

REVISIONS TO CHILD WELFARE

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill amends child welfare provisions of the Utah Human Services Code, the Utah Criminal Code, and the Judicial Code, and repeals the pilot program for differentiated responses to child abuse and neglect reports.

Highlighted Provisions:

This bill:

- ▶ defines terms and modifies definition provisions;
- ▶ provides that abuse and neglect do not include accidental conduct;
- ▶ removes the requirement that the Division of Child and Family Services provide services to unwed parents;
- ▶ provides that a substantiated finding by a court that abuse or neglect occurred must be based on clear and convincing evidence;
- ▶ provides that a supported finding by the Division of Child and Family Services, upon completion of an investigation, must be based upon a determination that it is more likely than not that abuse, neglect, or dependency occurred;
- ▶ lists the training that a child welfare caseworker is required to receive;
- ▶ deletes and repeals the provisions relating to the pilot program for differentiated responses to child abuse and neglect reports;
- ▶ lists the rights and responsibilities of parents and the state, including those related to discipline and medical and mental health care of a child;
- ▶ provides that in an adjudicative proceeding to challenge a supported finding by the



- 28 Division of Child and Family Services, the division has the burden of proving the finding by
29 clear and convincing evidence;
- 30 ▶ limits the ability of the Division of Child and Family Services to withhold family
31 preservation services;
 - 32 ▶ addresses family preservation services and procedures for conducting an
33 investigation and developing a treatment plan;
 - 34 ▶ clarifies when services should be provided to eliminate the need to remove a child
35 from the custody of the child's parent or guardian;
 - 36 ▶ expands the information that must be provided to a parent or guardian when the
37 child of the parent or guardian is taken into protective custody;
 - 38 ▶ requires that all reasonable efforts be made to notify the parent or guardian of a
39 child taken into protective custody;
 - 40 ▶ amends provisions relating to a treatment plan for a child in the temporary custody
41 of the Division of Child and Family Services;
 - 42 ▶ lists the circumstances under which parental visitation may be denied by a court or
43 the Division of Child and Family Services;
 - 44 ▶ lists the circumstances where reporting of abuse or neglect is required;
 - 45 ▶ describes when the Division of Child and Family Services is required to make a
46 preremoval investigation;
 - 47 ▶ provides that when the Division of Child and Family Services is required to inform
48 a parent of an interview prior to interviewing a child, the division must inform the
49 parent of the specific allegations concerning the child and the time and place of the
50 interview;
 - 51 ▶ lists circumstances under which a parent or guardian is not guilty of child abuse or
52 neglect of a disabled child;
 - 53 ▶ describes when a court may order medical care for a disabled child;
 - 54 ▶ describes the authority of a guardian;
 - 55 ▶ describes and limits the circumstances where a court can issue a search warrant or
56 subpoena in a protective custody matter;
 - 57 ▶ limits the authority of a court to order medical and mental health treatment of a
58 child;

- 59 ▶ requires that when placing a child in guardianship or legal custody, a court shall
- 60 take into consideration the religious preferences of a minor and the minor's parents;
- 61 ▶ limits the circumstances under which a court may order that a child be placed into
- 62 protective custody;
- 63 ▶ clarifies the evidence that may be presented by a parent or guardian at a shelter
- 64 hearing;
- 65 ▶ requires that a court honor, as nearly as practicable, a request by a parent or
- 66 guardian to continue a shelter hearing;
- 67 ▶ increases the burden of proof for maintaining a child in protective custody to a clear
- 68 and convincing evidence standard;
- 69 ▶ describes when a court must order a child released from protective custody;
- 70 ▶ describes the circumstances under which the Division of Child and Family Services
- 71 and the court are required to provide services to:
 - 72 • maintain or return a child to the child's home; or
 - 73 • attempt to rehabilitate an offending parent;
- 74 ▶ addresses reunification services;
- 75 ▶ requires that a petitioner in a proceeding to terminate parental rights establish the
- 76 facts beyond a reasonable doubt;
- 77 ▶ describes the circumstances under which a court can order the termination of
- 78 parental rights;
- 79 ▶ establishes a rebuttable presumption that discipline of a child by a parent does not
- 80 constitute abusive conduct;
- 81 ▶ provides that upon granting a voluntary relinquishment of parental rights, a court
- 82 may enter an order relating to the child's health and safety;
- 83 ▶ increases the time within which a court must hold a permanency hearing from eight
- 84 months to 12 months; and
- 85 ▶ makes technical changes.

86 **Monies Appropriated in this Bill:**

87 None

88 **Other Special Clauses:**

89 None

90 **Utah Code Sections Affected:**

91 **AMENDS:**

- 92 **62A-2-121**, as last amended by Chapter 86, Laws of Utah 2004
- 93 **62A-4a-101**, as last amended by Chapter 356, Laws of Utah 2004
- 94 **62A-4a-106**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 95 **62A-4a-107**, as last amended by Chapter 94, Laws of Utah 2003
- 96 **62A-4a-116.1**, as last amended by Chapter 210, Laws of Utah 2003
- 97 **62A-4a-116.2**, as last amended by Chapter 86, Laws of Utah 2004
- 98 **62A-4a-116.4**, as enacted by Chapter 283, Laws of Utah 2002
- 99 **62A-4a-116.5**, as last amended by Chapter 74, Laws of Utah 2004
- 100 **62A-4a-116.6**, as last amended by Chapter 210, Laws of Utah 2003
- 101 **62A-4a-117**, as last amended by Chapter 94, Laws of Utah 2003
- 102 **62A-4a-201**, as last amended by Chapter 274, Laws of Utah 2000
- 103 **62A-4a-202**, as last amended by Chapter 100, Laws of Utah 2004
- 104 **62A-4a-202.1**, as last amended by Chapter 180, Laws of Utah 2004
- 105 **62A-4a-202.2**, as last amended by Chapter 10, Laws of Utah 2001, First Special
- 106 **Session**
- 107 **62A-4a-202.6**, as last amended by Chapter 58, Laws of Utah 2001
- 108 **62A-4a-203**, as last amended by Chapter 274, Laws of Utah 1998
- 109 **62A-4a-205**, as last amended by Chapter 356, Laws of Utah 2004
- 110 **62A-4a-208**, as enacted by Chapter 274, Laws of Utah 1998
- 111 **62A-4a-209**, as last amended by Chapters 265 and 306, Laws of Utah 2002
- 112 **62A-4a-302**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 113 **62A-4a-402**, as last amended by Chapter 274, Laws of Utah 1998
- 114 **62A-4a-403**, as last amended by Chapter 21, Laws of Utah 1999
- 115 **62A-4a-409**, as last amended by Chapter 356, Laws of Utah 2004
- 116 **62A-4a-414**, as enacted by Chapter 315, Laws of Utah 2004
- 117 **63-55-262**, as last amended by Chapter 134, Laws of Utah 2001
- 118 **76-5-109**, as last amended by Chapter 125, Laws of Utah 2000
- 119 **76-5-110**, as last amended by Chapter 303, Laws of Utah 1997
- 120 **78-3a-103**, as last amended by Chapter 171, Laws of Utah 2003

- 121 **78-3a-106**, as last amended by Chapter 267, Laws of Utah 2003
- 122 **78-3a-110**, as enacted by Chapter 365, Laws of Utah 1997
- 123 **78-3a-118**, as last amended by Chapters 102 and 267, Laws of Utah 2004
- 124 **78-3a-301**, as last amended by Chapter 356, Laws of Utah 2004
- 125 **78-3a-306**, as last amended by Chapters 131 and 267, Laws of Utah 2003
- 126 **78-3a-311**, as last amended by Chapter 356, Laws of Utah 2004
- 127 **78-3a-320**, as last amended by Chapter 210, Laws of Utah 2003
- 128 **78-3a-402**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 129 **78-3a-406**, as last amended by Chapter 332, Laws of Utah 2003
- 130 **78-3a-407**, as last amended by Chapter 246, Laws of Utah 2002
- 131 **78-3a-408**, as last amended by Chapter 274, Laws of Utah 1998
- 132 **78-3a-414**, as last amended by Chapter 101, Laws of Utah 2001

133 REPEALS:

- 134 **62A-4a-202.7**, as last amended by Chapter 94, Laws of Utah 2003
- 135 **78-3a-403**, as last amended by Chapter 318, Laws of Utah 1996

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

138 Section 1. Section **62A-2-121** is amended to read:

139 **62A-2-121. Access to abuse and neglect information for licensing purposes.**

140 (1) With respect to human services licensees, the department may access only the
141 Licensing Information System of the Division of Child and Family Services created by Section
142 62A-4a-116.2 and juvenile court records under Subsection 78-3a-320(4), for the purpose of:

143 (a) determining whether:

144 (i) a person associated with a licensee, with direct access to children, is listed in the
145 Licensing Information System; or ~~[has a substantiated finding by]~~

146 (ii) a juvenile court ~~[of a]~~ made a substantiated finding that a person committed severe
147 ~~[type of]~~ child abuse or neglect under Subsections 78-3a-320(1) and (2); and

148 (b) informing a licensee that:

149 (i) a person associated with the licensee is listed in the Licensing Information System;
150 or ~~[has a substantiated finding by a juvenile court of a severe type of]~~

151 (ii) a juvenile court made a substantiated finding that a person associated with the

152 licensee committed severe child abuse or neglect under Subsections 78-3a-320(1) and (2).

153 (2) Notwithstanding Subsection (1), the department may access the Division of Child
154 and Family Service's Management Information System under Section 62A-4a-116 for the
155 purpose of licensing and monitoring foster parents.

156 (3) After receiving identifying information for a person under Subsection
157 62A-2-120(1), the department shall process the information for the purposes described in
158 Subsection (1).

159 (4) The department shall adopt rules under Title 63, Chapter 46a, Utah Administrative
160 Rulemaking Act, consistent with this chapter, defining the circumstances under which a person
161 who has direct access to children and who is listed in the Licensing Information System or has
162 a substantiated finding by a court of a severe ~~[type of]~~ child abuse or neglect under Subsections
163 78-3a-320(1) and (2) may provide services to children.

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

165 **62A-4a-101. Definitions.**

166 As used in this chapter:

167 (1) (a) "Abuse" means intentionally, knowingly, recklessly, or with criminal
168 negligence:

169 [~~(a) actual or threatened nonaccidental physical or mental harm;~~]

170 [~~(b) negligent treatment;~~]

171 [~~(c) sexual exploitation; or~~]

172 [~~(d) any sexual abuse].~~

173 (i) causing:

174 (A) physical injury, as defined in Section 76-5-109; or

175 (B) serious physical injury, as defined in Section 76-5-109;

176 (ii) engaging in:

177 (A) mental cruelty, as defined in Section 76-5-109;

178 (B) sexual exploitation of a child, as defined in Section 62A-4a-402; or

179 (C) sexual abuse, as defined in Section 62A-4a-402;

180 (iii) while having care or custody of a child, causing or permitting another to:

181 (A) inflict on the child an injury described in Subsection (1)(a)(i); or

182 (B) engage in conduct, described in Subsection (1)(a)(ii), involving the child;

- 183 (iv) engaging in conduct described in Subsection 76-5-109.1(2); or
184 (v) subjecting a child to an imminent risk of a type of abuse described in Subsections
185 (1)(a)(i) through (iv).
- 186 (b) "Abuse" does not include:
187 (i) disciplining or managing a child, including:
188 (A) withholding privileges from a child; or
189 (B) other discipline that does not constitute abuse under Subsection (1)(a);
190 (ii) accidental conduct;
191 (iii) conduct described in Subsection 53A-11-802(2);
192 (iv) conduct described in Section 76-2-401; or
193 (v) the use of reasonable and necessary physical restraint or force on a child:
194 (A) in self-defense;
195 (B) in defense of others;
196 (C) to protect the child; or
197 (D) to remove a weapon in the possession of a child for any of the reasons described in
198 Subsections (1)(b)(v)(A) through (C).
- 199 (2) "Accidental conduct" means conduct by a person:
200 (a) when the person is not aware that he is engaging in the conduct; or
201 (b) when the person is aware that he is engaging in the conduct and:
202 (i) a person would not expect that there is a reasonable possibility that the conduct
203 described in this Subsection (2)(b) would result in:
204 (A) physical injury, as defined in Section 76-5-109; or
205 (B) serious physical injury, as defined in Section 76-5-109; or
206 (ii) the person is not aware of the existence of circumstances that made it reasonably
207 possible that the conduct described in this Subsection (2)(b) would result in:
208 (A) physical injury, as defined in Section 76-5-109; or
209 (B) serious physical injury, as defined in Section 76-5-109.
- 210 [~~(2)~~] (3) "Adoption services" means:
211 (a) placing children for adoption[;];
212 (b) subsidizing adoptions under Section 62A-4a-105[;];
213 (c) supervising adoption placements until the adoption is finalized by the court[;];

214 (d) conducting adoption studies[;];
 215 (e) preparing adoption reports upon request of the court[;]; and
 216 (f) providing postadoptive placement services, upon request of a family, for the
 217 purpose of stabilizing a possible disruptive placement.

218 ~~[(3)]~~ (4) "Board" means the Board of Child and Family Services established in
 219 accordance with Sections 62A-1-105, 62A-1-107, and 62A-4a-102.

220 ~~[(4)]~~ (5) "Child" ~~[has the same meaning as "minor," as defined in this section]~~ means a
 221 person under the age of 18.

222 (6) "Chronic ~~[physical]~~ abuse" means ~~[repeated or patterned physical]~~ a pattern of
 223 abuse.

224 (7) "Chronic neglect" means a ~~[repeated or patterned failure or refusal by a parent,~~
 225 ~~guardian, or custodian to provide necessary care for a minor's safety, morals, or well-being]~~
 226 pattern of neglect.

227 ~~[(8)]~~ "Chronic emotional abuse" means ~~repeated or patterned emotional abuse.~~

228 ~~[(5)]~~ (8) "Consumer" means a person who receives services offered by the division in
 229 accordance with this chapter.

230 (9) "Criminal negligence" is as defined in Section 76-2-103.

231 ~~[(9)]~~ (10) "Custody," with regard to the division, means the custody of a ~~[child]~~ minor
 232 in the division as of the date of disposition.

233 ~~[(10)]~~ (11) "Day-care services" means care of a child for a portion of the day which is:

- 234 (a) less than 24 hours[;];
- 235 (b) in ~~[his]~~ the child's own home by a responsible person[;]; or
- 236 (c) outside of ~~[his]~~ the child's home in a:
 - 237 (i) day-care center[;];
 - 238 (ii) family group home[;]; or
 - 239 (iii) family child care home.

240 ~~[(11)]~~ (12) "Dependent child" or "dependency" means a child, or the condition of a
 241 child, who is homeless or without proper care through no fault of the child's parent, guardian,
 242 or custodian.

243 ~~[(12)]~~ (13) "Director" means the director of the Division of Child and Family Services.

244 ~~[(13)]~~ (14) "Division" means the Division of Child and Family Services.

245 [~~(14)~~] (15) (a) "Domestic violence services" means temporary shelter, treatment, and
246 related services to persons who are victims of abuse and their dependent children and treatment
247 services for domestic violence perpetrators.

248 (b) As used in this Subsection [~~(14)~~] (15):

249 (i) "abuse" means the same as that term is defined in Section 30-6-1[~~;~~]; and

250 (ii) "domestic violence perpetrator" means a person who is alleged to have committed,
251 has been convicted of, or has pled guilty to an act of domestic violence as defined in
252 Subsection 77-36-1(2).

253 [~~(15)~~] (16) "Homemaking service" means the care of individuals in their domiciles, and
254 help given to individual caretaker relatives to achieve improved household and family
255 management through the services of a trained homemaker.

256 (17) "Intentionally" is as defined in Section 76-2-103.

257 (18) "Knowingly" is as defined in Section 76-2-103.

258 [~~(16)~~] (19) (a) "Minor" means a person under 18 years of age.

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

261 [~~(17)~~] (20) "Natural parent" means a minor's biological or adoptive parent, and
262 includes a minor's noncustodial parent.

263 [~~(18)~~] (21) (a) "Neglect" means:

264 (i) repeated or substantial failure by a parent, guardian, or person with care or custody
265 of a child to provide the child with:

266 (A) proper care; or

267 (B) adequate:

268 (I) food;

269 (II) shelter;

270 (III) clothing;

271 (IV) training;

272 (V) physical safety; or

273 (VI) medical care;

274 [~~(i)~~] (ii) abandonment of a child, except as provided in Title 62A, Chapter 4a, Part 8,
275 Safe Relinquishment of a Newborn Child; or

276 ~~[(ii) subjecting a child to mistreatment or abuse;]~~
277 ~~[(iii) lack of proper parental care by reason of the fault or habits of the parent,~~
278 ~~guardian, or custodian;]~~
279 ~~[(iv) failure or refusal of a parent, guardian, or custodian to provide proper or necessary~~
280 ~~subsistence, education, or medical care, including surgery or psychiatric services when~~
281 ~~required, or any other care necessary for his health, safety, morals, or well-being; or]~~
282 ~~[(v) a child at risk of being neglected or abused because another child in the same~~
283 ~~home is neglected or abused.]~~
284 ~~[(b) The aspect of neglect relating to education, described in Subsection (18)(a)(iv),~~
285 ~~means that, after receiving notice that a child has been frequently absent from school without~~
286 ~~good cause, or that the child has failed to cooperate with school authorities in a reasonable~~
287 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the child receives~~
288 ~~an appropriate education.]~~
289 [(iii) failure by a parent or guardian to make a good faith effort to ensure that the child
290 receives an appropriate education after the parent or guardian receives notice that the child is
291 frequently absent from school without good cause.
292 (b) "Neglect" does not include:
293 ~~[(c) A] (i) a parent or guardian legitimately practicing religious beliefs [and] who, for~~
294 ~~that reason, does not provide specified medical or mental health treatment for a child[; is not~~
295 ~~guilty of neglect.];~~
296 (ii) disciplining or managing a child; or
297 (iii) accidental conduct.
298 ~~[(19)] (22) "Protective custody," with regard to the division, means the shelter of a~~
299 ~~child by the division from the time the child is removed from the child's home until the shelter~~
300 ~~hearing, or the [child's return] child returns home, whichever occurs earlier.~~
301 ~~[(20)] (23) "Protective services" means expedited services that are provided:~~
302 (a) in response to evidence of neglect, abuse, or dependency of a minor;
303 (b) to a cohabitant who is neglecting or abusing a child, in order to help the cohabitant
304 develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse, and
305 to strengthen the cohabitant's ability to provide safe and acceptable care; and
306 (c) in cases where the child's welfare is endangered:

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

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

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

314 (24) "Recklessly" is as defined in Section 76-2-103.

315 ~~[(22) "Severe]~~ (25) "Serious neglect" means neglect that causes [or threatens to cause
316 ~~serious harm]~~ serious physical injury, as defined in Section 76-5-109, to a minor.

317 ~~[(21) "Services to unwed parents" means social, educational, and medical services~~
318 ~~arranged for or provided to unwed parents to help them plan for themselves and the unborn~~
319 ~~child.]~~

320 (26) "Severe child abuse or neglect" means:

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

322 (i) intentionally, knowingly, recklessly, or with criminal negligence causing serious
323 physical injury, as defined in Section 76-5-109; or

324 (ii) committing:

325 (A) chronic abuse;

326 (B) sexual abuse, as defined in Section 62A-4a-402;

327 (C) sexual exploitation of a child, as defined in Section 62A-4a-402;

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

330 (E) serious neglect;

331 (F) chronic neglect; or

332 (G) mental cruelty, as defined in Section 76-5-109; or

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

334 (i) inflicting serious physical injury, as defined in Section 76-5-109, to another child
335 when that conduct indicates that the person poses an actual risk to other children, as determined
336 in accordance with risk assessment factors established by the division, by rule, as provided in
337 Section 62A-4a-102; or

338 (ii) committing sexual behavior with or upon another child when that conduct
339 indicates that the person poses an actual risk to other children, as determined in accordance
340 with risk assessment factors established by the division, by rule, as provided in Section
341 62A-4a-102.

342 ~~[(23)]~~ (27) "Shelter care" means the temporary care of ~~[minors]~~ a minor in a nonsecure
343 [facilities] facility.

344 ~~[(24)]~~ (28) "State" means a state of the United States, the District of Columbia, the
345 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
346 Mariana Islands, or a territory or possession administered by the United States.

347 ~~[(25) "Severe emotional abuse" means emotional abuse that causes or threatens to~~
348 ~~cause serious harm to a minor.]~~

349 ~~[(26) "Severe physical abuse" means physical abuse that causes or threatens to cause~~
350 ~~serious harm to a minor.]~~

351 ~~[(27)]~~ (29) "State plan" means the written description of the programs for children,
352 youth, and family services administered by the division in accordance with federal law.

353 ~~[(28)]~~ (30) "Status offense" means a violation of the law that would not be a violation
354 but for the age of the offender.

355 ~~[(29)]~~ (31) "Substantiated" or "substantiation" means a judicial finding based on ~~[a~~
356 ~~preponderance of the]~~ clear and convincing evidence that abuse or neglect occurred. Each
357 allegation made or identified in a given case shall be considered separately in determining
358 whether there should be a finding of substantiated.

359 ~~[(30)]~~ (32) "Substitute care" means:

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

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

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

366 ~~[(31)]~~ (33) "Supported" means a finding by the division ~~[based on the evidence~~
367 ~~available]~~ at the completion of an investigation ~~[that there is a reasonable basis to conclude]~~
368 that is more likely than not that abuse, neglect, or dependency occurred. Each allegation made

369 or identified during the course of the investigation shall be considered separately in
 370 determining whether there should be a finding of supported.

371 ~~[(32)]~~ (34) "Temporary custody," with regard to the division, means the custody of a
 372 child in the division from the date of the shelter hearing until disposition.

373 ~~[(33)]~~ (35) "Transportation services" means travel assistance given to an individual
 374 with escort service, if necessary, to and from community facilities and resources as part of a
 375 service plan.

376 ~~[(34)]~~ (36) "Unsubstantiated" means a judicial finding that there is ~~[insufficient]~~ not
 377 clear and convincing evidence ~~[to conclude]~~ that abuse or neglect occurred.

378 ~~[(35)]~~ (37) "Unsupported" means a finding at the completion of an investigation by the
 379 division that there is insufficient evidence to ~~[conclude]~~ show that it is more likely than not that
 380 abuse, neglect, or dependency occurred. However, a finding of unsupported means also that
 381 the division worker did not conclude that the allegation was without merit.

382 ~~[(36)]~~ (38) "Without merit" means a finding at the completion of an investigation by
 383 the division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur,
 384 or that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

385 Section 3. Section **62A-4a-106** is amended to read:

386 **62A-4a-106. Services provided by division.**

387 (1) The division may provide, directly or through contract, services that include~~[-but~~
 388 ~~are not limited to;]~~ the following:

- 389 (a) adoptions;
- 390 (b) day care for children;
- 391 ~~[(c) services to unwed parents;]~~
- 392 ~~[(d)]~~ (c) out-of-home placements for minors;
- 393 ~~[(e)]~~ (d) health-related services;
- 394 ~~[(f)]~~ (e) homemaking services;
- 395 ~~[(g)]~~ (f) home management services;
- 396 ~~[(h)]~~ (g) protective services for minors;
- 397 ~~[(i)]~~ (h) transportation services; and
- 398 ~~[(j)]~~ (i) domestic violence services.

399 (2) Services provided directly by the division or through contract shall be monitored by

400 the division to insure compliance with applicable:

401 (a) state law[~~;~~]; and

402 (b) standards and rules of the division.

403 Section 4. Section **62A-4a-107** is amended to read:

404 **62A-4a-107. Mandatory education and training of caseworkers -- Development of**
405 **curriculum.**

406 (1) There is created within the division a full-time position of Child Welfare Training
407 Coordinator, who shall be appointed by and serve at the pleasure of the director. The employee
408 in that position [~~shall~~] is not [~~be~~] responsible for direct casework services or the supervision of
409 those services, but [~~shall~~] is required to:

410 (a) develop child welfare curriculum that:

411 (i) is current and effective, consistent with the division's mission and purpose for child
412 welfare; and

413 (ii) utilizes curriculum and resources from a variety of sources including those from:

414 (A) the public sector;

415 (B) the private sector; and

416 (C) inside and outside of the state;

417 (b) recruit, select, and supervise child welfare trainers;

418 (c) develop a statewide training program, including a budget and identification of
419 sources of funding to support that training;

420 (d) evaluate the efficacy of training in improving job performance;

421 (e) assist child protective services and foster care workers in developing and fulfilling
422 their individual training plans;

423 (f) monitor staff compliance with division training requirements and individual training
424 plans; and

425 (g) expand the collaboration between the division and schools of social work within
426 institutions of higher education in developing child welfare services curriculum, and in
427 providing and evaluating training.

428 (2) (a) The director shall, with the assistance of the child welfare training coordinator,
429 establish a core curriculum for child welfare services that is substantially equivalent to the
430 Child Welfare League of America's Core Training for Child Welfare Caseworkers Curriculum.

431 (b) Any child welfare [~~worker~~] caseworker who is employed by the division for the
432 first time after July 1, 1999, shall, before assuming significant independent casework
433 responsibilities, successfully complete:

434 (i) the core curriculum; and

435 (ii) except as provided in Subsection (2)(c), on-the-job training that consists of
436 observing and accompanying at least two capable and experienced child welfare [~~workers~~]
437 caseworkers as they perform work-related functions:

438 (A) for three months if the [~~worker~~] caseworker has less than six months of on-the-job
439 experience as a child welfare [~~worker~~] caseworker; or

440 (B) for two months if the [~~worker~~] caseworker has six months or more but less than 24
441 months of on-the-job experience as a child welfare [~~worker~~] caseworker.

442 (c) A child welfare [~~worker~~] caseworker with at least 24 months of on-the-job
443 experience is not required to receive on-the-job training under Subsection (2)(b)(ii).

444 (3) Child welfare caseworkers shall, on an annual basis, complete training in:

445 (a) the legal duties of a child welfare caseworker;

446 (b) the responsibility of a child welfare caseworker to protect the safety and legal rights
447 of children, parents, and families at all stages of a case, including:

448 (i) initial contact;

449 (ii) investigation; and

450 (iii) treatment;

451 (c) recognizing situations involving:

452 (i) substance abuse;

453 (ii) domestic violence;

454 (iii) abuse; and

455 (iv) neglect; and

456 (d) the relationship of the Fourth and Fourteenth Amendments of the Constitution of
457 the United States to the child welfare caseworker's job, including:

458 (i) search and seizure of evidence;

459 (ii) the warrant requirement;

460 (iii) exceptions to the warrant requirement; and

461 (iv) removing a child from the custody of the child's parent or guardian.

462 (4) The division shall train its child welfare caseworkers to apply the risk assessment
 463 factors and rules described in Subsection 62A-4a-101(26)(b)(ii).

464 (5) When a child welfare caseworker is hired, before assuming significant independent
 465 casework responsibilities, the child welfare caseworker shall complete the training described in
 466 Subsections (3) and (4).

467 Section 5. Section **62A-4a-116.1** is amended to read:

468 **62A-4a-116.1. Supported finding of severe types of abuse or neglect -- Notation in**
 469 **Licensing Information System -- Juvenile court petition or notice to alleged perpetrator --**
 470 **Rights of alleged perpetrator -- Juvenile court finding.**

471 (1) If the division makes a supported finding [~~of one or more of the~~] that a person
 472 committed severe [~~types of~~] child abuse or neglect [~~described in Subsection (2)~~], the division
 473 shall:

474 (a) serve notice of the finding on the alleged perpetrator [~~and~~];

475 (b) enter into the Licensing Information System created in Section 62A-4a-116.2 the
 476 name and other identifying information of the perpetrator with the supported finding[;];

477 (i) without identifying the person as a perpetrator or alleged perpetrator[;]; and

478 (ii) with a notation to the effect that an investigation regarding the person is pending;

479 and

480 [~~(b)~~] (c) if the division considers it advisable, file a petition for substantiation within
 481 one year of the supported finding.

482 [~~(2) Except as otherwise provided in Subsection (3), the severe types of child abuse or~~
 483 ~~neglect referred to in Subsection (1) are as follows:]~~

484 [~~(a) if committed by a person 18 years of age or older:]~~

485 [~~(i) severe or chronic physical abuse;]~~

486 [~~(ii) sexual abuse;]~~

487 [~~(iii) sexual exploitation;]~~

488 [~~(iv) abandonment;]~~

489 [~~(v) medical neglect resulting in death, disability, or serious illness;]~~

490 [~~(vi) chronic or severe neglect; or]~~

491 [~~(vii) chronic or severe emotional abuse; or]~~

492 [~~(b) if committed by a person under the age of 18:]~~

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

495 ~~[(ii) sexual behavior with or upon another child which indicates a significant risk to~~
496 ~~other children.]~~

497 ~~[(3) Severe child abuse or neglect in Subsection (2) does not include:]~~

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

500 ~~[(b) a person's conduct that:]~~

501 ~~[(i) is justified under Section 76-2-401; or]~~

502 ~~[(ii) constitutes the use of reasonable and necessary physical restraint or force in~~
503 ~~self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or~~
504 ~~other dangerous object in the possession or under the control of a child or to protect the child or~~
505 ~~another person from physical injury.]~~

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

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

512 ~~[(5)]~~ (2) The notice referred to in Subsection (1)(a):

513 (a) shall state that:

514 ~~[(a)]~~ (i) the division has conducted an investigation regarding alleged child abuse or
515 neglect;

516 ~~[(b)]~~ (ii) the division has made a supported finding ~~[of one of the]~~ that the person
517 described in Subsection (1) committed severe ~~[types of]~~ child abuse or neglect ~~[described in~~
518 Subsection (2)];

519 ~~[(c)]~~ (iii) facts gathered by the division support the supported finding;

520 ~~[(d)]~~ (iv) as a result of the supported finding, the ~~[alleged perpetrator's]~~ name and other
521 identifying information of the person described in Subsection (1) have been listed in the
522 Licensing Information System in accordance with Subsection (1)~~[(a)]~~ (b);

523 ~~[(e)]~~ (v) the ~~[alleged perpetrator]~~ person described in Subsection (1) may be

524 disqualified from adopting a child or being licensed by:

525 ~~[(i)]~~ (A) the department;

526 ~~[(ii)]~~ (B) a human services licensee;

527 ~~[(iii)]~~ (C) a child care provider or program; ~~[and]~~

528 ~~[(iv)]~~ (D) a covered health care facility;

529 ~~[(f)]~~ (E) the alleged perpetrator has the rights described in Subsection ~~[(6)]~~ (3); and

530 ~~[(g)]~~ (F) failure to take either action described in Subsection ~~[(6)]~~ (3)(a) within one

531 year after service of the notice will result in the action described in Subsection ~~[(6)]~~ (3)(b)[-];

532 (b) shall include a general statement of the nature of the findings; and

533 (c) may not include:

534 (i) the name of a victim or witness; or

535 (ii) any privacy information related to the victim or a witness.

536 ~~[(6)]~~ (3) (a) Upon receipt of the notice described in ~~[Subsection (5)]~~ Subsections (1)(a)

537 and (2), the alleged perpetrator shall have the right to:

538 (i) file a written request asking the division to review the findings made under

539 Subsection ~~[(2)]~~ (1);

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

541 (iii) sign a written consent to:

542 (A) the supported finding made under Subsection (1); and

543 (B) entry into the Licensing Information System of:

544 (I) the alleged perpetrator's name; and

545 (II) other information regarding the supported finding [of abuse or neglect into the

546 Licensing Information System] made under Subsection (1).

547 (b) The alleged perpetrator's name and the information described in Subsection (1)(b)

548 shall remain in the Licensing Information System:

549 ~~[(b) If]~~ (i) if the alleged perpetrator fails to take action as described in Subsection ~~[(6)]~~

550 ~~(3)(a) within one year after service of the notice described in [Subsection (5), the alleged~~

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

552 ~~Information System. This information shall also remain in the Licensing Information System~~

553 ~~while] Subsections (1)(a) and (2);~~

554 (ii) during the time that the division awaits a response from the alleged perpetrator

555 pursuant to Subsection [~~(6)~~] (3)(a); and

556 (iii) during the pendency of any proceeding, including an appeal of a finding of
557 unsubstantiated or without merit, under Section 78-3a-320.

558 (c) The alleged perpetrator [~~shall have~~] has no right to petition the juvenile court under
559 Subsection [~~(6)(b)~~] (3)(a)(ii) if the court [~~has~~] previously held a hearing on the same alleged
560 incident of abuse or neglect pursuant to the filing of a petition under Section 78-3a-305 by
561 some other party.

562 (d) Consent under Subsection [~~(6)~~] (3)(a)(iii) by a minor [~~shall~~] may only be given by
563 the minor's parent or guardian.

564 [~~(7)~~] (4) Upon the filing of a petition under Subsection (1)[~~(b)~~](c), the juvenile court
565 shall make a finding of substantiated, unsubstantiated, or without merit as provided in
566 Subsections 78-3a-320(1) and (2).

567 [~~(8)~~] (5) Service of the notice under Subsections (1)(a) and [~~(5)~~] (2):

568 (a) shall be personal service in accordance with [~~Rule 4 of the~~] Utah Rules of Civil
569 Procedure, Rule 4; and

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

571 Section 6. Section **62A-4a-116.2** is amended to read:

572 **62A-4a-116.2. Licensing Information System -- Contents -- Juvenile court finding**
573 **-- Protected record -- Access -- Criminal penalty.**

574 (1) The division shall maintain a sub-part of the Management Information System
575 established pursuant to Section 62A-4a-116, to be known as the Licensing Information System,
576 to be used solely for licensing purposes. The Licensing Information System shall include only
577 the following information:

578 (a) the information described in Subsections 62A-4a-116.1(1)[~~(a)~~] (b) and [~~(6)~~] (3)(b);

579 (b) consented-to supported findings by alleged perpetrators under Subsection
580 62A-4a-116.1[~~(6)~~](3)(a)(iii); and

581 (c) the information in the licensing part of the division's Management Information
582 System as of May 6, 2002.

583 (2) Notwithstanding Subsection (1), the department's access to information in the
584 Management Information System for the licensure and monitoring of foster parents is governed
585 by Sections 62A-4a-116 and 62A-2-121.

586 (3) ~~[The division shall promptly amend the Licensing Information System;]~~ Except as
587 provided in Subsection 62A-4a-116.1(3)(b)(iii), upon receipt of a finding from the juvenile
588 court under Section 78-3a-320, the division shall:

589 (a) promptly amend the Licensing Information System; and ~~[shall]~~

590 (b) enter the same information in the Management Information System. [However, if a
591 finding of unsubstantiated or without merit is appealed, the supported finding shall not be
592 amended until the appeal is concluded.]

593 (4) Information contained in the Licensing Information System is classified as a
594 protected record under Title 63, Chapter 2, Government Records Access and Management Act.

595 (5) Notwithstanding the disclosure provisions of Title 63, Chapter 2, Government
596 Records Access and Management Act, the information contained in the Licensing Information
597 System may only be used or disclosed as specifically provided in this chapter and Section
598 62A-2-121 and is accessible only to:

599 (a) the Office of Licensing within the department, for licensing purposes only;

600 (b) the division, for the following purposes:

601 (i) to screen a person at the request of the Office of the Guardian Ad Litem Director[;];

602 (A) at the time that person seeks a paid or voluntary position with the Office of the
603 Guardian Ad Litem Director; and ~~[each year thereafter]~~

604 (B) on an annual basis, throughout the time that the person remains with ~~[that office]~~
605 the Office of the Guardian Ad Litem Director; and

606 (ii) to respond to a request for information from a person whose name is listed in the
607 Licensing Information System;

608 (c) two persons designated by and within the Department of Health, only for the
609 following purposes:

610 (i) licensing a child care program or provider; or

611 (ii) determining whether a person associated with a covered health care facility, as
612 defined by the Department of Health by rule, who provides direct care to a child, has a
613 supported finding of severe child abuse or neglect; and

614 (d) the department, as specifically provided in this chapter.

615 ~~[(5)]~~ (6) The two persons designated by the Department of Health under Subsection
616 ~~[(4)]~~ (5)(c) shall adopt measures to:

- 617 (a) protect the security of the Licensing Information System; and
618 (b) strictly limit access to the Licensing Information System to those persons
619 designated by statute.

620 ~~[(6)]~~ (7) All persons designated by statute as having access to information contained in
621 the Licensing Information System shall receive training from the department with respect to:

- 622 (a) accessing the Licensing Information System;
623 (b) maintaining strict security; and
624 (c) the criminal provisions of Sections 62A-4a-412 and 63-2-801 pertaining to the
625 improper release of information.

626 ~~[(7) No]~~ (8) A person, except those authorized by this chapter, may not request
627 another person to obtain or release any other information in the Licensing Information System
628 to screen for potential perpetrators of child abuse or neglect.

629 (9) A person who requests information knowing that it is a violation of ~~[this]~~
630 Subsection ~~[(7)]~~ (8) to do so is subject to the criminal penalty described in Sections
631 62A-4a-412 and 63-2-801.

632 Section 7. Section **62A-4a-116.4** is amended to read:

633 **62A-4a-116.4. Timeframes for deletion of specified information or reports.**

634 (1) Unless the executive director determines that there is good cause for keeping a
635 report of abuse or neglect in the Management Information System, based on standards
636 established by rule, the division shall delete any reference to:

637 (a) a report that is without merit, if no subsequent report involving the same alleged
638 perpetrator has occurred within one year; or

639 (b) a report that has been determined by a court of competent jurisdiction to be
640 unsubstantiated or without merit, if no subsequent report involving the same alleged
641 perpetrator has occurred within five years.

642 (2) (a) The division shall maintain a separation of reports as follows:

- 643 (i) those that are supported;
644 (ii) those that are unsupported;
645 (iii) those that are without merit;
646 (iv) those that are unsubstantiated under the law in effect prior to May 6, 2002;
647 (v) those that are substantiated under the law in effect prior to May 6, 2002; and

648 (vi) those that are consented-to supported findings under Subsection
649 62A-4a-116.1[~~(6)(a)(ii)~~](3)(a)(iii).

650 (b) Only persons with statutory authority have access to information contained in any
651 of the reports identified in Subsection (2)(a).

652 Section 8. Section **62A-4a-116.5** is amended to read:

653 **62A-4a-116.5. Notice and opportunity to challenge supported finding in**
654 **Management Information System -- Right of judicial review.**

655 (1) (a) Except as provided in Subsection (2), the division shall send a notice of agency
656 action to a person with respect to whom the division makes a supported finding. In addition, if
657 the alleged perpetrator is under the age of 18, the division shall:

658 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

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

662 (b) Nothing in this section may be construed as affecting:

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

664 (ii) the use or effect, in any other setting, of a supported finding by the division at the
665 completion of an investigation for any purpose other than for notification under Subsection (1)
666 (a).

667 (2) Subsection (1) does not apply to a person who has been served with notice under
668 Subsection 62A-4a-116.1(1)(a).

669 (3) The notice described in Subsection (1) shall state:

670 (a) that the division has conducted an investigation regarding alleged child abuse,
671 neglect, or dependency;

672 (b) that the division has made a supported finding of abuse, neglect, or dependency;

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

674 (d) that the person has the right to request:

675 (i) a copy of the report; and

676 (ii) an opportunity to challenge the supported finding by the division; and

677 (e) that failure to request an opportunity to challenge the supported finding within 30
678 days of receiving the notice will result in an unappealable supported finding of child abuse,

679 neglect, or dependency unless the person can show good cause for why compliance within the
680 30-day requirement was virtually impossible or unreasonably burdensome.

681 (4) (a) A person may make a request to challenge a supported finding within 30 days of
682 a notice being received under this section.

683 (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative
684 Hearings shall hold an adjudicative proceeding pursuant to Title 63, Chapter 46b,
685 Administrative Procedures Act.

686 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall
687 have the burden of proving, by ~~[a preponderance of the]~~ clear and convincing evidence, ~~[that~~
688 ~~there is a reasonable basis to conclude]~~ that child abuse, neglect, or dependency occurred and
689 that the alleged perpetrator was substantially responsible for the abuse or neglect that occurred.

690 (b) Any party shall have the right of judicial review of final agency action, in
691 accordance with Title 63, Chapter 46b, Administrative Procedures Act.

692 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after
693 receiving notice, fails to challenge a supported finding in accordance with this section, may not
694 further challenge the finding and shall have no right to agency review or to an adjudicative
695 hearing or judicial review of the finding.

696 (7) (a) An alleged perpetrator may not make a request under Subsection (4) to
697 challenge a supported finding if a court of competent jurisdiction entered a finding, in a
698 proceeding in which the alleged perpetrator was a party, that the alleged perpetrator is
699 substantially responsible for the abuse, neglect, or dependency which was also the subject of
700 the supported finding. This Subsection (7)(a) does not apply to pleas in abeyance or diversion
701 agreements.

702 (b) An adjudicative proceeding under Subsection (5) may be stayed during the time a
703 judicial action on the same matter is pending.

704 (8) ~~[An]~~ Pursuant to Section 78-3a-320, an adjudicative proceeding on a supported
705 finding of ~~[one of the nonsevere types of]~~ a type of abuse or neglect that does not constitute
706 severe child abuse or neglect ~~[under Section 78-3a-320]~~ may be joined in the juvenile court
707 with an adjudicative proceeding on a supported finding of [a] severe ~~[type of]~~ child abuse or
708 neglect.

709 Section 9. Section **62A-4a-116.6** is amended to read:

710 **62A-4a-116.6. Notice and opportunity for court hearing for persons listed in**
711 **Licensing Information System.**

712 (1) Persons whose names were listed on the Licensing Information System as of May
713 6, 2002 and who have not been the subject of a court determination with respect to the alleged
714 incident of abuse or neglect may at any time:

715 (a) request review by the division of their case and removal of their name from the
716 Licensing Information System pursuant to Subsection (3); or

717 (b) file a petition for an evidentiary hearing and a request for a finding of
718 unsubstantiated or without merit.

719 (2) Subsection (1) does not apply to an individual who has been the subject of any of
720 the following court determinations with respect to the alleged incident of abuse or neglect:

721 (a) conviction;

722 (b) adjudication under Title 78, Chapter 3a, Juvenile ~~[Courts]~~ Court Act of 1996;

723 (c) plea of guilty;

724 (d) plea of guilty and mentally ill; or

725 (e) no contest.

726 (3) If an alleged perpetrator listed on the Licensing Information System prior to May 6,
727 2002 requests removal of ~~[their]~~ the alleged perpetrator's name from the Licensing Information
728 System, the division shall, within 30 days:

729 (a) (i) review the case to determine whether the incident of alleged abuse or neglect
730 qualifies as severe [or chronic under Subsection 62A-4a-116.1(2) and if it does not,] child
731 abuse or neglect; and

732 (ii) if the alleged abuse or neglect does not qualify as severe child abuse or neglect,
733 remove the name of the alleged perpetrator from the Licensing Information System; or

734 (b) determine whether to file a petition for substantiation.

735 (4) If the division decides to file a petition, that petition must be filed no more than 14
736 days after the decision.

737 (5) The juvenile court shall act on the petition as provided in Subsection 78-3a-320(3).

738 (6) If a person whose name appears on the Licensing Information System prior to May
739 6, 2002 files a petition pursuant to Section 78-3a-320 during the time that an alleged
740 perpetrator's application for clearance to work with children or vulnerable adults is pending, the

741 court shall hear the matter on an expedited basis.

742 Section 10. Section ~~62A-4a-117~~ is amended to read:

743 **62A-4a-117. Performance monitoring system.**

744 (1) As used in this section:

745 (a) "Performance goals" means a target level of performance or an expected level of
746 performance against which actual performance is compared.

747 (b) "Performance indicators" means actual performance information regarding a
748 program or activity.

749 (c) "Performance monitoring system" means a process to regularly collect and analyze
750 performance information including performance indicators and performance goals.

751 (2) On or before May 1, 1996, the director, in cooperation with the board, shall develop
752 a performance monitoring system of each area in the child welfare system, including foster care
753 and other substitute care, child protective services, and adoption.

754 (3) On or before June 1, 1996, the director shall submit a description of that monitoring
755 system to the Child Welfare Legislative Oversight Panel for review.

756 (4) The division shall fully implement a performance monitoring system on or before
757 October 1, 1996.

758 (5) Before January 1 each year the director shall submit a written report describing the
759 difference between actual performance and performance goals for the prior fiscal year to the
760 Child Welfare Legislative Oversight Panel, the Joint Health and Human Services
761 Appropriations Subcommittee, and the Utah Tomorrow Strategic Planning Committee. The
762 report shall include:

763 (a) a summary of the division's efforts during the prior fiscal year to implement the
764 Performance Milestone Plan;

765 (b) a summary of how performance must be improved to achieve full implementation
766 of the Performance Milestone Plan;

767 (c) data on the extent to which new and experienced division employees have received
768 training pursuant to statute and division policy; and

769 (d) an analysis of the use and efficacy of family preservation services, both before and
770 after removal of children from their homes[~~;~~ and].

771 [~~(e) a description of the extent to which the pilot program under Section 62A-4a-202.7~~]

772 has been expanded during the prior fiscal year and an explanation of how the performance of
773 regions that have previously implemented the program has been affected by the program,
774 including data showing the number of referrals to the division:]

775 [~~(i) accepted for an investigation;~~]

776 [~~(ii) accepted for a family assessment; or~~]

777 [~~(iii) not accepted.~~]

778 Section 11. Section **62A-4a-201** is amended to read:

779 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
780 **state.**

781 (1) [~~(a)~~] Courts have recognized a general presumption that it is in the best interest and
782 welfare of a child to be raised under the care and supervision of [~~his~~] the child's natural parents.

783 A child's need for a normal family life in a permanent home, and for positive, nurturing family
784 relationships will usually best be met by [~~his~~] the child's natural parents. [~~Additionally, the~~]

785 (2) The integrity of the family unit, and the right of parents to conceive and raise their
786 children have found protection in the due process clause of the Fourteenth Amendment to the
787 United States Constitution. The right of a fit, competent parent to raise his child has long been
788 protected by the laws and Constitution of this state and of the United States.

789 (3) The state recognizes that:

790 (a) a parent has the right, obligation, responsibility, and authority to raise, manage,
791 train, educate, provide for, and discipline his child;

792 (b) the state's role is secondary and supportive to the primary role of a parent; and

793 (c) the appropriate exercise of a parent's right to discipline a child is not grounds to
794 subject a parent to punishment, restriction, disqualification, or surveillance of any kind,

795 including:

796 (i) arrest;

797 (ii) criminal liability;

798 (iii) removing a child from the physical custody of a parent;

799 (iv) adversely altering a parent's physical custody of a child;

800 (v) issuance of a protective order;

801 (vi) requiring reporting;

802 (vii) investigation; or

803 (viii) withholding or revoking a license.
804 ~~[(b)]~~ (4) (a) It is the public policy of this state that ~~[parents retain]~~;
805 (i) a parent retains the fundamental right and duty to exercise primary control over the
806 care, supervision, upbringing, and education of ~~[their children who are in their custody. (2) It is~~
807 ~~also the public policy of this state that children have]~~ any child of the parent who is in the
808 parent's custody;
809 (ii) each child has the right to protection from abuse and neglect~~[-];~~ and ~~[that]~~
810 (iii) the state retains a compelling interest in investigating, prosecuting, and punishing
811 abuse and neglect, as defined in this chapter, and in Title 78, Chapter 3a, Juvenile Court Act of
812 1996. [Therefore, as]
813 (b) As a counterweight to parental rights, the state~~[-, as parens patriae,]~~ has an interest
814 in, and responsibility to protect ~~[children whose parents abuse them or do not adequately~~
815 ~~provide for their welfare. There are circumstances where a parent's conduct or condition is a~~
816 ~~substantial departure from the norm and the parent is unable or unwilling to render safe and~~
817 ~~proper parental care and protection. Under those circumstances, the welfare and protection of~~
818 ~~children is the consideration of paramount importance.],~~ a child who is abused or neglected by
819 his parents.
820 ~~[(3)]~~ (5) When the division intervenes on behalf of an abused, neglected, or dependent
821 child, it shall take into account the child's need for protection from immediate harm.
822 Throughout ~~[its]~~ the division's involvement, the division shall utilize the least intrusive means
823 available to protect a child, in an effort to ensure that children are brought up in stable,
824 permanent families, rather than in temporary foster placements, or other placements, under the
825 supervision of the state.
826 ~~[(4)]~~ (6) (a) When circumstances within the family pose ~~[a]~~ an immediate serious threat
827 to the child's safety ~~[or welfare,];~~
828 (i) the state's interest in the child's welfare is paramount to the rights of a parent[-
829 The]; and
830 (ii) the division may;
831 (A) obtain custody of the child for a planned period; and
832 (B) place [him] the child in a safe environment, in accordance with the requirements of
833 Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

834 (b) The fact that a child's home is dirty or unkempt does not constitute grounds for the
835 division to intervene or to remove a child from the child's home, unless the condition of the
836 home poses a serious threat to a child's safety.

837 ~~[(5)]~~ (7) In determining and making "reasonable efforts" ~~[with regard to a child]~~ to
838 maintain a child in the child's home, pursuant to the provisions of Section 62A-4a-203, and in
839 keeping with the presumptions described in Subsection (1), both the division's and the court's
840 paramount concern shall be the child's health~~;~~ and safety~~;~~ ~~and welfare~~.

841 ~~[(6)]~~ (8) (a) In cases where actual sexual abuse, abandonment, or serious physical
842 ~~[abuse]~~ injury or serious neglect are involved, the state has no duty to:

843 (i) make "reasonable efforts" to maintain a child in the child's home; or ~~[to];~~

844 (ii) in any other way, attempt to:

845 (A) maintain a child in ~~[his]~~ the child's home~~;~~;

846 (B) provide reunification services~~;~~; or ~~[to]~~

847 (C) attempt to rehabilitate the offending parent or parents. ~~[This Subsection (6) does~~
848 ~~not exempt]~~

849 (b) Notwithstanding Subsection (8)(a), the division ~~[from providing]~~ shall provide
850 court-ordered services.

851 ~~[(7)]~~ (9) (a) It is the division's obligation, under federal law, to achieve permanency for
852 children who are:

853 (i) abused~~;~~;

854 (ii) neglected~~;~~; or

855 (iii) dependent.

856 (b) If the use or continuation of "reasonable efforts~~;~~" to maintain a child in the child's
857 home as described in Subsections ~~[(5) and (6)]~~ (7) and (8), is determined to be inconsistent
858 with the permanency plan for a child, then measures shall be taken, in a timely manner~~;~~ to:

859 (i) place the child in accordance with the permanency plan~~;~~; and ~~[to]~~

860 (ii) complete whatever steps are necessary to finalize the permanent placement of the
861 child.

862 ~~[(b)]~~ (c) If, because of ~~[his]~~ a parent's conduct or condition, a parent is determined to
863 be unfit or incompetent based on the grounds for termination of parental rights described in
864 Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of

865 the child is of paramount importance, and shall govern in determining whether that parent's
866 rights should be terminated.

867 (10) The state's right to direct or intervene in the provision of medical or mental health
868 care for a child is subject to Subsection 78-3a-118(2)(n).

869 Section 12. Section **62A-4a-202** is amended to read:

870 **62A-4a-202. Preventive services -- Family preservation services.**

871 (1) (a) Within appropriations from the Legislature and monies obtained under
872 Subsection (5), the division shall provide preventive, in-home services and family preservation
873 services for ~~[families whose children are]~~ any family with a child whose health and safety is
874 not immediately endangered, when:

875 (i) the child is at immediate risk of being removed from the home ~~[and for families]; or~~

876 (ii) the family is in crisis~~[-if:].~~

877 ~~[(i) the child's welfare is not immediately endangered; and]~~

878 ~~[(ii) the division determines that it is possible and appropriate.]~~

879 (b) In determining whether preventive or family preservation services are reasonable
880 and appropriate, in keeping with the provisions of Subsection 62A-4a-201(1) the child's health,
881 safety, and welfare shall be the paramount concern.

882 (c) The division shall consider whether [those] the services described in Subsection
883 (1)(b):

884 (i) will be effective within a six-month period[-]; and [whether they]

885 (ii) are likely to prevent [reabuse] abuse or continued neglect of the child.

886 (2) The division shall maintain a statewide inventory of early intervention, preventive,
887 and family preservation services available through public and private agencies or individuals
888 for use by caseworkers. The inventory shall include:

889 (a) the method of accessing each service;

890 (b) eligibility requirements for each service; ~~[and]~~

891 (c) the geographic areas and the number of families that can be served by each
892 service[-]; and

893 (d) information regarding waiting lists for each service.

894 (3) As a part of its preventive services, the division shall provide family preservation
895 services that:

- 896 (a) are short-term, intensive, crisis intervention programs~~[-, and that];~~
- 897 (b) address~~[-(a)]~~ the safety of children; and
- 898 ~~[(b) the physical and emotional needs of parents and children, including evaluating~~
- 899 ~~specific needs of the family, including depression, addiction, and mental illness;]~~
- 900 ~~[(c) the child's physical surroundings, including cleaning and repairing physical~~
- 901 ~~housing, and addressing needs for necessities such as food, heat, and electricity;]~~
- 902 ~~[(d) personal cleanliness, nutrition, and provision of personal grooming supplies and~~
- 903 ~~clothing;]~~
- 904 ~~[(e) budgeting, money management, and employment; and]~~
- 905 ~~[(f) parenting skills, including nonviolent discipline, nurturing, and structure, and~~
- 906 ~~teaching responsibility, respect for others, cooperation, and moral values.]~~
- 907 (c) are provided within the region that the family resides, using existing division staff.
- 908 (4) (a) The division may use ~~[only]~~ specially trained caseworkers ~~[or]~~, private
- 909 providers, or other persons to provide the family preservation services described in Subsection
- 910 (3).
- 911 (b) Family preservation caseworkers ~~[may]~~ shall:
- 912 (i) only be assigned a ~~[minimum]~~ minimal number of families~~[-, but the division shall~~
- 913 ~~require that they];~~
- 914 (ii) be available 24 hours each day for an intensive period of at least six weeks~~[-];~~ and
- 915 ~~[that they]~~
- 916 (iii) respond to an assigned family within 24 hours.
- 917 (c) The division shall allow family preservation caseworkers to be creative and flexible
- 918 in responding to the needs of each individual family.
- 919 (5) To provide, expand, and improve the delivery of in-home services to prevent the
- 920 removal of children from their homes and promote the preservation of families, the division
- 921 shall make substantial effort to obtain funding, including:
- 922 (a) federal grants;
- 923 (b) federal waivers; and
- 924 (c) private monies.
- 925 Section 13. Section **62A-4a-202.1** is amended to read:
- 926 **62A-4a-202.1. Entering home of a minor -- Taking a minor into protective**

927 **custody -- Caseworker accompanied by peace officer -- Preventive services -- Shelter care**
928 **or emergency kinship.**

929 (1) A state officer, peace officer, or child welfare worker may not enter the home of a
930 minor who is not under the jurisdiction of the court, remove a minor from the minor's home or
931 school, or take a minor into protective custody unless:

932 (a) the state officer, peace officer, or child welfare worker has obtained:

933 (i) the consent of the minor's parent or guardian; or

934 (ii) a court order issued under Section 78-3a-106; or

935 (b) there exist exigent circumstances.

936 (2) A child welfare worker within the division may take action under Subsection (1)
937 accompanied by a peace officer, or without a peace officer when a peace officer is not
938 reasonably available.

939 (3) (a) If possible, consistent with the minor's safety and welfare, before taking a minor
940 into protective custody, the worker shall also determine whether there are services [~~reasonably~~]
941 available to the worker which, if provided to the minor's parent or to the minor, would
942 eliminate the need to remove the minor from the custody of the minor's parent or guardian.

943 (b) If [~~those services~~] the services described in Subsection (3)(a) are reasonably
944 available, they shall be utilized.

945 (c) In determining whether the services described in Subsection (3)(a) are reasonably
946 available, and in making all reasonable efforts to provide those services, the minor's health,
947 safety, and welfare shall be the worker's paramount concern.

948 (4) (a) A minor removed or taken into custody under this section may not be placed or
949 kept in a secure detention facility pending court proceedings unless the minor is detainable
950 based on guidelines promulgated by the Division of Juvenile Justice Services.

951 (b) A minor removed from the custody of the minor's parent or guardian but who does
952 not require physical restriction shall be given temporary care in:

953 (i) a shelter facility; or

954 (ii) an emergency kinship placement in accordance with Section 62A-4a-209.

955 Section 14. Section **62A-4a-202.2** is amended to read:

956 **62A-4a-202.2. Notice to parents upon removal of child -- Locating noncustodial**
957 **parent -- Written statement of procedural rights and preliminary proceedings.**

958 (1) (a) Any peace officer or caseworker who takes a minor into protective custody
959 pursuant to Section 62A-4a-202.1 shall immediately use reasonable efforts to locate and
960 inform, through the most efficient means available, the parents, including a noncustodial
961 parent, the guardian, or responsible relative:

962 (i) that the minor has been taken into protective custody;

963 (ii) the reasons for removal and placement of the minor in protective custody;

964 (iii) that a written statement is available that explains:

965 (A) the parent's or guardian's procedural rights; and

966 (B) the preliminary stages of the investigation and shelter hearing; ~~and~~

967 (iv) of a telephone number where the parent or guardian may access further
968 information[-];

969 (v) that the minor and the minor's parent or guardian are entitled to have an attorney
970 present at the shelter hearing;

971 (vi) that if the minor's parent or guardian is indigent and desires to have an attorney,
972 one will be provided; and

973 (vii) that resources are available to assist the minor's parent or guardian in locating:

974 (A) a parent advocate;

975 (B) a qualified attorney; and

976 (C) potential expert witnesses to testify on behalf of the:

977 (I) minor;

978 (II) minor's parent;

979 (III) minor's guardian; or

980 (IV) minor's family.

981 (b) For purposes of locating and informing the noncustodial parent as required in
982 Subsection (1)(a), the division shall search for the noncustodial parent through the national
983 parent locator database if the division is unable to locate the noncustodial parent through other
984 reasonable efforts.

985 (2) (a) The ~~[attorney general's office]~~ Office of the Attorney General shall adopt, print,
986 and distribute a form for the written statement described in Subsection (1)(a)(iii).

987 (b) The statement described in Subsections (1)(a)(iii) and (2)(a) shall:

988 (i) be made available to the division and for distribution in;

- 989 (A) schools[;];
- 990 (B) health care facilities[;];
- 991 (C) local police and sheriff's offices[;];
- 992 (D) the division[;]; and
- 993 (E) any other appropriate office within the Department of Human Services[~~—The~~
- 994 ~~notice shall~~];
- 995 (ii) be in simple language; and
- 996 (iii) include at least the following information:
- 997 [~~(a)~~] (A) the conditions under which a minor may be released[;];
- 998 (B) hearings that may be required[~~, and~~];
- 999 (C) the means by which the parent or guardian may access further specific information
- 1000 about a minor's case and conditions of protective and temporary custody; and
- 1001 [~~(b)~~] (D) the rights of a minor and of the parent or guardian to legal counsel and to
- 1002 appeal.
- 1003 (3) If [~~a good faith attempt was~~] all reasonable efforts are made by the peace officer or
- 1004 caseworker to notify the parent or guardian or a responsible relative in accordance with the
- 1005 requirements of Subsection (1), failure to notify shall:
- 1006 (a) be considered to be due to circumstances beyond the control of the peace officer or
- 1007 caseworker; and
- 1008 (b) may not be construed to:
- 1009 (i) permit a new defense to any juvenile or judicial proceeding; or [~~to~~]
- 1010 (ii) interfere with any rights, procedures, or investigations provided for by this chapter
- 1011 or Title 78, Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996.
- 1012 Section 15. Section **62A-4a-202.6** is amended to read:
- 1013 **62A-4a-202.6. Child protective services investigators within attorney general's**
- 1014 **office -- Authority.**
- 1015 (1) (a) Pursuant to Section 67-5-16 the attorney general may employ, with the consent
- 1016 of the division, child protective services investigators to investigate reports of abuse or neglect
- 1017 of a child that occur while the child is in the custody of the division.
- 1018 (b) (i) Under the direction of the Board of Child and Family Services, the division
- 1019 shall, in accordance with Subsection 62A-4a-409(5), contract with an independent child

1020 protective service investigator to investigate reports of abuse or neglect of a child that occur
1021 while the child is in the custody of the division.

1022 (ii) The executive director of the department shall designate an entity within the
1023 department, other than the division, to monitor the contract for the investigators described in
1024 Subsection (1)(b)(i).

1025 (2) The investigators described in Subsection (1) may also investigate allegations of
1026 abuse or neglect of a child by a department employee or a licensed substitute care provider.

1027 (3) The investigators described in Subsection (1), if not peace officers, shall have the
1028 same rights, duties, and authority of a child protective services investigator employed by the
1029 division to:

1030 (a) make a thorough investigation upon receiving either an oral or written report of
1031 alleged abuse or neglect of a child, with the primary purpose of that investigation being the
1032 protection of the child;

1033 (b) make an inquiry into the ~~[child's]~~;

1034 (i) child's home environment~~[-];~~;

1035 (ii) child's emotional~~[-, or mental health, the]~~ health;

1036 (iii) nature and extent of the child's injuries[-]; and ~~[the child's]~~

1037 (iv) child's physical safety;

1038 (c) (i) make a written report of ~~[their]~~ the investigation, including determination
1039 regarding whether the alleged abuse or neglect was;

1040 (A) substantiated[-];

1041 (B) unsubstantiated[-]; or

1042 (C) without merit[-]; and

1043 (ii) forward a copy of ~~[that report]~~ the report described in Subsection (3)(c)(i) to the
1044 division within the time mandates for investigations established by the division;

1045 (d) immediately consult with school authorities to verify the child's status in
1046 accordance with Sections 53A-11-101 through 53A-11-103 when a report is based upon or
1047 includes an allegation of educational neglect;

1048 (e) enter upon public or private premises, using appropriate legal processes, to
1049 investigate reports of alleged ~~[child]~~ abuse or neglect of a child; and

1050 (f) take a child into protective custody, and deliver the child to a law enforcement

1051 officer, or to the division.

1052 (4) Control and jurisdiction over the child described in Subsection (3)(f) shall be
1053 determined;

1054 (a) by the provisions of Title 62A, Chapter 4a, Part 2, Child Welfare Services[;];

1055 (b) by the provisions of Title 78, Chapter 3a, Juvenile [Courts, and] Court Act of 1996;
1056 or

1057 (c) as otherwise provided by law.

1058 Section 16. Section **62A-4a-203** is amended to read:

1059 **62A-4a-203. Removal of a child from home -- Reasonable efforts to maintain**
1060 **child in home -- Exception -- Reasonable efforts for reunification.**

1061 (1) Because removal of a child from [his] the child's home [~~may affect~~] affects
1062 protected, constitutional rights of the parent and has a dramatic, long-term impact on a child,
1063 the division shall:

1064 (a) when possible and appropriate, without danger to the child's [~~welfare~~] safety, make
1065 reasonable efforts to prevent or eliminate the need for removal of a child from [his] the child's
1066 home prior to placement in substitute care;

1067 (b) determine whether there is substantial cause to believe that a child [~~has been or~~] is
1068 in danger of abuse or neglect, in accordance with the guidelines described in Title 78, Chapter
1069 3a, Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from
1070 [his] the child's home; and

1071 (c) when it is possible and appropriate, and in accordance with the limitations and
1072 requirements of Sections 78-3a-311 and 78-3a-312, make reasonable efforts to make it possible
1073 for a child in substitute care to return to [his] the child's home.

1074 (2) (a) In determining the reasonableness of efforts needed to maintain a child in [his]
1075 the child's home or to return a child to [his] the child's home, in accordance with Subsection
1076 (1)(a) or (c), the child's [~~health,~~] safety[;] and welfare shall be the paramount concern.

1077 [~~Additionally, the~~]

1078 (b) The division shall consider whether [~~those services would be effective within a~~
1079 ~~six-month period, and whether they would be~~] the efforts described in Subsections (1) and
1080 (2)(a) are likely to prevent [reabuse] abuse or continued neglect of the child.

1081 (3) When removal and placement in substitute care is necessary to protect a child, the

1082 "efforts" described in Subsections (1) and (2) ~~[would not be];~~
1083 (a) are not reasonable or appropriate; and~~[, therefore,]~~
1084 (b) should not be utilized.
1085 (4) In cases where ~~[obvious]~~ sexual abuse, abandonment, ~~[or]~~ serious physical ~~[abuse]~~
1086 injury, or serious neglect are involved, the state has no duty to make "reasonable efforts" ~~[or]~~
1087 to;
1088 (a) maintain a child in the child's home;
1089 (b) provide reunification services; or
1090 (c) in any ~~[other]~~ way~~;~~;
1091 (i) attempt to maintain a child in ~~[his]~~ the child's home~~;~~;
1092 (ii) provide reunification services~~;~~; or ~~[to]~~
1093 (iii) attempt to rehabilitate the offending parent or parents. ~~[This subsection does not~~
1094 ~~exempt]~~
1095 (5) Nothing in Subsection (4) exempts the division from providing court ordered
1096 services.

1097 Section 17. Section **62A-4a-205** is amended to read:

1098 **62A-4a-205. Treatment plans.**

1099 (1) No more than 45 days after a child enters the temporary custody of the division, the
1100 child's treatment plan shall be finalized.

1101 ~~[(2) The division shall use an interdisciplinary team approach in developing each~~
1102 ~~treatment plan. An interdisciplinary team shall include, but is not limited to, representatives~~
1103 ~~from mental health, education, and, where appropriate, a representative of law enforcement.]~~

1104 (2) In developing the treatment plan, the division shall use the approach that it
1105 determines best serves the needs of the child.

1106 (3) (a) The division shall involve all of the following in the development of a child's
1107 treatment plan:

- 1108 (i) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- 1109 (ii) the child;
- 1110 (iii) the child's foster parents; and
- 1111 (iv) where appropriate, the child's stepparent.

1112 (b) In relation to all information considered by the division in developing a treatment

1113 plan, additional weight and attention shall be given to the input of the child's natural and foster
 1114 parents upon their involvement pursuant to Subsections (3)(a)(i) and (iii)[-], including their
 1115 preference to:

1116 (i) participate in a particular treatment program; or

1117 (ii) receive services from a particular medical or mental health professional.

1118 (4) (a) The division shall make a substantial effort to develop a treatment plan with
 1119 which the child's parents agree.

1120 (b) If a parent does not agree with a treatment plan:

1121 (i) the division shall inform the court of the disagreement; and

1122 (ii) the parent shall be permitted to submit an alternate treatment plan for the court's
 1123 consideration.

1124 (c) Prior to ordering a treatment plan, the court shall consider the treatment plan
 1125 proposed by:

1126 (i) the division; and

1127 (ii) a parent, if one is submitted.

1128 ~~[(4)]~~ (5) A copy of the treatment plan that is ordered by the court shall be provided to
 1129 the guardian ad litem, and to the child's natural parents and foster parents immediately upon
 1130 completion, or as soon as is reasonably possible thereafter.

1131 ~~[(5)]~~ (6) Each treatment plan shall:

1132 (a) specifically provide for the safety of the child, in accordance with federal law[;];

1133 and

1134 (b) clearly define what actions or precautions will, or may be, necessary to provide for
 1135 the health[~~-, safety, protection,~~] and welfare of the child.

1136 ~~[(6)]~~ (7) The plan shall set forth, with specificity, at least the following:

1137 (a) the reason the child entered [~~Division of Child and Family Services~~] the division's
 1138 custody[~~-, and~~];

1139 (b) documentation of the:

1140 (i) reasonable efforts made to prevent placement[;]; or [~~documentation of the~~]

1141 (ii) emergency situation that [~~existed and that~~] prevented the reasonable efforts
 1142 described in Subsection (7)(b)(i) from being made;

1143 ~~[(b)]~~ (c) the primary permanency goal for the child and the reason for selection of that

1144 goal;

1145 ~~[(e)]~~ (d) the concurrent permanency goal for the child and the reason for the selection

1146 of that goal;

1147 ~~[(d)]~~ (e) if the plan is for the child to return to the child's family~~[-specifically]~~ what the

1148 child's parents must do in order to enable the child to be returned home[-specifically] including

1149 how those requirements;

1150 (i) may be accomplished~~[-];~~ and ~~[how those requirements]~~

1151 (ii) will be measured;

1152 ~~[(e)]~~ (f) the specific services needed to reduce the problems that necessitated placement

1153 in the division's custody~~[-and];~~

1154 (g) who will provide ~~[for]~~ and be responsible for case management;

1155 ~~[(f)]~~ (h) a parent-time schedule between the natural parent and the child;

1156 ~~[(g)]~~ (i) subject to Subsection (9), the health and mental health care to be provided to

1157 address any known or diagnosed mental health needs of the child [and, if residential treatment

1158 rather than a foster home is the proposed placement, a requirement for a specialized assessment

1159 of the child's health needs including an assessment of mental illness and behavior and conduct

1160 disorders]; and

1161 ~~[(h)]~~ (j) social summaries that include case history information pertinent to case

1162 planning.

1163 (8) (a) Subject to Subsection (8)(b), the parent-time described in Subsection (7)(h) may

1164 be denied only by order of a court:

1165 (i) to protect the life or physical safety of a child; or

1166 (ii) if the parent caused the child to suffer:

1167 (A) physical injury, as defined in Section 76-5-109;

1168 (B) serious physical injury, as defined in Section 76-5-109;

1169 (C) sexual abuse, as defined in Section 62A-4a-402; or

1170 (D) sexual exploitation of a child, as defined in Section 62A-4a-402.

1171 (b) Notwithstanding Subsection (8)(a), the division may deny parent-time without a

1172 court order:

1173 (i) subject to Subsection (8)(c)(i), on a specific occasion if the parent is:

1174 (A) under the influence of an intoxicating substance; or

1175 (B) in an emotional or mental state that is likely to:
1176 (I) threaten the child's physical safety; or
1177 (II) cause the child to suffer emotional anguish; or
1178 (ii) subject to Subsection (8)(c)(ii), for any of the reasons listed in Subsection (8)(a).
1179 (c) (i) If the division denies parent-time under Subsection (8)(b)(i) on three consecutive
1180 occasions, the division shall file a motion for a court order to deny or modify parent-time,
1181 within 24 hours, excluding weekends and holidays, of the second consecutive denial.
1182 (ii) If the division denies parent-time under Subsection (8)(b)(ii), the division shall file
1183 a motion for an order to deny or modify parent-time, within 24 hours, excluding weekends and
1184 holidays, from the time that the decision to deny parent-time is made.
1185 (d) Failure to comply with a treatment plan may not be used as grounds to deny
1186 parent-time.
1187 (9) (a) Subject to Subsection (9)(b), in addition to the information required under
1188 Subsection (7)(i), the plan shall include a specialized assessment of the medical and mental
1189 health needs of a child if the child:
1190 (i) is placed in residential treatment; and
1191 (ii) has medical or mental health issues that need to be addressed.
1192 (b) Notwithstanding Subsection (9)(a), a parent shall retain the right to seek a separate
1193 medical or mental health diagnosis of the parent's child from a licensed practitioner of the
1194 parent's choice.
1195 ~~[(7)]~~ (10) (a) Each treatment plan shall be specific to each child and the child's family,
1196 rather than general.
1197 (b) The division shall train its workers to develop treatment plans that comply with
1198 federal mandates and the specific needs of the particular child and the child's family.
1199 ~~[(b) All treatment plans and expectations]~~
1200 (c) A treatment plan and the plan's expectations shall be individualized and contain
1201 specific time frames.
1202 ~~[(c) Treatment plans]~~ (d) Subject to Subsection (10)(e), a treatment plan shall address
1203 problems that keep [children] a child:
1204 (i) in placement; and [keep them]
1205 (ii) from achieving permanence in [their lives:] the child's life.

- 1206 ~~[(d) Each treatment plan shall]~~
- 1207 (e) A treatment plan shall:
- 1208 (i) be limited to:
- 1209 (A) addressing court findings; and
- 1210 (B) other items requested or approved by a parent of the child; and
- 1211 (ii) be designed to minimize disruption to the normal activities of the child's family,
- 1212 including:
- 1213 (A) employment; and
- 1214 (B) school. ~~[In particular]~~
- 1215 (f) For purposes of Subsection (10)(e)(ii)(A), the time, place, ~~[and]~~ amount of services,
- 1216 hearings, and other requirements ordered by the court shall be designed, as much as practicable,
- 1217 to help the child's parents maintain or obtain employment.
- 1218 ~~[(e) The]~~ (11) A child's natural parents, foster parents, and where appropriate,
- 1219 stepparents, shall be kept informed of, and supported to participate in, important meetings and
- 1220 procedures related to the child's placement.
- 1221 ~~[(8)]~~ (12) With regard to a child who is three years of age or younger, if the goal is not
- 1222 to return the child home, the permanency plan for that child shall be adoption. However, if the
- 1223 division documents to the court that there is a compelling reason that adoption, reunification,
- 1224 guardianship, and kinship placement are not in the child's best interest, the court may order
- 1225 another planned permanent living arrangement in accordance with federal law.
- 1226 Section 18. Section **62A-4a-208** is amended to read:
- 1227 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**
- 1228 (1) As used in this section:
- 1229 (a) "Complainant" means a person who initiates a complaint with the ombudsman.
- 1230 (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this
- 1231 section.
- 1232 (2) (a) (i) There is created within the department the position of child protection
- 1233 ombudsman.
- 1234 (ii) The ombudsman described in Subsection (2)(a)(i) shall be appointed by and serve
- 1235 at the pleasure of the executive director.
- 1236 (b) The ombudsman shall be:

- 1237 (i) an individual of recognized executive and administrative capacity;
- 1238 (ii) selected solely with regard to qualifications and fitness to discharge the duties of
1239 ombudsman; and
- 1240 (iii) have experience in child welfare, and in state laws and policies governing abused,
1241 neglected, and dependent children.
- 1242 (c) The ombudsman shall devote full time to the duties of office.
- 1243 (3) (a) Except as provided in Subsection (3)(b), the ombudsman shall, upon receipt of a
1244 complaint from any person, investigate whether an act or omission of the division with respect
1245 to a particular [~~child~~] minor:
- 1246 (i) is contrary to statute, rule, or policy;
- 1247 (ii) places a [~~child's~~] minor's health or safety at risk;
- 1248 (iii) is made without an adequate statement of reason; or
- 1249 (iv) is based on irrelevant, immaterial, or erroneous grounds.
- 1250 (b) The ombudsman may decline to investigate any complaint. If the ombudsman
1251 declines to investigate a complaint or continue an investigation, the ombudsman shall notify
1252 the complainant and the division of the decision and of the reasons for that decision.
- 1253 (c) The ombudsman may conduct an investigation on his own initiative.
- 1254 (4) The ombudsman shall:
- 1255 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
1256 make rules that govern the following:
- 1257 (i) receiving and processing complaints;
- 1258 (ii) notifying complainants and the division regarding a decision to investigate or to
1259 decline to investigate a complaint;
- 1260 (iii) prioritizing workload;
- 1261 (iv) maximum time within which investigations shall be completed;
- 1262 (v) conducting investigations;
- 1263 (vi) notifying complainants and the division regarding the results of investigations; and
- 1264 (vii) making recommendations based on the findings and results of recommendations;
- 1265 (b) report findings and recommendations in writing to the complainant and the
1266 division, in accordance with the provisions of this section;
- 1267 (c) within appropriations from the Legislature, employ staff as may be necessary to

1268 carry out the ombudsman's duties under this part;

1269 (d) provide information regarding the role, duties, and functions of the ombudsman to
1270 public agencies, private entities, and individuals;

1271 (e) annually report to the:

1272 (i) Child Welfare Legislative Oversight Panel;

1273 (ii) governor;

1274 (iii) Board of Child and Family Services;

1275 (iv) executive director of the department; and

1276 (v) director of the division; and

1277 (f) as appropriate, make recommendations to the division regarding individual cases,
1278 and the rules, policies, and operations of the division.

1279 (5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall
1280 notify the complainant and the division of that decision.

1281 (b) (i) The ombudsman may advise a complainant to pursue all administrative remedies
1282 or channels of complaint before pursuing a complaint with the ombudsman.

1283 (ii) Subsequent to processing a complaint, the ombudsman may conduct further
1284 investigations upon the request of the complainant or upon the ombudsman's own initiative.

1285 (iii) Nothing in this Subsection (5) precludes a complainant from making a complaint
1286 directly to the ombudsman before pursuing an administrative remedy.

1287 (c) If the ombudsman finds that an individual's act or omission violates state or federal
1288 criminal law, the ombudsman shall immediately report that finding to the appropriate county or
1289 district attorney or to the attorney general.

1290 (d) The ombudsman shall immediately notify the division if the ombudsman finds that
1291 a child needs protective custody, as that term is defined in Section 78-3a-103.

1292 (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect
1293 Reporting Requirements.

1294 (6) (a) (i) All records of the ombudsman regarding individual cases shall be classified
1295 in accordance with federal law and the provisions of Title 63, Chapter 2, Government Records
1296 Access and Management Act.

1297 (ii) The ombudsman may make public a report prepared pursuant to this section in
1298 accordance with the provisions of Title 63, Chapter 2, Government Records Access and

1299 Management Act.

1300 (b) (i) The ombudsman shall have access to all of the department's written and
1301 electronic records and databases, including those regarding individual cases.

1302 (ii) In accordance with Title 63, Chapter 2, Government Records Access and
1303 Management Act, all documents and information received by the ombudsman shall maintain
1304 the same classification that was designated by the department.

1305 (7) (a) The ombudsman shall prepare a written report of the findings and
1306 recommendations, if any, of each investigation.

1307 (b) The ombudsman shall make recommendations to the division if the ombudsman
1308 finds that:

1309 (i) a matter should be further considered by the division;

1310 (ii) an administrative act should be addressed, modified, or canceled;

1311 (iii) action should be taken by the division with regard to one of its employees; or

1312 (iv) any other action should be taken by the division.

1313 Section 19. Section **62A-4a-209** is amended to read:

1314 **62A-4a-209. Emergency kinship placement.**

1315 (1) The division may use an emergency kinship placement under Subsection
1316 62A-4a-202.1[~~(6)~~](4) when:

1317 (a) the case worker has made the determination that:

1318 (i) the child's home is unsafe;

1319 (ii) removal is necessary under [the provisions of] Section 62A-4a-202.1; and

1320 (iii) the child's custodial parent or guardian will agree to not remove the child from the
1321 relative's home who serves as the kinship placement and not have any contact with the child
1322 until after the shelter hearing required by Section 78-3a-306;

1323 (b) a relative, with preference being given to a noncustodial parent in accordance with
1324 Section 78-3a-307, can be identified who has the ability and is willing to provide care for the
1325 child who would otherwise be placed in shelter care, including:

1326 (i) taking the child to medical, mental health, dental, and educational appointments at
1327 the request of the division; and

1328 (ii) the relative has the ability to make the child available to division services and the
1329 guardian ad litem; and

1330 (c) the relative agrees to care for the child on an emergency basis under the following
1331 conditions:

1332 (i) the relative meets the criteria for an emergency kinship placement under Subsection
1333 (2);

1334 (ii) the relative agrees to not allow the custodial parent or guardian to have any contact
1335 with the child until after the shelter hearing unless authorized by the division in writing;

1336 (iii) the relative agrees to contact law enforcement and the division if the custodial
1337 parent or guardian attempts to make unauthorized contact with the child;

1338 (iv) the relative agrees to allow the division and the child's guardian ad litem to have
1339 access to the child;

1340 (v) the relative has been informed and understands that the division may continue to
1341 search for other possible kinship placements for long-term care, if needed;

1342 (vi) the relative is willing to assist the custodial parent or guardian in reunification
1343 efforts at the request of the division, and to follow all court orders; and

1344 (vii) the child is comfortable with the relative.

1345 (2) Before the division places a child in an emergency kinship placement, the division
1346 must:

1347 (a) request the name of a reference and when possible, contact the reference and
1348 determine the answer to the following questions:

1349 (i) would the person identified as a reference place a child in the home of the
1350 emergency kinship placement; and

1351 (ii) are there any other relatives to consider as a possible emergency or long-term
1352 placement for the child;

1353 (b) have the custodial parent or guardian sign an emergency kinship placement
1354 agreement form during the investigation;

1355 (c) complete a criminal background check described in Sections 62A-4a-202.4 and
1356 78-3a-307.1 on all persons living in the relative's household;

1357 (d) complete a home inspection of the relative's home; and

1358 (e) have the emergency kinship placement approved by a family service specialist.

1359 (3) As soon as possible after the emergency placement and prior to the shelter hearing
1360 required by Section 78-3a-306, the division shall convene a family unity meeting.

- 1361 (4) After an emergency kinship placement, the division caseworker must:
- 1362 (a) respond to the emergency kinship placement's calls within one hour if the custodial
- 1363 parents or guardians attempt to make unauthorized contact with the child or attempt to remove
- 1364 the child;
- 1365 (b) complete all removal paperwork, including the notice provided to the custodial
- 1366 parents and guardians under Section 78-3a-306;
- 1367 (c) contact the attorney general to schedule a shelter hearing;
- 1368 (d) complete the kinship procedures required in Section 78-3a-307, including, within
- 1369 five days after placement, the criminal history record check described in Subsection (5); and
- 1370 (e) continue to search for other relatives as a possible long-term placement, if needed.
- 1371 (5) (a) In order to determine the suitability of the kinship placement and to conduct a
- 1372 background screening and investigation of individuals living in the household in which a child
- 1373 is placed, each individual living in the household in which the child is placed who has not lived
- 1374 in the state substantially year round for the most recent five consecutive years ending on the
- 1375 date the investigation is commenced shall be fingerprinted. If no disqualifying record is
- 1376 identified at the state level, the fingerprints shall be forwarded by the division to the Federal
- 1377 Bureau of Investigation for a national criminal history record check.
- 1378 (b) The cost of those investigations shall be borne by whomever received placement of
- 1379 the child, except that the division may pay all or part of the cost of those investigations if the
- 1380 person with whom the child is placed is unable to pay.

1381 Section 20. Section **62A-4a-302** is amended to read:

1382 **62A-4a-302. Definitions.**

1383 As used in this part:

1384 (1) "Council" means the Child Abuse Advisory Council established under Section

1385 62A-4a-311.

1386 (2) "Child abuse and neglect" [~~means the same as the term "child abuse or neglect,"~~] is

1387 as defined in Section 62A-4a-402.

1388 Section 21. Section **62A-4a-402** is amended to read:

1389 **62A-4a-402. Definitions.**

1390 As used in this part:

1391 (1) "A person responsible for a child's care" means the child's parent, guardian, or other

1392 person responsible for the child's care, whether in:

1393 (a) the same home as the child[;];

1394 (b) a relative's home[;];

1395 (c) a group, family, or center day care facility[;];

1396 (d) a foster care home[;]; or

1397 (e) a residential institution.

1398 ~~[(2) "Child" means a person under 18 years of age.]~~

1399 ~~[(3)]~~ (2) "Child abuse or neglect" means ~~[causing harm or threatened harm to a child's~~
1400 ~~health or welfare.];~~

1401 ~~[(4) "Harm or threatened harm" means damage or threatened damage to the physical or~~
1402 ~~emotional health and welfare of a child through neglect or abuse, and includes but is not~~
1403 ~~limited to:]~~

1404 ~~[(a) causing nonaccidental physical or mental injury;]~~

1405 ~~[(b) incest;]~~

1406 ~~[(c) sexual abuse;]~~

1407 ~~[(d) sexual exploitation;]~~

1408 ~~[(e) molestation; or]~~

1409 ~~[(f) repeated negligent treatment or maltreatment.]~~

1410 (a) abuse, as defined in Section 62A-4a-101; or

1411 (b) neglect, as defined in Section 62A-4a-101.

1412 ~~[(5)]~~ (3) (a) "Incest" means having sexual intercourse with a person whom the
1413 perpetrator knows to be ~~[his or her]~~ the perpetrator's:

1414 (i) ancestor[;];

1415 (ii) descendant[;];

1416 (iii) brother[;];

1417 (iv) sister[;];

1418 (v) uncle[;];

1419 (vi) aunt[;];

1420 (vii) nephew[;];

1421 (viii) niece[;]; or

1422 (ix) first cousin.

1423 (b) The relationships referred to in ~~[this]~~ Subsection (3)(a) include:

1424 (i) blood relationships of the whole or half blood without regard to legitimacy~~[-and~~
1425 ~~include];~~

1426 (ii) relationships of parent and child by adoption~~[-];~~ and

1427 (iii) relationships of stepparent and stepchild while the marriage creating the
1428 relationship of a stepparent and stepchild exists.

1429 ~~[(6)]~~ (4) "Molestation" means:

1430 (a) touching:

1431 (i) the anus of a child; or

1432 (ii) any part of the genitals of a child ~~[or];~~

1433 (b) otherwise taking indecent liberties with a child~~[-];~~ or

1434 (c) causing a child to take indecent liberties with the perpetrator or another with the
1435 intent to arouse or gratify the sexual desire of any person.

1436 ~~[(7)]~~ (5) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or
1437 molestation directed towards a child.

1438 ~~[(8)]~~ (6) "Sexual exploitation of ~~[minors]~~ a child" means knowingly employing, using,
1439 persuading, inducing, enticing or coercing ~~[any minor]~~ a child to pose in the nude for the
1440 purpose of sexual arousal of any person or for profit, or to engage in any sexual or simulated
1441 sexual conduct for the purpose of photographing, filming, recording, or displaying in any way
1442 the sexual or simulated sexual conduct, and includes displaying, distributing, possessing for the
1443 purpose of distribution, or selling material depicting ~~[minors]~~ a child in the nude or engaging in
1444 sexual or simulated sexual conduct.

1445 ~~[(9)]~~ (7) "Subject" or "subject of the report" means any person reported under this part,
1446 including~~[-, but not limited to,];~~

1447 (a) a child~~[-];~~

1448 (b) a parent~~[-];~~

1449 (c) a guardian~~[-];~~ or

1450 (d) any other person responsible for a child's care.

1451 Section 22. Section **62A-4a-403** is amended to read:

1452 **62A-4a-403. Reporting requirements.**

1453 (1) For purposes of this section:

1454 (a) "Minister" means a person recognized by a bona fide religious organization as a:

1455 (i) minister;

1456 (ii) member of the clergy;

1457 (iii) priest; or

1458 (iv) counselor.

1459 (b) "Serious harm" means:

1460 (i) serious physical injury, as defined in Section 76-5-109; or

1461 (ii) mental cruelty, as defined in Section 76-5-109.

1462 ~~[(+)]~~ (2) (a) Except as provided in [Subsection (2), when any] Subsections (3) through
1463 (5), a person, including persons licensed under Title 58, Chapter 67, Utah Medical Practice
1464 Act, or Title 58, Chapter 31b, Nurse Practice Act, shall immediately notify a peace officer, law
1465 enforcement agency, or office of the division when that person:

1466 (i) has [reason] probable cause to believe that a child has been subjected to [incest,
1467 molestation, sexual exploitation, sexual abuse, physical abuse, or neglect, or who] child abuse
1468 or neglect; or

1469 (ii) observes a child being subjected to conditions or circumstances which would
1470 reasonably result in [sexual abuse, physical abuse, or neglect, he shall immediately notify the
1471 nearest peace officer, law enforcement agency, or office of the division] child abuse or neglect.

1472 (b) On receipt of [this] the notice described in Subsection (2)(a), the peace officer or
1473 law enforcement agency shall immediately notify the nearest office of the division.

1474 (c) If an initial report of child abuse or neglect is made to the division, the division
1475 shall immediately notify the appropriate local law enforcement agency.

1476 (d) The division shall, in addition to its own investigation, comply with and lend
1477 support to investigations by law enforcement undertaken pursuant to a report made under this
1478 section.

1479 ~~[(2)]~~ (3) The notification requirements of Subsection [(+)] (2) do not apply to a
1480 [clergyman or priest] minister, without the consent of the person making the confession, with
1481 regard to any confession made to [him in his] the minister in the minister's professional
1482 character in the course of discipline enjoined by the church to which [he] the minister belongs,
1483 if the:

1484 (a) [the] confession was made directly to the [clergyman or priest] minister by the

1485 perpetrator; and

1486 ~~[(b) the clergyman or priest is, under canon law or church doctrine or practice, bound~~
1487 ~~to maintain the confidentiality of that confession.]~~

1488 (b) minister is bound to maintain the confidentiality of that confession under:

1489 (i) canon law;

1490 (ii) church doctrine; or

1491 (iii) practice.

1492 ~~[(3)]~~ (4) (a) When a [clergyman or priest] minister receives information about child
1493 abuse or neglect from any source other than confession of the perpetrator, [he] the minister is
1494 required to give notification on the basis of that information even though [he] the minister may
1495 have also received a report of child abuse or neglect from the confession of the perpetrator.

1496 (b) Exemption of notification requirements for a [clergyman or priest] minister does
1497 not exempt a [clergyman or priest] minister from any other efforts required by law to prevent
1498 further child abuse or neglect by the perpetrator.

1499 (5) In the case of potential neglect due to failure to provide adequate medical care, the
1500 notification described in Subsection (2) is not required if a parent or guardian of the child:

1501 (a) declines counsel or treatment for the child's condition:

1502 (i) in order to seek counsel or treatment for the child's condition from one or more
1503 other licensed practitioners, as defined in Section 78-3a-103; or

1504 (ii) because the treatment poses a substantial risk of serious harm to the child;

1505 (b) obtains counsel or treatment for the child's condition from a licensed practitioner,
1506 as defined in Section 78-3a-103, other than the child's usual primary care doctor or specialist;

1507 (c) obtains nontraditional treatment for the child's condition; or

1508 (d) acts in a manner consistent with what a reasonable parent or guardian would do
1509 under similar circumstances.

1510 Section 23. Section ~~62A-4a-409~~ is amended to read:

1511 **62A-4a-409. Investigation by division -- Temporary protective custody --**
1512 **Preremoval interviews of children.**

1513 (1) (a) The division shall make a thorough preremoval investigation upon receiving
1514 either an oral or written report of alleged abuse, neglect, fetal alcohol syndrome, or fetal drug
1515 dependency, when there is ~~[reasonable cause to suspect]~~ probable cause to believe that a

1516 situation of abuse, neglect, fetal alcohol syndrome, or fetal drug dependency exists.

1517 (b) The primary purpose of ~~[that]~~ the investigation described in Subsection (1)(a) shall
1518 be protection of the child.

1519 (2) The preremoval investigation described in Subsection (1)(a) shall include the same
1520 investigative requirements described in Section 62A-4a-202.3.

1521 (3) The division shall make a written report of its investigation~~[- The written report]~~
1522 that shall include a determination regarding whether the alleged abuse or neglect ~~[was]~~ is:

1523 (a) supported~~[;]~~;

1524 (b) unsupported~~[;]~~; or

1525 (c) without merit.

1526 (4) ~~[(a)]~~ The division ~~[shall]~~ may use an interdisciplinary approach ~~[whenever~~
1527 ~~possible]~~ when appropriate in dealing with reports made under this part.

1528 ~~[(b) For this purpose, the division shall convene appropriate interdisciplinary "child~~
1529 ~~protection teams" to assist it in its protective, diagnostic, assessment, treatment, and~~
1530 ~~coordination services.]~~

1531 ~~[(c) A representative of the division shall serve as the team's coordinator and chair.~~
1532 ~~Members of the team shall serve at the coordinator's invitation. Whenever possible, the team~~
1533 ~~shall include representatives of:]~~

1534 ~~[(i) health, mental health, education, and law enforcement agencies;]~~

1535 ~~[(ii) the child;]~~

1536 ~~[(iii) parent and family support groups unless the parent is alleged to be the perpetrator;~~
1537 ~~and]~~

1538 ~~[(iv) other appropriate agencies or individuals.]~~

1539 (5) In any case where the division supervises, governs, or directs the affairs of any
1540 individual, institution, or facility that ~~[has been]~~ is alleged to be involved in acts or omissions
1541 of child abuse or neglect, the investigation of the reported child abuse or neglect shall be
1542 conducted by an agency other than the division.

1543 (6) If a report of neglect is based upon or includes an allegation of educational neglect,
1544 the division shall immediately consult with school authorities to verify the child's status in
1545 accordance with Sections 53A-11-101 through 53A-11-103.

1546 (7) When the division ~~[has completed]~~ completes its initial investigation under this

1547 part, it shall give notice of that completion to the person who made the initial report.

1548 (8) Division workers or other child protection team members have authority to enter
1549 upon public or private premises, using appropriate legal processes, to investigate reports of
1550 alleged child abuse or neglect, upon notice to parents of their rights under the Child Abuse
1551 Prevention and Treatment Act, 42 U.S.C. Sec. 5106, or any successor thereof.

1552 (9) With regard to any interview of a child prior to removal of that child from the
1553 child's home:

1554 (a) except as provided in Subsection (9)(b) or (c), the division shall [~~notify~~] inform a
1555 parent of the child prior to the interview[;] of:

1556 (i) the specific allegations concerning the child; and

1557 (ii) the time and place of the interview;

1558 (b) if a child's parent or stepparent, or a parent's paramour has been identified as the
1559 alleged perpetrator, the division [~~need not notify a parent of the child prior to an initial~~
1560 ~~interview with the child~~] is not required to comply with Subsection (9)(a);

1561 (c) if the perpetrator is unknown, or if the perpetrator's relationship to the child's family
1562 is unknown, the division may conduct a minimal interview or conversation, not to exceed 15
1563 minutes, with the child prior to [~~notification of the child's parent~~] complying with Subsection
1564 (9)(a);

1565 (d) in all cases described in Subsection (9)(b) or (c), a parent of the child shall be
1566 notified as soon as practicable after the child has been interviewed, but in no case later than 24
1567 hours after the interview has taken place;

1568 (e) a child's parents shall be notified of the time and place of all subsequent interviews
1569 with the child; and

1570 (f) (i) the child shall be allowed to have a support person of the child's choice present;
1571 and

1572 (ii) the person described in Subsection (9)(f)(i):

1573 (A) may include:

1574 (I) a school teacher;

1575 (II) an administrator;

1576 (III) a guidance counselor;

1577 (IV) a child care provider; [~~or~~]

1578 (V) a family member;
1579 (VI) a family advocate;
1580 (VII) an attorney; or
1581 ~~[(V) clergy]~~ (VIII) a minister, as defined in Section 62A-4a-403; and
1582 (B) may not be a person who is alleged to be, or potentially may be, the perpetrator.
1583 (10) In accordance with the procedures and requirements of Sections 62A-4a-202.1
1584 through 62A-4a-202.3, a division worker or child protection team member may take a child
1585 into protective custody and deliver the child to a law enforcement officer, or place the child in
1586 an emergency shelter facility approved by the juvenile court, at the earliest opportunity
1587 subsequent to the child's removal from the child's original environment. Control and
1588 jurisdiction over the child is determined by the provisions of Title 78, Chapter 3a, Juvenile
1589 Court Act of 1996, and as otherwise provided by law.
1590 (11) With regard to cases in which law enforcement has or is conducting an
1591 investigation of alleged abuse or neglect of a child:
1592 (a) the division shall coordinate with law enforcement to ensure that there is an
1593 adequate safety plan to protect the child from further abuse or neglect; and
1594 (b) the division is not required to duplicate an aspect of the investigation that, in the
1595 division's determination, has been satisfactorily completed by law enforcement.
1596 Section 24. Section **62A-4a-414** is amended to read:
1597 **62A-4a-414. Interviews of children -- Recording required.**
1598 (1) (a) Interviews of children during an investigation in accordance with Section
1599 62A-4a-409, and involving allegations of sexual abuse or serious physical [~~abuse~~] injury of a
1600 child, shall be conducted only under the following conditions:
1601 (i) the interview shall be recorded visually and aurally on film, videotape, or by other
1602 electronic means;
1603 (ii) both the interviewer and the child shall be simultaneously recorded and visible on
1604 the final product;
1605 (iii) the time and date of the interview shall be continuously and clearly visible to any
1606 subsequent viewer of the recording; and
1607 (iv) the recording equipment shall run continuously for the duration of the interview.
1608 (b) This Subsection (1) does not apply to initial or minimal interviews conducted in

1609 accordance with Subsection 62A-4a-409(9)(b) or (c).

1610 (2) Interviews conducted in accordance with Subsection (1) shall be carried out in an
1611 existing Children's Justice Center or in a soft interview room, when available.

1612 (a) If the Children's Justice Center or a soft interview room is not available, the
1613 interviewer shall use the best setting available under the circumstances.

1614 (b) If the equipment required under Subsection (1) is not available, the interview shall
1615 be audiotaped, provided that the interviewer shall clearly state at the beginning of the tape:

1616 (i) the time, date, and place of the interview;

1617 (ii) the full name and age of the child being interviewed; and

1618 (iii) that the equipment required under Subsection (1) is not available and why.

1619 (3) All other investigative interviews shall be audiotaped using electronic means. At
1620 the beginning of the tape, the worker shall state clearly the time, date, and place of the meeting,
1621 and the full name and age of the child in attendance.

1622 Section 25. Section **63-55-262** is amended to read:

1623 **63-55-262. Repeal dates, Title 62A.**

1624 [~~(1) Section 62A-4a-202.7, Pilot Program for Differentiated Responses to Child Abuse~~
1625 ~~and Neglect Reports, is repealed July 1, 2005.]~~

1626 [~~(2) Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child, is~~
1627 ~~repealed July 1, 2006.]~~

1628 Section 26. Section **76-5-109** is amended to read:

1629 **76-5-109. Child abuse.**

1630 (1) As used in this section:

1631 (a) "Child" means a ~~[human being]~~ person who is under 18 years of age.

1632 (b) "Child abuse" means any offense described in Subsection (2) or (3), or in Section
1633 76-5-109.1.

1634 (c) "Mental cruelty" means conduct that causes a child to suffer:

1635 (i) mental anguish; or

1636 (ii) serious emotional injury.

1637 [~~(e)~~] (d) (i) "Physical injury" means an injury [to or condition] or set of injuries of a
1638 child [which impairs] that:

1639 (A) results in actual harm to the physical condition or health of the child[~~, including~~];

1640 and

1641 (B) is not a serious physical injury.

1642 (ii) Subject to Subsection (1)(d)(i)(B), "physical injury" includes:

1643 [(i)] (A) a serious bruise or other contusion of the skin;

1644 [(ii)] (B) a minor laceration or abrasion;

1645 [(iii)] (C) failure to thrive or malnutrition; or

1646 [(iv) ~~any other~~] (D) a condition ~~[which] that~~ imperils the child's ~~[health or welfare and~~

1647 ~~which is not a serious physical injury as defined in Subsection (1)(d)] safety.~~

1648 [(d)] (e) "Serious physical injury" means ~~[any physical]~~:

1649 (i) an injury or set of injuries ~~[which] that~~:

1650 (A) seriously impairs the child's health~~[-, or which involves]~~;

1651 (B) constitutes or results from physical torture ~~[or causes serious emotional harm to the~~

1652 ~~child, or which involves a substantial risk of death to the child, including: (i)~~

1653 ~~[fracture of any bone or bones];~~

1654 (C) causes:

1655 (I) death;

1656 (II) disability;

1657 (III) serious illness;

1658 (IV) substantial impairment of a major bodily function;

1659 (V) permanent disfigurement; or

1660 (VI) protracted loss or impairment of the function of a:

1661 (Aa) body member;

1662 (Bb) limb; or

1663 (Cc) organ;

1664 (D) poses a substantial risk of death; or

1665 (E) that results in substantial physical harm, including:

1666 (I) fracture of a bone;

1667 [(i)] (II) intracranial bleeding, swelling, or contusion of the brain~~[-, whether]~~ caused by

1668 any method, including:

1669 (Aa) blows~~[-];~~

1670 (Bb) shaking~~[-];~~ or

- 1671 (Cc) causing the child's head to impact with an object or surface;
- 1672 [~~(iii)~~] (III) any burn, including burns inflicted by:
- 1673 (Aa) hot water[;]; or [~~those caused by~~]
- 1674 (Bb) placing a hot object upon the skin or body of the child;
- 1675 [~~(iv)~~] (IV) any injury caused by use of a dangerous weapon as defined in Section
- 1676 76-1-601;
- 1677 [~~(v)~~] (V) any combination of two or more reportable physical injuries inflicted by the
- 1678 same person[; ~~either~~];
- 1679 (Aa) at the same time; or [~~on different occasions~~];
- 1680 (Bb) within a two-year period; or
- 1681 [~~(vi)~~] (VI) any damage to internal organs of the body;
- 1682 (ii) mental cruelty;
- 1683 [~~(vii)~~] (iii) any conduct toward a child [~~which~~] that results in [~~severe emotional harm~~];
- 1684 severe developmental delay [~~or retardation, or severe impairment of the child's ability to~~
- 1685 function];
- 1686 [~~(viii) any injury which creates a permanent disfigurement or protracted loss or~~
- 1687 impairment of the function of a bodily member, limb, or organ];
- 1688 [~~(ix)~~] (iv) any conduct [~~which~~] that causes a child to cease breathing, even if
- 1689 resuscitation is successful following the conduct; or
- 1690 [~~(x)~~] (v) any conduct [~~which~~] that results in starvation or failure to thrive or
- 1691 malnutrition that jeopardizes [~~the~~] a child's life.
- 1692 (2) [~~Any~~] Subject to Subsections (5) and (6), any person who inflicts upon a child
- 1693 serious physical injury or, having the care or custody of such child, causes or permits another to
- 1694 inflict serious physical injury upon a child is guilty of an offense as follows:
- 1695 (a) if done intentionally or knowingly, the offense is a felony of the second degree;
- 1696 (b) if done recklessly, the offense is a felony of the third degree; or
- 1697 (c) if done with criminal negligence, the offense is a class A misdemeanor.
- 1698 (3) [~~Any~~] Subject to Subsections (5) and (6), any person who inflicts upon a child
- 1699 physical injury or, having the care or custody of such child, causes or permits another to inflict
- 1700 physical injury upon a child is guilty of an offense as follows:
- 1701 (a) if done intentionally or knowingly, the offense is a class A misdemeanor;

1702 (b) if done recklessly, the offense is a class B misdemeanor; or
1703 (c) if done with criminal negligence, the offense is a class C misdemeanor.
1704 (4) A parent or legal guardian who provides a child with treatment by spiritual means
1705 alone through prayer, in lieu of medical or mental health treatment, in accordance with the
1706 tenets and practices of an established church or religious denomination of which the parent or
1707 legal guardian is a member or adherent [~~shall~~] may not, for that reason alone, be [~~deemed~~]
1708 considered to have committed an offense under this section.

1709 (5) A parent or guardian is not guilty of an offense under this section for refusing
1710 traditional medical or mental health treatment on behalf of the parent's or guardian's child in
1711 order to seek nontraditional treatment.

1712 (6) A person is not guilty of an offense under this section for conduct that constitutes:

1713 (a) discipline or management of a child, including:

1714 (i) withholding privileges from a child; or

1715 (ii) other discipline that does not result in:

1716 (A) physical injury; or

1717 (B) serious physical injury;

1718 (b) accidental conduct, as defined in Section 62A-4a-101;

1719 (c) conduct described in Subsection 53A-11-802(2);

1720 (d) conduct described in Section 76-2-401; or

1721 (e) the use of reasonable and necessary physical restraint or force on a child:

1722 (i) in self-defense;

1723 (ii) in defense of others;

1724 (iii) to protect the child; or

1725 (iv) to remove a weapon in the possession of a child for any of the reasons described in

1726 Subsections (6)(e)(i) through (iii).

1727 Section 27. Section **76-5-110** is amended to read:

1728 **76-5-110. Abuse or neglect of disabled child.**

1729 (1) As used in this section:

1730 (a) "Abuse" [~~means:~~] is as defined in Section 62A-4a-101.

1731 [~~(i) inflicting physical injury, as that term is defined in Section 76-5-109;~~]

1732 [~~(ii) having the care or custody of a disabled child, causing or permitting another to~~]

1733 inflict physical injury, as that term is defined in Section 76-5-109; or]

1734 [~~(iii) unreasonable confinement.~~]

1735 (b) "Caretaker" means:

1736 (i) [~~any~~] a parent, legal guardian, or other person having under his care and custody a
1737 disabled child; or

1738 (ii) [~~any~~] a person, corporation, or public institution that has assumed by contract or
1739 court order the responsibility to provide food, shelter, clothing, medical or mental health, and
1740 other necessities to a disabled child.

1741 (c) "Disabled child" means any person under 18 years of age who is impaired because
1742 of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent
1743 that [~~he~~] the person is unable to:

1744 (i) care for [~~his~~] the person's own personal safety; or [~~to~~]

1745 (ii) provide necessities such as food, shelter, clothing, and medical care.

1746 (d) "Neglect" [~~means failure by a caretaker to provide care, nutrition, clothing, shelter,~~
1747 ~~supervision, or medical care~~] is as defined in Section 62A-4a-101.

1748 (2) Any caretaker who abuses or neglects a disabled child is guilty of a third degree
1749 felony.

1750 (3) (a) A parent or legal guardian who provides a child with treatment by spiritual
1751 means alone through prayer, in lieu of medical or mental health treatment, in accordance with
1752 the tenets and practices of an established church or religious denomination of which the parent
1753 or legal guardian is a member or adherent [~~shall~~] may not, for that reason alone, be considered
1754 to be in violation under this section.

1755 (b) [~~The~~] Subject to Subsection 78-3a-118(2)(n), the exception under Subsection (3)(a)
1756 [~~shall~~] does not preclude a court from ordering medical services from a [~~physician~~] licensed [~~to~~
1757 ~~engage in the practice of medicine~~] practitioner, as defined in Section 78-3a-103, to be
1758 provided to the child where there is an actual and substantial risk of harm to the child's health
1759 or [~~welfare~~] safety if the treatment is not provided.

1760 Section 28. Section **78-3a-103** is amended to read:

1761 **78-3a-103. Definitions.**

1762 (1) As used in this chapter:

1763 [~~(a) "Abused child" includes a minor less than 18 years of age who:~~]

1764 ~~[(i) has suffered or been threatened with nonaccidental physical or mental harm,~~
1765 ~~negligent treatment, or sexual exploitation; or]~~
1766 ~~[(ii) has been the victim of any sexual abuse.]~~
1767 (a) "Abuse" is as defined in Section 62A-4a-101.
1768 (b) "Abused child" means a person under the age of 18 who has suffered abuse as
1769 defined in Section 62A-4a-101.
1770 ~~[(b)]~~ (c) "Adjudication" means a finding by the court, incorporated in a decree, that the
1771 facts alleged in the petition have been proved.
1772 ~~[(c)]~~ (d) "Adult" means a person 18 years of age or over, except that persons 18 years
1773 or over under the continuing jurisdiction of the juvenile court pursuant to Section 78-3a-121
1774 shall be referred to as minors.
1775 ~~[(d)]~~ (e) "Board" means the Board of Juvenile Court Judges.
1776 ~~[(e)]~~ (f) "Child placement agency" means:
1777 (i) a private agency licensed to receive minors for placement or adoption under this
1778 code; or
1779 (ii) a private agency receiving minors for placement or adoption in another state, which
1780 agency is licensed or approved where such license or approval is required by law.
1781 ~~[(f)]~~ (g) "Commit" means to transfer legal custody.
1782 ~~[(g)]~~ (h) "Court" means the juvenile court.
1783 ~~[(h)]~~ (i) "Dependent child" includes a minor who is homeless or without proper care
1784 through no fault of [his] the minor's parent, guardian, or custodian.
1785 ~~[(i)]~~ (j) "Deprivation of custody" means transfer of legal custody by the court from a
1786 parent or the parents or a previous legal custodian to another person, agency, or institution.
1787 ~~[(j)]~~ (k) "Detention" means home detention and secure detention as defined in Section
1788 62A-7-101 for the temporary care of minors who require secure custody in physically
1789 restricting facilities:
1790 (i) pending court disposition or transfer to another jurisdiction; or
1791 (ii) while under the continuing jurisdiction of the court.
1792 ~~[(k)]~~ (l) "Division" means the Division of Child and Family Services.
1793 ~~[(l)]~~ (m) "Formal referral" means a written report from a peace officer or other person
1794 informing the court that a minor is or appears to be within the court's jurisdiction and that a

1795 petition may be filed.

1796 ~~[(m)]~~ (n) "Group rehabilitation therapy" means psychological and social counseling of
 1797 one or more persons in the group, depending upon the recommendation of the therapist.

1798 ~~[(n)]~~ (o) "Guardianship of the person" includes the authority to consent to:

1799 (i) marriage~~[-to]~~;

1800 (ii) enlistment in the armed forces~~[-to]~~;

1801 (iii) major medical~~[-]~~ treatment;

1802 (iv) major surgical~~[-or psychiatric]~~ treatment;

1803 (v) mental health treatment~~[-and to]~~; or

1804 (vi) legal custody, if legal custody is not vested in another person, agency, or
 1805 institution.

1806 ~~[(o)]~~ (p) "Habitual truant" ~~[is]~~ means a school-age minor who ~~[has received]~~;

1807 (i) receives:

1808 (A) more than two truancy citations within one school year from the school in which
 1809 the minor is or should be enrolled; and

1810 (B) eight absences without a legitimate or valid excuse; or ~~[who]~~;

1811 (ii) in defiance of efforts on the part of school authorities as required under Section
 1812 53A-11-103, refuses to regularly attend;

1813 (A) school; or

1814 (B) any scheduled period of the school day.

1815 ~~[(p)]~~ (q) "Legal custody" means a relationship embodying the following rights and
 1816 duties:

1817 (i) the right to physical custody of the minor;

1818 (ii) the right and duty to protect, train, and discipline the minor;

1819 (iii) the duty to provide the minor with:

1820 (A) food~~[-]~~;

1821 (B) clothing~~[-]~~;

1822 (C) shelter~~[-]~~;

1823 (D) education~~[-]~~; and

1824 (E) ordinary medical care;

1825 (iv) the right to determine where and with whom the minor shall live; and

- 1826 (v) the right, in an emergency, to authorize surgery or other extraordinary care.
- 1827 (r) "Licensed practitioner" means a person who is:
- 1828 (i) a health care provider, as defined in Section 78-14-3; and
- 1829 (ii) licensed under the law of any state, district, or territory of the United States.
- 1830 (s) "Mental cruelty" is as defined in Section 76-5-109.
- 1831 ~~[(r)]~~ (t) (i) "Minor" means a person under the age of 18 years. [It]
- 1832 (ii) "Minor" includes the term "child" as used in other parts of this chapter.
- 1833 ~~[(r)]~~ (u) (i) "Natural parent" means a minor's biological or adoptive parent~~[-and]~~.
- 1834 (ii) "Natural parent" includes the minor's noncustodial parent.
- 1835 (v) "Neglect" is as defined in Section 62A-4a-101.
- 1836 ~~[(s)-(r)]~~ (w) "Neglected child" means a minor[:] who has suffered neglect as defined in
- 1837 Section 62A-4a-101.
- 1838 ~~[(A) whose parent, guardian, or custodian has abandoned the minor, except as provided~~
- 1839 ~~in Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn Child;]~~
- 1840 ~~[(B) whose parent, guardian, or custodian has subjected the minor to mistreatment or~~
- 1841 ~~abuse;]~~
- 1842 ~~[(C) who lacks proper parental care by reason of the fault or habits of the parent,~~
- 1843 ~~guardian, or custodian;]~~
- 1844 ~~[(D) whose parent, guardian, or custodian fails or refuses to provide proper or~~
- 1845 ~~necessary subsistence, education, or medical care, including surgery or psychiatric services~~
- 1846 ~~when required, or any other care necessary for health, safety, morals, or well-being; or]~~
- 1847 ~~[(E) who is at risk of being a neglected or abused child as defined in this chapter~~
- 1848 ~~because another minor in the same home is a neglected or abused child as defined in this~~
- 1849 ~~chapter.]~~
- 1850 ~~[(ii) The aspect of neglect related to education, described in Subsection (1)(s)(i)(D),~~
- 1851 ~~means that, after receiving notice that a minor has been frequently absent from school without~~
- 1852 ~~good cause, or that the minor has failed to cooperate with school authorities in a reasonable~~
- 1853 ~~manner, a parent or guardian fails to make a good faith effort to ensure that the minor receives~~
- 1854 ~~an appropriate education.]~~
- 1855 ~~[(iii) A parent or guardian legitimately practicing religious beliefs and who, for that~~
- 1856 ~~reason, does not provide specified medical treatment for a minor, is not guilty of neglect.]~~

1857 [(t)] (x) "Nonjudicial adjustment" means closure of the case by the assigned probation
 1858 officer without judicial determination upon the consent in writing of the;

1859 (i) minor~~[-the]~~;

1860 (ii) parent, legal guardian or custodian~~[-]~~; and ~~[the]~~

1861 (iii) assigned probation officer.

1862 (y) "Physical injury" is as defined in Section 76-5-109.

1863 [(t)] (z) "Probation" means a legal status created by court order following an
 1864 adjudication on the ground of a violation of law or under Section 78-3a-104, whereby the
 1865 minor is permitted to remain in ~~[his]~~ the minor's home under prescribed conditions and under
 1866 supervision by the probation department or other agency designated by the court, subject to
 1867 return to the court for violation of any of the conditions prescribed.

1868 [(v)] (aa) "Protective supervision" means a legal status created by court order following
 1869 an adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted
 1870 to remain in ~~[his]~~ the minor's home, and supervision and assistance to correct the abuse,
 1871 neglect, or dependency is provided by the probation department or other agency designated by
 1872 the court.

1873 [(w)] (bb) (i) "Residual parental rights and duties" means those rights and duties
 1874 remaining with the parent after legal custody or guardianship, or both, ~~[have been]~~ are vested in
 1875 another person or agency, including:

1876 (A) the responsibility for support~~[-]~~; and

1877 (B) the right to:

1878 (I) consent to adoption~~[-the right to]~~;

1879 (II) determine the child's religious affiliation~~[-and the right to]~~; and

1880 (III) reasonable parent-time unless restricted by the court.

1881 (ii) If no guardian has been appointed, "residual parental rights and duties" also include
 1882 the right to consent to:

1883 (A) marriage~~[-to]~~;

1884 (B) enlistment~~[-and to]~~;

1885 (C) major medical~~[-]~~ treatment;

1886 (D) major surgical~~[-]~~ treatment; or ~~[psychiatric]~~

1887 (E) mental health treatment.

1888 ~~[(x)]~~ (cc) "Secure facility" means any facility operated by or under contract with the
 1889 Division of Juvenile Justice Services, that provides 24-hour supervision and confinement for
 1890 youth offenders committed to the division for custody and rehabilitation.

1891 ~~(dd)~~ "Serious neglect" is as defined in Section 62A-4a-101.

1892 ~~(ee)~~ "Serious physical injury" is as defined in Section 76-5-109.

1893 ~~(ff)~~ "Severe child abuse or neglect" is as defined in Section 62A-4a-101.

1894 ~~(gg)~~ "Sexual abuse" is as defined in Section 62A-4a-402.

1895 ~~(hh)~~ "Sexual exploitation of a child" is as defined in Section 62A-4a-402.

1896 ~~[(y)]~~ (ii) "Shelter" means the temporary care of minors in physically unrestricted
 1897 facilities pending court disposition or transfer to another jurisdiction.

1898 ~~[(z)]~~ (jj) "State supervision" means a disposition ~~[which]~~ that provides a more intensive
 1899 level of intervention than standard probation but is less intensive or restrictive than a
 1900 community placement with the Division of Juvenile Justice Services.

1901 ~~[(aa)]~~ (kk) "Substantiated" ~~[has the same meaning]~~ is as defined in Section
 1902 62A-4a-101.

1903 ~~[(bb)]~~ (ll) "Supported" ~~[has the same meaning]~~ is as defined in Section 62A-4a-101.

1904 ~~[(cc)]~~ (mm) "Termination of parental rights" means the permanent elimination of all
 1905 parental rights and duties, including residual parental rights and duties, by court order.

1906 ~~[(dd)]~~ (nn) "Therapist" means:

1907 (i) a person employed by a ~~[state]~~ division or agency of any state, district, or territory of
 1908 the United States for the purpose of conducting psychological treatment and counseling of a
 1909 minor in its custody~~[-];~~ or

1910 (ii) any other person licensed or approved by ~~[the]~~ any state, district, or territory of the
 1911 United States for the purpose of conducting psychological treatment and counseling.

1912 ~~[(cc)]~~ (oo) "Unsubstantiated" ~~[has the same meaning]~~ is as defined in Section
 1913 62A-4a-101.

1914 ~~[(ff)]~~ (pp) "Without merit" ~~[has the same meaning]~~ is as defined in Section
 1915 62A-4a-101.

1916 (2) As used in Part 3, Abuse, Neglect, and Dependency Proceedings, with regard to the
 1917 ~~[Division of Child and Family Services]~~ division:

1918 (a) "Custody" means the custody of a minor in the ~~[Division of Child and Family~~

1919 ~~Services]~~ division as of the date of disposition.

1920 (b) "Protective custody" means the shelter of a minor by the [~~Division of Child and~~
1921 ~~Family Services]~~ division from the time the minor is removed from home until the shelter
1922 hearing, or the minor's return home, whichever occurs earlier.

1923 (c) "Temporary custody" means the custody of a minor in the [~~Division of Child and~~
1924 ~~Family Services]~~ division from the date of the shelter hearing until disposition.

1925 Section 29. Section **78-3a-106** is amended to read:

1926 **78-3a-106. Search warrants and subpoenas -- Authority to issue.**

1927 (1) For purposes of this section:

1928 (a) "Child" means a person under the age of 18.

1929 (b) "Custody" means:

1930 (i) custody;

1931 (ii) care; and

1932 (iii) control.

1933 (c) "Officer" means a:

1934 (i) child welfare worker;

1935 (ii) peace officer; or

1936 (iii) state officer.

1937 [(+) (2) The court has authority to issue search warrants, subpoenas, or investigative
1938 subpoenas;

1939 (a) in:

1940 (i) criminal cases[;];

1941 (ii) delinquency[, and] proceedings; and

1942 (iii) abuse, neglect, and dependency proceedings; and

1943 (b) for the same purposes, in the same manner and pursuant to the same procedures set
1944 forth in the code of criminal procedure for the issuance of search warrants[, subpoenas,] or
1945 [~~investigative~~] subpoenas in other trial courts in the state.

1946 [(2)-(a) The] (3) (a) Subject to Subsection (4), a court may issue a warrant authorizing
1947 [~~a child protective services worker or peace~~] an officer to search for a child and take the child
1948 into protective custody if it appears to the court [~~upon a verified petition, recorded sworn~~
1949 ~~testimony or an affidavit sworn to by a peace officer or any other person, and upon the~~

1950 ~~examination of other witnesses, if required by the judge,]~~ that there is probable cause to believe
1951 that:

1952 (i) there is an immediate threat to the safety of a child; ~~[and]~~

1953 (ii) there is a substantial risk that the child will suffer abuse or neglect if the child is not
1954 taken into protective custody; and

1955 ~~[(ii)]~~ (iii) the applicant certifies to the court in writing or by recorded sworn testimony
1956 ~~[as to]:~~

1957 (A) the efforts, if any, ~~[that have been]~~ made to give notice to the minor's parent or
1958 guardian; and

1959 (B) the reasons supporting the claim that notice and an opportunity to be heard should
1960 not be required.

1961 (b) The court's decision on whether to issue a warrant under Subsection (3)(a), may be
1962 based on:

1963 (i) (A) a verified petition;

1964 (B) recorded sworn testimony; or

1965 (C) a sworn affidavit; and

1966 (ii) if required by the judge, the examination of other witnesses.

1967 ~~[(b)]~~ (c) A warrant removing a child from ~~[his]~~ the child's home or school, or having
1968 the effect of depriving a parent or guardian of the ~~[care,]~~ custody~~[-, and control of their minor]~~
1969 of the parent's or guardian's child, may not be issued without notice to the ~~[minor's]~~ child's
1970 parents and an opportunity to be heard unless the requirements of ~~[Subsections (2)]~~ Subsection
1971 (3)(a)~~[(i) and (ii) have been]~~ are satisfied.

1972 ~~[(c)]~~ (d) Pursuant to Section 77-23-210, a peace officer making the search described in
1973 Subsection (3)(a) may enter a house or premises by force, if necessary, in order to remove the
1974 child.

1975 ~~[(d)]~~ (e) The person executing the warrant described in Subsection (3)(a) shall ~~[then]~~
1976 take the child to the place of shelter designated by the court.

1977 (4) A warrant based solely on grounds of medical neglect may not be issued under
1978 Subsection (2):

1979 (a) if the sole basis for the warrant is that a parent or guardian of a child:

1980 (i) declines medical counsel or treatment on behalf of the child to seek the medical

1981 counsel or treatment of other licensed practitioners;

1982 (ii) obtains medical counsel or treatment from a licensed practitioner other than the
 1983 child's primary licensed practitioner;

1984 (iii) declines treatment on behalf of the child when the treatment poses a substantial
 1985 risk of serious harm to the child's immediate or future physical or mental health;

1986 (iv) obtains nontraditional treatment; or

1987 (v) acts in a manner consistent with what a reasonable parent or guardian would do
 1988 under the circumstances; and

1989 (b) unless not practicable, until the court examines the parent's or guardian's response,
 1990 whether oral or written, to the allegation of medical neglect.

1991 [~~3~~] (5) The parent or guardian to be notified must be the minor's primary caregiver, or
 1992 the person who has custody of the minor, when the order is sought.

1993 Section 30. Section **78-3a-110** is amended to read:

1994 **78-3a-110. Summons -- Service and process -- Issuance and contents -- Notice to**
 1995 **absent parent or guardian -- Emergency medical or surgical treatment -- Compulsory**
 1996 **process for attendance of witnesses when authorized.**

1997 (1) (a) After a petition is filed, the court shall promptly issue a summons, unless the
 1998 judge directs that a further investigation is needed. [~~No~~]

1999 (b) A summons is not required as to any person who appears voluntarily or who files a
 2000 written waiver of service with the clerk of the court at or prior to the hearing.

2001 (2) The summons shall contain:

2002 (a) the name of the court;

2003 (b) the title of the proceedings; and

2004 (c) except for a published summons, a brief statement of the substance of the
 2005 allegations in the petition.

2006 (3) A published summons shall state:

2007 (a) that a proceeding concerning the minor is pending in the court; and

2008 (b) an adjudication will be made.

2009 (4) (a) The summons shall require the person or persons who have physical custody of
 2010 the minor to appear personally and bring the minor before the court at a time and place stated.

2011 (b) If the person or persons summoned under Subsection (4)(a) are not the parent,

2012 parents, or guardian of the minor, the summons shall also be issued to the parent, parents, or
2013 guardian, as the case may be, notifying them of the pendency of the case and of the time and
2014 place set for the hearing.

2015 (5) Summons may be issued requiring the appearance of any other person whose
2016 presence the court finds necessary.

2017 (6) If it appears to the court that the welfare of the minor or of the public requires that
2018 the minor be taken into custody, the court may by endorsement upon the summons direct that
2019 the person serving the summons take the minor into custody at once.

2020 (7) ~~Upon~~ Subject to Subsection 78-3a-118(2)(n), upon the sworn testimony of one or
2021 more reputable physicians, the court may order emergency medical or surgical treatment that is
2022 immediately necessary for a minor concerning whom a petition has been filed pending the
2023 service of summons upon ~~his~~ the minor's parents, guardian, or custodian.

2024 (8) (a) A parent or guardian is entitled to the issuance of compulsory process for the
2025 attendance of witnesses on ~~his~~:

2026 (i) the parent's or guardian's own behalf; or ~~on~~

2027 (ii) behalf of the minor.

2028 (b) A guardian ad litem or a probation officer is entitled to compulsory process for the
2029 attendance of witnesses on behalf of the minor.

2030 (9) Service of summons and process and proof of service shall be made in the manner
2031 provided in the Utah Rules of Civil Procedure.

2032 (10) Service of summons or process shall be made:

2033 (a) by the sheriff, or a deputy sheriff, of the county where the service is to be made~~, or~~
2034 ~~by his deputy, but~~; or

2035 (b) upon request of the court ~~[service shall be made]~~ by:

2036 (i) any other peace officer~~, or by~~; or

2037 (ii) another suitable person selected by the court.

2038 (11) (a) Service of summons in the state shall be made personally, by delivering a copy
2039 to the person summoned~~;~~ ~~provided, however, that~~.

2040 (b) If the parents of a minor [living] live together at [their] the parent's usual place of
2041 abode [may], both parents may be served by personal delivery to either parent of [copies of the
2042 summons,] one copy of the summons for each parent.

2043 (12) If ~~[the]~~ a judge makes a written finding that ~~[he]~~ the judge has reason to believe
2044 that personal service of the summons will be unsuccessful, or will not accomplish notification
2045 within a reasonable time after issuance of the summons, ~~[he]~~ the judge may order service by
2046 registered mail, with a return receipt to be signed by the addressee only, to be addressed to the
2047 last-known address of the person to be served in the state. Service shall be complete upon
2048 return to the court of the signed receipt.

2049 (13) (a) If the parents, parent, or guardian required to be summoned under Subsection
2050 (4) cannot be found within the state, the fact of their minor's presence within the state shall
2051 confer jurisdiction on the court in proceedings in minor's cases under this chapter as to any
2052 absent parent or guardian, provided that due notice has been given ~~[in the following manner:]~~
2053 as provided in Subsection (13)(b).

2054 ~~[(a)]~~ (b) (i) If the address of the parent or guardian is known, due notice is given by
2055 sending ~~[him]~~ the parent or guardian a copy of the summons by registered mail with a return
2056 receipt to be signed by the addressee only, or by personal service outside the state, as provided
2057 in the Utah Rules of Civil Procedure. Service by registered mail shall be complete upon return
2058 to the court of the signed receipt.

2059 ~~[(b)]~~ (ii) If the address or whereabouts of the parent or guardian outside the state
2060 cannot after diligent inquiry be ascertained, due notice is given by publishing a summons in a
2061 newspaper having general circulation in the county in which the proceeding is pending. The
2062 summons shall be published once a week for four successive weeks. Service shall be complete
2063 on the day of the last publication.

2064 (c) Service of summons as provided in this Subsection (13) shall vest the court with
2065 jurisdiction over the parent or guardian served in the same manner and to the same extent as if
2066 the person served was served personally within the state.

2067 (14) (a) In the case of service in the state, service completed not less than 48 hours
2068 before the time set in the summons for the appearance of the person served, shall be sufficient
2069 to confer jurisdiction.

2070 (b) In the case of service outside the state, service completed not less than five days
2071 before the time set in the summons for appearance of the person served, shall be sufficient to
2072 confer jurisdiction.

2073 (15) Computation of periods of time under this chapter shall be made in accordance

2074 with the Utah Rules of Civil Procedure.

2075 Section 31. Section **78-3a-118** is amended to read:

2076 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
2077 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**
2078 **sample.**

2079 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
2080 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
2081 jurisdiction over the minor. However, in cases within the provisions of Subsection
2082 78-3a-104(1), findings of fact are not necessary.

2083 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
2084 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
2085 to the school superintendent of the district in which the minor resides or attends school. Notice
2086 shall be made to the district superintendent within three days of the adjudication and shall
2087 include:

2088 (i) the specific offenses for which the minor was adjudicated; and

2089 (ii) if available, [if] whether the victim:

2090 (A) resides in the same school district as the minor; or

2091 (B) attends the same school as the minor.

2092 (2) Upon adjudication the court may make the following dispositions by court order:

2093 (a) (i) The court may place the minor on probation or under protective supervision in
2094 the minor's own home and upon conditions determined by the court, including compensatory
2095 service as provided in Section 78-11-20.7.

2096 (ii) The court may place the minor in state supervision with the probation department
2097 of the court, under the legal custody of:

2098 (A) [his] the minor's parent or guardian;

2099 (B) the Division of Juvenile Justice Services; or

2100 (C) the Division of Child and Family Services.

2101 (iii) If the court orders probation or state supervision, the court shall direct that notice
2102 of its order be provided to designated persons in the local law enforcement agency and the
2103 school or transferee school, if applicable, which the minor attends. The designated persons
2104 may receive the information for purposes of the minor's supervision and student safety.

- 2105 (iv) Any employee of the local law enforcement agency and the school which the
2106 minor attends who discloses the court's order of probation is not:
- 2107 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
2108 provided in Section 63-30d-202; and
- 2109 (B) civilly or criminally liable except when the disclosure constitutes a knowing
2110 violation of Section 63-2-801.
- 2111 (b) The court may place the minor in the legal custody of a relative or other suitable
2112 person, with or without probation or protective supervision, but the juvenile court may not
2113 assume the function of developing foster home services.
- 2114 (c) (i) The court may:
- 2115 (A) vest legal custody of the minor in the Division of Child and Family Services,
2116 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
2117 and
- 2118 (B) order the Department of Human Services to provide dispositional
2119 recommendations and services.
- 2120 (ii) For minors who may qualify for services from two or more divisions within the
2121 Department of Human Services, the court may vest legal custody with the department.
- 2122 (iii) (A) Minors who are committed to the custody of the Division of Child and Family
2123 Services on grounds other than abuse or neglect are subject to the provisions of Title 78,
2124 Chapter 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title
2125 62A, Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.
- 2126 (B) Prior to the court entering an order to place a minor in the custody of the Division
2127 of Child and Family Services on grounds other than abuse or neglect, the court shall provide
2128 the division with notice of the hearing no later than five days before the time specified for the
2129 hearing so the division may attend the hearing.
- 2130 (C) Prior to committing a minor to the custody of the Division of Child and Family
2131 Services, the court shall make a finding as to what reasonable efforts have been attempted to
2132 prevent the minor's removal from [~~his~~] the minor's home.
- 2133 (d) (i) The court may commit the minor to the Division of Juvenile Justice Services for
2134 secure confinement.
- 2135 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,

2136 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
2137 Juvenile Justice Services.

2138 (e) The court may commit the minor, subject to the court retaining continuing
2139 jurisdiction over ~~[him]~~ the minor, to the temporary custody of the Division of Juvenile Justice
2140 Services for observation and evaluation for a period not to exceed 45 days, which period may
2141 be extended up to 15 days at the request of the director of the Division of Juvenile Justice
2142 Services.

2143 (f) (i) The court may commit the minor to a place of detention or an alternative to
2144 detention for a period not to exceed 30 days subject to the court retaining continuing
2145 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
2146 ordered by the court.

2147 (ii) This Subsection (2)(f) applies only to those minors adjudicated for:

2148 (A) an act which if committed by an adult would be a criminal offense; or

2149 (B) contempt of court under Section 78-3a-901.

2150 (g) The court may vest legal custody of an abused, neglected, or dependent minor in
2151 the Division of Child and Family Services or any other appropriate person in accordance with
2152 the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
2153 Dependency Proceedings.

2154 (h) (i) The court may place the minor on a ranch or forestry camp, or similar facility for
2155 care and also for work, if possible, if the person, agency, or association operating the facility
2156 has been approved or has otherwise complied with all applicable state and local laws.

2157 (ii) A minor placed in a forestry camp or similar facility may be required to work on
2158 fire prevention, forestation and reforestation, recreational works, forest roads, and on other
2159 works on or off the grounds of the facility and may be paid wages, subject to the approval of
2160 and under conditions set by the court.

2161 (i) (i) The court may order the minor to repair, replace, or otherwise make restitution
2162 for damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
2163 Section 78-3a-318 and impose fines in limited amounts.

2164 (ii) The court may also require the minor to reimburse an individual, entity, or
2165 governmental agency who offered and paid a reward to a person or persons for providing
2166 information resulting in a court adjudication that the minor is within the jurisdiction of the

2167 juvenile court due to the commission of a criminal offense.

2168 (iii) If a minor has been returned to this state under the Interstate Compact on
2169 Juveniles, the court may order the minor to make restitution for costs expended by any
2170 governmental entity for the return.

2171 (j) The court may issue orders necessary for the collection of restitution and fines
2172 ordered by the court, including garnishments, wage withholdings, and executions.

2173 (k) (i) The court may through its probation department encourage the development of
2174 employment or work programs:

2175 (A) to enable [~~minors~~] a minor to fulfill [~~their~~] the minor's obligations under
2176 Subsection (2)(i); and

2177 (B) for other purposes considered desirable by the court.

2178 (ii) Consistent with the order of the court, the probation officer may permit the minor
2179 found to be within the jurisdiction of the court to participate in a program of work restitution or
2180 compensatory service in lieu of paying part or all of the fine imposed by the court.

2181 (l) (i) [~~In violations of traffic laws~~] For a violation of a traffic law within the court's
2182 jurisdiction, the court may, in addition to any other disposition authorized by this section:

2183 (A) restrain the minor from driving for periods of time the court considers necessary;
2184 and

2185 (B) take possession of the minor's driver license.

2186 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
2187 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
2188 Section 78-3a-506.

2189 (m) (i) When a minor is found within the jurisdiction of the juvenile court under
2190 Section 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
2191 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
2192 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
2193 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
2194 completion of an approved substance abuse prevention or treatment program may be credited
2195 by the court as compensatory service hours.

2196 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
2197 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court

2198 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order
2199 that the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
2200 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
2201 approved substance abuse prevention or treatment program may be credited by the court as
2202 compensatory service hours.

2203 (n) (i) ~~[The]~~ Subject to Subsection (2)(n)(iii), the court may order that the minor:

2204 (A) be examined or treated by a physician[, surgeon, psychiatrist, or psychologist or
2205 that he]; or

2206 (B) receive other special care.

2207 (ii) For ~~[these]~~ purposes of receiving the examination, treatment, or care described in
2208 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

2209 (iii) A court may not enter an order under this Subsection (2)(n) or any other provision
2210 of law unless the examination, treatment, or care described in Subsection (2)(n)(i):

2211 (A) is ordered with the consent of a parent or guardian of the minor;

2212 (B) does not pose a significant risk of producing serious side effects including:

2213 (I) death;

2214 (II) blindness;

2215 (III) suppression of growth;

2216 (IV) behavioral disturbances, including:

2217 (Aa) suicidal ideation; or

2218 (Bb) homicidal ideation;

2219 (V) thought disorders;

2220 (VI) tardive dyskinesia;

2221 (VII) brain function impairment; or

2222 (VIII) emotional or physical harm resulting from the compulsory nature of the
2223 examination, treatment, or care; or

2224 (C) is shown, by clear and convincing evidence, to be necessary to avoid an immediate
2225 serious threat to the minor's:

2226 (I) life; or

2227 (II) essential physiological functions.

2228 (o) (i) The court may appoint;

2229 (A) a guardian for the minor if ~~[it]~~ an appointment appears necessary in the interest of
2230 the minor~~[-];~~ and ~~[may appoint]~~

2231 (B) as guardian a public or private institution or agency in which legal custody of the
2232 minor is vested.

2233 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
2234 private agency or institution, the court shall:

2235 (A) give primary consideration to the welfare of the minor~~[- When practicable, the~~
2236 ~~court may];~~ and

2237 (B) take into consideration the religious preferences of the minor and ~~[of]~~ the minor's
2238 parents.

2239 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
2240 conditions to be complied with by ~~[the parents or guardian];~~

2241 (A) a parent or guardian of the minor;

2242 (B) the minor~~[-];~~

2243 (C) the minor's custodian~~[-];~~ or

2244 (D) any other person who has been made a party to the proceedings. ~~[Conditions]~~

2245 (ii) The conditions described in Subsection (2)(p)(i) may include:

2246 (A) parent-time ~~[by the parents or one parent];~~

2247 (B) restrictions on the minor's associates;

2248 (C) restrictions on the minor's occupation and other activities; and

2249 (D) requirements to be observed by ~~[the parents]~~ a parent or custodian.

2250 ~~[(ii)]~~ (iii) A minor whose parents or guardians successfully complete a family or other
2251 counseling program may be credited by the court for detention, confinement, or probation time.

2252 (q) The court may order the minor to be committed to the physical custody of a local
2253 mental health authority, in accordance with the procedures and requirements of Title 62A,
2254 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
2255 Mental Health.

2256 (r) (i) The court may make an order committing a minor within ~~[its]~~ the court's
2257 jurisdiction to the Utah State Developmental Center if the minor has mental retardation in
2258 accordance with the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental
2259 Retardation Facility.

2260 (ii) The court shall follow the procedure applicable in the district courts with respect to
2261 judicial commitments to the Utah State Developmental Center when ordering a commitment
2262 under Subsection (2)(r)(i).

2263 (s) The court may terminate all parental rights upon a finding of compliance with the
2264 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

2265 (t) The court may make any other reasonable orders for the best interest of the minor or
2266 as required for the protection of the public, except that a person younger than 18 years of age
2267 may not be committed to jail or prison.

2268 (u) The court may combine the dispositions listed in this section if they are compatible.

2269 (v) (i) Before depriving any parent of custody, the court shall give due consideration to
2270 the rights of ~~[parents]~~ the parent concerning ~~[their]~~ the parent's minor.

2271 (ii) The court may transfer custody of a minor to another person, agency, or institution
2272 in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse,
2273 Neglect, and Dependency Proceedings.

2274 (w) (i) Except as provided in Subsection (2)(y)(i), an order under this section for
2275 probation or placement of a minor with an individual or an agency shall include a date certain
2276 for a review of the case by the court.

2277 (ii) A new case review date shall be set ~~[upon]~~ at each review described in Subsection
2278 (2)(w)(i).

2279 (x) In reviewing foster home placements, special attention shall be given to making
2280 adoptable minors available for adoption without delay.

2281 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
2282 with a relative or individual of a minor where the court ~~[has]~~ previously acquired jurisdiction
2283 as a result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
2284 order for child support on behalf of the minor child against the natural or adoptive parents of
2285 the child.

2286 (ii) Orders under Subsection (2)(y)(i):

2287 (A) shall remain in effect until the minor reaches majority;

2288 (B) are not subject to review under Section 78-3a-119; and

2289 (C) may be modified by petition or motion as provided in Section 78-3a-903.

2290 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and

2291 permanent orders of custody and guardianship do not expire with a termination of jurisdiction
2292 of the juvenile court.

2293 (3) In addition to the dispositions described in Subsection (2), when a minor comes
2294 within the court's jurisdiction ~~he~~ the minor may be given a choice by the court to serve in the
2295 National Guard in lieu of other sanctions, provided:

2296 (a) the minor meets the current entrance qualifications for service in the National
2297 Guard as determined by a recruiter, whose determination is final;

2298 (b) the minor is not under the jurisdiction of the court for any act that:

2299 (i) would be a felony if committed by an adult;

2300 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

2301 (iii) was committed with a weapon; and

2302 (c) the court retains jurisdiction over the minor under conditions set by the court and
2303 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

2304 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction
2305 of the court as described in Subsection 53-10-403(3).

2306 (b) The specimen described in Subsection (4)(a) shall be:

2307 (i) obtained by designated employees of the court; or~~;~~

2308 (ii) if the minor is in the legal custody of the Division of Juvenile Justice Services,
2309 ~~then~~ by designated employees of the division under Subsection 53-10-404(5)(b).

2310 ~~(b)~~ (c) The responsible agency shall ensure that:

2311 (i) employees designated to collect the saliva DNA specimens receive appropriate
2312 training; and ~~that~~

2313 (ii) the specimens are obtained in accordance with accepted protocol.

2314 ~~(c)~~ (d) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the
2315 DNA Specimen Restricted Account created in Section 53-10-407.

2316 ~~(d)~~ (e) Payment of the reimbursement is second in priority to payments the minor is
2317 ordered to make for restitution under this section and treatment under Section 78-3a-318.

2318 Section 32. Section **78-3a-301** is amended to read:

2319 **78-3a-301. Court-ordered protective custody of a minor following petition filing**
2320 **-- Grounds.**

2321 (1) After a petition has been filed under Subsection 78-3a-305(1), if the minor who is

2322 the subject of the petition is not in the protective custody of the division, a court may order that
2323 the minor be removed from the minor's home or otherwise taken into protective custody if the
2324 court finds, by a preponderance of the evidence, that any one or more of the following
2325 circumstances exist:

2326 (a) there is ~~[an]~~ imminent danger to the physical health or safety of the minor and the
2327 minor's physical health or safety may not be protected without removing the minor from the
2328 custody of the minor's parent or guardian;

2329 (b) a parent or guardian engages in ~~[or threatens the minor with unreasonable conduct~~
2330 ~~that causes the minor to suffer emotional damage]~~ mental cruelty of a minor and there are no
2331 reasonable means available by which the minor's emotional health may be protected without
2332 removing the minor from the custody of the minor's parent or guardian;

2333 (c) the minor or another minor residing in the same household has been physically or
2334 sexually abused, or is considered to be at substantial risk of being physically or sexually
2335 abused, by a:

2336 (i) parent ~~[or]~~;

2337 (ii) guardian~~[-a]~~;

2338 (iii) member of the parent's or guardian's household~~[-]~~; or ~~[other]~~

2339 (iv) person known to the parent or guardian;

2340 (d) the parent or guardian is unwilling to have physical custody of the minor;

2341 (e) the minor has been abandoned or left without any provision for the minor's support;

2342 (f) a parent or guardian who has been incarcerated or institutionalized has not arranged
2343 or cannot arrange for safe and appropriate care for the minor;

2344 (g) (i) a relative or other adult custodian with whom the minor ~~[has been]~~ is left by the
2345 parent or guardian is unwilling or unable to provide care or support for the minor~~[-]~~;

2346 (ii) the whereabouts of the parent or guardian are unknown~~[-]~~; and

2347 (iii) reasonable efforts to locate the parent or guardian ~~[have been]~~ are unsuccessful;

2348 (h) the minor is in immediate need of medical care;

2349 (i) (i) a parent's or guardian's actions, omissions, or habitual action create an
2350 environment that poses a substantial threat to the minor's health or safety; or

2351 (ii) a parent's or guardian's action in leaving a minor unattended would reasonably pose
2352 a substantial threat to the minor's health or safety;

- 2353 (j) subject to Subsection (2)(c), the minor or another minor residing in the same
2354 household [~~has been~~] is neglected;
- 2355 (k) an infant [~~has been~~] is abandoned, as defined in Section 78-3a-313.5;
- 2356 (l) (i) the parent or guardian, or an adult residing in the same household as the parent or
2357 guardian, [~~has been~~] is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug
2358 Lab Act[;]; and
- 2359 (ii) any clandestine laboratory operation, as defined in Section 58-37d-3, was located in
2360 the residence or on the property where the minor resided; or
- 2361 (m) the minor's welfare is otherwise endangered.
- 2362 (2) (a) For purposes of Subsection (1)(a), if a minor has previously been adjudicated as
2363 abused, neglected, or dependent, and a subsequent incident of abuse, neglect, or dependency
2364 has occurred involving the same substantiated abuser or under similar circumstance as the
2365 previous abuse, that fact [~~constitutes prima facie~~] is evidence that the minor cannot safely
2366 remain in the custody of the minor's parent.
- 2367 (b) For purposes of Subsection (1)(c):
- 2368 (i) another minor residing in the same household may not be removed from the home
2369 unless that minor is considered to be at substantial risk of being physically or sexually abused
2370 as described in Subsection (1)(c) or Subsection (2)(b)(ii); and
- 2371 (ii) if a parent or guardian has received actual notice that physical or sexual abuse by a
2372 person known to the parent has occurred, and there is evidence that the parent or guardian
2373 failed to protect the minor, after having received the notice, by allowing the minor to be in the
2374 physical presence of the alleged abuser, that fact constitutes prima facie evidence that the
2375 minor is at substantial risk of being physically or sexually abused.
- 2376 (c) For purposes of Subsection (1)(j), a minor residing in the same household as a
2377 neglected minor may not be removed unless there is a substantial risk that the minor will also
2378 be neglected.
- 2379 (3) In the absence of one of the factors described in Subsection (1), a court may not
2380 remove a minor from the parent's or guardian's custody on the basis of:
- 2381 (a) educational neglect;
- 2382 (b) mental illness or poverty of the parent or guardian; or
- 2383 (c) disability of the parent or guardian, as defined in Subsection [~~57-21-3~~] 57-21-2(9).

2384 (4) A minor removed from the custody of the minor's parent or guardian under this
2385 section may not be placed or kept in a secure detention facility pending further court
2386 proceedings unless the minor is detainable based on guidelines promulgated by the Division of
2387 Juvenile Justice Services.

2388 (5) This section does not preclude removal of a minor from the minor's home without a
2389 warrant or court order under Section 62A-4a-202.1.

2390 Section 33. Section **78-3a-306** is amended to read:

2391 **78-3a-306. Shelter hearing.**

2392 (1) A shelter hearing shall be held within 72 hours excluding weekends and holidays
2393 after any one or all of the following occur:

2394 (a) removal of the child from [~~his~~] the child's home by the [~~Division of Child and~~
2395 ~~Family Services~~] division;

2396 (b) placement of the child in the protective custody of the [~~Division of Child and~~
2397 ~~Family Services~~] division;

2398 (c) emergency kinship placement under Subsection 62A-4a-202.1(4); or

2399 (d) as an alternative to removal of the child, a parent [~~has entered~~] enters a domestic
2400 violence shelter at the request of the [~~Division of Child and Family Services~~] division.

2401 (2) Upon the occurrence of any of the circumstances described in Subsections (1)(a)
2402 through (1)(d), the division shall issue a notice that contains all of the following:

2403 (a) the name and address of the person to whom the notice is directed;

2404 (b) the date, time, and place of the shelter hearing;

2405 (c) the name of the [~~minor~~] child on whose behalf a petition is being brought;

2406 (d) a concise statement regarding:

2407 (i) the reasons for removal or other action of the division under Subsection (1); and

2408 (ii) the allegations and code sections under which the proceeding has been instituted;

2409 (e) a statement that the parent or guardian to whom notice is given, and the [~~minor~~]

2410 child, are entitled to have an attorney present at the shelter hearing, and that if the parent or

2411 guardian is indigent and cannot afford an attorney, and desires to be represented by an attorney,

2412 one will be provided; and

2413 (f) a statement that the parent or guardian is liable for the cost of support of the [~~minor~~]

2414 child in the protective custody, temporary custody, and custody of the division, and the cost for

2415 legal counsel appointed for the parent or guardian under Subsection (2)(e), according to [his]
 2416 the financial ability of the parent or guardian.

2417 (3) [~~That notice~~] The notice described in Subsection (2) shall be personally served as
 2418 soon as possible, but no later than one business day after removal of a child from [his] the
 2419 child's home, on:

2420 (a) the appropriate guardian ad litem; and

2421 (b) both parents and any guardian of the [~~minor~~] child, unless they cannot be located.

2422 (4) The following persons shall be present at the shelter hearing:

2423 (a) the child, unless it would be detrimental for the child;

2424 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
 2425 response to the notice;

2426 (c) counsel for the parents, if one [~~has been~~] is requested;

2427 (d) the child's guardian ad litem;

2428 (e) the caseworker from the [~~Division of Child and Family Services~~] division who [~~has~~
 2429 ~~been~~] is assigned to the case; and

2430 (f) the attorney from the attorney general's office who is representing the division.

2431 (5) (a) At the shelter hearing, the court:

2432 (i) shall provide an opportunity [~~for~~] to provide relevant testimony to:

2433 (A) the [~~minor's~~] child's parent or guardian, if present[;]; and

2434 (B) any [~~other~~] person having relevant knowledge, [~~to provide relevant testimony. The~~
 2435 ~~court~~] including any person requested by the parent or guardian; and

2436 (ii) may also provide an opportunity for the [~~minor~~] child to testify.

2437 (b) The court:

2438 (i) may consider all relevant evidence, in accordance with the Utah Rules of Juvenile
 2439 Procedure[~~. The court~~];

2440 (ii) shall hear relevant evidence presented by the [~~minor, his~~] child, the child's parent or
 2441 guardian, the requesting party, or their counsel[~~, but~~]; and

2442 (iii) may in its discretion limit testimony and evidence to only that which goes to the
 2443 issues of removal and the child's need for continued protection.

2444 (6) If the child is in the protective custody of the division, the division shall report to
 2445 the court:

2446 (a) the ~~[reasons]~~ reason why the ~~[minor]~~ child was removed from the parent's or
2447 guardian's custody;

2448 (b) any services provided to the child and ~~[his]~~ the child's family in an effort to prevent
2449 removal;

2450 (c) the need, if any, for continued shelter;

2451 (d) the available services that could facilitate the return of the ~~[minor]~~ child to the
2452 custody of ~~[his]~~ the child's parent or guardian; and

2453 (e) whether the child has any relatives who may be able and willing to take temporary
2454 custody.

2455 (7) The court shall consider all relevant evidence provided by persons or entities
2456 authorized to present relevant evidence pursuant to this section.

2457 (8) (a) If necessary to protect the child, preserve the rights of a party, or for other good
2458 cause shown, the court may grant no more than one ~~[time-limited]~~ continuance, not to exceed
2459 five judicial days.

2460 (b) A court shall honor, as nearly as practicable, the request by a parent or guardian for
2461 a continuance under Subsection (8)(a).

2462 (9) (a) If the child is in the protective custody of the division, the court shall order that
2463 the minor be released from the protective custody of the division unless it finds, by ~~[a~~
2464 ~~preponderance of the]~~ clear and convincing evidence, that any one of the following exist:

2465 ~~[(a)]~~ (i) subject to Subsection (9)(b)(i), there is a substantial danger to the physical
2466 health or safety of the [minor] child and the [minor's] child's physical health or safety may not
2467 be protected without removing [him] the child from [his parent's] the custody~~[-If a minor has~~
2468 ~~previously been adjudicated as abused, neglected, or dependent and a subsequent incident of~~
2469 ~~abuse, neglect, or dependency occurs, that fact constitutes prima facie evidence that the child~~
2470 ~~cannot safely remain in the custody of his parent] of the child's parents;~~

2471 ~~[(b)]~~ (ii) the [minor] child is suffering emotional damage~~[-as may be indicated by, but~~
2472 ~~is not limited to, extreme anxiety, depression, withdrawal, or negative aggressive behavior~~
2473 ~~toward self or others,]~~ and there are no reasonable means available by which the ~~[minor's]~~
2474 child's emotional health may be protected without removing the ~~[minor]~~ child from the custody
2475 of ~~[his parent]~~ the child's parents;

2476 (iii) there is a substantial risk that the child will suffer abuse or neglect if the child is

2477 not removed from the custody of the child's parents:

2478 ~~[(e)]~~ (iv) subject to Subsection (9)(b)(ii), the [minor] child or another [minor] child
 2479 residing in the same household [has been] is physically or sexually abused, or is considered to
 2480 be at substantial risk of being physically or sexually abused, by a:

2481 (A) parent[; a];

2482 (B) member of the parent's household[;]; or [other]

2483 (C) person known to the parent[. ~~If a parent has received actual notice that physical or~~
 2484 sexual abuse by a person known to the parent has occurred, and there is evidence that the
 2485 parent has allowed the child to be in the physical presence of the alleged abuser, that fact
 2486 constitutes prima facie evidence that the child is at substantial risk of being physically or
 2487 sexually abused];

2488 ~~[(d)]~~ (v) the parent is unwilling to have physical custody of the child;

2489 ~~[(e)]~~ (vi) the [minor has been] child is left without any provision for [his] the child's
 2490 support;

2491 ~~[(f)]~~ (vii) a parent who [has been] is incarcerated or institutionalized has not or cannot
 2492 arrange for safe and appropriate care for the [minor] child;

2493 ~~[(g)]~~ (viii) (A) a relative or other adult custodian with whom the [minor has been] child
 2494 is left by the parent is unwilling or unable to provide care or support for the [minor,] child;

2495 (B) the whereabouts of the parent are unknown[;]; and

2496 (C) reasonable efforts to locate [him have been] the parent are unsuccessful;

2497 ~~[(h) the minor is in immediate need of medical care;]~~

2498 ~~[(i)]~~ (ix) the physical environment or the fact that the child is left unattended beyond a
 2499 reasonable period of time poses a threat to the child's health or safety;

2500 ~~[(j) the minor or another minor residing in the same household has been neglected;]~~

2501 ~~[(k)]~~ (x) the parent, or an adult residing in the same household as the parent, [has been]
 2502 is charged or arrested pursuant to Title 58, Chapter 37d, Clandestine Drug Lab Act, and any
 2503 clandestine laboratory operation, as defined in Section 58-37d-3, was located in the residence
 2504 or on the property where the child resided; or

2505 ~~[(l)]~~ (xi) the child's welfare is [otherwise] substantially endangered.

2506 (b) (i) For purposes of Subsection (9)(a)(i), evidence that a child cannot safely remain
 2507 in the custody of a parent of the child is established if:

2508 (A) a court previously adjudicated that the child suffered abuse, neglect, or dependency
 2509 involving the parent; and

2510 (B) a subsequent incident of abuse, neglect, or dependency involving the parent occurs.

2511 (ii) For purposes of Subsection (9)(a)(iv), there is a substantial risk that a child will be
 2512 physically or sexually abused if the court finds, by clear and convincing evidence, that the
 2513 parent:

2514 (A) received actual notice that abuse by a person known to the parent occurred; and

2515 (B) after receiving the notice described in Subsection (9)(b)(ii)(A), allowed the child to
 2516 be in the physical presence of the abuser.

2517 (10) (a) The court shall also make a determination on the record as to whether:

2518 (i) reasonable efforts were made to prevent or eliminate the need for removal of the
 2519 [minor] child from [his] the child's home; and [whether]

2520 (ii) there are available services that would prevent the need for continued removal.

2521 (b) If the court finds that the [minor] child can be safely returned to the custody of [his]
 2522 the child's parent or guardian through the provision of [those services, it shall] the services
 2523 described in Subsection (10)(a)(ii), the court shall:

2524 (i) place the [minor] child with [his] the child's parent or guardian; and

2525 (ii) order that those services be provided by the division.

2526 ~~[(b) In making that determination, and in ordering and providing services, the child's]~~

2527 (c) In complying with this Subsection (10), the child's health[;] and safety[; and
 2528 welfare] shall be the paramount concern, in accordance with federal law.

2529 (11) Where the division's first contact with the family occurred during an emergency
 2530 situation in which the child could not safely remain at home, the court shall make a finding that
 2531 any lack of preplacement preventive efforts was appropriate.

2532 (12) In cases where actual sexual abuse ~~[or]~~, abandonment, ~~[or]~~ serious physical
 2533 ~~[abuse]~~ injury, or serious neglect are involved, neither the division nor the court has any duty to
 2534 make "reasonable efforts" or to, in any other way, attempt to:

2535 (a) maintain a child in [his] the child's home[;];

2536 (b) return a child to [his] the child's home[;];

2537 (c) provide reunification services[;]; or

2538 (d) attempt to rehabilitate [the] an offending parent [or parents].

2539 (13) The court may not order continued removal of a [~~minor~~] child solely on the basis
 2540 of educational neglect as described in Subsection [~~78-3a-103(1)(s)(ii)~~] 62A-4a-101(21)(a)(iii).

2541 (14) (a) Whenever a court orders continued removal of a [~~minor~~] child under this
 2542 section, it shall state the facts on which that decision is based.

2543 (b) If no continued removal is ordered and the [~~minor~~] child is returned home, the court
 2544 shall state the facts on which that decision is based.

2545 (15) If the court finds that continued removal and temporary custody are necessary for
 2546 the protection of a child because harm may result to the child if [~~he were~~] the child is returned
 2547 home, [~~it~~] the court shall order continued removal regardless of:

2548 (a) any error in the initial removal of the child[;]; or

2549 (b) the failure of a party to comply with:

2550 (i) notice provisions[;]; or

2551 (ii) any other procedural requirement of this chapter or Title 62A, Chapter 4a, Child
 2552 and Family Services.

2553 Section 34. Section **78-3a-311** is amended to read:

2554 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

2555 (1) The court may:

2556 (a) make any of the dispositions described in Section 78-3a-118[;];

2557 (b) place the child in the custody or guardianship of any:

2558 (i) individual; or

2559 (ii) public or private entity or agency[;]; or

2560 (c) order:

2561 (i) protective supervision[;];

2562 (ii) family preservation[;];

2563 (iii) subject to Subsection 78-3a-118(2)(n)(iii), medical or mental health treatment[;];

2564 or

2565 (iv) other services.

2566 (2) (a) (i) Whenever the court orders continued removal at the dispositional hearing,
 2567 and that the minor remain in the custody of the [~~Division of Child and Family Services, it~~]
 2568 division, the court shall first:

2569 (A) establish a primary permanency goal for the minor; and

2570 (B) determine whether, in view of the primary permanency goal, reunification services
2571 are appropriate for the child and the child's family, pursuant to Subsection (3).

2572 (ii) When the court determines that reunification services are appropriate for the child
2573 and the child's family, the court shall provide for reasonable parent-time with the parent or
2574 parents from whose custody the child was removed, unless:

2575 (A) parent-time ~~[is not in the best interest]~~ would threaten the physical safety or life of
2576 the child[-]; or

2577 (B) the parent subjected the child to:

2578 (I) sexual abuse;

2579 (II) sexual exploitation of a child;

2580 (III) physical injury; or

2581 (IV) serious physical injury.

2582 (iii) In cases where obvious sexual abuse, abandonment, ~~[or]~~ serious physical ~~[abuse]~~
2583 injury, or serious neglect are involved, neither the division nor the court has any duty to make
2584 "reasonable efforts" or to, in any other way, attempt to provide reunification services~~[-or to~~
2585 attempt] to rehabilitate ~~[the]~~ an offending parent ~~[or parents]~~.

2586 (iv) In all cases, the child's health, safety, and welfare shall be the court's paramount
2587 concern in determining whether reasonable efforts to reunify should be made.

2588 (b) (i) In addition to the primary permanency goal, the court shall establish a
2589 concurrent permanency goal~~[-The concurrent permanency goal]~~ that shall include:

2590 (A) a representative list of the conditions under which the primary permanency goal
2591 will be abandoned in favor of the concurrent permanency goal; and

2592 (B) an explanation of the effect of abandoning or modifying the primary permanency
2593 goal.

2594 (ii) A permanency hearing shall be conducted in accordance with Subsection
2595 78-3a-312(1)(b) within 30 days if something other than reunification is initially established as a
2596 child's primary permanency goal.

2597 (iii) (A) The court may amend a child's primary permanency goal before the
2598 establishment of a final permanency plan under Section 78-3a-312.

2599 (B) The court is not limited to the terms of the concurrent permanency goal in the event
2600 that the primary permanency goal is abandoned.

2601 (C) If, at anytime, the court determines that reunification is no longer a child's primary
2602 permanency goal, the court shall conduct a permanency hearing in accordance with Section
2603 78-3a-312 within the earlier of:

2604 (I) 30 days of the court's determination; or

2605 (II) 12 months from the original removal of the child.

2606 (c) (i) If the court determines that reunification services are appropriate, it shall order
2607 that the division make reasonable efforts to provide services to the child and the child's parent
2608 for the purpose of facilitating reunification of the family, for a specified period of time. In
2609 providing those services, the child's health, safety, and welfare shall be the division's
2610 paramount concern, and the court shall so order.

2611 (ii) The court shall:

2612 (A) determine whether the services offered or provided by the division under the
2613 treatment plan constitute "reasonable efforts" on the part of the division[~~-. The court shall also~~];

2614 (B) determine and define the responsibilities of the parent under the treatment plan in
2615 accordance with Section 62A-4a-205[~~-. Those duties and responsibilities shall be identified~~];
2616 and

2617 (C) identify on the record the responsibilities described in Subsection (2)(c)(ii)(B), for
2618 the purpose of assisting in any future determination regarding the provision of reasonable
2619 efforts, in accordance with state and federal law.

2620 (iii) (A) The time period for reunification services may not exceed 12 months from the
2621 date that the child was initially removed from the child's home.

2622 (B) Nothing in this section may be construed to entitle any parent to an entire 12
2623 months of reunification services.

2624 (iv) If reunification services [~~have been~~] are ordered, the court may terminate those
2625 services at any time.

2626 (v) If, at any time, continuation of reasonable efforts to reunify a child is determined to
2627 be inconsistent with the final permanency plan for the child established pursuant to Subsection
2628 78-3a-312, then measures shall be taken, in a timely manner, to:

2629 (A) place the child in accordance with the permanency plan[~~;~~]; and [~~to~~]

2630 (B) complete whatever steps are necessary to finalize the permanent placement of the
2631 child.

2632 (d) Any physical custody of the minor by the parent or a relative during the period
2633 described in Subsection (2)(c) does not interrupt the running of the period.

2634 (e) (i) If reunification services [~~have been~~] are ordered, a permanency hearing shall be
2635 conducted by the court in accordance with Section 78-3a-312 at the expiration of the time
2636 period for reunification services.

2637 (ii) The permanency hearing described in Subsection (2)(e)(i) shall be held no later
2638 than 12 months after the original removal of the child.

2639 [~~(ii)~~] (iii) If reunification services [~~have not been~~] are not ordered, a permanency
2640 hearing shall be conducted within 30 days, in accordance with Section 78-3a-312.

2641 (f) With regard to a child who is 36 months of age or younger at the time the child is
2642 initially removed from the home, the court shall:

2643 (i) hold a permanency hearing [~~eight~~] 12 months after the date of the initial removal,
2644 pursuant to Section 78-3a-312; and

2645 (ii) order the discontinuance of those services after [~~eight~~] 12 months from the initial
2646 removal of the child from the home if the parent or parents have not made substantial efforts to
2647 comply with the treatment plan.

2648 (g) With regard to a child in the custody of the division whose parent or parents [~~have~~
2649 ~~been~~] are ordered to receive reunification services but who have abandoned that child for a
2650 period of six months since the date that reunification services were ordered[;]:

2651 (i) the court shall terminate reunification services[;]; and

2652 (ii) the division shall petition the court for termination of parental rights.

2653 (3) (a) Because of the state's interest in and responsibility to protect and provide
2654 permanency for children who are abused, neglected, or dependent, the Legislature finds that a
2655 parent's interest in receiving reunification services is limited.

2656 (b) The court may determine that:

2657 (i) efforts to reunify a child with the child's family are not reasonable or appropriate,
2658 based on the individual circumstances[;]; and [~~that~~]

2659 (ii) reunification services should not be provided.

2660 (c) In determining "reasonable efforts" to be made with respect to a child, and in
2661 making "reasonable efforts," the child's health, safety, and welfare shall be the paramount
2662 concern.

2663 ~~[(b)]~~ (d) (i) There is a presumption that reunification services should not be provided to
 2664 a parent if the court finds, by clear and convincing evidence, that any of the following
 2665 circumstances exist:

2666 ~~[(i)]~~ (A) the whereabouts of the parents are unknown, based upon a verified affidavit
 2667 indicating that a reasonably diligent search has failed to locate the parent;

2668 ~~[(ii)]~~ (B) subject to Subsection (3)(d)(ii), the parent is suffering from a mental illness of
 2669 such magnitude that it renders ~~[him]~~ the parent incapable of utilizing reunification services;
 2670 ~~[that finding shall be based on competent evidence from mental health professionals~~
 2671 ~~establishing that, even with the provision of services, the parent is unlikely to be capable of~~
 2672 ~~adequately caring for the child within 12 months;]~~

2673 ~~[(iii)]~~ (C) the ~~[minor has been]~~ child was previously adjudicated as an abused child
 2674 due to physical or sexual abuse, ~~[that]~~ and following the adjudication the child:

2675 (I) was removed from the custody of ~~[his]~~ the child's parent~~[-was];~~

2676 (II) subsequently returned to the custody of ~~[that]~~ the parent~~[-];~~ and ~~[the minor]~~

2677 (III) is being removed due to additional physical or sexual abuse;

2678 ~~[(iv)]~~ (D) the parent ~~[has]~~;

2679 (I) caused the death of another child through abuse or neglect; or ~~[has]~~

2680 (II) committed, aided, abetted, attempted, conspired, or solicited to commit:

2681 (Aa) murder or manslaughter of a child; or

2682 (Bb) child abuse homicide;

2683 ~~[(v)]~~ (E) the ~~[minor has]~~ child suffered severe child abuse or neglect by the parent or
 2684 by any person known by the parent, if the parent knew ~~[or reasonably should have known]~~ that
 2685 the person was abusing or neglecting the ~~[minor]~~ child;

2686 ~~[(vi)]~~ (F) the ~~[minor has been]~~ child is adjudicated an abused child as a result of severe
 2687 child abuse or neglect by the parent, and the court finds that it would not benefit the child to
 2688 pursue reunification services with the offending parent;

2689 ~~[(vii)]~~ (G) the parent's rights ~~[have been]~~ are terminated with regard to any other child;

2690 ~~[(viii)]~~ (H) the child ~~[has been]~~ is removed from ~~[his]~~ the child's home on at least two
 2691 previous occasions and reunification services were offered or provided to the family at those
 2692 times; or

2693 ~~[(ix)]~~ (I) the parent has abandoned the child for a period of six months or longer~~[-or]~~.

2694 ~~[(x) any other circumstance that the court determines should preclude reunification~~
2695 ~~efforts or services.]~~

2696 ~~[(4)(a) Failure]~~

2697 (ii) The finding under Subsection (3)(d)(i)(B) shall be based on competent evidence
2698 from at least two medical or mental health professionals, who are not associates, establishing
2699 that, even with the provision of services, the parent is not likely to be capable of adequately
2700 caring for the child within 12 months of the court's finding.

2701 (4) In determining whether reunification services are appropriate, the court shall take
2702 into consideration:

2703 (a) failure of the parent to [respond to previous services or] make a reasonable effort to
2704 comply with [any] a previous treatment plan[;];

2705 (b) the fact that the child was abused while the parent was under the influence of drugs
2706 or alcohol[; a past];

2707 (c) any history of violent behavior[; directed at the child or an immediate family
2708 member;

2709 (d) whether a parent continues to live with an individual who abused the child[;];

2710 (e) any patterns of the parent's behavior that have exposed the child to repeated abuse[;
2711 or testimony by a competent professional that the parent's behavior is unlikely to be successful,
2712 shall be considered in determining whether reunification services are appropriate.]; and

2713 ~~[(b) The court shall also consider]~~ (f) whether the parent has expressed an interest in
2714 reunification with the child[; in determining whether reunification services are appropriate].

2715 (5) (a) If reunification services are not ordered pursuant to Subsection (3)(a), and the
2716 whereabouts of a parent become known within six months of the out-of-home placement of the
2717 [minor] child, the court may order the division to provide reunification services.

2718 (b) The time limits described in Subsection (2)[; however,] are not tolled by the
2719 parent's absence.

2720 (6) (a) If a parent is incarcerated or institutionalized, the court shall order reasonable
2721 services unless it determines that those services would be seriously detrimental to the [minor]
2722 health or safety of the child. [In determining detriment]

2723 (b) In making the determination described in Subsection (6)(a), the court shall
2724 consider;

- 2725 (i) the age of the child[;];
- 2726 (ii) the degree of parent-child bonding[;];
- 2727 (iii) the length of the sentence[;];
- 2728 (iv) the nature of the treatment[;];
- 2729 (v) the nature of the crime or mental illness[;];
- 2730 (vi) the degree of detriment to the ~~[child]~~ child's health and safety if services are not
- 2731 offered ~~[and;];~~
- 2732 (vii) for ~~[minors]~~ a child ten years of age or older, the ~~[minor's]~~ child's attitude toward
- 2733 the implementation of family reunification services[;]; and
- 2734 (viii) any other appropriate factors.
- 2735 (c) In making the determination described in Subsection (6)(a), the court shall give
- 2736 particular weight to the consideration described in Subsection (6)(b)(vii).
- 2737 (d) Reunification services for an incarcerated parent are subject to the 12-month
- 2738 limitation imposed in Subsection (2).
- 2739 (e) Reunification services for an institutionalized parent are subject to the 12-month
- 2740 limitation imposed in Subsection (2), unless the court determines that continued reunification
- 2741 services would be in the child's best interest.
- 2742 (7) If, pursuant to Subsection (3)(b)~~[(ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), or (x)],~~ the
- 2743 court does not order reunification services, a permanency hearing shall be conducted within 30
- 2744 days, in accordance with Section 78-3a-312.
- 2745 Section 35. Section **78-3a-320** is amended to read:
- 2746 **78-3a-320. Additional finding at adjudication hearing -- Petition -- Court records.**
- 2747 (1) Upon the filing with the court of a petition under Section 78-3a-305 by the
- 2748 ~~[Division of Child and Family Services]~~ division or any interested person informing the court,
- 2749 among other things, that the division ~~[has]~~ made a supported finding ~~[of one or more of the~~
- 2750 ~~severe types of],~~ pursuant to Section 62A-4a-116.1, that a person committed severe child abuse
- 2751 or neglect ~~[described in Subsection 62A-4a-116.1(2);]~~ the court shall:
- 2752 (a) make a finding of substantiated, unsubstantiated, or without merit;
- 2753 (b) include the finding described in Subsection (1)(a) in a written order; and
- 2754 (c) deliver a certified copy of the order described in Subsection (1)(b) to the division.
- 2755 (2) The judicial finding under Subsection (1) shall be made:

- 2756 (a) as part of or at the conclusion of the adjudication hearing; or
2757 (b) as part of a court order entered pursuant to a written stipulation of the parties.
- 2758 (3) (a) Any person described in Subsection 62A-4a-116.6(1) may at any time file with
2759 the court a petition for removal of the person's name from the Licensing Information System.
- 2760 (b) At the conclusion of the hearing on the petition described in Subsection (3)(a), the
2761 court shall:
- 2762 ~~[(a)]~~ (i) make a finding of substantiated, unsubstantiated, or without merit;
2763 ~~[(b)]~~ (ii) include the finding described in Subsection (1)(a) in a written order; and
2764 ~~[(c)]~~ (iii) deliver a certified copy of the order described in Subsection (1)(b) to the
2765 division.
- 2766 (4) A proceeding for adjudication under this section of a supported finding of a
2767 ~~[nonsevere]~~ type of abuse or neglect ~~[under this section]~~ that does not constitute severe child
2768 abuse or neglect may be joined in the juvenile court with an adjudication of ~~[a]~~ severe ~~[type of]~~
2769 child abuse or neglect.
- 2770 (5) If a person whose name appears on the Licensing Information System ~~[prior to]~~
2771 before May 6, 2002 files a petition during the time that an alleged perpetrator's application for
2772 clearance to work with children or vulnerable adults is pending, the court shall hear the matter
2773 and enter a final decision no later than 60 days after the filing of the petition.
- 2774 (6) For the purposes of licensing under Sections 26-21-9.5, 26-39-105.5, 62A-1-118,
2775 and 62A-2-121:
- 2776 (a) the court shall make available records of its findings under Subsections (1) and (2)
2777 for licensing purposes, only to those with statutory authority to access also the Licensing
2778 Information System created under Section 62A-4a-116.2; and
- 2779 (b) any appellate court shall make available court records of appeals from juvenile
2780 court decisions under Subsections (1), (2), (3), and (4) for licensing purposes, only to those
2781 with statutory authority to access also the Licensing Information System.
- 2782 Section 36. Section **78-3a-402** is amended to read:
- 2783 **78-3a-402. Judicial process for termination -- Parent unfit or incompetent -- Best**
2784 **interest of child.**
- 2785 (1) This part provides a judicial process for voluntary and involuntary severance of the
2786 parent-child relationship, designed to safeguard the rights and interests of all parties concerned

2787 and promote their welfare and that of the state.

2788 (2) Wherever possible family life should be strengthened and preserved, but if a parent
 2789 is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit or incompetent based
 2790 upon any of the grounds for termination described in this part, the court shall then consider the
 2791 welfare and best interest of the child of paramount importance in determining whether
 2792 termination of parental rights shall be ordered.

2793 Section 37. Section **78-3a-406** is amended to read:

2794 **78-3a-406. Notice -- Nature of proceedings.**

2795 (1) After a petition for termination of parental rights [~~has been~~] is filed, notice of that
 2796 fact and of the time and place of the hearing shall be provided, in accordance with the Utah
 2797 Rules of Civil Procedure, to:

2798 (a) the parents[;];

2799 (b) the guardian[;];

2800 (c) the person or agency having legal custody of the child[;]; and [~~to~~]

2801 (d) any person acting in loco parentis to the child.

2802 (2) (a) A hearing shall be held specifically on the question of termination of parental
 2803 rights no sooner than ten days after service of summons is complete.

2804 (b) A verbatim record of the proceedings of the hearing described in Subsection (2)(a)
 2805 shall be taken and the parties shall be advised of their right to counsel.

2806 (c) The summons described in Subsection (2)(a) shall contain a statement to the effect
 2807 that the rights of the parent or parents are proposed to be permanently terminated in the
 2808 proceedings. [~~That~~]

2809 (d) The statement described in Subsection (2)(c) may be contained in:

2810 (i) the summons originally issued in the proceeding; or [~~in~~]

2811 (ii) a separate summons subsequently issued.

2812 (3) (a) The proceedings in this section are civil in nature and are governed by the Utah
 2813 Rules of Civil Procedure.

2814 (b) The court shall in all cases:

2815 (i) require the petitioner to establish the facts [~~by clear and convincing evidence;~~]
 2816 beyond a reasonable doubt; and [~~shall~~]

2817 (ii) give full and careful consideration to all of the evidence presented with regard to

2818 the constitutional rights and claims of the parent [~~and, if~~].

2819 (c) If a parent is found, by reason of [~~his~~] the parent's conduct or condition, to be unfit
2820 or incompetent based upon any of the grounds for termination described in this part, the court
2821 shall then consider the welfare and best interest of the child of paramount importance in
2822 determining whether termination of parental rights shall be ordered.

2823 Section 38. Section **78-3a-407** is amended to read:

2824 **78-3a-407. Grounds for termination of parental rights -- Findings regarding**
2825 **reasonable efforts.**

2826 (1) The court may terminate all parental rights with respect to a parent if it finds [~~any~~]
2827 one or more of the following:

2828 (a) [~~that~~] the parent has abandoned the child;

2829 [~~(b) that the parent has neglected or abused the child;~~]

2830 [~~(c) that the parent is unfit or incompetent;~~]

2831 [~~(d) that the child is being cared for in an out-of-home placement under the supervision~~
2832 ~~of the court or the division and the parent has substantially neglected, wilfully refused, or has~~
2833 ~~been unable or unwilling to remedy the circumstances that cause the child to be in an~~
2834 ~~out-of-home placement, and there is a substantial likelihood that the parent will not be capable~~
2835 ~~of exercising proper and effective parental care in the near future;]~~

2836 [~~(e) failure of parental adjustment, as defined in this chapter;~~]

2837 [~~(f) that only token efforts have been made by the parent;~~]

2838 [~~(i) to support or communicate with the child;~~]

2839 [~~(ii) to prevent neglect of the child;~~]

2840 [~~(iii) to eliminate the risk of serious physical, mental, or emotional abuse of the child;~~

2841 ~~or]~~

2842 [~~(iv) to avoid being an unfit parent;~~]

2843 [~~(g) the parent has]~~

2844 (b) the parent:

2845 (i) is unfit or incompetent based on conduct or a condition that is seriously detrimental
2846 to the health and safety of the child; and

2847 (ii) is unable or unwilling to correct the unfitness or incompetence described in

2848 Subsection (1)(b)(i);

2849 (c) the parent commits:

2850 (i) severe child abuse or neglect;

2851 (ii) abuse that resulted in serious physical injury;

2852 (iii) serious neglect; or

2853 (iv) sexual abuse;

2854 (d) (i) the parent voluntarily relinquished the parent's parental rights to the child[;]; and

2855 (ii) the court finds that termination is in the child's best interest;

2856 ~~[(h) the parent, after a period of trial during which the child was returned to live in the~~

2857 ~~child's own home, substantially and continuously or repeatedly refused or failed to give the~~

2858 ~~child proper parental care and protection; or]~~

2859 (e) for at least one year the parent willfully and without just cause failed to:

2860 (i) communicate with the child by mail, telephone, or any other means; or

2861 (ii) show the normal interest of a natural parent in the child; or

2862 ~~[(f)] (f) the terms and conditions of safe relinquishment of a newborn child have been~~

2863 ~~complied with, pursuant to Title 62A, Chapter 4a, Part 8, Safe Relinquishment of a Newborn~~

2864 ~~Child.~~

2865 (2) For purposes of Subsection (1)(a), prima facie evidence of abandonment is

2866 established if it is shown that, while having legal custody of the child, a parent:

2867 (a) wilfully surrendered physical custody of the child; and

2868 (b) for a period of six months following the surrender described in Subsection (2)(a),

2869 does not manifest to the child or the person with physical custody of the child:

2870 (i) a firm intention to resume physical custody of the child; or

2871 (ii) to make arrangements for the care of the child.

2872 ~~[(2)] (3) The court may not terminate the parental rights of a parent because the parent~~

2873 ~~[has failed] fails to complete the requirements of a treatment plan.~~

2874 ~~[(3)] (4) (a) [In] Subject to Subsection (4)(b), in any case in which the court has~~

2875 ~~directed the division to provide reunification services to a parent, the court must find that the~~

2876 ~~division made reasonable efforts to provide those services before the court may terminate the~~

2877 ~~parent's rights under Subsection (1)(b), (c), [(d)]; (e), or (f)[; or (h)].~~

2878 ~~(b) The court is not required to make the finding under Subsection [(3)] (4)(a) before~~

2879 ~~terminating a parent's rights:~~

2880 (i) under Subsection (1)~~[(b)]~~(c) based upon abuse or neglect found by the court to have
 2881 occurred subsequent to adjudication; or

2882 (ii) if reasonable efforts are not required under federal law.

2883 Section 39. Section **78-3a-408** is amended to read:

2884 **78-3a-408. Evidence of grounds for termination.**

2885 ~~[(1) In determining whether a parent or parents have abandoned a child, it is prima~~
 2886 ~~facie evidence of abandonment that the parent or parents:]~~

2887 ~~[(a) although having legal custody of the child, have surrendered physical custody of~~
 2888 ~~the child, and for a period of six months following the surrender have not manifested to the~~
 2889 ~~child or to the person having the physical custody of the child a firm intention to resume~~
 2890 ~~physical custody or to make arrangements for the care of the child;]~~

2891 ~~[(b) have failed to communicate with the child by mail, telephone, or otherwise for six~~
 2892 ~~months;]~~

2893 ~~[(c) failed to have shown the normal interest of a natural parent, without just cause; or]~~

2894 ~~[(d) have abandoned an infant, as described in Section 78-3a-313.5.]~~

2895 ~~[(2) In determining whether a parent or parents are unfit or have neglected a child the~~
 2896 ~~court shall consider, but is not limited to, the following circumstances, conduct, or conditions:]~~

2897 ~~[(a) emotional illness, mental illness, or mental deficiency of the parent that renders~~
 2898 ~~him unable to care for the immediate and continuing physical or emotional needs of the child~~
 2899 ~~for extended periods of time;]~~

2900 (1) When considering evidence for grounds supporting the termination of parental
 2901 rights, the court shall consider:

2902 ~~[(b)]~~ (a) subject to Subsection (3), conduct toward a child of a physically, emotionally,
 2903 or sexually ~~[cruel or]~~ abusive nature;

2904 ~~[(c)]~~ (b) habitual or excessive use of intoxicating liquors, controlled substances, or
 2905 dangerous drugs that render the parent unable to care for the child;

2906 ~~[(d)]~~ (c) subject to Subsection (2), repeated or continuous failure to provide the child
 2907 with adequate food, clothing, shelter, ~~[education,]~~ or other care ~~[necessary for his]~~ that results
 2908 in substantial harm to the child's physical~~[, mental, and emotional]~~ and mental health ~~[and~~
 2909 ~~development by a parent or parents who are capable of providing that care. However, a parent~~
 2910 ~~who, legitimately practicing his religious beliefs, does not provide specified medical treatment~~

2911 for a child is not for that reason alone a negligent or unfit parent] or safety;
 2912 ~~[(e)]~~ (d) with regard to a child ~~[who is]~~ in the custody of the division, ~~[if]~~ whether:
 2913 (i) the parent is incarcerated as a result of a felony conviction [of a felony]; and
 2914 (ii) the sentence is of such length that the child will be deprived of a normal home for
 2915 more than one year; [or]
 2916 ~~[(f)]~~ (e) a history of violent behavior[-];
 2917 ~~[(3) If a child has been placed in the custody of the division and the parent or parents~~
 2918 ~~fail to comply substantially with the terms and conditions of a plan within six months after the~~
 2919 ~~date on which the child was placed or the plan was commenced, whichever occurs later, that~~
 2920 ~~failure to comply is evidence of failure of parental adjustment.]~~
 2921 ~~[(4) The following circumstances constitute prima facie evidence of unfitness:]~~
 2922 ~~[(a)]~~ (f) sexual abuse, injury, or death of ~~[a sibling of the child, or of]~~ any child, due to
 2923 known or substantiated abuse or neglect by ~~[the]~~ a parent ~~[or parents];~~
 2924 ~~[(b)]~~ (g) conviction of a crime, if the facts surrounding the crime are of such a nature as
 2925 to indicate the unfitness of the parent to provide adequate care to the extent necessary for the
 2926 child's physical, mental, or emotional health and development;
 2927 ~~[(e)]~~ (h) a single incident of life-threatening or gravely disabling injury to or
 2928 disfigurement of the child; or
 2929 ~~[(d)]~~ (i) whether the parent has committed, aided, abetted, attempted, conspired, or
 2930 solicited to commit:
 2931 (i) murder or manslaughter of a child; or
 2932 (ii) child abuse homicide.
 2933 (2) For purposes of Subsection (1)(c), failure by a parent, due to the legitimate practice
 2934 of religious beliefs, to provide specified medical treatment for a child, is not for that reason
 2935 alone, grounds for terminating parental rights.
 2936 (3) (a) For purposes of Subsection (1)(a), discipline of a child by a parent is presumed
 2937 to not constitute abusive conduct.
 2938 (b) The presumption described in Subsection (3)(a) may only be rebutted by clear and
 2939 convincing evidence that the discipline constitutes abuse.
 2940 Section 40. Section **78-3a-414** is amended to read:
 2941 **78-3a-414. Voluntary relinquishment -- Irrevocable.**

2942 (1) Voluntary relinquishment or consent for termination of parental rights shall be
2943 signed or confirmed under oath [~~either~~] before:

2944 (a) [~~before~~] a judge of any court that has jurisdiction over proceedings for termination
2945 of parental rights in this state or any other state[~~, or~~];

2946 (b) a public officer appointed by [~~that~~] a court described in Subsection (1)(a) for the
2947 purpose of taking consents or relinquishments; or

2948 [~~(b)~~] (c) except as provided in Subsection (2), any person authorized to take consents
2949 or relinquishments under Subsections 78-30-4.18(1) and (2).

2950 (2) Only the juvenile court is authorized to take consents or relinquishments from a
2951 parent who has:

2952 (a) any child [~~who is~~] in the custody of a state agency; or [~~who has~~]

2953 (b) a child who is otherwise under the jurisdiction of the juvenile court.

2954 (3) The court, appointed officer, or other authorized person shall certify to the best of
2955 that person's information and belief that the person executing the consent or relinquishment
2956 has:

2957 (a) read and understands the consent or relinquishment; and [~~has signed it~~]

2958 (b) signed the consent or relinquishment freely and voluntarily.

2959 (4) A voluntary relinquishment or consent for termination of parental rights is effective
2960 when it is signed and may not be revoked.

2961 (5) The requirements and processes described in Sections 78-3a-402 through 78-3a-410
2962 do not apply to a voluntary relinquishment or consent for termination of parental rights. The
2963 court need only find that the relinquishment or termination is in the child's best interest.

2964 (6) (a) There is a presumption that voluntary relinquishment or consent for termination
2965 of parental rights is not in the child's best interest where it appears to the court that the primary
2966 purpose is to avoid a financial support obligation.

2967 (b) The presumption described in Subsection (6)(a) may be rebutted[~~, however,~~] if the
2968 court finds the relinquishment or consent to termination of parental rights will facilitate the
2969 establishment of stability and permanency for the child.

2970 (7) Upon granting a voluntary relinquishment the court may make orders relating to the
2971 child's care, health, and [~~welfare~~] safety that the court considers to be in the child's best interest.

2972 Section 41. **Repealer.**

2973 This bill repeals:
2974 Section **62A-4a-202.7, Pilot program for differentiated responses to child abuse**
2975 **and neglect reports.**
2976 Section **78-3a-403, Definitions.**

Legislative Review Note
as of 1-13-05 5:06 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

State Impact

This legislation will impact the Division of Child and Family Services, the Courts, and the Attorney General's Office by \$1,741,500 (\$1,685,800 General Fund) in FY 2006 which includes \$37,400 in one-time funds. The funds would be appropriated as follows in FY 2006: \$301,000 (\$245,300 General Fund) to DCFS, \$566,600 to the Office of Attorney General (all General Fund), and \$873,900 to the Court system (all General Fund).

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
General Fund	\$1,685,800	\$1,651,800	\$0	\$0
Federal Funds	\$55,700	\$52,300	\$0	\$0
TOTAL	\$1,741,500	\$1,704,100	\$0	\$0

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst