

Concerns about First Substitute Senate Bill 99 – Child Welfare Amendments

It requires DCFS to hide information about harmful adults from protective parents

The Division of Child and Family Services (“DCFS”) investigates abuse and neglect of children. Often what these investigations show is that only one parent or caregiver is a threat. DCFS also initiates juvenile court proceedings against parents as part of its mission 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 with parents with differing levels of ability and willingness to protect their children. It also leads to parents and children becoming involved with largely overworked and underpaid DCFS staff and contracted-caretakers and service providers with differing levels of motivation, abilities, training and commitment to follow policies and recognize threats of harm and the fundamental liberty interests of parents and children in their relationships with each other in both the short and long term.

Under current law both parents (yes, even a non-protective parent) have a right under GRAMA, Utah’s open government law, and the more specific statute under the Human Services Code that governs disclosures of DCFS Child Abuse and Neglect records, to view upon request almost everything classified as “private” in their child’s DCFS Child Abuse and Neglect records. Yes, under current law DCFS is allowed to withhold information that could identify a referent, impede a criminal investigation or endanger someone’s safety. And, no, it doesn’t require or even allow to provide a parent “protected” or “controlled” information like attorney/client communication or the other parent’s mental health assessment – disclosures of those things are governed either by more specific laws or require a court-order to obtain. This is because parents are owed a higher level of transparency and due process fairness because of their fundamental right and their ongoing duty to care and protect their children.

First Substitute Senate Bill 99 changes things – a lot. It would allow DCFS to hide information from the requesting parent about the other parent and other caregivers and family members. Since abusive or harmful adult usually have more things they want to hide in the records, this change helps them more than parents who are protective.

When DCFS withholds information from good parents it makes it harder for them to protect their children from harmful adults

Often times a DCFS Child Abuse and Neglect report or investigation is just about one parent or another caregiver. Even when there are concerns or uncertainties about both parents and DCFS initiates a case in Juvenile Court, the Judge often is able to determine that the children can be safely returned to one parent either right away or after that parent has made the efforts and changes needed to be able to keep their children safe from harm.

In either case, parents have a duty to protect their children from harm that can extend months and even years after the DCFS investigation or juvenile court case ends. They are faced with many small and large decisions that impact their children’s physical safety and emotional well-being. Often times this also means they need to seek protective orders and other relief in family law cases that can be highly contentious and costly and assistance from law enforcement and other agencies. In many cases, the information DCFS gathered as a result of their involvement with the family is helpful to parents in their efforts to protect their children from harm.

If SB 99 (1st Sub) passes then DCFS will be required and/or allowed to withhold information they have gathered that would help good parents protect their children. Examples of information DCFS is required to provide parents under current law that DCFS would not be required to provide to them if SB 99 (1st Sub) passes include but are not

limited to:

- the confirmation of failed drug tests of the other parent;
- texts and emails between a DCFS caseworker and other staff, the other parent, the other parent's service providers, family members and foster-parents DCFS considers not directly related to the child or requesting parent, even if the content is threatening or creepy; and
- notes evidencing accusations and misinformation including negative but untrue statements made by the other parent, family members and other.

This 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 and those who pose a threat to children.

Legislators can fix this problem in SB 99 by changing just a few lines

First Substitute SB 99 – Child Welfare Amendments is overall a great bill. It has thousands of lines but just lines (473 -474 & 534 – 538) need to be changed to help good parents better protect their children. These lines make changes to Utah Code §62A-4a-412, the statute in the Human Services Code that specifically governs the disclosure of DCFS Child Abuse and Neglect records and that includes a provision specifically governing DCFS's duty to a parent when it provides to them their child's DCFS Child Abuse and Neglect records.

Lines 473-474: These line inserts two phrases in the section that talks about what records this law covers and changes it read: “. . . 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]. . .”

Some see this as an attempt by DCFS to limit the scope of this statute to just reports and child abuse and neglect investigation records, but the impact 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. The proposed changes in these lines need to be removed until their impact can be further studied.

Lines 534-538: These lines eliminate these confusing boring and sounding words: “Notwithstanding any other provision of law, excluding Section 78A-6-317, but including this chapter and [GRAMA] when . . .” They also change the rest of the provision to read: 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 (i) identify the referent; (ii) impede a criminal investigation; (iii) endanger ~~a person's~~ an individual's safety.

The first phrase simply means: “regardless of any another law” except for 78A-6-317 (a provision governing disclosures to parents in juvenile court proceedings) this provision cannot be preempted or limited by another law. To make things less confusing, it should be changed to: “Except for 78A-6-317, this provision preempts [GRAMA] and any other law. When” This is important because the provision prohibits DCFS when providing a parent their child's records from withholding any information except for what is listed in the provision itself. Finally, as you can see, taking out the word “only” although a short word, changes this.

More information, including a fact sheet/legal analysis can be accessed here:

<https://drive.google.com/drive/folders/1sBNStSzMUWpObsrAPMhQEbfHFzIlgHurZ?usp=sharing>