

Senator David L. Thomas proposes the following substitute bill:

1 **MEDICAL NEGLIGENCE - EXCLUSION**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: David L. Thomas**

5

LONG TITLE

6 **General Description:**

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

9 **Highlighted Provisions:**

10 This bill:

- 11
- 12 ▶ establishes that severe child abuse or neglect does not include the medical decision
 - 13 of a competent parent who has no prior history of abuse or neglect; and
 - 14 ▶ makes conforming amendments.

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 This bill takes effect on May 3, 2004, except that the amendments in this bill to Section
19 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **62A-4a-101**, as last amended by Chapters 281 and 283, Laws of Utah 2002

23 **62A-4a-116.1**, as last amended by Chapter 210, Laws of Utah 2003

24 **76-5-110**, as last amended by Chapter 303, Laws of Utah 1997

25 **78-3a-103 (Superseded 07/01/04)**, as last amended by Chapter 283, Laws of Utah 2002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 medical
96 neglect. A competent parent is defined herein as a parent who is a conscientious care giver
97 toward their child.

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

100 (f) Nothing in this Subsection (18) shall prohibit the state from taking life saving
101 measures when a licensed medical professional finds that without a medically necessary
102 procedure a minor child will suffer death within 24 hours of diagnosis.

103 (g) Notwithstanding Subsection (18)(f), a parent shall retain the right to a second
104 medical opinion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

143 (30) "Substitute care" means:

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

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

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

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

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

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

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

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

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

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

170 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
171 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
172 **Rights of alleged perpetrator -- Juvenile court finding.**

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

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

180 (b) if the division considers it advisable file a petition for substantiation within one

181 year of the supported finding.

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

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

185 (i) severe or chronic physical abuse;

186 (ii) sexual abuse;

187 (iii) sexual exploitation;

188 (iv) abandonment;

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

190 (vi) chronic or severe neglect; or

191 (vii) chronic or severe emotional abuse; or

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

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

195 (ii) sexual behavior with or upon another child which indicates a significant risk to
196 other children.

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

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

200 (b) a person's conduct that:

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

202 (ii) constitutes the use of reasonable and necessary physical restraint or force in
203 self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or
204 other dangerous object in the possession or under the control of a child or to protect the child or
205 another person from physical injury[-];

206 (c) the medical decision of a competent parent. A competent parent is defined herein
207 as a parent who is a conscientious care giver toward their child.

208 (4) For purposes of this section, all parents are presumed to be competent. This
209 presumption may be rebutted if the state can show that a parent or parents are incompetent
210 beyond a reasonable doubt.

211 (5) Nothing in Subsections (3) and (4) shall prohibit the state from taking life saving

212 measures when a licensed medical professional finds that without a medically necessary
213 procedure a minor child will suffer death within 24 hours of diagnosis.

214 (6) Notwithstanding Subsection (5), a parent shall retain the right to a second medical
215 opinion.

216 [~~4~~] (7) (a) For purposes of Subsection (2)(b), "significant risk" shall be determined in
217 accordance with risk assessment tools and rules established by the division that focus on age,
218 social factors, emotional factors, sexual factors, intellectual factors, family risk factors, and
219 other related considerations.

220 (b) The division shall train its child protection workers to apply the risk assessment
221 tools and rules established under Subsection [~~4~~] (7)(a).

222 [~~5~~] (8) The notice referred to in Subsection (1)(a) shall state that:

223 (a) the division has conducted an investigation regarding alleged child abuse or
224 neglect;

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

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

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

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

233 (i) the department;

234 (ii) a human services licensee;

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

236 (iv) a covered health care facility;

237 (f) the alleged perpetrator has the rights described in Subsection [~~6~~] (9); and

238 (g) failure to take either action described in Subsection [~~6~~] (9)(a) within one year
239 after service of the notice will result in the action described in Subsection [~~6~~] (9)(b).

240 [~~6~~] (9) (a) Upon receipt of the notice described in Subsection [~~5~~] (8), the alleged
241 perpetrator shall have the right to:

242 (i) file a written request asking the division to review the findings under Subsection

243 (2);

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

245 (iii) sign a written consent to the supported finding and entry of the alleged

246 perpetrator's name and other information regarding the supported finding of abuse or neglect

247 into the Licensing Information System.

248 (b) If the alleged perpetrator fails to take action as described in Subsection [~~(6)~~] (9)(a)

249 within one year after service of the notice described in Subsection [~~(5)~~] (8), the alleged

250 perpetrator's name and the notation described in Subsection (1)(a) shall remain in the Licensing

251 Information System. This information shall also remain in the Licensing Information System

252 while the division awaits a response from the alleged perpetrator pursuant to Subsection [~~(6)~~]

253 (9)(a) and during the pendency of any proceeding, including an appeal of a finding of

254 unsubstantiated or without merit, under Section 78-3a-320.

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

256 Subsection [~~(6)~~] (9)(b) if the court has previously held a hearing on the same alleged incident

257 of abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by some other

258 party.

259 (d) Consent under Subsection [~~(6)~~] (9)(a)(iii) by a minor shall be given by the minor's

260 parent or guardian.

261 [~~(7)~~] (10) Upon the filing of a petition under Subsection (1)(b), the juvenile court shall

262 make a finding of substantiated, unsubstantiated, or without merit as provided in Subsections

263 78-3a-320(1) and (2).

264 [~~(8)~~] (11) Service of the notice under Subsections (1)(a) and [~~(5)~~] (8):

265 (a) shall be personal service in accordance with Rule 4 of the Utah Rules of Civil

266 Procedure; and

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

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

269 **76-5-110. Abuse or neglect of disabled child.**

270 (1) As used in this section:

271 (a) "Abuse" means:

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

273 (ii) having the care or custody of a disabled child, causing or permitting another to

274 inflict physical injury, as that term is defined in Section 76-5-109; or

275 (iii) unreasonable confinement.

276 (b) "Caretaker" means:

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

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

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

286 (d) "Neglect" means failure by a competent caretaker to provide care, nutrition,
287 clothing, shelter, supervision, or medical care.

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

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

295 (b) The medical decision of a competent parent or guardian shall not be considered to
296 be in violation under this section. A competent parent is defined herein as a parent who is a
297 conscientious care giver toward their child.

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

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

303 (5) Nothing in Subsections (3) and (4) shall prohibit the state from taking life saving
304 measures when a licensed medical professional finds that without a medically necessary

305 procedure a minor child will suffer death within 24 hours of diagnosis.

306 (6) Notwithstanding Subsection (5), a parent shall retain the right to a second medical
307 opinion.

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

309 **78-3a-103 (Superseded 07/01/04). Definitions.**

310 (1) As used in this chapter:

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

312 (i) has suffered or been threatened with nonaccidental physical or mental harm,

313 negligent treatment, or sexual exploitation; or

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

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

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

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

321 (e) "Child placement agency" means:

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

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

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

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

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

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

332 (j) "Detention" means home detention and secure detention as defined in Section
333 62A-7-101 for the temporary care of minors who require secure custody in physically
334 restricting facilities:

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

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

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

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

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

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

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

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

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

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

354 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
355 medical care;

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

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

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

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

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

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

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

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

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

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

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

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

382 (iv) The medical decision of a competent parent or guardian does not constitute
383 medical neglect. A competent parent is defined herein as a parent who is a conscientious care
384 giver toward their child.

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

387 (vi) Nothing in Subsections (1)(s)(iv) and (v) shall prohibit the state from taking life
388 saving measures when a licensed medical professional finds that without a medically necessary
389 procedure a minor child will suffer death within 24 hours of diagnosis.

390 (vii) Notwithstanding Subsection (1)(s)(vi), a parent shall retain the right to a second
391 medical opinion.

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

395 (u) "Probation" means a legal status created by court order following an adjudication
396 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
397 to remain in his home under prescribed conditions and under supervision by the probation

398 department or other agency designated by the court, subject to return to the court for violation
399 of any of the conditions prescribed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

439 **78-3a-103 (Effective 07/01/04). Definitions.**

440 (1) As used in this chapter:

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

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

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

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

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

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

451 (e) "Child placement agency" means:

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

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

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

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

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

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

462 (j) "Detention" means home detention and secure detention as defined in Section
463 62A-7-101 for the temporary care of minors who require secure custody in physically
464 restricting facilities:

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

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

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

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

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

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

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

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

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

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

484 (iii) the duty to provide the minor with food, clothing, shelter, education, and ordinary
485 medical care;

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

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

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

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

491 minor's noncustodial parent.

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

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

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

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

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

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

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

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

512 (iv) The medical decision of a competent parent or guardian does not constitute
513 medical neglect. A competent parent is defined herein as a parent who is a conscientious care
514 giver toward their child.

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

517 (vi) Nothing in Subsections (1)(s)(iv) and (v) shall prohibit the state from taking life
518 saving measures when a licensed medical professional finds that without a medically necessary
519 procedure a minor child will suffer death within 24 hours of diagnosis.

520 (vii) Notwithstanding Subsection (1)(s)(vi), a parent shall retain the right to a second
521 medical opinion.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

569 **78-3a-408. Evidence of grounds for termination.**

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

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

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

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

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

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

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

584 extended periods of time;

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

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

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

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

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

597 (f) a history of violent behavior.

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

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

602 (5) All parents are presumed to be competent. This presumption may be rebutted if the
603 state can show that a parent or parents are incompetent beyond a reasonable doubt. A
604 competent parent is defined herein as a parent who is a conscientious care giver toward their
605 child.

606 [~~(3)~~] (6) If a child has been placed in the custody of the division and the parent or
607 parents fail to comply substantially with the terms and conditions of a plan within six months
608 after the date on which the child was placed or the plan was commenced, whichever occurs
609 later, that failure to comply is evidence of failure of parental adjustment.

610 [~~(4)~~] (7) The following circumstances constitute prima facie evidence of unfitness:

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

613 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to
614 indicate the unfitness of the parent to provide adequate care to the extent necessary for the

615 child's physical, mental, or emotional health and development;

616 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement
617 of the child; or

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

620 Section 7. **Effective date.**

621 This bill takes effect on May 3, 2004, except that the amendments in this bill to Section
622 78-3a-103 (Effective 07/01/04) take effect on July 1, 2004.