

CHILD WELFARE PROCESSES

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Mike Thompson

LONG TITLE

General Description:

This bill amends Child and Family Services and the Judicial Code and creates the Office of Child Welfare Parental Defense.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "protective services";
- ▶ requires the Division of Child and Family Services to accommodate the moral and religious beliefs, and culture, of those it serves;
- ▶ requires the Division of Child and Family Services to design treatment plans in a manner that minimizes disruption to the normal activities of the child's family;
- ▶ makes corrections to the terms "unsubstantiated" and "substantiated";
- ▶ expands interdisciplinary child protection team membership;
- ▶ requires notice to parents of their rights before conducting a child abuse or neglect investigation;
- ▶ expands who can serve as support persons;
- ▶ limits the types of identifying information that may be stricken from a record released by the Division of Child and Family Services;
- ▶ creates within the Department of Administrative Services the Office of Child Welfare Parental Defense;
- ▶ defines terms;
- ▶ appoints a director to the office;
- ▶ sets forth the duties, functions, and responsibilities of the office;
- ▶ outlines the qualifications, responsibilities, and standards for a contracted parental

defense attorney;

- ▶ classifies records of a contracted parental defense attorney as protected and indicates that the records may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise;

- ▶ provides for child welfare parental defense contracts;

- ▶ creates the Child Welfare Parental Defense Fund and specifies state and county obligations;

- ▶ imposes district court limits on any juvenile court using a parent's disability as a basis for changing a custody award made in district court;

- ▶ modifies access to juvenile court proceedings;

- ▶ prohibits a juvenile court from using disability of a parent as a basis for removing a child from the custody of the parent;

- ▶ requires recording of unauthorized ex parte communications concerning an ongoing case between a judge and other parties to an abuse, neglect, or dependency proceeding;

- ▶ amends preferential placement provisions for children removed from their homes due to abuse, neglect, or dependency;

- ▶ addresses a court determining and defining responsibilities under a treatment plan;

- ▶ requires the Office of the Guardian Ad Litem to make an annual report to the Child Welfare Legislative Oversight Panel;

- ▶ addresses appointment of counsel; and

- ▶ makes conforming changes and technical corrections.

Monies Appropriated in this Bill:

This bill appropriates:

- ▶ (\$239,000), as an ongoing appropriation, for fiscal year 2004-05 from the General Fund in the Department of Human Services Executive Director Operations -- Services Review; and

- ▶ \$239,000, as an ongoing appropriation for fiscal year 2004-05 from the General Fund

Enrolled Copy

H.B. 268

to the Child Welfare Parental Defense Fund.

Other Special Clauses:

This bill takes effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

- 30-3-10**, as last amended by Chapter 269, Laws of Utah 2003
- 62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002
- 62A-4a-205**, as last amended by Chapter 306, Laws of Utah 2002
- 62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002
- 62A-4a-412**, as last amended by Chapter 68, Laws of Utah 2003
- 63A-1-109**, as last amended by Chapter 5, Laws of Utah 2003
- 78-3a-105**, as last amended by Chapter 68, Laws of Utah 2003
- 78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003
- 78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 78-3a-304.5**, as enacted by Chapter 302, Laws of Utah 1995
- 78-3a-307**, as last amended by Chapters 153 and 255, Laws of Utah 2001
- 78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002
- 78-3a-912**, as last amended by Chapter 168, Laws of Utah 2002
- 78-3a-913**, as last amended by Chapter 256, Laws of Utah 1999

ENACTS:

- 62A-4a-120**, Utah Code Annotated 1953
- 63A-11-101**, Utah Code Annotated 1953
- 63A-11-102**, Utah Code Annotated 1953
- 63A-11-103**, Utah Code Annotated 1953
- 63A-11-104**, Utah Code Annotated 1953
- 63A-11-105**, Utah Code Annotated 1953
- 63A-11-106**, Utah Code Annotated 1953
- 63A-11-107**, Utah Code Annotated 1953

63A-11-108, Utah Code Annotated 1953

63A-11-201, Utah Code Annotated 1953

63A-11-202, Utah Code Annotated 1953

63A-11-203, Utah Code Annotated 1953

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

Section 1. Section **30-3-10** is amended to read:

30-3-10. Custody of children in case of separation or divorce -- Custody consideration.

(1) If a husband and wife having minor children are separated, or their marriage is declared void or dissolved, the court shall make an order for the future care and custody of the minor children as it considers appropriate.

(a) In determining any form of custody, the court shall consider the best interests of the child and, among other factors the court finds relevant, the following:

- (i) the past conduct and demonstrated moral standards of each of the parties;
- (ii) which parent is most likely to act in the best interest of the child, including allowing the child frequent and continuing contact with the noncustodial parent; and
- (iii) those factors outlined in Section 30-3-10.2.

(b) The court shall, in every case, consider joint custody but may award any form of custody which is determined to be in the best interest of the child.

(c) The children may not be required by either party to testify unless the trier of fact determines that extenuating circumstances exist that would necessitate the testimony of the children be heard and there is no other reasonable method to present their testimony.

(d) The court may inquire of the children and take into consideration the children's desires regarding future custody or parent-time schedules, but the expressed desires are not controlling and the court may determine the children's custody or parent-time otherwise. The desires of a child 16 years of age or older shall be given added weight, but is not the single controlling factor.

(e) If interviews with the children are conducted by the court pursuant to Subsection (1)(d), they shall be conducted by the judge in camera. The prior consent of the parties may be obtained but is not necessary if the court finds that an interview with the children is the only method to ascertain the child's desires regarding custody.

(2) In awarding custody, the court shall consider, among other factors the court finds relevant, which parent is most likely to act in the best interests of the child, including allowing the child frequent and continuing contact with the noncustodial parent as the court finds appropriate.

(3) If the court finds that one parent does not desire custody of the child, or has attempted to permanently relinquish custody to a third party, it shall take that evidence into consideration in determining whether to award custody to the other parent.

(4) (a) [A] Except as provided in Subsection (4)(b), a court may not discriminate against a parent due to a disability, as defined in Section 57-21-2, in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody.

(b) If a court takes a parent's disability into account in awarding custody or determining whether a substantial change has occurred for the purpose of modifying an award of custody, the parent with a disability may rebut any evidence, presumption, or inference arising ~~[therefrom]~~ from the disability by showing that:

(i) the disability does not significantly or substantially inhibit the parent's ability to provide for the physical and emotional needs of the child at issue; or

(ii) the parent with a disability has sufficient human, monetary, or other resources available to supplement the parent's ability to provide for the physical and emotional needs of the child at issue.

(c) Nothing in this section may be construed to apply to ~~[(i) abuse, neglect, or dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78, Chapter 3a, Juvenile Court Act of 1996, or (ii)]~~ adoption proceedings under Title 78, Chapter 30, Adoption.

(5) This section establishes neither a preference nor a presumption for or against joint

legal custody, joint physical custody, or sole custody, but allows the court and the family the widest discretion to choose a parenting plan that is in the best interest of the child.

Section 2. Section **62A-4a-101** is amended to read:

62A-4a-101. Definitions.

As used in this chapter:

- (1) "Abuse" means:
 - (a) actual or threatened nonaccidental physical or mental harm;
 - (b) negligent treatment;
 - (c) sexual exploitation; or
 - (d) any sexual abuse.
- (2) "Adoption services" means placing children for adoption, subsidizing adoptions under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by the court, conducting adoption studies, preparing adoption reports upon request of the court, and providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement.
- (3) "Board" means the Board of Child and Family Services established in accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.
- (4) "Child" has the same meaning as "minor," as defined in this section.
- (5) "Consumer" means a person who receives services offered by the division in accordance with this chapter.
- (6) "Chronic physical abuse" means repeated or patterned physical abuse.
- (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent, guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.
- (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.
- (9) "Custody," with regard to the division, means the custody of a child in the division as of the date of disposition.
- (10) "Day-care services" means care of a child for a portion of the day which is less than 24 hours, in his own home by a responsible person, or outside of his home in a day-care center,

family group home, or family child care home.

(11) "Dependent child" or "dependency" means a child, or the condition of a child, who is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

(12) "Director" means the director of the Division of Child and Family Services.

(13) "Division" means the Division of Child and Family Services.

(14) (a) "Domestic violence services" means temporary shelter, treatment, and related services to persons who are victims of abuse and their dependent children and treatment services for domestic violence perpetrators.

(b) As used in this Subsection (14) "abuse" means the same as that term is defined in Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have committed, has been convicted of, or has pled guilty to an act of domestic violence as defined in Subsection 77-36-1(2).

(15) "Homemaking service" means the care of individuals in their domiciles, and help given to individual caretaker relatives to achieve improved household and family management through the services of a trained homemaker.

(16) "Minor" means a person under 18 years of age. "Minor" may also include a person under 21 years of age for whom the division has been specifically ordered by the juvenile court to provide services.

(17) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.

(18) (a) "Neglect" means:

(i) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

(ii) subjecting a child to mistreatment or abuse;

(iii) lack of proper parental care by reason of the fault or habits of the parent, guardian, or custodian;

(iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary subsistence, education, or medical care, including surgery or psychiatric services when required,

or any other care necessary for his health, safety, morals, or well-being; or

(v) a child at risk of being neglected or abused because another child in the same home is neglected or abused.

(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv), means that, after receiving notice that a child has been frequently absent from school without good cause, or that the child has failed to cooperate with school authorities in a reasonable manner, a parent or guardian fails to make a good faith effort to ensure that the child receives an appropriate education.

(c) A parent or guardian legitimately practicing religious beliefs and who, for that reason, does not provide specified medical treatment for a child, is not guilty of neglect.

(19) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the shelter hearing, or the child's return home, whichever occurs earlier.

(20) "Protective services" means expedited services that are provided:

(a) in response to evidence of neglect, abuse, or dependency of a minor;

~~[(b) in an effort to substantiate evidence of neglect, abuse, or dependency;]~~

~~[(c)]~~ (b) to a cohabitant who is neglecting or abusing a child, in order to help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and to strengthen the cohabitant's ability to provide safe and acceptable care; and

~~[(d)]~~ (c) in cases where the child's welfare is endangered:

(i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;

(ii) to cause a protective order to be issued for the protection of the minor, when appropriate; and

(iii) to protect the child from the circumstances that endanger the child's welfare including, when appropriate, removal from the child's home, placement in substitute care, and petitioning the court for termination of parental rights.

(21) "Services to unwed parents" means social, educational, and medical services

arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

(22) "Severe neglect" means neglect that causes or threatens to cause serious harm to a minor.

(23) "Shelter care" means the temporary care of minors in nonsecure facilities.

(24) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession administered by the United States.

(25) "Severe emotional abuse" means emotional abuse that causes or threatens to cause serious harm to a minor.

(26) "Severe physical abuse" means physical abuse that causes or threatens to cause serious harm to a minor.

(27) "State plan" means the written description of the programs for children, youth, and family services administered by the division in accordance with federal law.

(28) "Status offense" means a violation of the law that would not be a violation but for the age of the offender.

(29) "Substantiated" or "substantiation" means a judicial finding based on a preponderance of the evidence that abuse or neglect occurred. Each allegation made or identified in a given case shall be considered separately in determining whether there should be a finding of substantiated.

(30) "Substitute care" means:

(a) the placement of a minor in a family home, group care facility, or other placement outside the minor's own home, either at the request of a parent or other responsible relative, or upon court order, when it is determined that continuation of care in the child's own home would be contrary to the child's welfare;

(b) services provided for a child awaiting placement; and

(c) the licensing and supervision of a substitute care facility.

(31) "Supported" means a finding by the division based on the evidence available at the completion of an investigation that there is a reasonable basis to conclude that abuse, neglect, or

dependency occurred. Each allegation made or identified during the course of the investigation shall be considered separately in determining whether there should be a finding of supported.

(32) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.

(33) "Transportation services" means travel assistance given to an individual with escort service, if necessary, to and from community facilities and resources as part of a service plan.

(34) "Unsubstantiated" means a judicial finding that there is insufficient evidence to conclude that abuse or neglect occurred.

(35) "Unsupported" means a finding at the completion of an investigation that there is insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a finding of unsupported means also that the division worker did not conclude that the allegation was without merit.

(36) "Without merit" means a finding at the completion of an investigation by the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

Section 3. Section **62A-4a-120** is enacted to read:

62A-4a-120. Accommodation of moral and religious beliefs and culture.

(1) The division shall adopt rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, and establish procedures to accommodate the moral and religious beliefs, and culture, of the children and families it serves, including:

(a) the immediate family and other relatives of a child in any type of custody or otherwise under the jurisdiction of the court;

(b) foster and other out-of-home placement families; and

(c) adoptive families.

(2) The accommodation under Subsection (1) applies to placements, treatment plans, services, and other activities of the division.

Section 4. Section **62A-4a-205** is amended to read:

62A-4a-205. Treatment plans.

(1) No more than 45 days after a child enters the temporary custody of the division, the child's treatment plan shall be finalized.

(2) The division shall use an interdisciplinary team approach in developing each treatment plan. An interdisciplinary team shall include, but is not limited to, representatives from mental health, education, and, where appropriate, a representative of law enforcement.

(3) (a) The division shall involve all of the following in the development of a child's treatment plan:

- (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- (ii) the child;
- (iii) the child's foster parents; and
- (iv) where appropriate, the child's stepparent.

(b) In relation to all information considered by the division in developing a treatment plan, additional weight and attention shall be given to the input of the child's natural and foster parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii).

(4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the child's natural parents and foster parents immediately upon completion, or as soon as is reasonably possible thereafter.

(5) Each treatment plan shall specifically provide for the safety of the child, in accordance with federal law, and clearly define what actions or precautions will, or may be, necessary to provide for the health, safety, protection, and welfare of the child.

(6) The plan shall set forth, with specificity, at least the following:

(a) the reason the child entered Division of Child and Family Services custody, and documentation of the reasonable efforts made to prevent placement, or documentation of the emergency situation that existed and that prevented reasonable efforts;

(b) the primary permanency goal for the child and the reason for selection of that goal;

(c) the concurrent permanency goal for the child and the reason for the selection of that goal;

(d) if the plan is for the child to return to the child's family, specifically what the parents

must do in order to enable the child to be returned home, specifically how those requirements may be accomplished, and how those requirements will be measured;

(e) the specific services needed to reduce the problems that necessitated placement in the division's custody, and who will provide for and be responsible for case management;

(f) a parent-time schedule between the natural parent and the child;

(g) the health [~~care to be provided to the child;~~] and [~~the~~] mental health care to be provided to address any known or diagnosed mental health needs of the child[~~.-If~~] and, if residential treatment[;] rather than a foster home[;] is the proposed placement, a requirement for a specialized assessment of the child's health needs [shall be conducted,] including an assessment of mental illness and behavior and conduct disorders; and

(h) social summaries that include case history information pertinent to case planning.

(7) (a) Each treatment plan shall be specific to each child and the child's family, rather than general. The division shall train its workers to develop treatment plans that comply with federal mandates and the specific needs of the particular child and the child's family.

(b) All treatment plans and expectations shall be individualized and contain specific time frames.

(c) Treatment plans shall address problems that keep children in placement and keep them from achieving permanence in their lives.

(d) Each treatment plan shall be designed to minimize disruption to the normal activities of the child's family, including employment and school. In particular, the time, place, and amount of services, hearings, and other requirements ordered by the court shall be designed, as much as practicable, to help the child's parents maintain or obtain employment.

~~(d)~~ (e) The child's natural parents, foster parents, and where appropriate, stepparents, shall be kept informed of and supported to participate in important meetings and procedures related to the child's placement.

(8) With regard to a child who is three years of age or younger, if the goal is not to return the child home, the permanency plan for that child shall be adoption. However, if the division documents to the court that there is a compelling reason that adoption, reunification,

guardianship, and kinship placement are not in the child's best interest, the court may order another planned permanent living arrangement in accordance with federal law.

Section 5. Section **62A-4a-409** is amended to read:

62A-4a-409. Investigation by division -- Temporary protective custody -- Preremoval interviews of children.

(1) The division shall make a thorough preremoval investigation upon receiving either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug dependency, when there is reasonable cause to suspect a situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency. The primary purpose of that investigation shall be protection of the child.

(2) The preremoval investigation shall include the same investigative requirements described in Section 62A-4a-202.3.

(3) The division shall make a written report of its investigation. The written report shall include a determination regarding whether the alleged abuse or neglect was [~~substantiated, unsubstantiated,~~] supported, unsupported, or without merit.

(4) (a) The division shall use an interdisciplinary approach whenever possible in dealing with reports made under this part.

(b) For this purpose, the division shall convene appropriate interdisciplinary "child protection teams" to assist it in its protective, diagnostic, assessment, treatment, and coordination services.

(c) A representative of the division shall serve as the team's coordinator and chair. Members of the team shall serve at the coordinator's invitation[~~, and whenever~~]. Whenever possible, the team shall include representatives of:

(i) health, mental health, education, and law enforcement agencies[;];

(ii) the child;

(iii) parent and family support groups unless the parent is alleged to be the perpetrator;

and

(iv) other appropriate agencies or individuals.

(5) In any case where the division supervises, governs, or directs the affairs of any

individual, institution, or facility that has been alleged to be involved in acts or omissions of child abuse or neglect, the investigation of the reported child abuse or neglect shall be conducted by an agency other than the division.

(6) If a report of neglect is based upon or includes an allegation of educational neglect, the division shall immediately consult with school authorities to verify the child's status in accordance with Sections 53A-11-101 through 53A-11-103.

(7) When the division has completed its initial investigation under this part, it shall give notice of that completion to the person who made the initial report.

(8) Division workers or other child protection team members have authority to enter upon public or private premises, using appropriate legal processes, to investigate reports of alleged child abuse or neglect, upon notice to parents of their rights under the Child Abuse Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

(9) With regard to any interview of a child prior to removal of that child from the child's home:

(a) except as provided in Subsection (9)(b) or (c), the division shall notify a parent of the child prior to the interview;

(b) if a child's parent or stepparent, or a parent's paramour has been identified as the alleged perpetrator, the division need not notify a parent of the child prior to an initial interview with the child;

(c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family is unknown, the division may conduct a minimal interview, not to exceed 15 minutes, with the child prior to notification of the child's parent;

(d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be notified as soon as practicable after the child has been interviewed, but in no case later than 24 hours after the interview has taken place;

(e) a child's parents shall be notified of the time and place of all subsequent interviews with the child; and

(f) (i) the child shall be allowed to have a support person of the child's choice present[-

That support person: ~~(i)~~; and

(ii) the person described in Subsection (9)(f)(i):

(A) may include~~[-, but is not limited to,];~~

(I) a school teacher ~~[or];~~

(II) an administrator~~[-];~~

(III) a guidance counselor~~[-or];~~

(IV) a child care provider~~[-and];~~ or

(V) clergy; and

~~[(i)]~~ (B) may not be a person who is alleged to be, or potentially may be, the perpetrator.

(10) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through 62A-4a-202.3, a division worker or child protection team member may take a child into protective custody and deliver the child to a law enforcement officer, or place the child in an emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent to the child's removal from the child's original environment. Control and jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile Court Act of 1996, and as otherwise provided by law.

(11) With regard to cases in which law enforcement has or is conducting an investigation of alleged abuse or neglect of a child:

(a) the division shall coordinate with law enforcement to ensure that there is an adequate safety plan to protect the child from further abuse or neglect; and

(b) the division is not required to duplicate an aspect of the investigation that, in the division's determination, has been satisfactorily completed by law enforcement.

Section 6. Section **62A-4a-412** is amended to read:

62A-4a-412. Reports and information confidential.

(1) Except as otherwise provided in this chapter, reports made pursuant to this part, as well as any other information in the possession of the division obtained as the result of a report are private, protected, or controlled records under Title 63, Chapter 2, Government Records Access and Management Act, and may only be made available to:

(a) a police or law enforcement agency investigating a report of known or suspected child abuse or neglect;

(b) a physician who reasonably believes that a child may be the subject of abuse or neglect;

(c) an agency that has responsibility or authority to care for, treat, or supervise a child who is the subject of a report;

(d) a contract provider that has a written contract with the division to render services to a child who is the subject of a report;

(e) any subject of the report, the natural parents of the minor, and the guardian ad litem;

(f) a court, upon a finding that access to the records may be necessary for the determination of an issue before ~~[it]~~ the court, provided that in a divorce, custody, or related proceeding between private parties, the record alone is:

(i) limited to objective or undisputed facts that were verified at the time of the investigation; and

(ii) devoid of conclusions drawn by the division or any of ~~[its]~~ the division's workers on the ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of another person;

(g) an office of the public prosecutor or its deputies in performing an official duty;

(h) a person authorized by a Children's Justice Center, for the purposes described in Section 67-5b-102;

(i) a person engaged in bona fide research, when approved by the director of the division, if the information does not include names and addresses;

(j) the State Office of Education, acting on behalf of itself or on behalf of a school district, for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, limited to information with substantiated findings involving an alleged sexual offense, an alleged felony or class A misdemeanor drug offense, or any alleged offense against the person under Title 76, Chapter 5, Offenses Against the Person, and with the understanding that the office must provide

the subject of a report received under Subsection (1)(k) with an opportunity to respond to the report before making a decision concerning licensure or employment;

(k) any person identified in the report as a perpetrator or possible perpetrator of child abuse or neglect, after being advised of the screening prohibition in Subsection (2); and

(l) a person filing a petition for a child protective order on behalf of a minor who is the subject of the report.

(2) (a) ~~No~~ A person, unless listed in Subsection (1), may not request another person to obtain or release a report or any other information in the possession of the division obtained as a result of the report that is available under Subsection (1)(k) to screen for potential perpetrators of child abuse or neglect.

(b) A person who requests information knowing that it is a violation of Subsection (2)(a) to do so is subject to the criminal penalty in Subsection (4).

(3) (a) Except as provided in Section 62A-4a-116.3 and Subsection (3)(b), the division and law enforcement officials shall ensure the anonymity of the person or persons making the initial report and any others involved in its subsequent investigation.

(b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but including this chapter and Title 63, Chapter 2, Government Records Access and Management Act, when the division makes a report or other information in its possession available under Subsection (1)(e) to a subject of the report or a parent of a minor, the division shall remove from the report or other information only the names, addresses, and telephone numbers of individuals or specific information that could:

(i) identify the referent;

(ii) impede a criminal investigation; or

(iii) endanger a person's safety.

(4) Any person who wilfully permits, or aides and abets the release of data or information obtained as a result of this part, in the possession of the division or contained on any part of the Management Information System, in violation of this part or Sections 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

(5) The physician-patient privilege is not a ground for excluding evidence regarding a child's injuries or the cause of those injuries, in any proceeding resulting from a report made in good faith pursuant to this part.

Section 7. Section **63A-1-109** is amended to read:

63A-1-109. Divisions of department -- Administration.

(1) The department shall be composed of the following divisions:

- (a) administrative rules;
- (b) archives and records;
- (c) facilities construction and management;
- (d) finance;
- (e) fleet operations;
- (f) information technology services;
- (g) office of state debt collection;
- (h) state purchasing and general services; ~~and~~
- (i) risk management[-]; and
- (j) office of child welfare parental defense.

(2) Each division shall be administered and managed by a division director.

Section 8. Section **63A-11-101** is enacted to read:

CHAPTER 11. OFFICE OF CHILD WELFARE PARENTAL DEFENSE

Part 1. General Provisions

63A-11-101. Title.

This chapter is known as the "Office of Child Welfare Parental Defense."

Section 9. Section **63A-11-102** is enacted to read:

63A-11-102. Definitions.

For purposes of this chapter:

(1) "Child welfare case" means a proceeding under Title 78, Chapter 3a, Juvenile Courts, Part 3 or 4.

(2) "Contracted parental defense attorney" means an attorney or law firm authorized to

practice law in Utah who is under contract with the office to provide parental defense in child welfare cases.

(3) "Director" means the director of the office.

(4) "Fund" means the Child Welfare Parental Defense Fund established in Section 63A-11-202.

(5) "Office" means the Office of Child Welfare Parental Defense created in Section 63A-11-103.

Section 10. Section **63A-11-103** is enacted to read:

63A-11-103. Creation of office.

There is created within the Department of Administrative Services, the Office of Child Welfare Parental Defense.

Section 11. Section **63A-11-104** is enacted to read:

63A-11-104. Office director -- Appointment -- Duties -- Staff.

(1) (a) The executive director of the department shall appoint the director of the office with the approval of the governor.

(b) The director shall be an attorney licensed to practice law in the state.

(2) The director shall administer and enforce this chapter.

(3) The director may employ staff.

Section 12. Section **63A-11-105** is enacted to read:

63A-11-105. Office -- Duties, functions, and responsibilities.

The duties, functions, and responsibilities of the office include the following:

(1) to develop and enter into contracts with attorneys authorized to practice law in the state, as independent contractors, to serve as parental defense attorneys;

(2) to provide assistance and advice to contracted parental defense attorneys;

(3) to develop and provide educational and training programs for contracted parental defense attorneys; and

(4) to provide information and advice to assist contracted parental defense attorneys to comply with their professional, contractual, and ethical duties.

Section 13. Section **63A-11-106** is enacted to read:

63A-11-106. Annual report -- Budget.

(1) On or before the 1st day of October each year, the director shall report to the governor and the Child Welfare Legislative Oversight Panel of the Legislature regarding the preceding fiscal year on the operations, activities, and goals of the office.

(2) The director shall prepare and submit to the executive director a budget of:

(a) the administrative expenses for the office; and

(b) the amount estimated to fund needed contracted parental defense attorneys and other costs.

Section 14. Section **63A-11-107** is enacted to read:

63A-11-107. Contracted parental defense attorney.

(1) With respect to child welfare cases, a contracted parental defense attorney shall:

(a) adequately prepare for and attend all court hearings, including initial and continued shelter hearings and mediations;

(b) fully advise the client of the nature of the proceedings and of the client's rights, communicate to the client any offers of settlement or compromise, and advise the client regarding the reasonably foreseeable consequences of any course of action in the proceedings;

(c) be reasonably available to consult with the client outside of court proceedings;

(d) where attendance of a parental defense attorney is reasonably needed, attend meetings regarding the client's case with representatives of one or more of the Division of Child and Family Services, the Office of the Attorney General, and the Office of the Guardian Ad Litem;

(e) represent the interest of the client at all stages of the proceedings before the trial court;

(f) participate in the training courses and otherwise maintain the standards described in Subsection (3).

(2) If the office enters into a contract with an attorney under Section 63A-11-105, the contract shall require that each attorney in the firm who will provide representation of parents in child welfare cases under the contract perform the duties described in Subsection (1).

(3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense attorney shall meet the standards developed by the director which may include:

- (i) completion of a basic training course provided by the office;
- (ii) experience in child welfare cases; and
- (iii) participation each calendar year in continuing legal education courses providing no fewer than eight hours of instruction in child welfare law.

(b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the director may, by rule, exempt from the requirements of Subsection (3)(a) an attorney who has equivalent training or adequate experience.

(4) Payment for the representation, costs, and expenses of the contracted parental defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-202.

Section 15. Section **63A-11-108** is enacted to read:

63A-11-108. Records access.

(1) (a) Notwithstanding Title 63, Chapter 2, Government Records Access and Management Act, and except as provided in Subsection (1)(b), all records of a contracted parental defense attorney are protected and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise.

(b) All records of a contracted parental defense attorney are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.

(2) Records released in accordance with Subsection (1)(b) shall be maintained as confidential by the Legislature. The professional legislative staff may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

Section 16. Section **63A-11-201** is enacted to read:

Part 2. Parental Defense Contracts and Funding

63A-11-201. Child welfare parental defense contracts -- Qualifications.

(1) The office shall enter into contracts with qualified parental defense attorneys to provide services for an indigent parent or parents who are the subject of a petition alleging abuse,

neglect, or dependency, and will require a parental defense attorney pursuant to Section 78-3a-913.

(2) Payment for the representation, costs, and expenses of legal defense counsel shall be made from the Child Welfare Parental Defense Fund as provided in Section 63A-11-202.

(3) The parental defense attorney shall maintain the minimum qualifications as provided by this chapter.

Section 17. Section **63A-11-202** is enacted to read:

63A-11-202. Child Welfare Parental Defense Fund -- Creation.

(1) There is created a restricted special revenue fund known as the "Child Welfare Parental Defense Fund".

(2) Subject to availability, the director may make distributions from the fund as required in this chapter for the following purposes:

(a) to pay for the representation, costs, expert witness fees, and expenses of contracted parental defense attorneys who are under contract with the office to provide parental defense in child welfare cases for the indigent parent or parents that are the subject of a petition alleging abuse, neglect, or dependency; and

(b) for administrative costs pursuant to this chapter.

(3) The fund consists of:

(a) appropriations made to the fund by the Legislature;

(b) interest and earnings from the investment of fund monies;

(c) proceeds deposited by participating counties pursuant to Section 63A-11-203; and

(d) private contributions to the Child Welfare Parental Defense Fund.

(4) The state treasurer shall invest the money in the fund by following the procedures and requirements of Title 51, Chapter 7, State Money Management Act.

(5) (a) If the director anticipates a deficit in the fund during any fiscal year:

(i) the director shall request an appropriation from the Legislature; and

(ii) the Legislature may fund the anticipated deficit through appropriation but is not required to fund the deficit.

(b) If the anticipated deficit is not funded by the Legislature, the director may request an interim assessment to participating counties to fund the anticipated deficit.

Section 18. Section **63A-11-203** is enacted to read:

63A-11-203. Agreements for coverage by the Child Welfare Parental Defense Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.

(1) A county legislative body may annually enter into a written agreement with the office to provide for payment of parental defense attorney costs out of the Child Welfare Parental Defense Fund.

(2) An agreement for payment of parental defense costs from the fund shall provide that the county shall pay into the fund an amount defined by a formula established in rule by the office.

(3) (a) Except as provided in Subsection (3)(b), after the first year of operation of the fund, any county that elects to initiate participation in the fund, or reestablish participation in the fund after participation was terminated, shall be required to make an equity payment, in addition to the assessment provided in Subsection (2).

(b) The equity payment shall be determined by the office in accordance with office rules.

(4) The agreement shall provide for revocation of the agreement for failure to pay assessments on the due date established by rule.

(5) Any county that elects to withdraw from participation in the fund, or whose participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit any right to any previously paid assessments by the county or coverage from the fund.

Section 19. Section **78-3a-105** is amended to read:

78-3a-105. Concurrent jurisdiction -- District court and juvenile court.

(1) The district court or other court has concurrent jurisdiction with the juvenile court as follows:

(a) when a person who is 18 years of age or older and who is under the continuing jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law or municipal ordinance; and

(b) in establishing paternity and ordering testing for the purposes of establishing paternity, in accordance with Title 78, Chapter 45a, Uniform Act on Paternity, with regard to proceedings initiated under Part 3, Abuse, Neglect, and Dependency Proceedings, or Part 4, Termination of Parental Rights Act.

(2) The juvenile court has jurisdiction over petitions to modify a minor's birth certificate if the court otherwise has jurisdiction over the minor.

(3) This section does not deprive the district court of jurisdiction to appoint a guardian for a minor, or to determine the support, custody, and parent-time of a minor upon writ of habeas corpus or when the question of support, custody, and parent-time is incidental to the determination of a cause in the district court.

(4) (a) Where a support, custody, or parent-time award has been made by a district court in a divorce action or other proceeding, and the jurisdiction of the district court in the case is continuing, the juvenile court may acquire jurisdiction in a case involving the same minor if the minor is dependent, abused, neglected, or otherwise comes within the jurisdiction of the juvenile court under Section 78-3a-104.

(b) The juvenile court may, by order, change the custody, subject to Subsection 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as necessary to implement the order of the juvenile court for the safety and welfare of the minor. The juvenile court order remains in effect so long as the jurisdiction of the juvenile court continues.

(c) When a copy of the findings and order of the juvenile court has been filed with the district court, the findings and order of the juvenile court are binding on the parties to the divorce action as though entered in the district court.

(5) The juvenile court has jurisdiction over questions of custody, support, and parent-time, of a minor who comes within the court's jurisdiction under this section or Section 78-3a-104.

Section 20. Section **78-3a-115** is amended to read:

78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's

cases heard separately from adult cases -- Minor or parents or custodian heard separately -- Continuance of hearing -- Consolidation of proceedings involving more than one minor.

(1) Hearings in minor's cases shall be held before the court without a jury and may be conducted in an informal manner.

(a) In abuse, neglect, and dependency cases in all districts other than pilot districts selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude [~~all persons~~] the general public from hearings held prior to July 1, [~~2005 who do not have a direct interest in the proceedings~~] 2004.

(b) In delinquency cases the court shall admit all persons who have a direct interest in the case and may admit persons requested by the parent or legal guardian to be present. The court shall exclude all other persons except as provided in Subsection (1)(c).

(c) In delinquency cases in which the minor charged is 14 years of age or older, the court shall admit any person unless the hearing is closed by the court upon findings on the record for good cause if:

(i) the minor has been charged with an offense which would be a felony if committed by an adult; or

(ii) the minor is charged with an offense that would be a class A or B misdemeanor if committed by an adult, and the minor has been previously charged with an offense which would be a misdemeanor or felony if committed by an adult.

(d) The victim of any act charged in a petition or information involving an offense committed by a minor which if committed by an adult would be a felony or a class A or class B misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77, Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not apply to important juvenile justice hearings as defined in Section 77-38-2.

(e) A victim, upon request to appropriate juvenile court personnel, shall have the right to inspect and duplicate juvenile court legal records that have not been expunged concerning:

(i) the scheduling of any court hearings on the petition;

- (ii) any findings made by the court; and
- (iii) any sentence or decree imposed by the court.

(2) Minor's cases shall be heard separately from adult cases. The minor or ~~his~~ the minor's parents or custodian may be heard separately when considered necessary by the court. The hearing may be continued from time to time to a date specified by court order.

(3) When more than one minor is involved in a home situation which may be found to constitute neglect or dependency, or when more than one minor is alleged to be involved in the same law violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

Section 21. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor following petition filing -- Grounds.

(1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is the subject of the petition is not in the protective custody of the division, a court may order that the minor be removed from the minor's home or otherwise taken into protective custody if the court finds, by a preponderance of the evidence, that any one or more of the following circumstances exist:

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

(b) a parent or guardian engages in or threatens the minor with unreasonable conduct that causes the minor to suffer emotional damage and there are no reasonable means available by which the minor's emotional health may be protected without removing the minor from the custody of the minor's parent or guardian;

(c) ~~[(†)]~~ the minor or another minor residing in the same household has been physically or sexually abused, or is considered to be at substantial risk of being physically or sexually abused, by a parent or guardian, a member of the parent's or guardian's household, or other person known to the parent or guardian[-];

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

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

(d) the parent or guardian is unwilling to have physical custody of the minor;

(e) the minor has been abandoned or left without any provision for the minor's support;

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

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

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

(i) (i) a parent's or guardian's actions, omissions, or habitual action create an environment that poses a threat to the minor's health or safety; or

(ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose a threat to the minor's health or safety;

(j) ~~[(†)]~~ the minor or another minor residing in the same household has been neglected;
[and]

~~[(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household~~

may not be removed unless that minor is considered to be at substantial risk of being neglected;]

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

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

(m) the minor's welfare is otherwise endangered.

(2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency has occurred involving the same substantiated abuser or under similar circumstance as the previous abuse, that fact constitutes prima facie evidence that the minor cannot safely remain in the custody of the minor's parent.

(b) For purposes of Subsection (1)(c):

(i) another minor residing in the same household may not be removed from the home unless that minor is considered to be at substantial risk of being physically or sexually abused as described in Subsection (1)(c) or Subsection (2)(b)(ii); and

(ii) if a parent or guardian has received actual notice that physical or sexual abuse by a person known to the parent has occurred, and there is evidence that the parent or guardian failed to protect the minor, after having received the notice, by allowing the minor to be in the physical presence of the alleged abuser, that fact constitutes prima facie evidence that the minor is at substantial risk of being physically or sexually abused.

~~[(2) A]~~ (3) In the absence of one of the factors described in Subsection (1), a court may not remove a minor from the parent's or guardian's custody on the basis of:

(a) educational neglect~~[- in the absence of one of the factors described in Subsection (1)].~~
~~(3) A court may not remove a minor from the parent's or guardian's custody on the basis of];~~

(b) mental illness or poverty of the parent or guardian~~[- in the absence of one of the factors described in Subsection (1)]; or~~

(c) disability of the parent or guardian, as defined in Subsection 57-21-3(9).

(4) A minor removed from the custody of the minor's parent or guardian under this section may not be placed or kept in a secure detention facility pending further court proceedings unless the minor is detainable based on guidelines promulgated by the Division of Juvenile Justice Services.

(5) This section does not preclude removal of a minor from the minor's home without a warrant or court order under Section 62A-4a-202.1.

Section 22. Section **78-3a-304.5** is amended to read:

78-3a-304.5. Rules of procedure -- Ex parte communications.

(1) The Utah Rules of Civil Procedure and the Utah Rules of Juvenile Procedure apply to abuse, neglect, and dependency proceedings unless the provisions of this part specify otherwise.

(2) Any unauthorized ex parte communication concerning a pending case between a judge and a party to an abuse, neglect, or dependency proceeding shall be recorded for subsequent review, if necessary, by the Judicial Conduct Commission.

Section 23. Section **78-3a-307** is amended to read:

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

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

(b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section "natural parent" includes only a biological or adoptive mother, an adoptive father, or a biological father who was married to the child's biological mother at the time the child was conceived or born, or who has strictly complied with the provisions of Section 78-30-4.14 prior to removal of

the child or voluntary surrender of the child by the custodial parent. This definition applies regardless of whether the child has been or will be placed with adoptive parents or whether adoption has been or will be considered as a long term goal for the child.

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

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

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

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

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

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

- (a) placement with the parent continues to be in the child's best interest;
- (b) the child should be returned to the original custodial parent;
- (c) the child should be placed with a relative, pursuant to Subsection (5); or
- (d) the child should be placed in the custody of the division.

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

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

(5) (a) (i) If, at the time of the shelter hearing, a child is removed from the custody of his parent and is not placed in the custody of his other parent, the court shall, at that time, determine whether there is a relative who is able and willing to care for the child.

(ii) The court may order the Division of Child and Family Services to conduct a reasonable search to determine whether there are relatives of the child who are willing and appropriate, in accordance with the requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement of the child. The court shall order the parents to cooperate with the division, within five working days, to provide information regarding relatives who may be able and willing to care for the child.

(iii) The child may be placed in the temporary custody of the division pending [~~that~~] the determination under Subsection (5)(a)(ii).

(iv) This section may not be construed as a guarantee that an identified relative will receive custody of the child. However, preferential consideration [~~may~~] shall be given to a relative's request for placement of the child, if it is in the best interest of the child, and the provisions of this section are satisfied.

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

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

so that the court may determine whether:

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

(B) the child is comfortable with the relative;

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

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

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

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

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

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

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

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

(6) (a) When the court vests physical custody of a child with a relative pursuant to Subsection (5), it shall order that the relative assume custody subject to the continuing supervision of the court, and shall order that any necessary services be provided to the minor and the relative. That child is not within the temporary custody or custody of the Division of Child and Family Services. The child and any relative with whom the child is placed are under the

continuing jurisdiction of the court. The court may enter any order that it considers necessary for the protection and best interest of the child. The court shall provide for reasonable parent-time with the parent or parents from whose custody the child was removed unless parent-time is not in the best interest of the child.

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

- (A) placement with the relative continues to be in the child's best interest;
- (B) the child should be returned home; or
- (C) the child should be placed in the custody of the division.

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

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

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

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

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

Section 24. Section **78-3a-311** is amended to read:

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

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

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

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

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

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

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

(iii) The court may amend a child's primary permanency goal before the establishment of a final permanency plan under Section 78-3a-312. The court is not limited to the terms of the

concurrent permanency goal in the event that the primary permanency goal is abandoned. If, at anytime, the court determines that reunification is no longer a child's primary permanency goal, the court shall conduct a permanency hearing in accordance with Section 78-3a-312 within the earlier of 30 days of the court's determination or 12 months from the original removal of the child.

(c) (i) If the court determines that reunification services are appropriate, it shall order that the division make reasonable efforts to provide services to the child and the child's parent for the purpose of facilitating reunification of the family, for a specified period of time. In providing those services, the child's health, safety, and welfare shall be the division's paramount concern, and the court shall so order.

(ii) The court shall determine whether the services offered or provided by the division under the treatment plan constitute "reasonable efforts" on the part of the division. The court shall also determine and define the responsibilities of the parent under the treatment plan in accordance with Section 62A-4a-205. Those duties and responsibilities shall be identified on the record, for the purpose of assisting in any future determination regarding the provision of reasonable efforts, in accordance with state and federal law.

(iii) The time period for reunification services may not exceed 12 months from the date that the child was initially removed from the child's home. Nothing in this section may be construed to entitle any parent to an entire 12 months of reunification services.

(iv) If reunification services have been ordered, the court may terminate those services at any time.

(v) If, at any time, continuation of reasonable efforts to reunify a child is determined to be inconsistent with the final permanency plan for the child established pursuant to Subsection 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

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

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

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

(f) With regard to a child who is 36 months of age or younger at the time the child is initially removed from the home, the court shall:

(i) hold a permanency hearing eight months after the date of the initial removal, pursuant to Section 78-3a-312; and

(ii) order the discontinuance of those services after eight months from the initial removal of the child from the home if the parent or parents have not made substantial efforts to comply with the treatment plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) (a) Failure of the parent to respond to previous services or comply with any previous treatment plan, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, whether a parent continues to live with an individual who abused the child, any patterns of the parent's behavior that have exposed the child

to repeated abuse, or testimony by a competent professional that the parent's behavior is unlikely to be successful, shall be considered in determining whether reunification services are appropriate.

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

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

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

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

Section 25. Section **78-3a-912** is amended to read:

78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) The court may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court and shall consider only the best interest of a minor in

determining whether to appoint a guardian ad litem.

(2) An attorney guardian ad litem shall represent the best interest of each minor who may become the subject of a petition alleging abuse, neglect, or dependency, from the date the minor is removed from the minor's home by the ~~[Division of Child and Family Services]~~ division, or the date the petition is filed, whichever occurs earlier.

(3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad litem, shall:

- (a) represent the best interest of the minor in all proceedings;
- (b) be trained in applicable statutory, regulatory, and case law, and in accordance with the United States Department of Justice National Court Appointed Special Advocate Association guidelines, prior to representing any minor before the court;
- (c) conduct or supervise an independent investigation in order to obtain first-hand, a clear understanding of the situation and needs of the child;
- (d) (i) personally meet with the minor~~[-];~~
- (ii) personally interview the minor if the minor is old enough to communicate~~[-];~~
- (iii) determine the minor's goals and concerns regarding placement~~[-];~~ and
- (iv) personally assess or supervise an assessment of the appropriateness and safety of the minor's environment in each placement;
- (e) file written motions, responses, or objections at all stages of a proceeding when necessary to protect the best interest of a minor;
- (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all administrative and foster care citizen review board hearings pertaining to the minor's case;
- (g) participate in all appeals unless excused by order of the court;
- (h) be familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the Division of Child and Family Services to maintain a minor in the minor's home or to reunify a minor with the minor's parent;
- (i) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the status

of the minor's case, all court and administrative proceedings, discussions, and proposals made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;

(j) review proposed orders for, and as requested by the court, prepare proposed orders with clear and specific directions regarding services, treatment, and evaluation, assessment, and protection of the minor and the minor's family; and

(k) personally or through a trained volunteer, paralegal, or other trained staff, monitor implementation of a minor's treatment plan and any dispositional orders to determine whether services ordered by the court are actually provided, are provided in a timely manner, and attempt to assess whether they are accomplishing their intended goal.

(4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of information regarding the cases of individual minors before the court. An attorney guardian ad litem may not, however, delegate the attorney's responsibilities described in Subsection (3).

(b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(c) The court may use volunteers trained in accordance with the requirements of Subsection (4)(b) to assist in investigation and preparation of information regarding the cases of individual minors within the jurisdiction.

(d) When possible and appropriate, the court may use a volunteer who is a peer of the minor appearing before the court, in order to provide assistance to that minor, under the supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or other trained staff.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from duties by the court.

(6) (a) The juvenile court is responsible for all costs resulting from the appointment of an

attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment and training, and shall use funds appropriated by the Legislature for the guardian ad litem program to cover those costs.

(b) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate.

(ii) The court may not assess those fees or costs against a legal guardian, when that guardian is the state, or against a parent who is found to be impecunious. If a person claims to be impecunious, the court shall require of that person an affidavit of impecuniosity as provided in Section 78-7-36 and the court shall follow the procedures and make the determinations as provided in Section 78-7-36.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of ~~his~~ the attorney guardian ad litem's duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah Governmental Immunity Act.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest. A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

(b) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor child of a marriage.

(9) An attorney guardian ad litem shall be provided access to all Division of Child and Family Services records regarding the minor at issue and the minor's family.

(10) An attorney guardian ad litem shall maintain current and accurate records regarding the number of times the attorney has had contact with each minor and the actions the attorney has

taken in representation of the minor's best interest.

(11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2, Government Records Access and Management Act.

(b) All records of an attorney guardian ad litem are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the Legislature.

(c) Records released in accordance with Subsection (11)(b) shall be maintained as confidential by the Legislature. The Office of the Legislative Auditor General may, however, include summary data and nonidentifying information in its audits and reports to the Legislature.

(d) Because of the unique role of an attorney guardian ad litem described in Subsection (8), and the state's role and responsibility to provide a guardian ad litem program and, as *parens patriae*, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

(e) The Office of the Guardian Ad Litem shall present an annual report to the Child Welfare Legislative Oversight Panel detailing:

(i) the development, policy, and management of the statewide guardian ad litem program;

(ii) the training and evaluation of attorney guardians ad litem and volunteers; and

(iii) the number of children served by the Office of the Guardian Ad Litem.

Section 26. Section **78-3a-913** is amended to read:

78-3a-913. Right to counsel -- Appointment of counsel for indigent -- Cost -- Court hearing to determine compelling reason to appoint a noncontracting attorney -- Rate of pay.

(1) (a) The parents, guardian, custodian, and the minor, if competent, shall be informed that they have the right to be represented by counsel at every stage of the proceedings. They have

the right to employ counsel of their own choice and if any of them requests an attorney and is found by the court to be indigent, counsel shall be appointed by the court as provided in Subsection (3). The court may appoint counsel without a request if it considers representation by counsel necessary to protect the interest of the minor or of other parties.

(b) The cost of appointed counsel for an indigent minor or other indigent party, including the cost of counsel and expense of appeal, shall be paid by the county in which the ~~[hearing is]~~ trial court proceedings are held. Counties may levy and collect taxes for these purposes.

(c) The court shall take into account the income and financial ability to retain counsel of the parents or guardian of a minor in determining the indigency of the minor.

(2) If the state or county responsible to provide legal counsel for an indigent under Subsection (1)(b) has arranged by contract to provide services, the court if it has received notice or a copy of such contract shall appoint the contracting attorney as legal counsel to represent that indigent.

(3) ~~[The]~~ In the absence of contrary contractual provisions regarding the selection and appointment of parental defense counsel, the court shall select and appoint the attorney or attorneys if:

(a) the contract for indigent legal services is with multiple attorneys; or

(b) the contract is with an additional attorney or attorneys in the event of a conflict of interest.

(4) If the court considers the appointment of a noncontracting attorney to provide legal services to an indigent despite the existence of an indigent legal services contract and the court has a copy or notice of such contract, before the court may make the appointment, it shall:

(a) set the matter for a hearing;

(b) give proper notice to the attorney general ~~[or county attorney of the responsible county of the hearing]~~ and the Office of Child Welfare Parental Defense created in Section 63A-11-103; and

(c) make findings that there is a compelling reason to appoint a noncontracting attorney before it may make such appointment.

(5) The indigent's mere preference for other counsel shall not be considered a compelling reason justifying the appointment of a noncontracting attorney.

(6) The court may order a minor, parent, guardian, or custodian for whom counsel is appointed and the parents or guardian of any minor for whom counsel is appointed to reimburse the county for the cost of appointed counsel.

(7) If the minor and other parties were not represented by counsel, the court shall inform them at the conclusion of the proceedings that they have the right to appeal.

Section 27. Appropriation.

(1) There is appropriated (\$239,000), as an ongoing appropriation from the General Fund for fiscal year 2004-05 to the Department of Human Services - Executive Director Operations -- Services Review Program.

(2) There is appropriated \$239,000, as an ongoing appropriation from the General Fund for fiscal year 2004-05 to the Child Welfare Parental Defense Fund created in this bill.

Section 28. Effective date.

This bill takes effect on July 1, 2004.