
Concerns Regarding First Substitute Senate Bill 99 – Child Welfare Amendments: Negative Impact on Child Safety, Parent Rights & DCFS Transparency

First Substitute Senate Bill 99 – Child Welfare Amendments proposes changes to Utah Code §62A-4a-412, the law under the Human Services Code that governs what information the Division of Child and Family Services (“DCFS”) may and/or must provide in response to a request for DCFS Child Abuse and Neglect records. See SB 99 (1st Sub) at pp. 16-19, lines 470-569. Spokespersons for DCFS have consistently characterized the changes proposed under SB 99 as merely technical and part of a larger effort to “clean up” the Human Services Code. For the many families that would be impacted by the changes, SB 99(1st Sub) is anything but a minor technical bill.

The purpose of this fact sheet is to explain how SB 99 (1st Sub):

- reduces the current statutory obligation of DCFS to share information with parents that will help them to protect their children when the child's other parent or another person presents a threat of harm;
- by restricting the right of parents to access their children’s DCFS Child Abuse and Neglect records children and families are less safe; and
- also reduces DCFS transparency and accountability at a time when more of both are needed.

Summary of DCFS’s Current Disclosure Duty to Parents

DCFS has the important mission of investigating allegations of child abuse and neglect and helping to ensure children will be safe with one or both parents when abuse or neglect has taken place. This mission leads to DCFS staff becoming deeply involved in broken family relationships and parents with differing levels of ability and willingness to protect their children. It is important to realize that although DCFS's involvement in these difficult situations generally only lasts for weeks or months, parents continue to have a duty to protect their children in these complicated situations for years.

A parent’s ongoing duty and right to care for and protect their children is one reason Utah law imposes a heightened duty of disclosure on DCFS with respect to parents set forth in Section 62A-4a-412(3)(b). This provision expressly preempts Utah’s Government Records Access and Management Act (“GRAMA”) and restricts what information DCFS is permitted to withhold from a parent when providing the parent private information from the child’s DCFS Child Abuse and Neglect records.

By defaulting to GRAMA, DCFS would have much broader discretion to withhold information from a parent, including information regarding the other parent or a caregiver.¹ If Section 62A-4a-412(3)(b) defaulted to GRAMA provisions, for example, the child’s DCFS Activity Log would no longer be

¹ See i.e., Utah Code §63G-2-202(3) (“if there is more than one subject of a private or controlled record, the part of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.”). Currently DCFS may not rely on this statute as Utah Code §62A-4a-412(3)(b) preempts this default GRAMA disclosure provision.

considered just the child's DCFS Activity Log. Rather, DCFS would have the statutory obligation to "segregate" the information related to anyone DCFS deemed to also be a subject of the child's DCFS Activity Log, such as the other parent, other family members and even the foster parents. DCFS would then have the discretion to redact anything it deemed not specifically related to the child or the requesting parent or that would interfere with the other subject's privacy interests.

Summary of How SB 99 Reduces DCFS's Disclosure Duty to Parents

The proposed amendments in SB 99 (1st Sub) lines 534-536 remove DCFS's enhanced disclosure requirements simply by deleting language so that Section 62A-4a-412(3)(b) no longer can be read to preempt other laws or limit the private information that can be withheld from a parent.

This means that DCFS would be able to rely on the default GRAMA provisions and any other statutory provision that gives it discretion to withhold from a parent information it is currently has no discretion to withhold. As such, the position that the changes would not restrict a parent's right to access information regarding their child's safety and well-being is untenable. However, the extent to which SB 99 would restrict the right of access for parents is unknown. As a practical matter, a particular parent's right of access under SB 99 would depend on the extent DCFS frontline workers and supervisors complied with DCFS policies regarding record keeping and retention, the level of training and preferences and/or biases of the DCFS GRAMA specialist assigned to their region, their familiarity with GRAMA and administrative processes, their level of education and self-advocacy skills, and what financial and other resources they have to self-advocate and/or retain counsel to challenge DCFS's determinations.

Case Examples

Here are just a few examples of the many situations in which DCFS would be required to disclose information to parents relevant to their child's safety and well-being under existing law but would have the discretion to withhold, or even be prohibited from disclosing in some cases, if SB 99 becomes law:

- During a DCFS case, a noncustodial parent sends harassing messages to the DCFS caseworker meant to indirectly intimidate the other parent because a protective order prohibits that parent from communicating with their intended victim directly. This indirect communication would constitute a protective order violation and disclosure would aid the enforcement of that order. The caseworker, who has had only 1.5 hours of domestic violence training, doesn't see the messages as related to the child's safety or that of the custodial parent.
- A DCFS juvenile court closes a case on a "paper review" (without a hearing) because at the last review hearing the custodial parent had completed almost all services. A few weeks before the paper review, the DCFS caseworker quits but writes the final court report for her supervisor to review and file. Shortly after she finishes the court report, the noncustodial parent tests positive for methamphetamines for the first time during the case. The caseworker is not too concerned because of the parent's lack of contact with the child since the last hearing. The caseworker documents the information in the DCFS Activity Log but forgets to update her supervisor or the other parent. The next month, the noncustodial parent insists on resuming visits as allowed under a pre-existing district court order. The custodial parent feels something is "off" and seeks evidence to support a motion for supervised parent-time.

- A noncustodial parent of an infant is supported for non-supervision following an investigation of a report that the infant had been left unattended in a hot car. During the investigation, the caseworker happens to document that the parent's youngest sibling recently returned to Utah and is living at their mother's home along with the parent. As it was not the focus of the investigation, the caseworker closes the case unaware of the sibling's juvenile record that includes child pornography and recent child protective order. The caseworker documents that the parent has requested his living situation be kept private as the sibling and the other parent have a contentious history and he wants to avoid a fight.
- A noncustodial parent with a history of schizophrenia informs the DCFS caseworker they have stopped taking medications and are no longer willing to meet with mental health professionals shortly before the juvenile court case is closed. The caseworker doesn't think to inform the custodial parent because visits are already supervised and sporadic. Disclosure would enable the custodial parent to take additional action to protect their child during visits, such as requiring a professional supervisor instead of allowing the grandmother to continue to supervise in the months ahead. The custodial parent submits a GRAMA request after the case closes the child starts being resistant to visits.
- DCFS places a young child in its custody with his aunt in a rural community. The mother grows concerned when the child repeatedly comes to visits with bruises and appears fearful of the aunt. She reports her concerns to the ongoing caseworker. The caseworker, who often commiserates with the aunt about the mother after her visits, dismisses the concerns. A few months before custody is restored to the mother, the child is hospitalized with a broken leg. The mother calls the DCFS reporting hotline and makes a report. Unbeknownst to the mother, the aunt's neighbor has also called in a referral. DCFS responds to both referrals by forwarding the information to the ongoing caseworker instead of assigning a Child Protective Services investigator to the case. The mother's court-appointed attorney attempts to obtain the records but is told by the Assistant Attorney General on the case to either do a GRAMA request or file a subpoena. The juvenile court case is closed before the DCFS records are obtained.

As explained in the following legal analysis, the parents involved in the above scenarios (including the noncustodial parents) would be entitled to all private information contained in their children's DCFS Child Abuse and Neglect records under current law. If SB 99 (1st Sub) passes DCFS would have broad discretion under the default GRAMA provisions to prohibit these disclosures from being made. The information that would be withheld or disclosed would vary depending on the where the parent lives and the circumstances of that that parent.

Removing DCFS's enhanced disclosure requirements for responding to parents requesting their children's DCFS Child Abuse and Neglect Records would be a major shift in public policy, significantly limit a parent's right to access their children's records and reduce DCFS transparency and accountability. Ultimately, it would place more children at risk of physical and emotional harm and for some children, even death. If DCFS wants to enact these changes, it needs to first explain to the State Legislature and to the families that will be impacted how these changes would better protect children and not just DCFS administration and caseworkers.

The Current Statute v. SB 99 (1st Sub) Amended Statute

The following table compares the current provisions of Section 62A-4a-412 specifically related to DCFS's disclosure obligations to parents with SB 99 (1st Sub) 's proposed amendments:

CURRENT STATUTE	SB 99 (1 st Sub)
62A-4a-412. Reports, information, and referrals confidential.	62A-4a-412. Reports, information, and referrals confidential.
<p>(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 a report are private, protected, or controlled records under [GRAMA], and may only be made available to: . . .</p>	<p>(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 [GRAMA], and may only be made available to: . . .</p>
<p>(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 . . .</p>	<p>(e) except as provided in Subsection 63G-2-202(10),² a subject of the report, the natural parents of the child, and the guardian ad litem . . .</p>
<p>(3)(b) Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and [GRAMA], 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 only the names, addresses, and telephone numbers of individuals or specific information that could:</p> <ul style="list-style-type: none"> (i) identify the referent; (ii) impede a criminal investigation; or (iii) endanger a person's safety. 	<p>(3)(b) [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] 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 only the names, addresses, and telephone numbers of individuals or specific information that could:</p> <ul style="list-style-type: none"> (i) identify the referent; (ii) impede a criminal investigation; or (iii) endanger [a person's] an individual's safety.

² SB 99 (1st Sub) removes the current statute, Utah Code § 63G-2-202(10), that prohibits DCFS from releasing records to anyone but the alleged perpetrator related to a DCFS investigation that was not supported. This amendment would increase transparency and parent's access to important information.

Legal Analysis: SB 99 (1st Sub) Impact on the DCFS GRAMA Disclosure Statute

The Government Records Access and Management Act (“GRAMA”) is Utah’s open records law. It mandates that upon request DCFS must provide to the parent of a child who is the subject of a DCFS Child Abuse and Neglect record all information contained in the child’s case records classified as “private”. See Utah Code §63G-2-202(1)(a)(i)-(ii). GRAMA dictates that if another statute governs or limits the release of information, that is the law that then controls the release of those records. See Utah Code § 63G-2-201(6)(a).

Titled “Reports, Information and Referrals Confidential” Utah Code §62A-4a-412, is the specific statute that governs DCFS disclosures of Child Abuse and Neglect records. These records include DCFS Child Abuse and Neglect referrals and investigation as well as records pertaining to cases that DCFS opens as a result of those investigations, such as voluntary and court-ordered in-home services and foster care cases.³ This statute clarifies that all information contained in DCFS Child Abuse and Neglect records are classified as either private, controlled or protected under GRAMA and directs who *may* have access to these records. Most relevant to SB 99 (1st Sub) and its impact on families are its provisions, included in the table above, that govern DCFS disclosures to parents of their child’s DCFS records.

The Statutory Construction of DCFS’s Disclosure Duty to Parents

Utah Code §62A-4a-412(3)(b) is the specific provision that dictates how DCFS must respond to a parent’s GRAMA request for reports and “other information in [its] possession” that they are entitled to under GRAMA. It is important to note that this provision only applies to DCFS disclosures of private and not controlled or protected records. This is because:

- Section 62A-4a-412 in no way dictates who *shall* have access to DCFS records and Section 62A-4a-412(3)(b) only applies “when” DCFS makes records available to a parent. As such, the private records DCFS makes available to a parent due to its obligation under GRAMA falls within its scope. On the other hand, DCFS has no obligation to make controlled and protected records available to a parent. In fact, in most cases, it is prohibited under state and/or federal law from doing so unless pursuant to a court-order, that in turn would govern their disclosure.

Specifically, this provision allows DCFS to remove or otherwise withhold from those disclosures of private records **only** the information expressly identified or referenced in the provision. This is because:

- the “notwithstanding any other provision of law” language simply means “regardless of any other statutes.”
- the “excluding Section 78A-6-317, but including this chapter and [GRAMA]” language simply means that Section 62A-4a-412(3)(b) preempts GRAMA and all

³ A parent may appeal DCFS’s response to their GRAMA request to the Utah Department of Human Services’ Chief Administrator Officer (“CAO”). Regardless of whether a parent is seeking records related to an investigation, DCFS in home or foster-care case, the CAO’s written decisions state that Section 62A-4a-412 is the specific statutory section that applies to “DCFS Child Abuse and Neglect records.”

other statutes, with the one exception of Section 78A-6-317 which is to be read in tandem with Section 62A-4a-412. In other words, Section 62A-4a-412(3)(b) is subject to no other statute other than Section 78A-6-317.

- Section 78A-6-317 clarifies DCFS's disclosures obligations to parents involved in child abuse, neglect and dependency juvenile court proceedings in which their children are subjects. It provides, in relevant part, that:

except as provided in Subsection (5)(b), and notwithstanding any other provision of law . . ." parents "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..."

Section 78A-6-317(5)(a) (*emphasis added*).

- Section 78A-6-317(5)(b) provides that disclosure is not required if:
 - (i) . . . 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; (v) the record is a report . . . 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 (vii) the record is a Children's Justice Center interview . . . the release of which is governed by Section 77-37-4.
- Based on the plain language of the above statutes, DCFS is very limited in what information contained in a DCFS Child Abuse and Neglect record it can withhold from the subject child's parent. In fact, when DCFS make a report or other information available to a parent it is **only** permitted to withhold from the parent the following:
 - (a) the names, addresses, and telephone numbers of individuals or specific information that could identify the referent; impede a criminal investigation; or endanger a person's safety." See Section 62A-4a-412(b)(3); and

(b) because Section 78A-6-317(5)(b) preempts Section 62A-4a-412(b)(3) and is therefore subject to its requirements, the exceptions enumerated in Section 78a-6-317(5)(b).

Together Sections 62A-4a-412 and 78A-78A-6-317 reflect a public policy strongly favoring open disclosure of otherwise private, non-public information contained in a subject child's DCFS Child Abuse and Neglect records to that child's parent, consistent with their fundamental right to the care, custody and control of their children. Together they further establish that there is no reasonable expectation that any communication between a foster parent, parent or family member and a DCFS worker will be kept from the subject child's parent.

How SB 99 Changes DCFS's Statutory Disclosure Duty to Parents

First Substitute Senate Bill 99 – Child Welfare Amendments at pp. 16-19, lines 470-569 seeks to amend Section 62A-4a-412(b)(3), the provision that currently governs DCFS's disclosure duty to parents regarding the private records they are entitled to under GRAMA. At first glance these proposed revisions may appear to be nothing more than minor technical changes. However, the proposed changes in lines 473 -74 and 534 - 538, if enacted into law, would reduce the rights of parents to access information related to their children's safety and well-being and further limit their ability to protect their children from harm. This is because:

- By removing the “notwithstanding any other provision of law” language, Section 62A-4a-412(b)(3) would no longer preempt GRAMA's default provisions or, for that matter, any other laws that may conflict with Section 62A-4a-412(b)(3). This is a significant change, particularly as certain default provisions of GRAMA authorize a government entity to redact or otherwise withhold information that does not fall within one of the exceptions currently specified in Sections 62A-4a-412(3)(b) or 78A-6-317(5)(b).
- For example, one default GRAMA provision provides that, “[i]f 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.” Utah Code §63G-2-202(3). Under the Human Service Code, “subject” is defined as “any person reported under this part, including, but not limited to, a child, parent, guardian, or other person responsible for a child's care.” See Section 62A-4a-402(b). Therefore, under the amended statute, DCFS would have broad discretion to redact information related to the other parent, family members and foster parents from a child's DCFS Child Abuse and Neglect records.
- By deleting the word “only”, the statute no longer reads that DCFS is limited to withholding from a parent only information that falls within one of the exceptions currently specified in Sections 62A-4a-412(3)(b) or 78A-6-317(5)(b). Rather, it changes the statute to read that DCFS has the authority to withhold other information it is currently prohibited from withholding under the existing statute.

- By inserting the words “an investigation” and “under this part” at lines 473-474 the scope of Section 62A-4a-412 becomes less clear and may potentially be seen to be an attempt to restrict disclosures under this section to Child Abuse and Neglect referrals and formal investigations. However, the title of the statute remains “Reports, Information and Referrals Confidential” and Section 62A-4a-412(3)(b) continues to include the more expansive language of “records and other information.” The impact of these proposed revisions may have on a parent’s ability to seek reports and “other information” related to their child’s in-home services and foster care cases is unclear, but warrants further study. ⁴

SUMMARY & RECOMMENDATIONS

First Substitute Senate Bill 99 – Child Welfare Amendments, as demonstrated above, changes the current statutory provision governing DCFS’s disclosure duty to parents in a way that limits the information that must be disclosed to parents when DCFS provides them the records they are entitled to under GRAMA.

This information can be critical for obtaining orders of protection, challenging DCFS administrative findings, responding to DCFS and GAL recommendations in district court, navigating complicated family dynamics and uncovering material evidence that was not previously requested and/or disclosed in juvenile court proceedings. Especially where a DCFS worker makes an error or in situations where there are domestic violence dynamics, a parent’s ability to timely, cost-effectively and fully access their child’s DCFS Child Abuse and Neglect records is essential in ensuring their child’s safety and well-being.

The proposed amendments to SB 99 (1st Sub) at pp. 16-19, lines 470-569 represent a major shift away from the current public policy recognizing a parent’s duty to protect their children and favoring disclosure, transparency and accountability particularly in circumstance stances where a government entity routinely engages in activities that could reasonably impact the fundamental liberty interests that the parents and children have in their relationships in both the short and long term.

Parents have a duty to protect their children from harm that can extend years after a DCFS investigation. If DCFS has gathered information that would help parents fulfill that duty DCFS should continue to be required to provide it to parents.

⁴ In *Hsu v. Department of Human Services*, 20-12, the Utah State Records Committee recently relied on Section 62A-4a-412 to order DCFS to provide to the petitioning parent records related to her child’s DCFS in-home services and foster care cases. The State Records Committee rejected DCFS’s argument that the statute applied only to DCFS Child Abuse and Neglect referrals and investigations and not to cases opened as a result of those referrals and investigations.

TAKE ACTION

Please preserve the existing right of Utah parents to access DCFS records -- beyond what GRAMA currently authorizes – by:

- Supporting an amendment to strike proposed changes in lines 473 -74, 534 - 538 of Senate Bill 99 - Child Welfare Amendments (1st Substitute).
- Requesting that any proposed legislation that could (even remotely) potentially further restrict a parent’s ability to access their child’s DCFS records or reduce transparency and accountability of DCFS be openly discussed and submitted for further legislative study the House and Senate Judiciary Committees before being enacted into law.
- Requesting that the Child Welfare Legislative Oversight Committee request a Legislative Audit to study DCFS’s compliance with its obligations under GRAMA regarding record retention and keeping (i.e. uploading caseworker emails/ texts, keeping accurate logs) and its obligations under Utah Law and court rules regarding disclosures (i.e., responding to GRAMA and juvenile court discovery requests).