

Senator Bill Wright proposes to substitute the following bill:

CHILD WELFARE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

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5 **This act modifies provisions of the Judicial Code and the Human Services Code related to**
6 **child welfare. This act requires the Division of Child and Family Services to maintain a**
7 **separate database system for unsubstantiated reports of child abuse and reports of child**
8 **abuse that are without merit. The act reduces the period of time unsubstantiated reports of**
9 **child abuse are maintained on the database system from ten years to five years. The act**
10 **establishes circumstances in which the division shall remove a name from the database. The**
11 **act requires the Child Welfare Legislative Oversight Committee to study immunity of child**
12 **protection service workers. The act clarifies the circumstances in which an officer may use**
13 **force to remove a child from a home. This act clarifies the conditions that must be met**
14 **before a child suspected of being abused or a sibling may be removed from the home. The**
15 **act requires a court to order visitation with a parent at the shelter hearing and at the**
16 **dispositional hearing unless visitation is not in the best interest of the child. This act includes**
17 **a coordination clause.**

18 This act affects sections of Utah Code Annotated 1953 as follows:

19 AMENDS:

20 **62A-4a-116**, as last amended by Chapters 304 and 321, Laws of Utah 2000

21 **62A-4a-116.5**, as last amended by Chapter 304, Laws of Utah 2000

22 **62A-4a-207**, as last amended by Chapter 13, Laws of Utah 1998

23 **78-3a-106**, as last amended by Chapters 329 and 365, Laws of Utah 1997

24 **78-3a-301**, as last amended by Chapter 274, Laws of Utah 2000

25 **78-3a-307**, as last amended by Chapter 285, Laws of Utah 2000



26 **78-3a-311**, as last amended by Chapter 121, Laws of Utah 1999

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

28 Section 1. Section **62A-4a-116** is amended to read:

29 **62A-4a-116. Management information system -- Requirements.**

30 (1) The division shall develop and implement a management information system that
31 meets the requirements of this section and the requirements of federal law and regulation.

32 (2) With regard to all child welfare cases, the management information system shall:

33 (a) provide each caseworker with a complete history of each child in his caseload,
34 including:

35 (i) all past action taken by the division with regard to that child and his siblings, the
36 complete case history and all reports and information in the control or keeping of the division
37 regarding that child and his siblings;

38 (ii) the number of times the child has been in foster care;

39 (iii) the cumulative period of time the child has been in foster care;

40 (iv) all reports of abuse or neglect received by the division with regard to that child's parent
41 or parents, including documentation regarding whether each report was substantiated,
42 unsubstantiated, or without merit;

43 (v) the number of times the child's parent or parents have failed any treatment plan; and

44 (vi) the number of different caseworkers who have been assigned to that child in the past;

45 (b) contain all key elements of each family's current treatment plan, including the dates and
46 number of times the plan has been administratively or judicially reviewed, the number of times the
47 parent or parents have failed that treatment plan, and the exact length of time that treatment plan
48 has been in effect;

49 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
50 plans; [~~and~~]

51 (d) unless the executive director determines that there is good cause for keeping the report
52 on the system based on standards established by rule, delete any reference to:

53 (i) a report that is without merit if no subsequent report involving the same alleged
54 perpetrator has occurred within one year; or

55 (ii) a report that is unsubstantiated if no subsequent report involving the same alleged
56 perpetrator has occurred within [~~ten~~] five years[-]; and

57 (e) maintain a separation of reports that are without merit in the system to identify the
58 cases apart from substantiated cases and, where necessary, provide restricted access to the without
59 merit cases.

60 (3) With regard to all child protective services cases, the management information system
61 shall, in addition to the information required in Subsection (2), monitor compliance with the policy
62 of the division, the laws of this state, and federal law and regulation.

63 (4) With regard to all child welfare and protective services cases, the age and date of birth
64 of the alleged perpetrator, at the time the abuse or neglect is alleged to have occurred, shall be
65 included in the management information system.

66 (5) (a) The division shall develop and maintain a part of the information management
67 system for licensing purposes, which shall be:

68 (i) limited to:

69 (A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and
70 an opportunity to challenge has been provided under Section 62A-4a-116.5;

71 (B) the name of a person who was not sent a notice of agency action under Section
72 62A-4a-116.5 because his location was not available on the management information system or
73 who was sent a notice of agency action that was returned to the division as undelivered for the sole
74 purpose of alerting the division of the need to afford the person an opportunity to challenge the
75 finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond
76 delaying the person's licensing application to provide an opportunity for challenge, may be taken;

77 (C) an adjudication of child abuse or neglect by a court of competent jurisdiction if
78 Subsection 62A-4a-116.5(5) has been met; and

79 (D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual
80 abuse of any person; and

81 (ii) accessible by:

82 (A) the Office of Licensing for licensing purposes only;

83 (B) the division:

84 (I) to screen a person at the request of the Office of the Guardian Ad Litem Director,
85 created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the
86 Office of the Guardian Ad Litem and each year thereafter that the person remains with the office;
87 and

88 (II) to respond to a request for information from the person who is identified as a
89 perpetrator in the report, after advising the person of the screening prohibition in Subsection
90 (4)(d)(iii);

91 (C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure
92 within the Department of Health only for the purpose of licensing a child care program or provider,
93 or for determining whether a person associated with a covered health care facility, as defined by
94 the Department of Health by rule, who provides direct care to a child has a substantiated finding
95 of child abuse or neglect; and

96 (D) the department as provided in Subsection (6) and Section 62A-1-118.

97 (b) For the purpose of Subsection (5)(a), "substantiated":

98 (i) means a finding that there is a reasonable basis to conclude that:

99 (A) a person 18 years of age or older committed one or more of the following types of
100 child abuse or neglect:

101 (I) physical abuse;

102 (II) sexual abuse;

103 (III) sexual exploitation;

104 (IV) abandonment;

105 (V) medical neglect resulting in death, disability, or serious illness; or

106 (VI) chronic or severe neglect; and

107 (B) a person under the age of 18:

108 (I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
109 which indicates a significant risk to other children; or

110 (II) engaged in sexual behavior with or upon another child which indicates a significant
111 risk to other children; and

112 (ii) does not include:

113 (A) the use of reasonable and necessary physical restraint or force by an educator in
114 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or

115 (B) a person's conduct that:

116 (I) is justified under Section 76-2-401; or

117 (II) constituted the use of reasonable and necessary physical restraint or force in
118 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or

119 other dangerous object in the possession or under the control of a child or to protect the child or
120 another person from physical injury.

121 (iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in
122 accordance with risk assessment tools and policies established by the division that focus on age,
123 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other
124 related considerations.

125 (B) The division shall train its child protection workers to apply the risk assessment tools
126 and policies established under Subsection (5)(b)(iii)(A).

127 (c) (i) The Department of Health shall:

128 (A) designate two persons within the Department of Health to access the licensing part of
129 the management information system; and

130 (B) adopt measures to:

131 (I) protect the security of the licensing part of the management information system; and

132 (II) strictly limit access to the licensing part of the management information system to
133 those designated under Subsection (5)(c)(i)(A).

134 (ii) Those designated under Subsection (5)(c)(i)(A) shall receive training from the
135 department with respect to:

136 (A) accessing the licensing part of the management information system;

137 (B) maintaining strict security; and

138 (C) the criminal provisions in Section 62A-4a-412 for the improper release of information.

139 (iii) Those designated under Subsection (5)(c)(i)(A):

140 (A) are the only ones in the Department of Health with the authority to access the licensing
141 part of the management information system; and

142 (B) may only access the licensing part of the management information system in
143 accordance with the provisions of Subsection (5)(a)(ii).

144 (iv) The Department of Health may obtain information in the possession of the division
145 that relates to a substantiated finding of abuse or neglect of a person screened under this
146 Subsection (5)(c).

147 (d) (i) Information in the licensing part of the management information system is
148 confidential and may only be used or disclosed as specifically provided in this section, Section
149 62A-2-121, and Section 62A-4a-116.5.

150 (ii) No person, unless listed in Subsection (5)(a)(ii), may request another person to obtain
151 or release a report or any other information in the possession of the division obtained as a result
152 of the report that is available under Subsection (5)(a)(ii)(A)(III) to screen for potential perpetrators
153 of child abuse or neglect.

154 (iii) A person who requests information knowing that it is a violation of Subsection
155 (5)(d)(ii) to do so is subject to the criminal penalty in Section 62A-4a-412.

156 (6) All information contained in the management information system shall be available
157 to the department upon the approval of the executive director, on a need-to-know basis.

158 (7) (a) The division may allow its contract providers to have limited access to the
159 management information system. The division shall limit that access to information about persons
160 who are currently receiving services from the specific contract provider.

161 (b) Each contract provider shall:

162 (i) take all necessary precautions to safeguard the security of the information contained in
163 the management information system;

164 (ii) train its employees regarding requirements for confidentiality and the criminal
165 penalties under Sections 62A-4a-412 and 63-2-801 for improper release of information; and

166 (iii) monitor its employees to ensure that they comply with the confidentiality requirements
167 related to the management information system.

168 (c) The division shall take reasonable precautions to ensure that its contract providers are
169 complying with Subsection (7)(b).

170 (8) The division shall take all necessary precautions, including password protection and
171 other appropriate technological techniques, to prevent unauthorized access to the information
172 contained in the management information system.

173 (9) (a) The division shall send a certified letter to a person who submitted a report of child
174 abuse or neglect that is put onto any part of the management information system if the division
175 determines, at the conclusion of its investigation, that:

176 (i) the report is false;

177 (ii) it is more likely than not that the person knew that the report was false at the time the
178 person submitted the report; and

179 (iii) the person's address is known or reasonably available.

180 (b) The letter shall inform the person of:

- 181 (i) the determination made under Subsection (9)(a);
- 182 (ii) the penalty for submitting false information under Section 76-8-506 and other
183 applicable laws;
- 184 (iii) the obligation of the division to inform law enforcement and the alleged perpetrator:
185 (A) in the present instance if an immediate referral is justified by the facts; or
186 (B) if the person submits a subsequent false report involving the same alleged perpetrator
187 or victim.
- 188 (c) (i) The division may inform law enforcement and the alleged perpetrator of a report for
189 which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by
190 the facts.
- 191 (ii) The division shall inform law enforcement and the alleged perpetrator of a report for
192 which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the
193 person involving the same alleged perpetrator or victim.
- 194 (iii) The division shall determine, in consultation with law enforcement:
195 (A) the information to be given to an alleged perpetrator about a false claim; and
196 (B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator
197 about a false claim.
- 198 (d) Nothing in this Subsection (9) may be construed as requiring the division to conduct
199 an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report
200 is false.

201 Section 2. Section **62A-4a-116.5** is amended to read:

202 **62A-4a-116.5. Opportunity to challenge a finding of child abuse or neglect.**

- 203 (1) (a) The division shall send a notice of agency action to a person if the division finds,
204 at the conclusion of an investigation, that, in the opinion of the division, there is a reasonable basis
205 to conclude that the person committed abuse or neglect listed in Subsection 62A-4a-116(5)(b)(i).
206 In the event that the person is under the age of 18, the division shall:
207 (i) make reasonable efforts to identify the person's parent or legal guardian; and
208 (ii) send a notice to each parent or legal guardian identified under Subsection (1)(a)(i) that
209 lives at a different address unless there is good cause, as defined by rule, for not sending a notice
210 to a parent or legal guardian.
- 211 (b) For purposes of this section only, which governs the right of a person to challenge the

212 division's initial finding or opinion of abuse or neglect as it pertains to the licensing part of the
213 management information system, the division shall refer to a finding under Subsection (1)(a) as
214 a "finding" or an "initial finding" of abuse or neglect when notifying or explaining a notification
215 to a person.

216 (c) Nothing in this section may be construed as affecting:

217 (i) the manner in which the division conducts an investigation; or

218 (ii) the use or effect, in any other setting, of:

219 (A) an initial division finding or substantiation of child abuse or neglect at the completion

220 of an investigation for any purpose other than for notification under Subsection (1)(b); or

221 (B) the term "substantiated" as used in any other provision of the code.

222 (2) The notice shall state:

223 (a) that the division conducted an investigation;

224 (b) that the division found, at the conclusion of the investigation, that there was, in the
225 opinion of the division, a reasonable basis to conclude that abuse or neglect occurred;

226 (c) the facts that support the finding;

227 (d) that the person may be disqualified from adopting a child or working for or being

228 licensed by:

229 (i) the department;

230 (ii) a human services licensee;

231 (iii) a child care provider or program; and

232 (iv) a covered health care facility;

233 (e) that the person has the right to request:

234 (i) a copy of the report; and

235 (ii) an opportunity to challenge the finding and its inclusion on the licensing part of the

236 management information system described in Subsection 62A-4a-116(5), except as provided in

237 Subsection (5)(b); and

238 (f) that failure to request an opportunity to challenge the finding within 30 days of the

239 notice being received will result in an unappealable finding of substantiation of child abuse or

240 neglect, unless the person can show good cause for why compliance within the 30-day requirement

241 was virtually impossible or unreasonably burdensome.

242 (3) (a) A person may make a request to challenge a finding within 30 days of:

- 243 (i) a notice being received under Subsection (2);
244 (ii) a finding by a court of competent jurisdiction based on the same underlying facts that:
245 (A) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), did not occur;
246 or
247 (B) the person was not responsible for the child abuse or neglect that did occur; or
248 (iii) the dismissal of criminal charges or a verdict of not guilty based on the same
249 underlying facts.
- 250 (b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown
251 that compliance was virtually impossible or unreasonably burdensome.
- 252 (c) The division may approve or deny a request made under Subsection (3)(a).
- 253 (d) If the division denies the request or fails to act within 30 days after receiving a request
254 submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an
255 adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.
- 256 (4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall
257 prove by a preponderance of the evidence that there is a reasonable basis to conclude that:
258 (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred; and
259 (ii) the person was substantially responsible for the abuse or neglect that occurred.
- 260 (b) The administrative hearing officer may make a determination of substantiation based
261 solely on the out-of-court statement of the child that the officer finds to be reliable under the
262 standards set forth in:
- 263 (i) Section 76-5-411;
264 (ii) Utah Rules of Criminal Procedure, Rule 15.5;
265 (iii) Section 78-3a-116(5);
266 (iv) the Utah Rules of Evidence; or
267 (v) Utah case law.
- 268 (5) (a) ~~[A]~~ Except as provided in Subsection (5)(b), a person may not make a request to
269 challenge a finding under Subsection (3)(a), if, at anytime, a court of competent jurisdiction has
270 made a determination based on the same underlying facts that:
- 271 (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred;
272 (ii) the person was substantially responsible for the abuse or neglect that occurred; and
273 (iii) the person:

274 (A) was a party to the proceeding; or
275 (B) (I) had notice of the proceeding; and
276 (II) was provided a meaningful opportunity to challenge the facts underlying the court's
277 determination.

278 (b) The division shall remove a person's name from the database unless the division
279 provides new notice under Subsection (1)(a) and an opportunity to be heard under Subsection
280 (3)(a) when the court of competent jurisdiction:

281 (i) enters a finding of not guilty;

282 (ii) dismisses the information or indictment after compliance with the requirements of a
283 diversion agreement under Section 77-2-6; or

284 (iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the completion of
285 a plea in abeyance agreement § FOLLOWING A [for a] § plea of no contest.

286 ~~[(b)]~~ (c) An adjudicative proceeding held pursuant to Subsection (4) may be stayed during
287 the time a judicial action is pending.

288 (6) Nothing in this section may affect the inclusion or exclusion of a report or finding of
289 child abuse or neglect from or access by the division, its caseworkers, and child protective services
290 workers to that part of the management information system used for purposes of child welfare
291 cases and child protective services as described in Subsections 62A-4a-116(2) and (3).

292 (7) By December 31, 1998, the division shall provide notice to each person with a finding
293 of abuse or neglect since January 1, 1994.

294 (8) A person who, after receiving notice, fails to challenge a finding of child abuse or
295 neglect may request the opportunity to challenge the finding under this section:

296 (a) if since the time that the person received notice, state law has been amended to permit
297 a broader use of or access to information on the licensing part of the management information
298 system; and

299 (b) before the finding may be used against the person in connection with the broader use
300 or access.

301 Section 3. Section **62A-4a-207** is amended to read:

302 **62A-4a-207. Legislative Oversight Panel -- Responsibilities.**

303 (1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the
304 following members:

305 (i) two members of the Senate, one from the majority party and one from the minority
306 party, appointed by the president of the Senate; and

307 (ii) three members of the House of Representatives, two from the majority party and one
308 from the minority party, appointed by the speaker of the House of Representatives.

309 (b) Members of the panel shall serve for two-year terms, or until their successors are
310 appointed.

311 (c) A vacancy exists whenever a member ceases to be a member of the Legislature, or
312 when a member resigns from the panel. Vacancies shall be filled by the appointing authority, and
313 the replacement shall fill the unexpired term.

314 (2) The president of the Senate shall designate one of the senators appointed to the panel
315 under Subsection (1) as the Senate chair of the panel. The speaker of the House of Representatives
316 shall designate one of the representatives appointed to the panel under Subsection (1) as the House
317 chair of the panel.

318 (3) The panel shall follow the interim committee rules established by the Legislature.

319 (4) The panel shall:

320 (a) examine and observe the process and execution of laws governing the child welfare
321 system by the executive branch and the judicial branch;

322 (b) upon request, receive testimony from the public, the juvenile court, and from all state
323 agencies involved with the child welfare system including, but not limited to, the division, other
324 offices and agencies within the department, the attorney general's office, the Office of the Guardian
325 Ad Litem Director, and school districts;

326 (c) receive reports from the Consumer Hearing Panel, described in Subsection
327 62A-4a-102(3), and consider and review the actions, reports, and recommendations of that panel;

328 (d) receive recommendations from, and make recommendations to the governor, the
329 Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the
330 juvenile court, and the public;

331 (e) study and recommend proposed changes to laws governing the child welfare system;

332 (f) study and determine what measures may be appropriate in addressing the immunity or
333 liability of government employees involved in child protective service investigations and removals,
334 and report its findings to the Human Services Interim Committee on or before November 1, 2001;

335 [(f)] (g) perform such other duties related to the oversight of the child welfare system as

336 the panel considers appropriate; and

337 ~~(g)~~ (h) annually report its findings and recommendations to the president of the Senate,
338 the speaker of the House of Representatives, the Health and Human Services Interim Committee,
339 and the Judiciary Interim Committee.

340 (5) The panel has authority to review and discuss individual cases. When an individual
341 case is discussed, the panel's meeting may be held in private.

342 (6) (a) The panel has authority to make recommendations to the Legislature, the governor,
343 the Board of Juvenile Court Judges, the division, and any other statutorily created entity related
344 to the policies and procedures of the child welfare system. The panel does not have authority to
345 make recommendations to the court, the division, or any other public or private entity regarding
346 the disposition of any individual case.

347 (b) The panel may hold public hearings, as it considers advisable, in various locations
348 within the state in order to afford all interested persons an opportunity to appear and present their
349 views regarding the child welfare system in this state.

350 (7) (a) All records of the panel regarding individual cases shall be classified private, and
351 may be disclosed only in accordance with federal law and the provisions of Title 63, Chapter 2,
352 Government Records Access and Management Act.

353 (b) The panel shall have access to all of the division's records, including those regarding
354 individual cases. In accordance with Title 63, Chapter 2, Government Records Access
355 Management Act, all documents and information received by the panel shall maintain the same
356 classification that was designated by the division.

357 (8) In order to accomplish its oversight functions, the panel has:

358 (a) all powers granted to legislative interim committees in Section 36-12-11; and

359 (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena Powers.

360 (9) Members of the panel shall receive salary and expenses in accordance with Section
361 36-2-2.

362 (10) (a) The Office of Legislative Research and General Counsel shall provide staff
363 support to the panel.

364 (b) The panel is authorized to employ additional professional assistance and other staff
365 members as it considers necessary and appropriate.

366 Section 4. Section **78-3a-106** is amended to read:

367 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

368 (1) The court has authority to issue search warrants, subpoenas, or investigative subpoenas
369 in criminal cases, delinquency, and abuse, neglect, and dependency proceedings for the same
370 purposes, in the same manner and pursuant to the same procedures set forth in the code of criminal
371 procedure for the issuance of search warrants, subpoenas, or investigative subpoenas in other trial
372 courts in the state.

373 (2) (a) If it appears to the court upon an affidavit sworn to by a peace officer or any other
374 person, and upon the examination of other witnesses, if required by the judge, that there is probable
375 cause to believe that a child is being ill-treated by his parent, guardian, or custodian, or is being
376 detained, ill-treated, or harbored against the desires of his parent, guardian, or custodian, in any
377 place within the jurisdiction of the court, the court may issue a warrant authorizing a peace officer
378 to search for the child.

379 (b) ~~[The]~~ Pursuant to Section 77-23-210, the officer making the search may enter a house
380 or premises by force, if necessary, in order to remove the child.

381 (c) The officer shall then take the child to the place of shelter designated by the court.

382 Section 5. Section **78-3a-301** is amended to read:

383 **78-3a-301. Removing a child from his home -- Grounds for removal.**

384 (1) The Division of Child and Family Services may not remove a child from the custody
385 of his natural parent unless the division complies with the provisions of Title 62A, Chapter 4a,
386 Child and Family Services, including Subsections 62A-4a-103(2)(b) and 62A-4a-201(3), and
387 unless there is substantial cause to believe that any one of the following exist:

388 (a) there is a substantial danger to the physical health or safety of the minor and the minor's
389 physical health or safety may not be protected without removing him from his parent's custody.
390 If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent
391 incident of abuse, neglect, or dependency ~~[occurs]~~ has occurred involving the same alleged abuser
392 or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that
393 the child cannot safely remain in the custody of his parent;

394 (b) a parent engages in or threatens the child with unreasonable conduct that causes the
395 minor [is suffering] to suffer emotional damage~~[, as may be indicated by, but not limited to,~~
396 ~~extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,]~~
397 and there are no reasonable means available by which the minor's emotional health may be

398 protected without removing the minor from the custody of his parent;

399 (c) (i) the minor or another minor residing in the same household has been physically or
400 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
401 a parent, a member of the parent's household, or other person known to the parent.

402 (ii) For purposes of this Subsection (1)(c), another minor residing in the same household
403 may not be removed from the home unless that minor is deemed to be at substantial risk of being
404 physically or sexually abused as described in Subsection (1)(c)(i) or (iii).

405 (iii) If a parent has received actual notice that physical or sexual abuse by a person known
406 to the parent has occurred, and there is evidence that the parent [has allowed] failed to protect the
407 child by allowing the child to be in the physical presence of the alleged abuser, that fact constitutes
408 prima facie evidence that the child is at substantial risk of being physically or sexually abused;

409 (d) the parent is unwilling to have physical custody of the child;

410 (e) the minor has been left without any provision for his support;

411 (f) a parent who has been incarcerated or institutionalized has not or cannot arrange for
412 safe and appropriate care for the minor;

413 (g) a relative or other adult custodian with whom the minor has been left by the parent is
414 unwilling or unable to provide care or support for the minor, the whereabouts of the parent are
415 unknown, and reasonable efforts to locate him have been unsuccessful;

416 (h) the minor is in immediate need of urgent medical care;

417 (i) ~~[the physical]~~ (A) a parent's actions, omissions, or habitual action create an
418 environment [or the fact that the child is left unattended] that poses a threat to the child's health
419 or safety; or

420 (B) a parent's action in leaving a child unattended would reasonably pose a threat to the
421 child's health or safety;

422 (j) (i) the minor or another minor residing in the same household has been neglected; and

423 (ii) for purposes of Subsection (j)(i), another minor residing in the same household may
424 not be removed unless that minor is deemed to be at substantial risk of being neglected;

425 (k) an infant has been abandoned, as defined in Section 78-3a-313.5;

426 (l) the parent, or an adult residing in the same household as the parent, has been charged
427 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
428 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the

429 property where the child resided; or

430 (m) the child's welfare is otherwise endangered, as documented by the caseworker. This
431 Subsection (1)(m) is repealed on July 1, 2002 unless further authorized by the Legislature.

432 (2) The Division of Child and Family Services may not remove a minor from the custody
433 of his [~~natural~~] parent solely on the basis of educational neglect.

434 (3) The Division of Child and Family Services may not remove a minor from the custody
435 of his parent solely on the basis of mental illness of the parent in the absence of one of the factors
436 described in Subsection (1).

437 [~~(3)~~] (4) The Division of Child and Family Services shall comply with the provisions of
438 Section 62A-4a-202.1 in effecting removal of a child pursuant to this section.

439 [~~(4)~~] (5) (a) A minor removed from the custody of his natural parent under this section may
440 not be placed or kept in a secure detention facility pending court proceedings unless the minor is
441 detainable based on guidelines promulgated by the Division of Youth Corrections.

442 (b) A minor removed from the custody of his natural parent but who does not require
443 physical restriction shall be given temporary care in a shelter facility.

444 Section 6. Section **78-3a-307** is amended to read:

445 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
446 **DCFS custody.**

447 (1) (a) At the shelter hearing, when the court orders that a child be removed from the
448 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
449 first determine whether there is another natural parent as defined in Subsection (1)(b), with whom
450 the child was not residing at the time the events or conditions that brought him within the court's
451 jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody,
452 the court shall place the minor with that parent unless it finds that the placement would be unsafe
453 or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the
454 provisions of Subsection (8)(b).

455 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
456 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological
457 father who was married to the child's biological mother at the time the child was conceived or
458 born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of
459 the child or voluntary surrender of the child by the custodial parent. This definition applies

460 regardless of whether the child has been or will be placed with adoptive parents or whether
461 adoption has been or will be considered as a long term goal for the child.

462 (c) (i) The court shall make a specific finding regarding the fitness of that parent to assume
463 custody, and the safety and appropriateness of the placement.

464 (ii) The court shall, at a minimum, order the division to visit the parent's home, perform
465 criminal background checks described in Sections 78-3a-307.1 and 62A-4a-202.4, and check the
466 division's management information system for any previous reports of abuse or neglect received
467 by the division regarding the parent at issue.

468 (iii) The court may order the Division of Child and Family Services to conduct any further
469 investigation regarding the safety and appropriateness of the placement.

470 (iv) The division shall report its findings in writing to the court.

471 (v) The court may place the child in the temporary custody of the division, pending its
472 determination regarding that placement.

473 (2) If the court orders placement with a parent under Subsection (1), the child and the
474 parent are under the continuing jurisdiction of the court. The court may order that the parent
475 assume custody subject to the supervision of the court, and order that services be provided to the
476 parent from whose custody the child was removed, the parent who has assumed custody, or both.
477 The court ~~may~~ shall also provide for reasonable visitation with the parent from whose custody
478 the child was removed, ~~if that~~ unless visitation is not in the best interest of the child. The court's
479 order shall be periodically reviewed to determine whether:

480 (a) placement with the parent continues to be in the child's best interest;

481 (b) the child should be returned to the original custodial parent;

482 (c) the child should be placed with a relative, pursuant to Subsection (5); or

483 (d) the child should be placed in the custody of the division.

484 (3) The time limitations described in Section 78-3a-311 with regard to reunification
485 efforts, apply to children placed with a previously noncustodial parent in accordance with
486 Subsection (1).

487 (4) Legal custody of the child is not affected by an order entered under Subsection (1) or
488 (2). In order to affect a previous court order regarding legal custody, the party must petition that
489 court for modification of the order.

490 (5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his

491 parent and is not placed in the custody of his other parent, the court shall, at that time, determine
492 whether there is a relative who is able and willing to care for the child. The court may order the
493 Division of Child and Family Services to conduct a reasonable search to determine whether there
494 are relatives of the child who are willing and appropriate, in accordance with the requirements of
495 this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The
496 court shall order the parents to cooperate with the division, within five working days, to provide
497 information regarding relatives who may be able and willing to care for the child. The child may
498 be placed in the temporary custody of the division pending that determination. This section may
499 not be construed as a guarantee that an identified relative will receive custody of the child.
500 However, preferential consideration may be given to a relative's request for placement of the child,
501 if it is in the best interest of the child, and the provisions of this section are satisfied.

502 (b) (i) If a willing relative is identified pursuant to Subsection (5)(a), the court shall make
503 a specific finding regarding the fitness of that relative to assume custody, and the safety and
504 appropriateness of placement with that relative. In order to be considered a "willing relative"
505 under this section, the relative shall be willing to cooperate if the child's permanency goal is
506 reunification with his parent or parents, and be willing to adopt or take permanent custody of the
507 child if that is determined to be in the best interest of the child.

508 (ii) The court shall, at a minimum, order the division to conduct criminal background
509 checks described in Sections 78-3a-307.1 and 62A-4a-202.4, visit the relative's home, check the
510 division's management information system for any previous reports of abuse or neglect regarding
511 the relative at issue, report its findings in writing to the court, and provide sufficient information
512 so that the court may determine whether:

513 (A) the relative has any history of abusive or neglectful behavior toward other children that
514 may indicate or present a danger to this child;

515 (B) the child is comfortable with the relative;

516 (C) the relative recognizes the parent's history of abuse and is determined to protect the
517 child;

518 (D) the relative is strong enough to resist inappropriate requests by the parent for access
519 to the child, in accordance with court orders;

520 (E) the relative is committed to caring for the child as long as necessary; and

521 (F) the relative can provide a secure and stable environment for the child.

522 (iii) The court may order the Division of Child and Family Services to conduct any further
523 investigation regarding the safety and appropriateness of the placement.

524 (iv) The division shall complete and file its assessment regarding placement with a relative
525 as soon as practicable, in an effort to facilitate placement of the child with a relative.

526 (c) The court may place the child in the temporary custody of the division, pending the
527 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding that
528 placement. The court shall ultimately base its determination regarding placement with a relative
529 on the best interest of the child.

530 (d) For purposes of this section, "relative" means an adult who is a grandparent, great
531 grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first
532 cousin, stepsibling, or sibling of the child. In the case of a child defined as an "Indian" under the
533 Indian Child Welfare Act, 25 U.S.C. Section 1903, "relative" also means an "extended family
534 member" as defined by that statute.

535 (6) (a) When the court vests physical custody of a child with a relative pursuant to
536 Subsection (5), it shall order that the relative assume custody subject to the continuing supervision
537 of the court, and shall order that any necessary services be provided to the minor and the relative.
538 That child is not within the temporary custody or custody of the Division of Child and Family
539 Services. The child and any relative with whom the child is placed are under the continuing
540 jurisdiction of the court. The court may enter any order that it considers necessary for the
541 protection and best interest of the child. The court shall provide for reasonable visitation with the
542 parent or parents from whose custody the child was removed unless visitation is not in the best
543 interest of the child.

544 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed
545 by the court, no less often than every six months, to determine whether:

546 (A) placement with the relative continues to be in the child's best interest;

547 (B) the child should be returned home; or

548 (C) the child should be placed in the custody of the division.

549 (ii) No later than 12 months after placement with a relative the court shall schedule a
550 hearing for the purpose of entering a permanent order in accordance with the best interest of the
551 child.

552 (iii) The time limitations described in Section 78-3a-311, with regard to reunification

553 efforts, apply to children placed with a relative pursuant to Subsection (5).

554 (7) When the court orders that a child be removed from the custody of his parent and does
555 not vest custody in another parent or relative under this section, the court shall order that the child
556 be placed in the temporary custody of the Division of Child and Family Services, to proceed to
557 adjudication and disposition and to be provided with care and services in accordance with this
558 chapter and Title 62A, Chapter 4a, Child and Family Services.

559 (8) (a) Any preferential consideration that a relative may be initially granted pursuant to
560 Subsection (5) expires 120 days from the date of the shelter hearing. After that time period has
561 expired, a relative who has not obtained custody or asserted an interest in a child, may not be
562 granted preferential consideration by the division or the court.

563 (b) When the time period described in Subsection (8)(a) has expired, the preferential
564 consideration which may initially be granted to a natural parent in accordance with Subsection (1),
565 is limited. After that time the court shall base its custody decision on the best interest of the child.

566 Section 7. Section **78-3a-311** is amended to read:

567 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

568 (1) The court may make any of the dispositions described in Section 78-3a-118, place the
569 child in the custody or guardianship of any individual or public or private entity or agency, order
570 protective supervision, family preservation, medical or mental health treatment, or other services.

571 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing, and
572 that the minor remain in the custody of the Division of Child and Family Services, it shall first
573 establish a primary permanency goal for the minor and determine whether, in view of the primary
574 permanency goal, reunification services are appropriate for the child and the child's family,
575 pursuant to Subsection (3).

576 (ii) When the court determines that reunification services are appropriate for the child and
577 the child's family, the court shall provide for reasonable visitation with the parent or parents from
578 whose custody the child was removed, unless visitation is not in the best interest of the child.

579 (iii) In cases where obvious sexual abuse, abandonment, or serious physical abuse or
580 neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
581 or to, in any other way, attempt to provide reunification services, or to attempt to rehabilitate the
582 offending parent or parents. In all cases, the child's health, safety, and welfare shall be the court's
583 paramount concern in determining whether reasonable efforts to reunify should be made.

584 (b) (i) In addition to the primary permanency goal, the court shall establish a concurrent
585 permanency goal. The concurrent permanency goal shall include a representative list of the
586 conditions under which the primary permanency goal will be abandoned in favor of the concurrent
587 permanency goal and an explanation of the effect of abandoning or modifying the primary
588 permanency goal.

589 (ii) A permanency hearing shall be conducted in accordance with Subsection
590 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
591 child's primary permanency goal.

592 (iii) The court may amend a child's primary permanency goal before the establishment of
593 a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the
594 concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at
595 anytime, the court determines that reunification is no longer a child's primary permanency goal,
596 the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the
597 earlier of 30 days of the court's determination or 12 months from the original removal of the child.

598 (c) If the court determines that reunification services are appropriate, it shall order that the
599 division make reasonable efforts to provide services to the minor and his parent for the purpose
600 of facilitating reunification of the family, for a specified period of time. In providing those
601 services, the child's health, safety, and welfare shall be the division's paramount concern, and the
602 court shall so order. The time period for reunification services may not exceed 12 months from
603 the date that the child was initially removed from his home. Nothing in this section may be
604 construed to entitle any parent to an entire 12 months of reunification services. If reunification
605 services have been ordered, the court may terminate those services at any time. If, at any time,
606 continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final
607 permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall
608 be taken, in a timely manner, to place the child in accordance with the permanency plan, and to
609 complete whatever steps are necessary to finalize the permanent placement of the child.

610 (d) Any physical custody of the minor by the parent or a relative during the period
611 described in Subsection (2)(c) does not interrupt the running of the period.

612 (e) (i) If reunification services have been ordered, a permanency hearing shall be
613 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time period
614 for reunification services. The permanency hearing shall be held no later than 12 months after the

615 original removal of the child.

616 (ii) If reunification services have not been ordered, a permanency hearing shall be
617 conducted within 30 days, in accordance with Section 78-3a-312.

618 (f) With regard to a child who is two years of age or younger at the time the court orders
619 reunification services, the court shall order the discontinuance of those services after six months
620 if the parent or parents have not made substantial efforts to comply with the treatment plan. The
621 burden is upon the parents, and the division if it supports continued reunification services, to show
622 that the parents have made substantial efforts to comply with the plan during the first six months
623 of reunification services.

624 (g) With regard to a child in the custody of the division whose parent or parents have been
625 ordered to receive reunification services but who have abandoned that child for a period of six
626 months since the date that reunification services were ordered, the court shall terminate
627 reunification services, and the division shall petition the court for termination of parental rights.

628 (3) (a) Because of the state's interest in and responsibility to protect and provide
629 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
630 parent's interest in receiving reunification services is limited. The court may~~[, under any~~
631 ~~circumstances,]~~ determine that efforts to reunify a child with his family are not reasonable or
632 appropriate, based on the individual circumstances, and that reunification services should not be
633 provided. In determining "reasonable efforts" to be made with respect to a child, and in making
634 "reasonable efforts," the child's health, safety, and welfare shall be the paramount concern.

635 (b) There is a presumption that reunification services should not be provided to a parent
636 if the court finds, by clear and convincing evidence, that any of the following circumstances exist:

637 (i) the whereabouts of the parents are unknown, based upon a verified affidavit indicating
638 that a reasonably diligent search has failed to locate the parent;

639 (ii) the parent is suffering from a mental illness of such magnitude that it renders him
640 incapable of utilizing reunification services; that finding shall be based on competent evidence
641 from mental health professionals establishing that, even with the provision of services, the parent
642 is unlikely to be capable of adequately caring for the child within 12 months;

643 (iii) the minor has been previously adjudicated as an abused child due to physical or sexual
644 abuse, that following the adjudication the child was removed from the custody of his parent, was
645 subsequently returned to the custody of that parent, and the minor is being removed due to

646 additional physical or sexual abuse;

647 (iv) the parent has caused the death of another child through abuse or neglect or has
648 committed, aided, abetted, attempted, conspired, or solicited to commit murder or manslaughter
649 of a child or child abuse homicide;

650 (v) the minor has suffered severe abuse by the parent or by any person known by the
651 parent, if the parent knew or reasonably should have known that the person was abusing the minor;

652 (vi) the minor has been adjudicated an abused child as a result of severe abuse by the
653 parent, and the court finds that it would not benefit the child to pursue reunification services with
654 the offending parent;

655 (vii) the parent's rights have been terminated with regard to any other child;

656 (viii) the child has been removed from his home on at least two previous occasions and
657 reunification services were offered or provided to the family at those times; or

658 (ix) the parent has abandoned the child for a period of six months or longer; or

659 (x) any other circumstance that the court determines should preclude reunification efforts
660 or services.

661 (4) (a) Failure of the parent to respond to previous services or comply with any previous
662 treatment plan, the fact that the child was abused while the parent was under the influence of drugs
663 or alcohol, a past history of violent behavior, whether a parent continues to live with an individual
664 who abused the child, any patterns of the parent's behavior that have exposed the child to repeated
665 abuse, or testimony by a competent professional that the parent's behavior is unlikely to be
666 successful, shall be considered in determining whether reunification services are appropriate.

667 (b) The court shall also consider whether the parent has expressed an interest in
668 reunification with the child, in determining whether reunification services are appropriate.

669 (5) If reunification services are not ordered pursuant to Subsection (3)(a), and the
670 whereabouts of a parent become known within six months of the out-of-home placement of the
671 minor, the court may order the division to provide reunification services. The time limits
672 described in Subsection (2), however, are not tolled by the parent's absence.

673 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable services
674 unless it determines that those services would be detrimental to the minor. In determining
675 detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
676 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of

677 detriment to the child if services are not offered and, for minors ten years of age or older, the
678 minor's attitude toward the implementation of family reunification services, and any other
679 appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
680 limitation imposed in Subsection (2). Reunification services for an institutionalized parent are
681 subject to the 12-month limitation imposed in Subsection (2), unless the court determines that
682 continued reunification services would be in the child's best interest.

683 (7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court
684 does not order reunification services, a permanency hearing shall be conducted within 30 days, in
685 accordance with Section 78-3a-312.

686 Section 8. **Coordination clause.**

687 If this bill and S.B. 165, Noncustodial Visitation, both pass, it is the intent of the
688 Legislature that the amendments in S.B. 165 which change the term "visitation" to "parent time"
689 supersede the amendments in Subsections 78-3a-307(2) and (6) and Subsection 78-3a-311(2) of
690 this bill which use the current statutory term "visitation".