

Senator L. Steven Poulton proposes to substitute the following bill:

CHILD WELFARE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

This act modifies provisions of the Judicial Code and the Human Services Code related to child welfare. The act creates a cause of action for actions by certain child protection employees. This act requires the Division of Child and Family Services to maintain a separate database system for unsubstantiated reports of child abuse and reports of child abuse that are without merit. The act reduces the period of time unsubstantiated reports of child abuse are maintained on the database system from ten years to five years. The act establishes circumstances in which the division shall remove a name from the database. The act clarifies the circumstances in which an officer may use force to remove a child from a home. This act clarifies the conditions that must be met before a child suspected of being abused or a sibling may be removed from the home. The act requires a court to order visitation with a parent at the shelter hearing and at the dispositional hearing unless visitation is not in the best interest of the child. This act includes a coordination clause.

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

AMENDS:

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

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

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

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

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

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

ENACTS:



26 **62A-4a-105.3**, Utah Code Annotated 1953

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

28 Section 1. Section **62A-4a-105.3** is enacted to read:

29 **62A-4a-105.3. Cause of action against certain child protection employees.**

30 (1) As used in this section:

31 (a) "Actual fraud" means any of the following acts committed with intent to deceive:

32 (i) the suggestion, as a fact, of that which is not true by one who does not believe it to be
33 true;

34 (ii) the positive assertion, in a manner not warranted by the information of the person
35 making it, of that which is not true, though the person believes it is true;

36 (iii) the suppression of that which is true by one having knowledge or belief of the fact;

37 (iv) a promise made without any intention of performing it; or

38 (v) any other act committed with intent to deceive.

39 (b) "Child protection employee" means:

40 (i) any person employed by the Division of Child and Family Services who provides
41 protective services as defined in Section 62A-4a-101; and

42 (ii) any person employed by the Division of Child and Family Services who provides
43 services relating to substitute care as defined in Section 62A-4a-101.

44 (c) "Constructive fraud" means:

45 (i) a breach of duty by a child protection employee without actual fraudulent intent that
46 gains an advantage to the employee by misleading another about the employee's prejudice; or

47 (ii) any other act or omission declared by the law to be fraud that does not rise to the level
48 of actual fraud.

49 (d) "Duress" means:

50 (i) unlawful confinement of a person, the husband or wife of the person, or of the ancestor,
51 descendant, or adopted child of the person or their husband or wife;

52 (ii) unlawful detention of the property of a person identified in Subsection (1)(d)(i);

53 (iii) confinement of a person identified in Subsection (1)(d)(i) that is lawful in form, but

54 is:

55 (A) fraudulently obtained; or

56 (B) fraudulently made unjustly harassing or oppressive.

- 57 (e) "Maliciously" means conduct that is:
58 (i) intended by a child protection employee to cause injury to a person; or
59 (ii) conduct by a child protection employee that constitutes a willful and conscious
60 disregard of the rights or safety of others.
- 61 (f) "Undue influence" means the situation created when:
62 (i) a person reposes a confidence in a child protection employee and the employee uses that
63 confidence or authority for the purpose of obtaining an unfair advantage over the person;
64 (ii) a child protection employee who holds real or apparent authority over a person uses
65 that confidence or authority for the purpose of obtaining an unfair advantage over the person;
66 (iii) a child protection employee takes unfair advantage of another's weakness of mind; or
67 (iv) a child protection employee takes a grossly oppressive and unfair advantage of
68 another's necessities or distress.
- 69 (2) (a) Notwithstanding any immunity established by Title 63, Chapter 30, Governmental
70 Immunity Act, any person injured by any of the acts identified in Subsection (2)(b) may bring a
71 civil action against the child protection employee who commits any of the acts specified in
72 Subsection (2)(b).
- 73 (b) A child protection employee is civilly and personally liable if the employee:
74 (i) commits perjury;
75 (ii) fabricates evidence;
76 (iii) maliciously fails to disclose known exculpatory evidence;
77 (iv) obtains testimony by actual fraud; or
78 (v) maliciously obtains testimony by constructive fraud, duress, or undue influence.
- 79 Section 2. Section **62A-4a-116** is amended to read:
- 80 **62A-4a-116. Management information system -- Requirements.**
- 81 (1) The division shall develop and implement a management information system that
82 meets the requirements of this section and the requirements of federal law and regulation.
- 83 (2) With regard to all child welfare cases, the management information system shall:
- 84 (a) provide each caseworker with a complete history of each child in his caseload,
85 including:
- 86 (i) all past action taken by the division with regard to that child and his siblings, the
87 complete case history and all reports and information in the control or keeping of the division

88 regarding that child and his siblings;

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

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

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

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

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

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

100 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
101 plans; ~~and~~

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

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

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

108 (e) maintain a separation of reports that are without merit in the system to identify the
109 cases apart form substantiated cases and, where necessary, provide restricted access to the without
110 merit cases.

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

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

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

- 119 (i) limited to:
- 120 (A) substantiated findings of child abuse or neglect since January 1, 1988, after notice and
- 121 an opportunity to challenge has been provided under Section 62A-4a-116.5;
- 122 (B) the name of a person who was not sent a notice of agency action under Section
- 123 62A-4a-116.5 because his location was not available on the management information system or
- 124 who was sent a notice of agency action that was returned to the division as undelivered for the sole
- 125 purpose of alerting the division of the need to afford the person an opportunity to challenge the
- 126 finding of child abuse or neglect under Section 62A-4a-116.5 before any adverse action, beyond
- 127 delaying the person's licensing application to provide an opportunity for challenge, may be taken;
- 128 (C) an adjudication of child abuse or neglect by a court of competent jurisdiction if
- 129 Subsection 62A-4a-116.5(5) has been met; and
- 130 (D) any criminal conviction or guilty plea related to neglect, physical abuse, or sexual
- 131 abuse of any person; and
- 132 (ii) accessible by:
- 133 (A) the Office of Licensing for licensing purposes only;
- 134 (B) the division:
- 135 (I) to screen a person at the request of the Office of the Guardian Ad Litem Director,
- 136 created by Section 78-3a-912, at the time the person seeks a paid or voluntary position with the
- 137 Office of the Guardian Ad Litem and each year thereafter that the person remains with the office;
- 138 and
- 139 (II) to respond to a request for information from the person who is identified as a
- 140 perpetrator in the report, after advising the person of the screening prohibition in Subsection
- 141 (4)(d)(iii);
- 142 (C) subject to the provisions of Subsection (5)(c), the Bureau of Health Facility Licensure
- 143 within the Department of Health only for the purpose of licensing a child care program or provider,
- 144 or for determining whether a person associated with a covered health care facility, as defined by
- 145 the Department of Health by rule, who provides direct care to a child has a substantiated finding
- 146 of child abuse or neglect; and
- 147 (D) the department as provided in Subsection (6) and Section 62A-1-118.
- 148 (b) For the purpose of Subsection (5)(a), "substantiated":
- 149 (i) means a finding that there is a reasonable basis to conclude that:

150 (A) a person 18 years of age or older committed one or more of the following types of
151 child abuse or neglect:
152 (I) physical abuse;
153 (II) sexual abuse;
154 (III) sexual exploitation;
155 (IV) abandonment;
156 (V) medical neglect resulting in death, disability, or serious illness; or
157 (VI) chronic or severe neglect; and
158 (B) a person under the age of 18:
159 (I) caused serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child
160 which indicates a significant risk to other children; or
161 (II) engaged in sexual behavior with or upon another child which indicates a significant
162 risk to other children; and
163 (ii) does not include:
164 (A) the use of reasonable and necessary physical restraint or force by an educator in
165 accordance with Subsection 53A-11-802(2) or Section 76-2-401; or
166 (B) a person's conduct that:
167 (I) is justified under Section 76-2-401; or
168 (II) constituted the use of reasonable and necessary physical restraint or force in
169 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
170 other dangerous object in the possession or under the control of a child or to protect the child or
171 another person from physical injury.
172 (iii) (A) For purposes of Subsection (5)(b)(i)(B), "significant risk" shall be determined in
173 accordance with risk assessment tools and policies established by the division that focus on age,
174 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and other
175 related considerations.
176 (B) The division shall train its child protection workers to apply the risk assessment tools
177 and policies established under Subsection (5)(b)(iii)(A).
178 (c) (i) The Department of Health shall:
179 (A) designate two persons within the Department of Health to access the licensing part of
180 the management information system; and

181 (B) adopt measures to:

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

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

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

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

188 (B) maintaining strict security; and

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

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

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

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

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

198 (d) (i) Information in the licensing part of the management information system is
199 confidential and may only be used or disclosed as specifically provided in this section, Section
200 62A-2-121, and Section 62A-4a-116.5.

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

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

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

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

212 (b) Each contract provider shall:

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

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

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

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

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

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

227 (i) the report is false;

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

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

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

232 (i) the determination made under Subsection (9)(a);

233 (ii) the penalty for submitting false information under Section 76-8-506 and other
234 applicable laws;

235 (iii) the obligation of the division to inform law enforcement and the alleged perpetrator:

236 (A) in the present instance if an immediate referral is justified by the facts; or

237 (B) if the person submits a subsequent false report involving the same alleged perpetrator
238 or victim.

239 (c) (i) The division may inform law enforcement and the alleged perpetrator of a report for
240 which a letter is required to be sent under Subsection (9)(a) if an immediate referral is justified by
241 the facts.

242 (ii) The division shall inform law enforcement and the alleged perpetrator of a report for

243 which a letter is required to be sent under Subsection (9)(a) if this is the second letter sent to the
244 person involving the same alleged perpetrator or victim.

245 (iii) The division shall determine, in consultation with law enforcement:

246 (A) the information to be given to an alleged perpetrator about a false claim; and

247 (B) whether good cause exists, as defined by rule, for not informing an alleged perpetrator
248 about a false claim.

249 (d) Nothing in this Subsection (9) may be construed as requiring the division to conduct
250 an investigation, beyond what is required in Subsection (9)(a), to determine whether or not a report
251 is false.

252 Section 3. Section **62A-4a-116.5** is amended to read:

253 **62A-4a-116.5. Opportunity to challenge a finding of child abuse or neglect.**

254 (1) (a) The division shall send a notice of agency action to a person if the division finds,
255 at the conclusion of an investigation, that, in the opinion of the division, there is a reasonable basis
256 to conclude that the person committed abuse or neglect listed in Subsection 62A-4a-116(5)(b)(i).

257 In the event that the person is under the age of 18, the division shall:

258 (i) make reasonable efforts to identify the person's parent or legal guardian; and

259 (ii) send a notice to each parent or legal guardian identified under Subsection (1)(a)(i) that
260 lives at a different address unless there is good cause, as defined by rule, for not sending a notice
261 to a parent or legal guardian.

262 (b) For purposes of this section only, which governs the right of a person to challenge the
263 division's initial finding or opinion of abuse or neglect as it pertains to the licensing part of the
264 management information system, the division shall refer to a finding under Subsection (1)(a) as
265 a "finding" or an "initial finding" of abuse or neglect when notifying or explaining a notification
266 to a person.

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

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

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

270 (A) an initial division finding or substantiation of child abuse or neglect at the completion
271 of an investigation for any purpose other than for notification under Subsection (1)(b); or

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

273 (2) The notice shall state:

- 274 (a) that the division conducted an investigation;
- 275 (b) that the division found, at the conclusion of the investigation, that there was, in the
276 opinion of the division, a reasonable basis to conclude that abuse or neglect occurred;
- 277 (c) the facts that support the finding;
- 278 (d) that the person may be disqualified from adopting a child or working for or being
279 licensed by:
- 280 (i) the department;
- 281 (ii) a human services licensee;
- 282 (iii) a child care provider or program; and
- 283 (iv) a covered health care facility;
- 284 (e) that the person has the right to request:
- 285 (i) a copy of the report; and
- 286 (ii) an opportunity to challenge the finding and its inclusion on the licensing part of the
287 management information system described in Subsection 62A-4a-116(5), except as provided in
288 Subsection (5)(b); and
- 289 (f) that failure to request an opportunity to challenge the finding within 30 days of the
290 notice being received will result in an unappealable finding of substantiation of child abuse or
291 neglect, unless the person can show good cause for why compliance within the 30-day requirement
292 was virtually impossible or unreasonably burdensome.
- 293 (3) (a) A person may make a request to challenge a finding within 30 days of:
- 294 (i) a notice being received under Subsection (2);
- 295 (ii) a finding by a court of competent jurisdiction based on the same underlying facts that:
- 296 (A) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), did not occur;
- 297 or
- 298 (B) the person was not responsible for the child abuse or neglect that did occur; or
- 299 (iii) the dismissal of criminal charges or a verdict of not guilty based on the same
300 underlying facts.
- 301 (b) The 30-day requirement of Subsection (3)(a) shall be extended for good cause shown
302 that compliance was virtually impossible or unreasonably burdensome.
- 303 (c) The division may approve or deny a request made under Subsection (3)(a).
- 304 (d) If the division denies the request or fails to act within 30 days after receiving a request

305 submitted under Subsection (3)(a), the Office of Administrative Hearings shall hold an
306 adjudicative proceeding pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

307 (4) (a) In an adjudicative proceeding held pursuant to Subsection (3)(d), the division shall
308 prove by a preponderance of the evidence that there is a reasonable basis to conclude that:

309 (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred; and
310 (ii) the person was substantially responsible for the abuse or neglect that occurred.

311 (b) The administrative hearing officer may make a determination of substantiation based
312 solely on the out-of-court statement of the child that the officer finds to be reliable under the
313 standards set forth in:

314 (i) Section 76-5-411;

315 (ii) Utah Rules of Criminal Procedure, Rule 15.5;

316 (iii) Section 78-3a-116(5);

317 (iv) the Utah Rules of Evidence; or

318 (v) Utah case law.

319 (5) (a) ~~[A]~~ Except as provided in Subsection (5)(b), a person may not make a request to
320 challenge a finding under Subsection (3)(a), if, at anytime, a court of competent jurisdiction has
321 made a determination based on the same underlying facts that:

322 (i) child abuse or neglect, as described in Subsection 62A-4a-116(5)(b), occurred;

323 (ii) the person was substantially responsible for the abuse or neglect that occurred; and

324 (iii) the person:

325 (A) was a party to the proceeding; or

326 (B) (I) had notice of the proceeding; and

327 (II) was provided a meaningful opportunity to challenge the facts underlying the court's
328 determination.

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

332 (i) enters a finding of not guilty;

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

335 (iii) dismisses the case or withdraws a plea under Section 77-2a-3 after the completion of

336 a plea in abeyance agreement for a plea of no contest.

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

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

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

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

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

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

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

353 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

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

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

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

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

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

369 **78-3a-301. Removing a child from his home -- Grounds for removal.**

370 (1) The Division of Child and Family Services may not remove a child from the custody
371 of his natural parent unless the division complies with the provisions of Title 62A, Chapter 4a,
372 Child and Family Services, including Subsection 62A-4a-201(3), and unless there is substantial
373 cause to believe that any one of the following exist:

374 (a) there is a substantial danger to the physical health or safety of the minor and the minor's
375 physical health or safety may not be protected without removing him from his parent's custody.
376 If a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent
377 incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the
378 child cannot safely remain in the custody of his parent;

379 (b) the minor is suffering emotional damage, as may be indicated by, but not limited to,
380 extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,
381 and there are no reasonable means available by which the minor's emotional health may be
382 protected without removing the minor from the custody of his parent;

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

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

389 (iii) If a parent has received actual notice that physical or sexual abuse by a person known
390 to the parent has occurred, and there is evidence that the parent has allowed the child to be in the
391 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the child is
392 at substantial risk of being physically or sexually abused;

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

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

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

397 (g) a relative or other adult custodian with whom the minor has been left by the parent is

398 unwilling or unable to provide care or support for the minor, the whereabouts of the parent are
399 unknown, and reasonable efforts to locate him have been unsuccessful;

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

401 (i) the physical environment or the fact that the child is left unattended poses a threat to
402 the child's health or safety;

403 (j) (i) the minor or another minor residing in the same household has been neglected; and
404 (ii) for purposes of Subsection (j)(i), another minor residing in the same household may
405 not be removed unless that minor is deemed to be at substantial risk of being neglected;

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

407 (l) the parent, or an adult residing in the same household as the parent, has been charged
408 or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any clandestine
409 laboratory operation, as defined in Section 58-37d-3, was located in the residence or on the
410 property where the child resided; or

411 (m) the child's welfare is otherwise endangered, as documented by the caseworker.

412 (2) The Division of Child and Family Services may not remove a minor from the custody
413 of his natural parent solely on the basis of educational neglect.

414 (3) The Division of Child and Family Services shall comply with the provisions of Section
415 62A-4a-202.1 in effecting removal of a child pursuant to this section.

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

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

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

422 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
423 **DCFS custody.**

424 (1) (a) At the shelter hearing, when the court orders that a child be removed from the
425 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
426 first determine whether there is another natural parent as defined in Subsection (1)(b), with whom
427 the child was not residing at the time the events or conditions that brought him within the court's
428 jurisdiction occurred, who desires to assume custody of the child. If that parent requests custody,

429 the court shall place the minor with that parent unless it finds that the placement would be unsafe
430 or otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the
431 provisions of Subsection (8)(b).

432 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
433 "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological
434 father who was married to the child's biological mother at the time the child was conceived or
435 born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of
436 the child or voluntary surrender of the child by the custodial parent. This definition applies
437 regardless of whether the child has been or will be placed with adoptive parents or whether
438 adoption has been or will be considered as a long term goal for the child.

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

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

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

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

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

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

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

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

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

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

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

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

467 (5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his
468 parent and is not placed in the custody of his other parent, the court shall, at that time, determine
469 whether there is a relative who is able and willing to care for the child. The court may order the
470 Division of Child and Family Services to conduct a reasonable search to determine whether there
471 are relatives of the child who are willing and appropriate, in accordance with the requirements of
472 this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The
473 court shall order the parents to cooperate with the division, within five working days, to provide
474 information regarding relatives who may be able and willing to care for the child. The child may
475 be placed in the temporary custody of the division pending that determination. This section may
476 not be construed as a guarantee that an identified relative will receive custody of the child.
477 However, preferential consideration may be given to a relative's request for placement of the child,
478 if it is in the best interest of the child, and the provisions of this section are satisfied.

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

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

490 (A) the relative has any history of abusive or neglectful behavior toward other children that

491 may indicate or present a danger to this child;

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

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

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

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

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

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

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

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

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

512 (6) (a) When the court vests physical custody of a child with a relative pursuant to
513 Subsection (5), it shall order that the relative assume custody subject to the continuing supervision
514 of the court, and shall order that any necessary services be provided to the minor and the relative.
515 That child is not within the temporary custody or custody of the Division of Child and Family
516 Services. The child and any relative with whom the child is placed are under the continuing
517 jurisdiction of the court. The court may enter any order that it considers necessary for the
518 protection and best interest of the child. The court shall provide for reasonable visitation with the
519 parent or parents from whose custody the child was removed unless visitation is not in the best
520 interest of the child.

521 (b) (i) Placement with a relative pursuant to Subsection (5) shall be periodically reviewed

522 by the court, no less often than every six months, to determine whether:

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

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

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

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

529 (iii) The time limitations described in Section 78-3a-311, with regard to reunification
530 efforts, apply to children placed with a relative pursuant to Subsection (5).

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

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

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

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

544 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

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

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

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

561 (b) (i) In addition to the primary permanency goal, the court shall establish a concurrent
562 permanency goal. The concurrent permanency goal shall include a representative list of the
563 conditions under which the primary permanency goal will be abandoned in favor of the concurrent
564 permanency goal and an explanation of the effect of abandoning or modifying the primary
565 permanency goal.

566 (ii) A permanency hearing shall be conducted in accordance with Subsection
567 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
568 child's primary permanency goal.

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

575 (c) If the court determines that reunification services are appropriate, it shall order that the
576 division make reasonable efforts to provide services to the minor and his parent for the purpose
577 of facilitating reunification of the family, for a specified period of time. In providing those
578 services, the child's health, safety, and welfare shall be the division's paramount concern, and the
579 court shall so order. The time period for reunification services may not exceed 12 months from
580 the date that the child was initially removed from his home. Nothing in this section may be
581 construed to entitle any parent to an entire 12 months of reunification services. If reunification
582 services have been ordered, the court may terminate those services at any time. If, at any time,
583 continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final

584 permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall
585 be taken, in a timely manner, to place the child in accordance with the permanency plan, and to
586 complete whatever steps are necessary to finalize the permanent placement of the child.

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

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

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

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

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

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

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

614 (i) the whereabouts of the parents are unknown, based upon a verified affidavit indicating

615 that a reasonably diligent search has failed to locate the parent;

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

620 (iii) the minor has been previously adjudicated as an abused child due to physical or sexual
621 abuse, that following the adjudication the child was removed from the custody of his parent, was
622 subsequently returned to the custody of that parent, and the minor is being removed due to
623 additional physical or sexual abuse;

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

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

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

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

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

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

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

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

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

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

650 (6) If a parent is incarcerated or institutionalized, the court shall order reasonable services
651 unless it determines that those services would be detrimental to the minor. In determining
652 detriment, the court shall consider the age of the child, the degree of parent-child bonding, the
653 length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of
654 detriment to the child if services are not offered and, for minors ten years of age or older, the
655 minor's attitude toward the implementation of family reunification services, and any other
656 appropriate factors. Reunification services for an incarcerated parent are subject to the 12-month
657 limitation imposed in Subsection (2). Reunification services for an institutionalized parent are
658 subject to the 12-month limitation imposed in Subsection (2), unless the court determines that
659 continued reunification services would be in the child's best interest.

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

663 **Section 8. Coordination clause.**

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