

Representative Mike Thompson proposes the following substitute bill:

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.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "protective services";
- ▶ requires notice to parents of their statutory and constitutional rights before conducting a child abuse, neglect, or dependency investigation;
- ▶ prohibits a reporter of child abuse from acting as a support person in a preremoval interview;
- ▶ makes technical corrections to the terms "unsubstantiated" and "substantiated";
- ▶ prohibits a juvenile court from using disability of a parent as a basis for removing a child from the custody of the parent;
- ▶ 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;
- ▶ expands interdisciplinary child protection team membership;
- ▶ amends preferential placement provisions for children removed from their homes due to abuse, neglect, or dependency;
- ▶ requires the Division of Child and Family Services to accommodate and honor the moral and religious beliefs of those it serves;



- 26 ▶ requires the Division of Child and Family Services to design treatment plans in a
- 27 manner that minimizes disruption to the normal activities of the child's family;
- 28 ▶ expands access to juvenile court proceedings;
- 29 ▶ limits the types of identifying information that may be stricken from a record
- 30 released by the Division of Child and Family Services to specified individuals;
- 31 ▶ requires the Office of the Guardian Ad Litem to make an annual report to the Child
- 32 Welfare Legislative Oversight Panel;
- 33 ▶ requires recording of ex parte communications concerning an ongoing case between
- 34 a judge and other parties to an abuse, neglect, or dependency proceeding; and
- 35 ▶ makes conforming changes and technical corrections.

36 Monies Appropriated in this Bill:

37 None

38 Other Special Clauses:

39 This bill takes effect on July 1, 2004.

40 Utah Code Sections Affected:

41 AMENDS:

- 42 **30-3-10**, as last amended by Chapter 269, Laws of Utah 2003
- 43 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002
- 44 **62A-4a-205**, as last amended by Chapter 306, Laws of Utah 2002
- 45 **62A-4a-409**, as last amended by Chapter 265, Laws of Utah 2002
- 46 **62A-4a-412**, as last amended by Chapter 68, Laws of Utah 2003
- 47 **78-3a-105**, as last amended by Chapter 68, Laws of Utah 2003
- 48 **78-3a-115**, as last amended by Chapter 332, Laws of Utah 2003
- 49 **78-3a-301 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
- 50 **78-3a-304.5**, as enacted by Chapter 302, Laws of Utah 1995
- 51 **78-3a-307**, as last amended by Chapters 153 and 255, Laws of Utah 2001
- 52 **78-3a-311**, as last amended by Chapter 246, Laws of Utah 2002
- 53 **78-3a-314**, as last amended by Chapter 120, Laws of Utah 2001
- 54 **78-3a-412**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 55 **78-3a-912**, as last amended by Chapter 168, Laws of Utah 2002
- 56 **78-7-45**, as last amended by Chapter 168, Laws of Utah 2002

57 ENACTS:

58 **62A-4a-120**, Utah Code Annotated 1953



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

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

62 **30-3-10. Custody of children in case of separation or divorce -- Custody**
63 **consideration.**

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

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

69 (i) the past conduct and demonstrated moral standards of each of the parties;

70 (ii) which parent is most likely to act in the best interest of the child, including
71 allowing the child frequent and continuing contact with the noncustodial parent; and

72 (iii) those factors outlined in Section 30-3-10.2.

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

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

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

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

87 (2) In awarding custody, the court shall consider, among other factors the court finds

88 relevant, which parent is most likely to act in the best interests of the child, including allowing
89 the child frequent and continuing contact with the noncustodial parent as the court finds
90 appropriate.

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

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

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

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

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

107 (c) Nothing in this section may be construed to apply to [~~:(i) abuse, neglect, or~~
108 ~~dependency proceedings under Title 62A, Chapter 4a, Child and Family Services, or Title 78,~~
109 ~~Chapter 3a, Juvenile Court Act of 1996, or (ii)] adoption proceedings under Title 78, Chapter
110 30, Adoption.~~

111 (5) This section establishes neither a preference nor a presumption for or against joint
112 legal custody, joint physical custody, or sole custody, but allows the court and the family the
113 widest discretion to choose a parenting plan that is in the best interest of the child.

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

115 **62A-4a-101. Definitions.**

116 As used in this chapter:

117 (1) "Abuse" means:

118 (a) actual or threatened nonaccidental physical or mental harm;

119 (b) negligent treatment;

120 (c) sexual exploitation; or

121 (d) any sexual abuse.

122 (2) "Adoption services" means placing children for adoption, subsidizing adoptions
123 under Section 62A-4a-105, supervising adoption placements until the adoption is finalized by
124 the court, conducting adoption studies, preparing adoption reports upon request of the court,
125 and providing postadoptive placement services, upon request of a family, for the purpose of
126 stabilizing a possible disruptive placement.

127 (3) "Board" means the Board of Child and Family Services established in accordance
128 with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

129 (4) "Child" has the same meaning as "minor," as defined in this section.

130 (5) "Consumer" means a person who receives services offered by the division in
131 accordance with this chapter.

132 (6) "Chronic physical abuse" means repeated or patterned physical abuse.

133 (7) "Chronic neglect" means a repeated or patterned failure or refusal by a parent,
134 guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being.

135 (8) "Chronic emotional abuse" means repeated or patterned emotional abuse.

136 (9) "Custody," with regard to the division, means the custody of a child in the division
137 as of the date of disposition.

138 (10) "Day-care services" means care of a child for a portion of the day which is less
139 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care
140 center, family group home, or family child care home.

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

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

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

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

148 (b) As used in this Subsection (14) "abuse" means the same as that term is defined in
149 Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have

150 committed, has been convicted of, or has pled guilty to an act of domestic violence as defined
151 in Subsection 77-36-1(2).

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

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

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

160 (18) (a) "Neglect" means:

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

163 (ii) subjecting a child to mistreatment or abuse;

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

166 (iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary
167 subsistence, education, or medical care, including surgery or psychiatric services when
168 required, or any other care necessary for his health, safety, morals, or well-being; or

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

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

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

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

181 (20) "Protective services" means expedited services that are provided:
182 (a) in response to evidence of neglect, abuse, or dependency of a minor;
183 [~~(b) in an effort to substantiate evidence of neglect, abuse, or dependency;~~]
184 [~~(c)~~] (b) to a cohabitant who is neglecting or abusing a child, in order to help the
185 cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or
186 abuse, and to strengthen the cohabitant's ability to provide safe and acceptable care; and

187 [~~(d)~~] (c) in cases where the child's welfare is endangered:
188 (i) to bring the situation to the attention of the appropriate juvenile court and law
189 enforcement agency;

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

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

195 (21) "Services to unwed parents" means social, educational, and medical services
196 arranged for or provided to unwed parents to help them plan for themselves and the unborn
197 child.

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

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

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

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

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

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

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

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

216 (30) "Substitute care" means:

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

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

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

223 (31) "Supported" means a finding by the division based on the evidence available at the
224 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,
225 or dependency occurred. Each allegation made or identified during the course of the
226 investigation shall be considered separately in determining whether there should be a finding of
227 supported.

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

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

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

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

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

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

243 **62A-4a-120. Accommodation of moral and religious beliefs.**

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

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

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

250 (c) adoptive families.

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

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

254 **62A-4a-205. Treatment plans.**

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

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

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

262 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;

263 (ii) the child;

264 (iii) the child's foster parents; and

265 (iv) where appropriate, the child's stepparent.

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

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

272 (5) Each treatment plan shall specifically provide for the safety of the child, in
273 accordance with federal law, and clearly define what actions or precautions will, or may be,

274 necessary to provide for the health, safety, protection, and welfare of the child.

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

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

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

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

282 (d) if the plan is for the child to return to the child's family, specifically what the
283 parents must do in order to enable the child to be returned home, specifically how those
284 requirements may be accomplished, and how those requirements will be measured;

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

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

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

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

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

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

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

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

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

308 (8) With regard to a child who is three years of age or younger, if the goal is not to
309 return the child home, the permanency plan for that child shall be adoption. However, if the
310 division documents to the court that there is a compelling reason that adoption, reunification,
311 guardianship, and kinship placement are not in the child's best interest, the court may order
312 another planned permanent living arrangement in accordance with federal law.

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

314 **62A-4a-409. Investigation by division -- Temporary protective custody --**
315 **Preremoval interviews of children.**

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

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

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

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

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

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

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

335 (ii) the child;

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

338 (iv) other appropriate agencies or individuals.

339 (5) In any case where the division supervises, governs, or directs the affairs of any
340 individual, institution, or facility that has been alleged to be involved in acts or omissions of
341 child abuse or neglect, the investigation of the reported child abuse or neglect shall be
342 conducted by an agency other than the division.

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

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

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

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

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

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

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

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

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

367 (f) (i) the child shall be allowed to have a support person of the child's choice present[
 368 ~~That support person: (i); and~~
 369 (ii) the person described in Subsection (9)(f)(i):
 370 (A) may include[~~, but is not limited to;~~];
 371 (I) a school teacher [~~or~~];
 372 (II) an administrator[~~;~~];
 373 (III) a guidance counselor[~~; or~~];
 374 (IV) a child care provider[~~; and~~]; or
 375 (V) clergy; and
 376 [(ii)] (B) may not be a person who is alleged to be, or potentially may be, the
 377 perpetrator.

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

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

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

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

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

392 **62A-4a-412. Reports and information confidential.**

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

397 (a) a police or law enforcement agency investigating a report of known or suspected

398 child abuse or neglect;

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

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

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

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

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

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

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

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

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

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

420 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
421 district, for the purpose of evaluating whether an individual should be permitted to obtain or
422 retain a license as an educator or serve as an employee or volunteer in a school, limited to
423 information with substantiated findings involving an alleged sexual offense, an alleged felony
424 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
425 Chapter 5, Offenses Against the Person, and with the understanding that the office must
426 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond
427 to the report before making a decision concerning licensure or employment;

428 (k) any person identified in the report as a perpetrator or possible perpetrator of child

429 abuse or neglect, after being advised of the screening prohibition in Subsection (2); and

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

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

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

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

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

447 (4) Any person who wilfully permits, or aides and abets the release of data or
448 information obtained as a result of this part, in the possession of the division or contained on
449 any part of the Management Information System, in violation of this part or Sections
450 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

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

454 Section 7. Section **78-3a-105** is amended to read:

455 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

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

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

460 law or municipal ordinance; and

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

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

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

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

476 (b) The juvenile court may, by order, change the custody, subject to Subsection
477 30-3-10(4), support, parent-time, and visitation rights previously ordered in the district court as
478 necessary to implement the order of the juvenile court for the safety and welfare of the minor.
479 The juvenile court order remains in effect so long as the jurisdiction of the juvenile court
480 continues.

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

484 (5) The juvenile court has jurisdiction over questions of custody, support, and
485 parent-time, of a minor who comes within the court's jurisdiction under this section or Section
486 78-3a-104.

487 Section 8. Section **78-3a-115** is amended to read:

488 **78-3a-115. Hearings -- Public excluded, exceptions -- Victims admitted -- Minor's**
489 **cases heard separately from adult cases -- Minor or parents or custodian heard**
490 **separately -- Continuance of hearing -- Consolidation of proceedings involving more than**

491 **one minor.**

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

494 (a) In abuse, neglect, and dependency cases in all districts other than pilot districts
495 selected by the Judicial Council under Subsection 78-3-21(15)(a), the court shall exclude [~~all~~
496 persons] the general public from hearings held prior to July 1, [~~2005~~] 2004, and admit only
497 those persons who [~~do not~~]:

498 (i) have a direct interest in the proceedings; or

499 (ii) have been requested by the parent or legal guardian to be present.

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

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

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

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

511 (d) The victim of any act charged in a petition or information involving an offense
512 committed by a minor which if committed by an adult would be a felony or a class A or class B
513 misdemeanor shall, upon request, be afforded all rights afforded victims in Title 77, Chapter
514 36, Cohabitant Abuse Procedures Act, Title 77, Chapter 37, Victims' Rights, and Title 77,
515 Chapter 38, Rights of Crime Victims Act. The notice provisions in Section 77-38-3 do not
516 apply to important juvenile justice hearings as defined in Section 77-38-2.

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

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

520 (ii) any findings made by the court; and

521 (iii) any sentence or decree imposed by the court.

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

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

529 Section 9. Section **78-3a-301 (Effective 07/01/04)** is amended to read:

530 **78-3a-301 (Effective 07/01/04). Court-ordered protective custody of a minor**
531 **following petition filing -- Grounds.**

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

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

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

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

552 ~~[(ii) For purposes of this Subsection (1)(c), another minor residing in the same~~

553 household may not be removed from the home unless that minor is considered to be at
554 substantial risk of being physically or sexually abused as described in Subsection (1)(c)(i) or
555 (iii).]

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

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

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

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

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

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

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

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

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

576 [~~(ii) for purposes of Subsection (1)(j)(i), another minor residing in the same household
577 may not be removed unless that minor is considered to be at substantial risk of being
578 neglected;~~]

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

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

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

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

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

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

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

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

601 (a) educational neglect~~[, in the absence of one of the factors described in Subsection~~
602 ~~(1). (3) A court may not remove a minor from the parent's or guardian's custody on the basis~~
603 ~~of];~~

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

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

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

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

613 Section 10. Section **78-3a-304.5** is amended to read:

614 **78-3a-304.5. Rules of procedure -- Ex parte communications.**

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

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

621 Section 11. Section **78-3a-307** is amended to read:

622 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
623 **DCFS custody.**

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

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

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

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

645 (iii) The court may order the Division of Child and Family Services to conduct any

646 further investigation regarding the safety and appropriateness of the placement.

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

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

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

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

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

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

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

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

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

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

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

676 (iii) The child may be placed in the temporary custody of the division pending [~~that~~]

677 the determination under Subsection (5)(a)(ii).

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

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

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

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

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

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

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

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

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

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

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

706 (c) The court may place the child in the temporary custody of the division, pending the
707 division's investigation pursuant to Subsection (5)(b), and the court's determination regarding

708 that placement. The court shall ultimately base its determination regarding placement with a
709 relative on the best interest of the child.

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

715 (6) (a) When the court vests physical custody of a child with a relative pursuant to
716 Subsection (5), it shall order that the relative assume custody subject to the continuing
717 supervision of the court, and shall order that any necessary services be provided to the minor
718 and the relative. That child is not within the temporary custody or custody of the Division of
719 Child and Family Services. The child and any relative with whom the child is placed are under
720 the continuing jurisdiction of the court. The court may enter any order that it considers
721 necessary for the protection and best interest of the child. The court shall provide for
722 reasonable parent-time with the parent or parents from whose custody the child was removed
723 unless parent-time is not in the best interest of the child.

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

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

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

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

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

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

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

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

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

747 Section 12. Section **78-3a-311** is amended to read:

748 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

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

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

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

768 (b) (i) In addition to the primary permanency goal, the court shall establish a
769 concurrent permanency goal. The concurrent permanency goal shall include a representative

770 list of the conditions under which the primary permanency goal will be abandoned in favor of
771 the concurrent permanency goal and an explanation of the effect of abandoning or modifying
772 the primary permanency goal.

773 (ii) A permanency hearing shall be conducted in accordance with Subsection
774 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
775 child's primary permanency goal.

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

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

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

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

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

799 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
800 be inconsistent with the final permanency plan for the child established pursuant to Subsection

801 78-3a-312, then measures shall be taken, in a timely manner, to place the child in accordance
802 with the permanency plan, and to complete whatever steps are necessary to finalize the
803 permanent placement of the child.

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

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

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

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

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

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

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

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

831 (b) There is a presumption that reunification services should not be provided to a

832 parent if the court finds, by clear and convincing evidence, that any of the following
833 circumstances exist:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

886 Section 13. Section **78-3a-314** is amended to read:

887 **78-3a-314. All proceedings -- Persons entitled to be present.**

888 (1) A child who is the subject of a juvenile court hearing, any person entitled to notice
889 pursuant to Section 78-3a-306 or 78-3a-309, preadoptive parents, and any relative providing
890 care for the child, are entitled:

891 (a) to notice[;];

892 (b) to be present at each hearing held under this part, including administrative and
893 citizen reviews[;]; and [~~are entitled~~]

894 (c) to an opportunity to be heard.

895 (2) Because the child's foster parents have the right to notice, pursuant to Section
896 78-3a-309, they have the right to be present at each and every hearing held under this part
897 including administrative and citizen reviews, and are entitled to an opportunity to be heard.

898 (3) A child shall be represented at each hearing by the guardian ad litem appointed to
899 his case by the court. The child has a right to be present at each hearing, subject to the
900 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

901 (4) (a) The parent or guardian of a child who is the subject of a petition under this part
902 has the right to be represented by counsel, and to present evidence, at each hearing.

903 (b) When it appears to the court that a parent or guardian of the child desires counsel
904 but is financially unable to afford and cannot for that reason employ counsel, and the child has
905 been placed in out-of-home care, or the petitioner is recommending that the child be placed in
906 out-of-home care, the court shall appoint counsel.

907 (5) (a) In every abuse, neglect, or dependency proceeding under this chapter, the court
908 shall order that the child be represented by a guardian ad litem, in accordance with Section
909 78-3a-912.

910 (b) The guardian ad litem shall represent the best interest of the child, in accordance
911 with the requirements of that section, at the shelter hearing and at all subsequent court and
912 administrative proceedings, including any proceeding for termination of parental rights in
913 accordance with Part 4, Termination of Parental Rights Act.

914 (6) (a) (i) Notwithstanding any other provision of law, counsel for all parties to the
915 action shall be given access to all records, maintained by the division or any other state or local
916 public agency, that are relevant to the abuse, neglect, or dependency proceeding under this
917 chapter.

918 (ii) If the natural parent of a child is representing himself, ~~[he]~~ the natural parent of the
919 child shall have access to ~~[those]~~ the records described in Subsection (6)(a)(i).

920 (b) The ~~[above]~~ disclosures described in Subsection (6)(a) are not required in the
921 following circumstances:

922 ~~[(a)]~~ (i) ~~[The]~~ if the division or other state or local public agency did not originally
923 create the record being requested~~[- In those circumstances, the person making the request~~
924 ~~under this section shall be informed of the following:]~~;

925 ~~[(i) the existence of all records in the possession of the division or any other state or~~
 926 ~~local public agency;]~~

927 ~~[(ii) the name and address of the person or agency that originally created the record;~~
 928 ~~and]~~

929 ~~[(iii) that he must seek access to the record from the person or agency that originally~~
 930 ~~created the record.]~~

931 ~~[(b)]~~ (ii) ~~[Disclosure]~~ if disclosure of the record would jeopardize the life or physical
 932 safety of a child who has been a victim of child abuse or neglect, or any person who provided
 933 substitute care for the child[-];

934 ~~[(c)]~~ (iii) ~~[Disclosure]~~ if disclosure of the record would jeopardize the anonymity of the
 935 person or persons making the initial report of abuse or neglect or any others involved in the
 936 subsequent investigation[-]; or

937 ~~[(d)]~~ (iv) ~~[Disclosure]~~ if disclosure of the record would jeopardize the life or physical
 938 safety of a person who has been a victim of domestic violence.

939 (c) In circumstances described in Subsection (6)(b)(i), the person making the request
 940 under this section shall be informed of the following:

941 (i) the existence of all records in the possession of the division or any other state or
 942 local public agency;

943 (ii) the name and address of the person or agency that originally created the record; and

944 (iii) that the person must seek access to the record from the person or agency that
 945 originally created the record.

946 (7) (a) The appropriate foster care citizen review board shall be given access to all
 947 records, maintained by the division or any other state or local public agency, that are relevant to
 948 an abuse, neglect, or dependency proceeding under this chapter.

949 (b) Representatives of the appropriate foster care citizen review board are entitled to be
 950 present at each hearing held under this part, but notice is not required to be provided.

951 Section 14. Section **78-3a-412** is amended to read:

952 **78-3a-412. Review following termination.**

953 (1) At the conclusion of the hearing in which the court orders termination of the
 954 parent-child relationship, the court shall order that a review hearing be held within 90 days
 955 following the date of termination if the child has not been permanently placed.

956 (2) At that review hearing, the agency or individual vested with custody of the child
957 shall report to the court regarding the plan for permanent placement of the child. The guardian
958 ad litem shall submit to the court a written report with recommendations, based on an
959 independent investigation, for disposition meeting the best interests of the child.

960 (3) The court may order the agency or individual vested with custody of the child to
961 report, at appropriate intervals, on the status of the child until the plan for permanent placement
962 of the child has been accomplished.

963 Section 15. Section **78-3a-912** is amended to read:

964 **78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal --**
965 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**
966 **advocate volunteers -- Costs -- Immunity.**

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

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

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

976 (a) represent the best interest of the minor in all proceedings;

977 (b) be trained in applicable statutory, regulatory, and case law, and in accordance with
978 the United States Department of Justice National Court Appointed Special Advocate
979 Association guidelines, prior to representing any minor before the court;

980 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
981 clear understanding of the situation and needs of the child; and

982 (d) (i) personally meet with the minor[;];

983 (ii) personally interview the minor if the minor is old enough to communicate[;];

984 (iii) determine the minor's goals and concerns regarding placement[;]; and

985 (iv) personally assess or supervise an assessment of the appropriateness and safety of
986 the minor's environment in each placement;

987 (e) file written motions, responses, or objections at all stages of a proceeding when
988 necessary to protect the best interest of a minor;

989 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all
990 administrative and foster care citizen review board hearings pertaining to the minor's case;

991 (g) participate in all appeals unless excused by order of the court;

992 (h) be familiar with local experts who can provide consultation and testimony
993 regarding the reasonableness and appropriateness of efforts made by the Division of Child and
994 Family Services to maintain a minor in the minor's home or to reunify a minor with the minor's
995 parent;

996 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
997 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of the
998 status of the minor's case, all court and administrative proceedings, discussions, and proposals
999 made by other parties, court action, and psychiatric, medical, or other treatment or diagnostic
1000 services that are to be provided to the minor;

1001 (j) review proposed orders for, and as requested by the court, prepare proposed orders
1002 with clear and specific directions regarding services, treatment, and evaluation, assessment, and
1003 protection of the minor and the minor's family; and

1004 (k) personally or through a trained volunteer, paralegal, or other trained staff, monitor
1005 implementation of a minor's treatment plan and any dispositional orders to determine whether
1006 services ordered by the court are actually provided, are provided in a timely manner, and
1007 attempt to assess whether they are accomplishing their intended goal.

1008 (4) (a) An attorney guardian ad litem may use trained volunteers, in accordance with
1009 Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained
1010 staff to assist in investigation and preparation of information regarding the cases of individual
1011 minors before the court. An attorney guardian ad litem may not, however, delegate the
1012 attorney's responsibilities described in Subsection (3).

1013 (b) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
1014 in and follow, at a minimum, the guidelines established by the United States Department of
1015 Justice Court Appointed Special Advocate Association.

1016 (c) The court may use volunteers trained in accordance with the requirements of
1017 Subsection (4)(b) to assist in investigation and preparation of information regarding the cases

1018 of individual minors within the jurisdiction.

1019 (d) When possible and appropriate, the court may use a volunteer who is a peer of the
1020 minor appearing before the court, in order to provide assistance to that minor, under the
1021 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
1022 other trained staff.

1023 (5) The attorney guardian ad litem shall continue to represent the best interest of the
1024 minor until released from duties by the court.

1025 (6) (a) The juvenile court is responsible for all costs resulting from the appointment of
1026 an attorney guardian ad litem and the costs of volunteer, paralegal, and other staff appointment
1027 and training, and shall use funds appropriated by the Legislature for the guardian ad litem
1028 program to cover those costs.

1029 (b) (i) When the court appoints an attorney guardian ad litem under this section, the
1030 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer
1031 expenses against the minor's parents, parent, or legal guardian in a proportion that the court
1032 determines to be just and appropriate.

1033 (ii) The court may not assess those fees or costs against a legal guardian, when that
1034 guardian is the state, or against a parent who is found to be impecunious. If a person claims to
1035 be impecunious, the court shall require of that person an affidavit of impecuniosity as provided
1036 in Section 78-7-36 and the court shall follow the procedures and make the determinations as
1037 provided in Section 78-7-36.

1038 (7) An attorney guardian ad litem appointed under this section, when serving in the
1039 scope of ~~[his]~~ the attorney guardian ad litem's duties as guardian ad litem is considered an
1040 employee of the state for purposes of indemnification under Title 63, Chapter 30, Utah
1041 Governmental Immunity Act.

1042 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor. If the
1043 minor's wishes differ from the attorney's determination of the minor's best interest, the attorney
1044 guardian ad litem shall communicate the minor's wishes to the court in addition to presenting
1045 the attorney's determination of the minor's best interest. A difference between the minor's
1046 wishes and the attorney's determination of best interest may not be considered a conflict of
1047 interest for the attorney.

1048 (b) The court may appoint one attorney guardian ad litem to represent the best interests

1049 of more than one minor child of a marriage.

1050 (9) An attorney guardian ad litem shall be provided access to all Division of Child and
1051 Family Services records regarding the minor at issue and the minor's family.

1052 (10) An attorney guardian ad litem shall maintain current and accurate records
1053 regarding the number of times the attorney has had contact with each minor and the actions the
1054 attorney has taken in representation of the minor's best interest.

1055 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
1056 ad litem are confidential and may not be released or made public upon subpoena, search
1057 warrant, discovery proceedings, or otherwise. This subsection supersedes Title 63, Chapter 2,
1058 Government Records Access and Management Act.

1059 (b) All records of an attorney guardian ad litem are subject to legislative subpoena,
1060 under Title 36, Chapter 14, Legislative Subpoena Powers, and shall be released to the
1061 Legislature.

1062 (c) Records released in accordance with Subsection (11)(b) shall be maintained as
1063 confidential by the Legislature. The Office of the Legislative Auditor General may, however,
1064 include summary data and nonidentifying information in its audits and reports to the
1065 Legislature.

1066 (d) Because of the unique role of an attorney guardian ad litem described in Subsection
1067 (8), and the state's role and responsibility to provide a guardian ad litem program and, as parens
1068 patriae, to protect minors, Subsection (11)(b) constitutes an exception to Rules of Professional
1069 Conduct, Rule 1.6, as provided by Rule 1.6(b)(4). A claim of attorney-client privilege does not
1070 bar access to the records of an attorney guardian ad litem by the Legislature, through legislative
1071 subpoena.

1072 (e) The Office of the Guardian ad Litem shall present an annual report to the Child
1073 Welfare Legislative Oversight Panel detailing:

1074 (i) the development, policy, and management of the statewide guardian ad litem
1075 program;

1076 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

1077 (iii) the number of children served by the Office of the Guardian ad Litem.

1078 Section 16. Section **78-7-45** is amended to read:

1079 **78-7-45. Private attorney guardian ad litem -- Appointment -- Costs and fees --**

1080 **Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum**
1081 **qualifications.**

1082 (1) (a) The court may only appoint a private attorney as guardian ad litem who meets
1083 the minimum requirement needed to act as a guardian ad litem to represent the best interests of
1084 the minor in any district court action in which the custody of or visitation with a minor is at
1085 issue. [~~The attorney guardian ad litem shall be certified by the Director of the Office of the~~
1086 ~~Guardian Ad Litem as having met the minimum qualifications for appointment, but shall not be~~
1087 ~~employed by or under contract with the Office of the Guardian Ad Litem.~~]

1088 (b) If an attorney guardian ad litem has been appointed for the minor in any prior or
1089 concurrent action and that attorney guardian ad litem is available, the court shall appoint that
1090 attorney guardian ad litem, unless good cause is shown why another attorney guardian ad litem
1091 should be appointed.

1092 (c) If, after appointment of the attorney guardian ad litem, an allegation of abuse,
1093 neglect, or dependency of the minor is made the court shall:

1094 (i) determine whether it is in the best interests of the minor to continue the
1095 appointment; or

1096 (ii) order the withdrawal of the private attorney guardian ad litem and ~~[appoint]:~~

1097 (A) in the manner set forth in Subsection 78-3a-912(2), appoint:

1098 (I) the Office of the Guardian Ad Litem[-]; or

1099 (II) another attorney guardian ad litem; or

1100 (B) make no further appointment.

1101 (2) (a) The court shall assess all or part of the attorney guardian ad litem fees, courts
1102 costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court
1103 determines to be just.

1104 (b) If the court finds a party to be impecunious, under the provisions of Section
1105 78-7-36, the court may direct the impecunious party's share of the assessment to be covered by
1106 the attorney guardian ad litem pro bono obligation established in Subsection (6)(b).

1107 (3) The attorney guardian ad litem appointed under the provisions of this section shall:

1108 (a) represent the best interests of the minor from the date of the appointment until
1109 released by the court;

1110 (b) conduct or supervise an independent investigation in order to obtain a clear

1111 understanding of the situation and needs of the minor;

1112 (c) interview witnesses and review relevant records pertaining to the minor and the
1113 minor's family, including medical, psychological, and school records;

1114 (d) if the minor is old enough to communicate and unless it would be detrimental to the
1115 minor:

1116 (i) meet with and interview the minor;

1117 (ii) determine the minor's goals and concerns regarding custody or visitation; and

1118 (iii) counsel the minor regarding the nature, purpose, status, and implications of the
1119 case, of hearings, of recommendations, and proposals by parties and of court orders;

1120 (e) conduct discovery, file pleadings and other papers, prepare and review orders, and
1121 otherwise comply with the Utah Rules of Civil Procedure as necessary to protect the best
1122 interest of the minor;

1123 (f) unless excused by the court, prepare for and attend all mediation hearings and all
1124 court conferences and hearings, and present witnesses and exhibits as necessary to protect the
1125 best interests of the minor;

1126 (g) identify community resources to protect the best interests of the minor and advocate
1127 for those resources; and

1128 (h) participate in all appeals unless excused by the court.

1129 (4) (a) (i) The attorney guardian ad litem shall represent the best interests of a minor.

1130 [H]

1131 (ii) Whether the minor's wishes differ from the attorney's determination of the minor's
1132 best interests, the attorney guardian ad litem shall communicate to the court the minor's wishes
1133 and the attorney's determination of the minor's best interests.

1134 (iii) A difference between the minor's wishes and the attorney's determination of best
1135 interests is not sufficient to create a conflict of interest.

1136 (b) The court may appoint one attorney guardian ad litem to represent the best interests
1137 of more than one minor child of a marriage.

1138 (5) An attorney guardian ad litem appointed under this section is immune from any
1139 civil liability that might result by reason of acts performed within the scope of duties of the
1140 attorney guardian ad litem.

1141 (6) (a) Upon the advice of the Director of the Office of the Guardian Ad Litem, the

1142 Judicial Council shall by rule establish the minimum qualifications and requirements for
1143 appointment by the court as an attorney guardian ad litem.

1144 (b) An attorney guardian ad litem may be required to appear pro bono in one case for
1145 every five cases in which the attorney is appointed with compensation.

1146 (7) This section shall be effective in the Second, Third, and Fourth Judicial Districts on
1147 July 1, 2001, and in the remaining judicial districts of the state on July 1, 2002.

1148 **Section 17. Effective date.**

1149 This bill takes effect on July 1, 2004.