

1 **MENTAL HEALTH RECORDS CONFIDENTIALITY**

2 **AMENDMENTS**

3 2021 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Steve Eliason**

6 Senate Sponsor: _____

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions related to the disclosure of certain confidential
11 communications.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ amends provisions related to the disclosure of confidential communications with
15 mental health therapists, psychologists, behavior analysts, and behavior specialists;
16 and

17 ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **58-60-114**, as last amended by Laws of Utah 2011, Chapter 366

25 **58-61-602**, as last amended by Laws of Utah 2011, Chapter 366

26 **58-61-713**, as enacted by Laws of Utah 2015, Chapter 367

27 **63G-2-103**, as last amended by Laws of Utah 2020, Chapter 365



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

Section 1. Section **58-60-114** is amended to read:

58-60-114. Confidentiality -- Exemptions.

(1) [~~A~~] Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, a mental health therapist under this chapter may not disclose any confidential communication with a client or patient without the express written consent of:

(a) the client or patient;

(b) the parent or legal guardian of a minor client or patient; or

~~[(c) the authorized agent of a client or patient.]~~

(c) a person authorized to consent to the disclosure of the confidential communication by the client or patient in a written document:

(i) that is signed by the client or the patient; and

(ii) in which the client's or the patient's signature is reasonably verifiable.

(2) A mental health therapist under this chapter is not subject to Subsection (1) if:

(a) the mental health therapist is permitted or required by state or federal law, rule, regulation, or order to report or disclose any confidential communication, including:

(i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a Vulnerable Adult;

(ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements;

(iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to Warn; or

(iv) reporting of a communicable disease as required under Section [26-6-6](#);

(b) the disclosure is part of an administrative, civil, or criminal proceeding and is made under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

(c) the disclosure is made under a generally recognized professional or ethical standard that authorizes or requires the disclosure.

Section 2. Section **58-61-602** is amended to read:

58-61-602. Confidentiality -- Exemptions.

(1) [~~A~~] Notwithstanding Title 63G, Chapter 2, Government Records Access and

59 Management Act, a psychologist under this chapter may not disclose any confidential
60 communication with a client or patient without the express written consent of:

- 61 (a) the client or patient;
- 62 (b) the parent or legal guardian of a minor client or patient; or
- 63 [~~(c) the authorized agent of a client or patient.~~]
- 64 (c) a person authorized to consent to the disclosure of the confidential communication
65 by the client or patient in a written document:

- 66 (i) that is signed by the client or the patient; and
- 67 (ii) in which the client's or the patient's signature is reasonably verifiable.

68 (2) A psychologist under this chapter is not subject to Subsection (1) if:

69 (a) the psychologist is permitted or required by state or federal law, rule, regulation, or
70 order to report or disclose any confidential communication, including:

71 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a
72 Vulnerable Adult;

73 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting
74 Requirements;

75 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to
76 Warn; or

77 (iv) reporting of a communicable disease as required under Section [26-6-6](#);

78 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
79 under an exemption from evidentiary privilege under Rule 506, Utah Rules of Evidence; or

80 (c) the disclosure is made under a generally recognized professional or ethical standard
81 that authorizes or requires the disclosure.

82 Section 3. Section **58-61-713** is amended to read:

83 **58-61-713. Confidentiality -- Exemptions.**

84 (1) A behavior analyst or behavior specialist under this chapter may not disclose any
85 confidential communication with a client or patient without the express written consent of:

- 86 (a) the client or patient;
- 87 (b) the parent or legal guardian of a minor client or patient; or
- 88 [~~(c) the authorized agent of a client or patient.~~]
- 89 (c) a person authorized to consent to the disclosure of the confidential communication

90 by the client or patient in a written document:

91 (i) that is signed by the client or the patient; and

92 (ii) in which the client's or the patient's signature is reasonably verifiable.

93 (2) A behavior analyst or behavior specialist is not subject to Subsection (1) if:

94 (a) the behavior analyst or behavior specialist is permitted or required by state or
95 federal law, rule, regulation, or order to report or disclose any confidential communication,
96 including:

97 (i) reporting under Title 62A, Chapter 3, Part 3, Abuse, Neglect, or Exploitation of a
98 Vulnerable Adult;

99 (ii) reporting under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting
100 Requirements;

101 (iii) reporting under Title 78B, Chapter 3, Part 5, Limitation of Therapist's Duty to
102 Warn; or

103 (iv) reporting of a communicable disease as required under Section 26-6-6;

104 (b) the disclosure is part of an administrative, civil, or criminal proceeding and is made
105 under an exemption from evidentiary privilege under Utah Rules of Evidence, Rule 506; or

106 (c) the disclosure is made under a generally recognized professional or ethical standard
107 that authorizes or requires the disclosure.

108 Section 4. Section **63G-2-103** is amended to read:

109 **63G-2-103. Definitions.**

110 As used in this chapter:

111 (1) "Audit" means:

112 (a) a systematic examination of financial, management, program, and related records
113 for the purpose of determining the fair presentation of financial statements, adequacy of
114 internal controls, or compliance with laws and regulations; or

115 (b) a systematic examination of program procedures and operations for the purpose of
116 determining their effectiveness, economy, efficiency, and compliance with statutes and
117 regulations.

118 (2) "Chronological logs" mean the regular and customary summary records of law
119 enforcement agencies and other public safety agencies that show:

120 (a) the time and general nature of police, fire, and paramedic calls made to the agency;

121 and

122 (b) any arrests or jail bookings made by the agency.

123 (3) "Classification," "classify," and their derivative forms mean determining whether a
124 record series, record, or information within a record is public, private, controlled, protected, or
125 exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

126 (4) (a) "Computer program" means:

127 (i) a series of instructions or statements that permit the functioning of a computer
128 system in a manner designed to provide storage, retrieval, and manipulation of data from the
129 computer system; and

130 (ii) any associated documentation and source material that explain how to operate the
131 computer program.

132 (b) "Computer program" does not mean:

133 (i) the original data, including numbers, text, voice, graphics, and images;

134 (ii) analysis, compilation, and other manipulated forms of the original data produced by
135 use of the program; or

136 (iii) the mathematical or statistical formulas, excluding the underlying mathematical
137 algorithms contained in the program, that would be used if the manipulated forms of the
138 original data were to be produced manually.

139 (5) (a) "Contractor" means:

140 (i) any person who contracts with a governmental entity to provide goods or services
141 directly to a governmental entity; or

142 (ii) any private, nonprofit organization that receives funds from a governmental entity.

143 (b) "Contractor" does not mean a private provider.

144 (6) "Controlled record" means a record containing data on individuals that is controlled
145 as provided by Section [63G-2-304](#).

146 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
147 governmental entity's familiarity with a record series or based on a governmental entity's
148 review of a reasonable sample of a record series, the primary classification that a majority of
149 records in a record series would be given if classified and the classification that other records
150 typically present in the record series would be given if classified.

151 (8) "Elected official" means each person elected to a state office, county office,

152 municipal office, school board or school district office, local district office, or special service
153 district office, but does not include judges.

154 (9) "Explosive" means a chemical compound, device, or mixture:

155 (a) commonly used or intended for the purpose of producing an explosion; and

156 (b) that contains oxidizing or combustive units or other ingredients in proportions,
157 quantities, or packing so that:

158 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
159 compound or mixture may cause a sudden generation of highly heated gases; and

160 (ii) the resultant gaseous pressures are capable of:

161 (A) producing destructive effects on contiguous objects; or

162 (B) causing death or serious bodily injury.

163 (10) "Government audit agency" means any governmental entity that conducts an audit.

164 (11) (a) "Governmental entity" means:

165 (i) executive department agencies of the state, the offices of the governor, lieutenant
166 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
167 the Board of Examiners, the National Guard, the Career Service Review Office, the State
168 Board of Education, the Utah Board of Higher Education, and the State Archives;

169 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
170 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
171 committees, except any political party, group, caucus, or rules or sifting committee of the
172 Legislature;

173 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
174 administrative units in the judicial branch;

175 (iv) any state-funded institution of higher education or public education; or

176 (v) any political subdivision of the state, but, if a political subdivision has adopted an
177 ordinance or a policy relating to information practices pursuant to Section [63G-2-701](#), this
178 chapter shall apply to the political subdivision to the extent specified in Section [63G-2-701](#) or
179 as specified in any other section of this chapter that specifically refers to political subdivisions.

180 (b) "Governmental entity" also means:

181 (i) every office, agency, board, bureau, committee, department, advisory board, or
182 commission of an entity listed in Subsection (11)(a) that is funded or established by the

183 government to carry out the public's business;

184 (ii) as defined in Section 11-13-103, an interlocal entity or joint or cooperative
185 undertaking;

186 (iii) as defined in Section 11-13a-102, a governmental nonprofit corporation;

187 (iv) an association as defined in Section 53G-7-1101;

188 (v) the Utah Independent Redistricting Commission; and

189 (vi) a law enforcement agency, as defined in Section 53-1-102, that employs one or
190 more law enforcement officers, as defined in Section 53-13-103.

191 (c) "Governmental entity" does not include the Utah Educational Savings Plan created
192 in Section 53B-8a-103.

193 (12) "Gross compensation" means every form of remuneration payable for a given
194 period to an individual for services provided including salaries, commissions, vacation pay,
195 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
196 similar benefit received from the individual's employer.

197 (13) "Individual" means a human being.

198 (14) (a) "Initial contact report" means an initial written or recorded report, however
199 titled, prepared by peace officers engaged in public patrol or response duties describing official
200 actions initially taken in response to either a public complaint about or the discovery of an
201 apparent violation of law, which report may describe:

202 (i) the date, time, location, and nature of the complaint, the incident, or offense;

203 (ii) names of victims;

204 (iii) the nature or general scope of the agency's initial actions taken in response to the
205 incident;

206 (iv) the general nature of any injuries or estimate of damages sustained in the incident;

207 (v) the name, address, and other identifying information about any person arrested or
208 charged in connection with the incident; or

209 (vi) the identity of the public safety personnel, except undercover personnel, or
210 prosecuting attorney involved in responding to the initial incident.

211 (b) Initial contact reports do not include follow-up or investigative reports prepared
212 after the initial contact report. However, if the information specified in Subsection (14)(a)
213 appears in follow-up or investigative reports, it may only be treated confidentially if it is

214 private, controlled, protected, or exempt from disclosure under Subsection [63G-2-201\(3\)\(b\)](#).

215 (15) "Legislative body" means the Legislature.

216 (16) "Notice of compliance" means a statement confirming that a governmental entity
217 has complied with an order of the State Records Committee.

218 (17) "Person" means:

219 (a) an individual;

220 (b) a nonprofit or profit corporation;

221 (c) a partnership;

222 (d) a sole proprietorship;

223 (e) other type of business organization; or

224 (f) any combination acting in concert with one another.

225 (18) "Private provider" means any person who contracts with a governmental entity to
226 provide services directly to the public.

227 (19) "Private record" means a record containing data on individuals that is private as
228 provided by Section [63G-2-302](#).

229 (20) "Protected record" means a record that is classified protected as provided by
230 Section [63G-2-305](#).

231 (21) "Public record" means a record that is not private, controlled, or protected and that
232 is not exempt from disclosure as provided in Subsection [63G-2-201\(3\)\(b\)](#).

233 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
234 card, tape, recording, electronic data, or other documentary material regardless of physical form
235 or characteristics:

236 (i) that is prepared, owned, received, or retained by a governmental entity or political
237 subdivision; and

238 (ii) where all of the information in the original is reproducible by photocopy or other
239 mechanical or electronic means.

240 (b) "Record" does not mean:

241 (i) a personal note or personal communication prepared or received by an employee or
242 officer of a governmental entity:

243 (A) in a capacity other than the employee's or officer's governmental capacity; or

244 (B) that is unrelated to the conduct of the public's business;

- 245 (ii) a temporary draft or similar material prepared for the originator's personal use or
246 prepared by the originator for the personal use of an individual for whom the originator is
247 working;
- 248 (iii) material that is legally owned by an individual in the individual's private capacity;
- 249 (iv) material to which access is limited by the laws of copyright or patent unless the
250 copyright or patent is owned by a governmental entity or political subdivision;
- 251 (v) proprietary software;
- 252 (vi) junk mail or a commercial publication received by a governmental entity or an
253 official or employee of a governmental entity;
- 254 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections
255 of a library open to the public;
- 256 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
257 of a library open to the public, regardless of physical form or characteristics of the material;
- 258 (ix) a daily calendar or other personal note prepared by the originator for the
259 originator's personal use or for the personal use of an individual for whom the originator is
260 working;
- 261 (x) a computer program that is developed or purchased by or for any governmental
262 entity for its own use;
- 263 (xi) a note or internal memorandum prepared as part of the deliberative process by:
- 264 (A) a member of the judiciary;
- 265 (B) an administrative law judge;
- 266 (C) a member of the Board of Pardons and Parole; or
- 267 (D) a member of any other body, other than an association or appeals panel as defined
268 in Section [53G-7-1101](#), charged by law with performing a quasi-judicial function;
- 269 (xii) a telephone number or similar code used to access a mobile communication
270 device that is used by an employee or officer of a governmental entity, provided that the
271 employee or officer of the governmental entity has designated at least one business telephone
272 number that is a public record as provided in Section [63G-2-301](#);
- 273 (xiii) information provided by the Public Employees' Benefit and Insurance Program,
274 created in Section [49-20-103](#), to a county to enable the county to calculate the amount to be
275 paid to a health care provider under Subsection [17-50-319\(2\)\(e\)\(ii\)](#);

276 (xiv) information that an owner of unimproved property provides to a local entity as
277 provided in Section [11-42-205](#);

278 (xv) a video or audio recording of an interview, or a transcript of the video or audio
279 recording, that is conducted at a Children's Justice Center established under Section [67-5b-102](#);

280 (xvi) child pornography, as defined by Section [76-5b-103](#); ~~or~~

281 (xvii) before final disposition of an ethics complaint occurs, a video or audio recording
282 of the closed portion of a meeting or hearing of:

283 (A) a Senate or House Ethics Committee;

284 (B) the Independent Legislative Ethics Commission;

285 (C) the Independent Executive Branch Ethics Commission, created in Section
286 [63A-14-202](#); or

287 (D) the Political Subdivisions Ethics Review Commission established in Section
288 [63A-15-201](#)~~[-];~~ or

289 (xviii) confidential communication described in Section [58-60-102](#), [58-61-102](#), or
290 [58-61-702](#).

291 (23) "Record series" means a group of records that may be treated as a unit for
292 purposes of designation, description, management, or disposition.

293 (24) "Records officer" means the individual appointed by the chief administrative
294 officer of each governmental entity, or the political subdivision to work with state archives in
295 the care, maintenance, scheduling, designation, classification, disposal, and preservation of
296 records.

297 (25) "Schedule," "scheduling," and their derivative forms mean the process of
298 specifying the length of time each record series should be retained by a governmental entity for
299 administrative, legal, fiscal, or historical purposes and when each record series should be
300 transferred to the state archives or destroyed.

301 (26) "Sponsored research" means research, training, and other sponsored activities as
302 defined by the federal Executive Office of the President, Office of Management and Budget:

303 (a) conducted:

304 (i) by an institution within the state system of higher education defined in Section
305 [53B-1-102](#); and

306 (ii) through an office responsible for sponsored projects or programs; and

- 307 (b) funded or otherwise supported by an external:
308 (i) person that is not created or controlled by the institution within the state system of
309 higher education; or
310 (ii) federal, state, or local governmental entity.
- 311 (27) "State archives" means the Division of Archives and Records Service created in
312 Section [63A-12-101](#).
- 313 (28) "State archivist" means the director of the state archives.
- 314 (29) "State Records Committee" means the State Records Committee created in
315 Section [63G-2-501](#).
- 316 (30) "Summary data" means statistical records and compilations that contain data
317 derived from private, controlled, or protected information but that do not disclose private,
318 controlled, or protected information.