

Senator David L. Thomas proposes the following substitute bill:

MEDICAL NEGLIGENCE - EXCLUSION

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

LONG TITLE

General Description:

This bill modifies the Child and Family Services provisions regarding severe child abuse or neglect.

Highlighted Provisions:

This bill:

- ▶ establishes that severe child abuse or neglect does not include the medical decision of a competent parent who has no prior history of abuse or neglect; and
- ▶ makes conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on May 3, 2004, except that the amendments in this bill to Section 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.

Utah Code Sections Affected:

AMENDS:

62A-4a-101, as last amended by Chapters 281 and 283, Laws of Utah 2002

62A-4a-116.1, as last amended by Chapter 210, Laws of Utah 2003

76-5-110, as last amended by Chapter 303, Laws of Utah 1997

78-3a-103 (Superseded 07/01/04), as last amended by Chapter 283, Laws of Utah 2002



26 **78-3a-103 (Effective 07/01/04)**, as last amended by Chapter 171, Laws of Utah 2003
27 **78-3a-408**, as last amended by Chapter 274, Laws of Utah 1998



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

30 Section 1. Section **62A-4a-101** is amended to read:

31 **62A-4a-101. Definitions.**

32 As used in this chapter:

33 (1) "Abuse" means:

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

35 (b) negligent treatment;

36 (c) sexual exploitation; or

37 (d) any sexual abuse.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),

88 means that, after receiving notice that a child has been frequently absent from school without
89 good cause, or that the child has failed to cooperate with school authorities in a reasonable
90 manner, a parent or guardian fails to make a good faith effort to ensure that the child receives
91 an appropriate education.

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

95 (d) The medical decision of a competent parent or guardian does not constitute neglect.

96 (e) All parents are presumed to be competent. This presumption may be rebutted if the
97 state can show that a parent is incompetent beyond a reasonable doubt.

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

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

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

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

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

107 (d) in cases where the child's welfare is endangered:

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

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

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

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

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

119 minor.

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

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

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

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

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

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

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

136 (30) "Substitute care" means:

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

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

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

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

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

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

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

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

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

162 Section 2. Section **62A-4a-116.1** is amended to read:

163 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
164 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
165 **Rights of alleged perpetrator -- Juvenile court finding.**

166 (1) If the division makes a supported finding of one or more of the severe types of child
167 abuse or neglect described in Subsection (2), the division shall:

168 (a) serve notice of the finding on the alleged perpetrator and enter into the Licensing
169 Information System created in Section 62A-4a-116.2 the name and other identifying
170 information of the perpetrator with the supported finding, without identifying the person as a
171 perpetrator or alleged perpetrator, and a notation to the effect that an investigation regarding
172 the person is pending; and

173 (b) if the division considers it advisable file a petition for substantiation within one
174 year of the supported finding.

175 (2) Except as otherwise provided in Subsection (3), the severe types of child abuse or
176 neglect referred to in Subsection (1) are as follows:

177 (a) if committed by a person 18 years of age or older:

178 (i) severe or chronic physical abuse;

179 (ii) sexual abuse;

180 (iii) sexual exploitation;

181 (iv) abandonment;

182 (v) medical neglect resulting in death, disability, or serious illness;

183 (vi) chronic or severe neglect; or

184 (vii) chronic or severe emotional abuse; or

185 (b) if committed by a person under the age of 18:

186 (i) serious physical injury, as defined in Subsection 76-5-109(1)(d), to another child

187 which indicates a significant risk to other children; or

188 (ii) sexual behavior with or upon another child which indicates a significant risk to

189 other children.

190 (3) Severe child abuse or neglect in Subsection (2) does not include:

191 (a) the use of reasonable and necessary physical restraint or force by an educator in

192 accordance with Subsection 53A-11-802(2) or Section 76-2-401; [~~or~~]

193 (b) a person's conduct that:

194 (i) is justified under Section 76-2-401; or

195 (ii) constitutes the use of reasonable and necessary physical restraint or force in

196 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or

197 other dangerous object in the possession or under the control of a child or to protect the child or

198 another person from physical injury[-];

199 (c) the medical decision of a competent parent.

200 (4) For purposes of this section, all parents are presumed to be competent. This

201 presumption may be rebutted if the state can show that a parent is incompetent beyond a

202 reasonable doubt.

203 [~~(4)~~] (5) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in

204 accordance with risk assessment tools and rules established by the division that focus on age,

205 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and

206 other related considerations.

207 (b) The division shall train its child protection workers to apply the risk assessment

208 tools and rules established under Subsection [~~(4)~~] (5)(a).

209 [~~(5)~~] (6) The notice referred to in Subsection (1)(a) shall state that:

210 (a) the division has conducted an investigation regarding alleged child abuse or

211 neglect;

212 (b) the division has made a supported finding of one of the severe types of child abuse
213 or neglect described in Subsection (2);

214 (c) facts gathered by the division support the supported finding;

215 (d) as a result of the supported finding, the alleged perpetrator's name and other
216 identifying information have been listed in the Licensing Information System in accordance
217 with Subsection (1)(a);

218 (e) the alleged perpetrator may be disqualified from adopting a child or being licensed
219 by:

220 (i) the department;

221 (ii) a human services licensee;

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

223 (iv) a covered health care facility;

224 (f) the alleged perpetrator has the rights described in Subsection [~~(6)~~] (7); and

225 (g) failure to take either action described in Subsection [~~(6)~~] (7)(a) within one year
226 after service of the notice will result in the action described in Subsection [~~(6)~~] (7)(b).

227 [~~(6)~~] (7) (a) Upon receipt of the notice described in Subsection [~~(5)~~] (6), the alleged
228 perpetrator shall have the right to:

229 (i) file a written request asking the division to review the findings under Subsection
230 (2);

231 (ii) immediately petition the juvenile court under Section 78-3a-320; or

232 (iii) sign a written consent to the supported finding and entry of the alleged
233 perpetrator's name and other information regarding the supported finding of abuse or neglect
234 into the Licensing Information System.

235 (b) If the alleged perpetrator fails to take action as described in Subsection [~~(6)~~] (7)(a)
236 within one year after service of the notice described in Subsection [~~(5)~~] (6), the alleged
237 perpetrator's name and the notation described in Subsection (1)(a) shall remain in the Licensing
238 Information System. This information shall also remain in the Licensing Information System
239 while the division awaits a response from the alleged perpetrator pursuant to Subsection [~~(6)~~]
240 (7)(a) and during the pendency of any proceeding, including an appeal of a finding of
241 unsubstantiated or without merit, under Section 78-3a-320.

242 (c) The alleged perpetrator shall have no right to petition the juvenile court under

243 Subsection [~~(6)~~] (7)(b) if the court has previously held a hearing on the same alleged incident
244 of abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other
245 party.

246 (d) Consent under Subsection [~~(6)~~] (7)(a)(iii) by a minor shall be given by the minor's
247 parent or guardian.

248 [~~(7)~~] (8) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall
249 make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections
250 78-3a-320(1) and (2).

251 [~~(8)~~] (9) Service of the notice under Subsections (1)(a) and [~~(5)~~] (6):

252 (a) shall be personal service in accordance with Rule 4 of the Utah Rules of Civil
253 Procedure; and

254 (b) does not preclude civil or criminal action against the alleged perpetrator.

255 Section 3. Section **76-5-110** is amended to read:

256 **76-5-110. Abuse or neglect of disabled child.**

257 (1) As used in this section:

258 (a) "Abuse" means:

259 (i) inflicting physical injury, as that term is defined in Section 76-5-109;

260 (ii) having the care or custody of a disabled child, causing or permitting another to
261 inflict physical injury, as that term is defined in Section 76-5-109; or

262 (iii) unreasonable confinement.

263 (b) "Caretaker" means:

264 (i) any parent, legal guardian, or other person having under his care and custody a
265 disabled child; or

266 (ii) any person, corporation, or public institution that has assumed by contract or court
267 order the responsibility to provide food, shelter, clothing, medical, and other necessities to a
268 disabled child.

269 (c) "Disabled child" means any person under 18 years of age who is impaired because
270 of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent
271 that he is unable to care for his own personal safety or to provide necessities such as food,
272 shelter, clothing, and medical care.

273 (d) "Neglect" means failure by a competent caretaker to provide care, nutrition,

274 clothing, shelter, supervision, or medical care.

275 (2) Any caretaker who abuses or neglects a disabled child is guilty of a third degree
276 felony.

277 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
278 means alone through prayer, in lieu of medical treatment, in accordance with the tenets and
279 practices of an established church or religious denomination of which the parent or legal
280 guardian is a member or adherent shall not, for that reason alone, be considered to be in
281 violation under this section.

282 (b) The medical decision of a competent parent or guardian shall not be considered to
283 be in violation under this section.

284 ~~[(b)]~~ (c) The exception under Subsection (3)(a) shall not preclude a court from ordering
285 medical services from a physician licensed to engage in the practice of medicine to be provided
286 to the child where there is substantial risk of harm to the child's health or welfare.

287 (4) All parents are presumed to be competent. This presumption may be rebutted if the
288 state can show that a parent is incompetent beyond a reasonable doubt.

289 Section 4. Section **78-3a-103 (Superseded 07/01/04)** is amended to read:

290 **78-3a-103 (Superseded 07/01/04). Definitions.**

291 (1) As used in this chapter:

292 (a) "Abused child" includes a minor less than 18 years of age who:

293 (i) has suffered or been threatened with nonaccidental physical or mental harm,
294 negligent treatment, or sexual exploitation; or

295 (ii) has been the victim of any sexual abuse.

296 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
297 alleged in the petition have been proved.

298 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
299 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
300 be referred to as minors.

301 (d) "Board" means the Board of Juvenile Court Judges.

302 (e) "Child placement agency" means:

303 (i) a private agency licensed to receive minors for placement or adoption under this
304 code; or

305 (ii) a private agency receiving minors for placement or adoption in another state, which
306 agency is licensed or approved where such license or approval is required by law.

307 (f) "Commit" means to transfer legal custody.

308 (g) "Court" means the juvenile court.

309 (h) "Dependent child" includes a minor who is homeless or without proper care
310 through no fault of his parent, guardian, or custodian.

311 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent
312 or the parents or a previous legal custodian to another person, agency, or institution.

313 (j) "Detention" means home detention and secure detention as defined in Section
314 62A-7-101 for the temporary care of minors who require secure custody in physically
315 restricting facilities:

316 (i) pending court disposition or transfer to another jurisdiction; or

317 (ii) while under the continuing jurisdiction of the court.

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

319 (l) "Formal referral" means a written report from a peace officer or other person
320 informing the court that a minor is or appears to be within the court's jurisdiction and that a
321 petition may be filed.

322 (m) "Group rehabilitation therapy" means psychological and social counseling of one
323 or more persons in the group, depending upon the recommendation of the therapist.

324 (n) "Guardianship of the person" includes the authority to consent to marriage, to
325 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
326 custody, if legal custody is not vested in another person, agency, or institution.

327 (o) "Habitual truant" is a school-age minor who has received more than two truancy
328 citations within one school year from the school in which the minor is or should be enrolled
329 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
330 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
331 school or any scheduled period of the school day.

332 (p) "Legal custody" means a relationship embodying the following rights and duties:

333 (i) the right to physical custody of the minor;

334 (ii) the right and duty to protect, train, and discipline the minor;

335 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary

336 medical care;

337 (iv) the right to determine where and with whom the minor shall live; and

338 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

339 (q) "Minor" means a person under the age of 18 years. It includes the term "child" as

340 used in other parts of this chapter.

341 (r) "Natural parent" means a minor's biological or adoptive parent, and includes the

342 minor's noncustodial parent.

343 (s) (i) "Neglected child" means a minor:

344 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided
345 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

346 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
347 abuse;

348 (C) who lacks proper parental care by reason of the fault or habits of the parent,
349 guardian, or custodian;

350 (D) whose competent parent, guardian, or custodian fails or refuses to provide proper
351 or necessary subsistence, education, or medical care, including surgery or psychiatric services
352 when required, or any other care necessary for health, safety, morals, or well-being; or

353 (E) who is at risk of being a neglected or abused child as defined in this chapter
354 because another minor in the same home is a neglected or abused child as defined in this
355 chapter.

356 (ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D),
357 means that, after receiving notice that a minor has been frequently absent from school without
358 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
359 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
360 an appropriate education.

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

363 (iv) The medical decision of a competent parent or guardian does not constitute
364 neglect.

365 (v) All parents are presumed to be competent. This presumption may be rebutted if the
366 state can show that a parent is incompetent beyond a reasonable doubt.

367 (t) "Nonjudicial adjustment" means closure of the case by the assigned probation
368 officer without judicial determination upon the consent in writing of the minor, the parent,
369 legal guardian or custodian, and the assigned probation officer.

370 (u) "Probation" means a legal status created by court order following an adjudication
371 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
372 to remain in his home under prescribed conditions and under supervision by the probation
373 department or other agency designated by the court, subject to return to the court for violation
374 of any of the conditions prescribed.

375 (v) "Protective supervision" means a legal status created by court order following an
376 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
377 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
378 is provided by the probation department or other agency designated by the court.

379 (w) "Residual parental rights and duties" means those rights and duties remaining with
380 the parent after legal custody or guardianship, or both, have been vested in another person or
381 agency, including the responsibility for support, the right to consent to adoption, the right to
382 determine the child's religious affiliation, and the right to reasonable parent-time unless
383 restricted by the court. If no guardian has been appointed, "residual parental rights and duties"
384 also include the right to consent to marriage, to enlistment, and to major medical, surgical, or
385 psychiatric treatment.

386 (x) "Secure facility" means any facility operated by or under contract with the Division
387 of Youth Corrections, that provides 24-hour supervision and confinement for youth offenders
388 committed to the division for custody and rehabilitation.

389 (y) "Shelter" means the temporary care of minors in physically unrestricted facilities
390 pending court disposition or transfer to another jurisdiction.

391 (z) "State supervision" means a disposition which provides a more intensive level of
392 intervention than standard probation but is less intensive or restrictive than a community
393 placement with the Division of Youth Corrections.

394 (aa) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

395 (bb) "Supported" has the same meaning as defined in Section 62A-4a-101.

396 (cc) "Termination of parental rights" means the permanent elimination of all parental
397 rights and duties, including residual parental rights and duties, by court order.

398 (dd) "Therapist" means a person employed by a state division or agency for the purpose
399 of conducting psychological treatment and counseling of a minor in its custody, or any other
400 person licensed or approved by the state for the purpose of conducting psychological treatment
401 and counseling.

402 (ee) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

403 (ff) "Without merit" has the same meaning as defined in Section 62A-4a-101.

404 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
405 Division of Child and Family Services:

406 (a) "Custody" means the custody of a minor in the Division of Child and Family
407 Services as of the date of disposition.

408 (b) "Protective custody" means the shelter of a minor by the Division of Child and
409 Family Services from the time the minor is removed from home until the shelter hearing, or the
410 minor's return home, whichever occurs earlier.

411 (c) "Temporary custody" means the custody of a minor in the Division of Child and
412 Family Services from the date of the shelter hearing until disposition.

413 Section 5. Section **78-3a-103 (Effective 07/01/04)** is amended to read:

414 **78-3a-103 (Effective 07/01/04). Definitions.**

415 (1) As used in this chapter:

416 (a) "Abused child" includes a minor less than 18 years of age who:

417 (i) has suffered or been threatened with nonaccidental physical or mental harm,
418 negligent treatment, or sexual exploitation; or

419 (ii) has been the victim of any sexual abuse.

420 (b) "Adjudication" means a finding by the court, incorporated in a decree, that the facts
421 alleged in the petition have been proved.

422 (c) "Adult" means a person 18 years of age or over, except that persons 18 years or
423 over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121 shall
424 be referred to as minors.

425 (d) "Board" means the Board of Juvenile Court Judges.

426 (e) "Child placement agency" means:

427 (i) a private agency licensed to receive minors for placement or adoption under this
428 code; or

429 (ii) a private agency receiving minors for placement or adoption in another state, which
430 agency is licensed or approved where such license or approval is required by law.

431 (f) "Commit" means to transfer legal custody.

432 (g) "Court" means the juvenile court.

433 (h) "Dependent child" includes a minor who is homeless or without proper care
434 through no fault of his parent, guardian, or custodian.

435 (i) "Deprivation of custody" means transfer of legal custody by the court from a parent
436 or the parents or a previous legal custodian to another person, agency, or institution.

437 (j) "Detention" means home detention and secure detention as defined in Section
438 62A-7-101 for the temporary care of minors who require secure custody in physically
439 restricting facilities:

440 (i) pending court disposition or transfer to another jurisdiction; or

441 (ii) while under the continuing jurisdiction of the court.

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

443 (l) "Formal referral" means a written report from a peace officer or other person
444 informing the court that a minor is or appears to be within the court's jurisdiction and that a
445 petition may be filed.

446 (m) "Group rehabilitation therapy" means psychological and social counseling of one
447 or more persons in the group, depending upon the recommendation of the therapist.

448 (n) "Guardianship of the person" includes the authority to consent to marriage, to
449 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
450 custody, if legal custody is not vested in another person, agency, or institution.

451 (o) "Habitual truant" is a school-age minor who has received more than two truancy
452 citations within one school year from the school in which the minor is or should be enrolled
453 and eight absences without a legitimate or valid excuse or who, in defiance of efforts on the
454 part of school authorities as required under Section 53A-11-103, refuses to regularly attend
455 school or any scheduled period of the school day.

456 (p) "Legal custody" means a relationship embodying the following rights and duties:

457 (i) the right to physical custody of the minor;

458 (ii) the right and duty to protect, train, and discipline the minor;

459 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary

460 medical care;

461 (iv) the right to determine where and with whom the minor shall live; and

462 (v) the right, in an emergency, to authorize surgery or other extraordinary care.

463 (q) "Minor" means a person under the age of 18 years. It includes the term "child" as
464 used in other parts of this chapter.

465 (r) "Natural parent" means a minor's biological or adoptive parent, and includes the
466 minor's noncustodial parent.

467 (s) (i) "Neglected child" means a minor:

468 (A) whose parent, guardian, or custodian has abandoned the minor, except as provided
469 in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;

470 (B) whose parent, guardian, or custodian has subjected the minor to mistreatment or
471 abuse;

472 (C) who lacks proper parental care by reason of the fault or habits of the parent,
473 guardian, or custodian;

474 (D) whose competent parent, guardian, or custodian fails or refuses to provide proper
475 or necessary subsistence, education, or medical care, including surgery or psychiatric services
476 when required, or any other care necessary for health, safety, morals, or well-being; or

477 (E) who is at risk of being a neglected or abused child as defined in this chapter
478 because another minor in the same home is a neglected or abused child as defined in this
479 chapter.

480 (ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D),
481 means that, after receiving notice that a minor has been frequently absent from school without
482 good cause, or that the minor has failed to cooperate with school authorities in a reasonable
483 manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives
484 an appropriate education.

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

487 (iv) The medical decision of a competent parent or guardian does not constitute
488 neglect.

489 (v) All parents are presumed to be competent. This presumption may be rebutted if the
490 state can show that a parent is incompetent beyond a reasonable doubt.

491 (t) "Nonjudicial adjustment" means closure of the case by the assigned probation
492 officer without judicial determination upon the consent in writing of the minor, the parent,
493 legal guardian or custodian, and the assigned probation officer.

494 (u) "Probation" means a legal status created by court order following an adjudication
495 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
496 to remain in his home under prescribed conditions and under supervision by the probation
497 department or other agency designated by the court, subject to return to the court for violation
498 of any of the conditions prescribed.

499 (v) "Protective supervision" means a legal status created by court order following an
500 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
501 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
502 is provided by the probation department or other agency designated by the court.

503 (w) "Residual parental rights and duties" means those rights and duties remaining with
504 the parent after legal custody or guardianship, or both, have been vested in another person or
505 agency, including the responsibility for support, the right to consent to adoption, the right to
506 determine the child's religious affiliation, and the right to reasonable parent-time unless
507 restricted by the court. If no guardian has been appointed, "residual parental rights and duties"
508 also include the right to consent to marriage, to enlistment, and to major medical, surgical, or
509 psychiatric treatment.

510 (x) "Secure facility" means any facility operated by or under contract with the Division
511 of Juvenile Justice Services, that provides 24-hour supervision and confinement for youth
512 offenders committed to the division for custody and rehabilitation.

513 (y) "Shelter" means the temporary care of minors in physically unrestricted facilities
514 pending court disposition or transfer to another jurisdiction.

515 (z) "State supervision" means a disposition which provides a more intensive level of
516 intervention than standard probation but is less intensive or restrictive than a community
517 placement with the Division of Juvenile Justice Services.

518 (aa) "Substantiated" has the same meaning as defined in Section 62A-4a-101.

519 (bb) "Supported" has the same meaning as defined in Section 62A-4a-101.

520 (cc) "Termination of parental rights" means the permanent elimination of all parental
521 rights and duties, including residual parental rights and duties, by court order.

522 (dd) "Therapist" means a person employed by a state division or agency for the purpose
523 of conducting psychological treatment and counseling of a minor in its custody, or any other
524 person licensed or approved by the state for the purpose of conducting psychological treatment
525 and counseling.

526 (ee) "Unsubstantiated" has the same meaning as defined in Section 62A-4a-101.

527 (ff) "Without merit" has the same meaning as defined in Section 62A-4a-101.

528 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
529 Division of Child and Family Services:

530 (a) "Custody" means the custody of a minor in the Division of Child and Family
531 Services as of the date of disposition.

532 (b) "Protective custody" means the shelter of a minor by the Division of Child and
533 Family Services from the time the minor is removed from home until the shelter hearing, or the
534 minor's return home, whichever occurs earlier.

535 (c) "Temporary custody" means the custody of a minor in the Division of Child and
536 Family Services from the date of the shelter hearing until disposition.

537 Section 6. Section **78-3a-408** is amended to read:

538 **78-3a-408. Evidence of grounds for termination.**

539 (1) In determining whether a parent or parents have abandoned a child, it is prima facie
540 evidence of abandonment that the parent or parents:

541 (a) although having legal custody of the child, have surrendered physical custody of the
542 child, and for a period of six months following the surrender have not manifested to the child
543 or to the person having the physical custody of the child a firm intention to resume physical
544 custody or to make arrangements for the care of the child;

545 (b) have failed to communicate with the child by mail, telephone, or otherwise for six
546 months;

547 (c) failed to have shown the normal interest of a natural parent, without just cause; or

548 (d) have abandoned an infant, as described in Section 78-3a-313.5.

549 (2) In determining whether a parent or parents are unfit or have neglected a child the
550 court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

551 (a) emotional illness, mental illness, or mental deficiency of the parent that renders him
552 unable to care for the immediate and continuing physical or emotional needs of the child for

553 extended periods of time;

554 (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive
555 nature;

556 (c) habitual or excessive use of intoxicating liquors, controlled substances, or
557 dangerous drugs that render the parent unable to care for the child;

558 (d) repeated or continuous failure to provide the child with adequate food, clothing,
559 shelter, education, or other care necessary for his physical, mental, and emotional health and
560 development by a competent parent or parents who are capable of providing that care[-];

561 [~~However, a parent who, legitimately practicing his religious beliefs, does not provide specified~~
562 ~~medical treatment for a child is not for that reason alone a negligent or unfit parent;]~~

563 (e) with regard to a child who is in the custody of the division, if the parent is
564 incarcerated as a result of conviction of a felony, and the sentence is of such length that the
565 child will be deprived of a normal home for more than one year; or

566 (f) a history of violent behavior.

567 (3) A competent parent who, legitimately practicing his religious beliefs, does not
568 provide specified medical treatment for a child is not for that reason alone a negligent or unfit
569 parent.

570 (4) The medical decision of a competent parent or guardian does not constitute neglect.

571 (5) All parents are presumed to be competent. This presumption may be rebutted if the
572 state can show that a parent is incompetent beyond a reasonable doubt.

573 [~~(3)~~] (6) If a child has been placed in the custody of the division and the parent or
574 parents fail to comply substantially with the terms and conditions of a plan within six months
575 after the date on which the child was placed or the plan was commenced, whichever occurs
576 later, that failure to comply is evidence of failure of parental adjustment.

577 [~~(4)~~] (7) The following circumstances constitute prima facie evidence of unfitness:

578 (a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known
579 or substantiated abuse or neglect by the parent or parents;

580 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to
581 indicate the unfitness of the parent to provide adequate care to the extent necessary for the
582 child's physical, mental, or emotional health and development;

583 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement

584 of the child; or

585 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
586 commit murder or manslaughter of a child or child abuse homicide.

587 **Section 7. Effective date.**

588 This bill takes effect on May 3, 2004, except that the amendments in this bill to Section
589 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.