✉ [Gregory@FerbracheLaw.com](mailto:Gregory@FerbracheLaw.com)

🌐 [FerbracheLaw.com](http://FerbracheLaw.com)

TRIAL LITIGATION  
ADVOCACY  
CRIMINAL DEFENSE  
GOVERNMENT RELATIONS