

Representative J. Brent Haymond proposes to substitute the following bill:

CHILD WELFARE AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: J. Brent Haymond

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5 AN ACT RELATING TO CHILDREN; INCLUDING COMMISSION OF DOMESTIC
6 VIOLENCE IN THE PRESENCE OF A CHILD IN ALL CIVIL DEFINITIONS OF CHILD
7 ABUSE; AUTHORIZING THE ATTORNEY GENERAL'S OFFICE TO HIRE CHILD
8 PROTECTIVE SERVICES INVESTIGATORS; CLARIFYING AND MODIFYING
9 PROCEDURES FOR FOSTER PARENT DUE PROCESS; CLARIFYING PROCESS AND
10 JURISDICTION OF PROTECTIVE ORDERS FOR MINORS IN JUVENILE AND DISTRICT
11 COURTS; CLARIFYING THAT SPECIFIC COURT PROCEDURES APPLY ONLY TO
12 CHILDREN REMOVED BY THE DIVISION OF CHILD AND FAMILY SERVICES AND
13 CHILDREN WHO ARE IN THE DIVISION'S CUSTODY; CLARIFYING PROVISIONS IN
14 THE TERMINATION OF PARENTAL RIGHTS ACT; PROVIDING THAT THE JUVENILE
15 COURT HAS CONCURRENT JURISDICTION TO ESTABLISH PATERNITY AND TO
16 ORDER TESTING FOR THAT PURPOSE; EXPANDING THE EARLY INTERVENTION
17 FOR JUVENILES PILOT PROGRAM; PROVIDING RIGHTS AND RESPONSIBILITIES
18 OF RELATIVES AND NONCUSTODIAL PARENTS WITH REGARD TO A CHILD WHO
19 HAS BEEN REMOVED FROM HIS HOME BASED ON ABUSE OR NEGLECT;
20 PROVIDING THAT PETITIONS FOR TERMINATION OF PARENTAL RIGHTS MAY BE
21 FILED AND HEARINGS HELD PRIOR TO, IN LIEU OF, OR IN COMBINATION WITH
22 A PERMANENCY HEARING; REQUIRING THE ATTORNEY GENERAL'S OFFICE TO
23 REPRESENT DCFS IN CASES INVOLVING MINORS IN DCFS CUSTODY ON
24 GROUNDS OTHER THAN ABUSE OR NEGLECT; REQUIRING PROBATION
25 DEPARTMENT TO NOTIFY DCFS OF SPECIFIED RECOMMENDATIONS;

1 INCORPORATING FEDERAL REQUIREMENTS REGARDING THE LIMITATION OF
2 REASONABLE EFFORTS; MAKING AMENDMENTS IN COMPLIANCE WITH
3 FEDERAL LAW; CHANGING THE DCFS FINDING OF "INCONCLUSIVE" TO
4 "WITHOUT MERIT"; CREATING A CHILD WELFARE OMBUDSMAN; PROVIDING
5 THAT ARREST OR CHARGES UNDER CLANDESTINE DRUG LAB ACT CONSTITUTE
6 GROUNDS FOR REMOVAL OF CHILD; PROVIDING AN EFFECTIVE DATE.

7 This act affects sections of Utah Code Annotated 1953 as follows:

8 AMENDS:

9 **62A-4a-101**, as last amended by Chapter 318, Laws of Utah 1996

10 **62A-4a-105**, as last amended by Chapters 47, 329 and 365, Laws of Utah 1997

11 **62A-4a-113**, as last amended by Chapter 329, Laws of Utah 1997

12 **62A-4a-116**, as last amended by Chapter 318, Laws of Utah 1996

13 **62A-4a-117**, as last amended by Chapter 318, Laws of Utah 1996

14 **62A-4a-201**, as last amended by Chapter 329, Laws of Utah 1997

15 **62A-4a-202**, as enacted by Chapter 260, Laws of Utah 1994

16 **62A-4a-202.1**, as last amended by Chapter 329, Laws of Utah 1997

17 **62A-4a-202.3**, as last amended by Chapter 329, Laws of Utah 1997

18 **62A-4a-203**, as last amended by Chapter 329, Laws of Utah 1997

19 **62A-4a-205**, as last amended by Chapter 318, Laws of Utah 1996

20 **62A-4a-205.6**, as last amended by Chapters 195 and 329, Laws of Utah 1997

21 **62A-4a-206**, as last amended by Chapter 302, Laws of Utah 1995

22 **62A-4a-250**, as enacted by Chapter 329, Laws of Utah 1997

23 **62A-4a-402**, as renumbered and amended by Chapter 260, Laws of Utah 1994

24 **62A-4a-409**, as last amended by Chapter 302, Laws of Utah 1995

25 **78-3a-103**, as last amended by Chapters 329 and 365, Laws of Utah 1997

26 **78-3a-104**, as last amended by Chapters 329 and 365, Laws of Utah 1997

27 **78-3a-105**, as last amended by Chapters 329 and 365, Laws of Utah 1997

28 **78-3a-116**, as last amended by Chapter 133 and renumbered and amended by Chapter 365,
29 Laws of Utah 1997

30 **78-3a-118**, as last amended by Chapters 329, 357, 358 and renumbered and amended by
31 Chapter 365, Laws of Utah 1997

- 1 **78-3a-301**, as last amended by Chapters 329 and 365, Laws of Utah 1997
- 2 **78-3a-305**, as last amended by Chapter 318, Laws of Utah 1996
- 3 **78-3a-306**, as last amended by Chapter 329, Laws of Utah 1997
- 4 **78-3a-307**, as last amended by Chapters 195 and 329, Laws of Utah 1997
- 5 **78-3a-311**, as last amended by Chapters 195, 329 and 365, Laws of Utah 1997
- 6 **78-3a-312**, as last amended by Chapters 133 and 329, Laws of Utah 1997
- 7 **78-3a-314**, as last amended by Chapter 133, Laws of Utah 1997
- 8 **78-3a-350**, as enacted by Chapter 329, Laws of Utah 1997
- 9 **78-3a-408**, as last amended by Chapter 329, Laws of Utah 1997
- 10 **78-3a-903**, as last amended by Chapter 365, Laws of Utah 1997
- 11 **78-3g-103**, as repealed and reenacted by Chapter 133, Laws of Utah 1997
- 12 **78-45a-5**, as last amended by Chapter 232, Laws of Utah 1997

13 ENACTS:

- 14 **62A-4a-202.6**, Utah Code Annotated 1953
- 15 **62A-4a-203.5**, Utah Code Annotated 1953
- 16 **62A-4a-208**, Utah Code Annotated 1953
- 17 **67-5-16**, Utah Code Annotated 1953
- 18 **78-3a-305.1**, Utah Code Annotated 1953
- 19 **78-3a-313.5**, Utah Code Annotated 1953

20 This act affects uncodified material as follows:

21 AMENDS:

22 **Uncodified Section 42, Chapter 329, Laws Of Utah 1997**

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

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

25 **62A-4a-101. Definitions.**

26 As used in this chapter:

27 (1) "Abuse" means:

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

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

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

31 (d) any sexual abuse[~~;~~];or

1 (e) commission of domestic violence in the presence of a child.

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

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

9 (4) "Commission of domestic violence in the presence of a child" means committing an
10 act of domestic violence against a cohabitant, as defined in Section 30-6-1:

11 (a) in the physical presence of a child; or

12 (b) having knowledge that a child is present and may see or hear an act of domestic
13 violence.

14 [~~4~~] (5) "Consumer" means a person who receives services offered by the division in
15 accordance with this chapter.

16 [~~5~~] (6) "Custody," with regard to the division, means the custody of a child in the
17 division as of the date of disposition.

18 [~~6~~] (7) "Day-care services" means care of a child for a portion of the day which is less
19 than 24 hours, in his own home by a responsible person, or outside of his home in a day-care
20 center, family group home, or family child care home.

21 [~~7~~] (8) "Dependent child" means a child who is homeless or without proper care through
22 no fault of his parent, guardian, or custodian.

23 [~~8~~] (9) "Director" means the director of the Division of Child and Family Services.

24 [~~9~~] (10) "Division" means the Division of Child and Family Services.

25 [~~10~~] (11) (a) "Domestic violence" means the same as that term is defined in Section
26 77-36-1.

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

30 [~~b~~] (c) As used in this subsection "abuse" means the same as that term is defined in
31 Section 30-6-1, and "domestic violence perpetrator" means a person who is alleged to have

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

3 [~~(11)~~] (12) "Homemaking service" means the care of individuals in their domiciles, and
4 help given to individual caretaker relatives to achieve improved household and family management
5 through the services of a trained homemaker.

6 [~~(12)~~] (13) "Minor" means a person under 18 years of age. "Minor" may also include a
7 person under 21 years of age for whom the division has been specifically ordered by the juvenile
8 court to provide services.

9 [~~(13)~~] (14) "Natural parent" means a child's biological or adoptive parent, and includes a
10 child's noncustodial parent.

11 [~~(14)~~] (15) (a) "Neglect" means:

12 (i) abandonment of a child;

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

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

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

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

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

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

27 [~~(15)~~] (16) "Protective custody," with regard to the division, means the shelter of a child
28 by the division from the time he is removed from his home until the shelter hearing, or his return
29 home, whichever occurs earlier.

30 [~~(16)~~] (17) "Protective services" means expedited services that are provided:

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

1 (b) in an effort to substantiate evidence of neglect, abuse, or exploitation;

2 (c) to a cohabitant who is neglecting or abusing a child, in order to help him develop
3 recognition of his duty of care and of the causes of neglect or abuse, and to strengthen his ability
4 to provide safe and acceptable care; and

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

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

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

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

13 [~~(17)~~] (18) "Services to unwed parents" means social, educational, and medical services
14 arranged for or provided to unwed parents to help them plan for themselves and the unborn child.

15 [~~(18)~~] (19) "Shelter care" means the temporary care of minors in nonsecure facilities.

16 [~~(19)~~] (20) "State" means a state of the United States, the District of Columbia, the
17 Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern
18 Mariana Islands, or a territory or possession administered by the United States.

19 [~~(20)~~] (21) "State plan" means the written description of the programs for children, youth,
20 and family services administered by the division in accordance with federal law.

21 [~~(21)~~] (22) "Status offender" means a minor who has been declared a runaway or
22 ungovernable.

23 [~~(22)~~] (23) "Substitute care" means:

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

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

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

30 [~~(23)~~] (24) "Temporary custody," with regard to the division, means the custody of a child
31 in the division from the date of the shelter hearing until disposition.

1 [(24)] (25) "Transportation services" means travel assistance given to an individual with
2 escort service, if necessary, to and from community facilities and resources as part of a service
3 plan.

4 [(25)] (26) "Youth services" means services provided to families in crisis when a minor
5 is ungovernable or runaway or where there is parent-child conflict, in an effort to resolve family
6 conflict, maintain or reunite minors with their families, and to divert minors from the juvenile
7 justice system. Those services may include crisis intervention, short-term shelter, time-out
8 placement, and family counseling.

9 Section 2. Section **62A-4a-105** is amended to read:

10 **62A-4a-105. Division responsibilities.**

11 The division shall:

12 (1) administer services to children and families, including child welfare services, youth
13 services, domestic violence services, and all other responsibilities that the Legislature or the
14 executive director may assign to the division;

15 (2) establish standards for all contract providers of out-of-home care for children and
16 families;

17 (3) cooperate with the federal government in the administration of child welfare, youth
18 services, and domestic violence programs and other human service activities assigned by the
19 department;

20 (4) provide for the compilation of relevant information, statistics, and reports on child and
21 family service matters in the state;

22 (5) prepare and submit to the department, the governor, and the Legislature reports of the
23 operation and administration of the division in accordance with the requirements of Sections
24 62A-4a-117 and 62A-4a-118;

25 (6) promote and enforce state and federal laws enacted for the protection of abused,
26 neglected, dependent, delinquent, ungovernable, and runaway children, and status offenders, in
27 accordance with the requirements of this chapter, unless administration is expressly vested in
28 another division or department of the state. In carrying out the provisions of this subsection, the
29 division shall cooperate with the juvenile courts, the Division of Youth Corrections, and with all
30 public and private licensed child welfare agencies and institutions to develop and administer a
31 broad range of services and supports. The division shall take the initiative in all matters involving

1 the protection of abused or neglected children if adequate provisions have not been made or are
2 not likely to be made, and shall make expenditures necessary for the care and protection of those
3 children, within the division's budget;

4 (7) provide substitute care for dependent, abused, neglected, and delinquent children,
5 establish standards for substitute care facilities, and approve those facilities;

6 (8) provide financial support to persons adopting physically handicapped, mentally
7 handicapped, older, or other hard-to-place children who, immediately prior to adoption, were legal
8 wards of the state. The financial support provided under this subsection may not exceed the
9 amounts the division would provide for the child as a legal ward of the state;

10 (9) cooperate with the Division of Employment Development in the Department of
11 Workforce Services in meeting social and economic needs of individuals eligible for public
12 assistance;

13 (10) conduct court-ordered home evaluations for the district and juvenile courts with
14 regard to child custody issues. The court shall order either or both parties to reimburse the division
15 for the cost of that evaluation, in accordance with the community rate for that service or with the
16 department's fee schedule rate;

17 (11) provide noncustodial and in-home preventive services, designed to prevent family
18 breakup, family preservation services, and reunification services to families whose children are
19 in substitute care in accordance with the requirements of this chapter and Title 78, Chapter 3a,
20 Juvenile Courts;

21 (12) provide protective supervision of a family, upon court order, in an effort to eliminate
22 abuse or neglect of a child in that family;

23 (13) establish programs pursuant to Section 62A-4a-250, and provide services to runaway
24 and ungovernable children and their families;

25 (14) provide shelter care in accordance with the requirements of this chapter and Title 78,
26 Chapter 3a, Juvenile Courts;

27 (15) provide social studies and reports for the juvenile court in accordance with Section
28 78-3a-505;

29 (16) arrange for and provide training for staff and providers involved in the administration
30 and delivery of services offered by the division in accordance with this chapter;

31 (17) provide domestic violence services in accordance with the requirements of federal

1 law, and establish standards for all direct or contract providers of domestic violence services.
2 Within appropriations from the Legislature, the division shall provide or contract for a variety of
3 domestic violence services and treatment methods;

4 (18) ensure regular, periodic publication, including electronic publication, regarding the
5 number of children in the custody of the division who have a permanency goal of adoption, or for
6 whom a final plan of termination of parental rights has been approved, pursuant to Section
7 78-3a-312, and promote adoption of those children; and

8 (19) perform such other duties and functions as required by law.

9 Section 3. Section **62A-4a-113** is amended to read:

10 **62A-4a-113. Division's enforcement authority -- Responsibility of attorney general**
11 **to represent division.**

12 (1) The division shall take legal action that is necessary to enforce the provisions of this
13 chapter.

14 (2) (a) The attorney general shall enforce all provisions of this chapter, in addition to the
15 requirements of Title 78, Chapter 3a, relating to protection and custody of abused, neglected, or
16 dependent children. The attorney general may contract with the local county attorney to enforce
17 the provisions of this chapter and Title 78, Chapter 3a.

18 [(3)] (b) It is the responsibility of the attorney general's office to:

19 [(a)] (i) advise the division regarding decisions to remove a child from his home;

20 [(b)] (ii) represent the division in all court and administrative proceedings related to child
21 abuse, neglect, and dependency including, but not limited to, shelter hearings, dispositional
22 hearings, dispositional review hearings, periodic review hearings, and petitions for termination of
23 parental rights; and

24 [(c)] (iii) be available to and advise caseworkers on an ongoing basis.

25 [(4)] (c) The attorney general shall designate no less than 16 full-time attorneys to advise
26 and represent the division in abuse, neglect, and dependency proceedings, including petitions for
27 termination of parental rights. Those attorneys shall devote their full time and attention to that
28 representation and, insofar as it is practicable, shall be housed in or near various offices of the
29 division statewide.

30 (3) As of July 1, 1998, the attorney general's office shall represent the division with regard
31 to actions involving minors who have not been adjudicated as abused or h [neglect] NEGLECTED h .
31a but who are

1 otherwise committed to the custody of the division by the juvenile court, and who are classified
2 in the division's management information system as having been placed in custody primarily on
3 the bases of delinquent behavior or a status offense. Nothing in this section may be construed to
4 affect the responsibility of the county attorney or district attorney to represent the state in those
5 matters, in accordance with Section 78-3a-116.

6 Section 4. Section **62A-4a-116** is amended to read:

7 **62A-4a-116. Management information system -- Requirements.**

8 (1) The division shall develop and implement a management information system that
9 meets the requirements of this section and the requirements of federal law and regulation.

10 (2) With regard to all child welfare cases, that system shall:

11 (a) provide each caseworker with a complete history of each child in his caseload,
12 including:

13 (i) all past action taken by the division with regard to that child and his siblings, the
14 complete case history and all reports and information in the control or keeping of the division
15 regarding that child and his siblings;

16 (ii) the number of times the child has been in foster care;

17 (iii) the cumulative period of time the child has been in foster care;

18 (iv) all reports of abuse or neglect received by the division with regard to that child's
19 parent or parents, including documentation regarding whether each report was substantiated [or],
20 unsubstantiated, or without merit;

21 (v) the number of times the child's parent or parents have failed any treatment plan; and

22 (vi) the number of different caseworkers who have been assigned to that child in the past;

23 (b) contain all key elements of each family's current treatment plan, including the dates
24 and number of times the plan has been administratively or judicially reviewed, the number of times
25 the parent or parents have failed that treatment plan, and the exact length of time that treatment
26 plan has been in effect; and

27 (c) alert caseworkers regarding deadlines for completion of and compliance with treatment
28 plans.

29 (3) With regard to all child protective services cases, that system shall also monitor
30 compliance with the policy of the division, the laws of this state, and federal law and regulation.

31 (4) All information contained in the management information system shall be available

1 to the department, so that divisions may share common databases.

2 Section 5. Section **62A-4a-117** is amended to read:

3 **62A-4a-117. Performance monitoring system.**

4 (1) As used in this section:

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

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

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

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

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

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

18 (5) On or before December 31, 1997, and each year thereafter, the director shall submit,
19 to the Legislative Fiscal Analyst and the director of the Office of Legislative Research and General
20 Counsel, a written report describing the difference between actual performance and performance
21 goals for the [~~period consisting of the second, third, and fourth quarters of the immediate~~] prior
22 fiscal year [~~and the first quarter of the current fiscal year~~].

23 (6) The Legislative Fiscal Analyst shall convey the information contained in that report
24 to the Health and Human Services Appropriation Subcommittee during the general session
25 immediately following submission of the report. The subcommittee may consider that information
26 in its deliberations regarding the budget for the division. The director of the Office of Legislative
27 Research and General Counsel shall convey the information in that report to the Child Welfare
28 Legislative Oversight Panel and to the Utah Tomorrow Strategic Planning Committee.

29 Section 6. Section **62A-4a-201** is amended to read:

30 **62A-4a-201. Rights of parents -- Children's rights -- Interest and responsibility of**
31 **state.**

1 (1) Courts have recognized a general presumption that it is in the best interest and welfare
2 of a child to be raised under the care and supervision of his natural parents. A child's need for a
3 normal family life in a permanent home, and for positive, nurturing family relationships will
4 usually best be met by his natural parents. Additionally, the integrity of the family unit, and
5 the right of parents to conceive and raise their children have found protection in the due process
6 clause of the Fourteenth Amendment to the United States Constitution. The right of a fit,
7 competent parent to raise his child has long been protected by the laws and Constitution of this
8 state and of the United States.

9 (2) As a counterweight to parental rights, the state, as *parens patriae*, has an interest in and
10 responsibility to protect children whose parents abuse them or do not adequately provide for their
11 welfare. There are circumstances where a parent's conduct or condition is a substantial departure
12 from the norm and the parent is unable or unwilling to render safe and proper parental care and
13 protection. Under those circumstances, the welfare and protection of children is the consideration
14 of paramount importance.

15 (3) When the division intervenes on behalf of an abused, neglected, or dependent child,
16 it shall take into account the child's need for protection from immediate harm. Throughout its
17 involvement, the division shall attempt to utilize the least intrusive means available to protect a
18 child, in an effort to ensure that children are brought up in stable, permanent families, rather than
19 in temporary foster placements under the supervision of the state.

20 (4) When circumstances within the family pose a threat to the child's safety or welfare, the
21 state's interest in the child's welfare is paramount to the rights of a parent. The division may obtain
22 custody of the child for a planned period and place him in a safe environment, in accordance with
23 the requirements of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

24 (5) In determining and making "reasonable efforts" with regard to a child, pursuant to the
25 provisions of Section 62A-4a-203, both the division's and the court's paramount concern shall be
26 the child's health ~~and~~ , safety, AND WELFARE in accordance with federal law.

27 [(5)] (6) In cases where obvious sexual abuse, abandonment, or serious physical abuse
28 or neglect are involved, the state has no duty to make "reasonable efforts" or to, in any other way,
29 attempt to maintain a child in his home, provide reunification services, or to attempt to rehabilitate
30 the offending parent or parents. This subsection does not exempt the division from providing
31 [court-ordered] court-ordered services.

1 ~~[(6)]~~ (7)(a) It is the division's obligation, under federal law, to achieve permanency for
 2 children who are abused, neglected, or dependent. If the use or continuation of "reasonable
 3 efforts," as described in Subsections (5) and (6), is determined to be inconsistent with the
 4 permanency plan for a child, then measures shall be taken, in a timely manner, to place the child
 5 in accordance with the permanency plan, and to complete whatever steps are necessary to finalize
 6 the permanent placement of the child.

7 (b) If, because of his conduct or condition, a parent is determined to be unfit or
 8 incompetent based on the grounds for termination of parental rights described in Title 78, Chapter
 9 3a, Part 4, Termination of Parental Rights Act, the welfare and best interest of the child is [then]
 10 of paramount importance, and shall govern in determining whether that parent's rights should be
 11 terminated.

12 Section 7. Section **62A-4a-202** is amended to read:

13 **62A-4a-202. Preventive services -- Family preservation services.**

14 (1) (a) Within appropriations from the Legislature, the division shall provide preventive,
 15 in-home services and family preservation services for families whose children are at immediate
 16 risk of being removed from the home and for families in crisis, if the child's welfare is not
 17 immediately endangered and the division determines that it is possible and appropriate.

18 (b) In determining whether preventive or family preservation services are reasonable and
 19 appropriate, the child's health ~~h~~ [and] , ~~h~~ safety ~~h~~ , AND WELFARE ~~h~~ shall be the paramount concern,
 19a in accordance with

20 federal law. The division shall consider whether those services will be effective within a
 21 six-month period, and whether they are likely to prevent reabuse or continued neglect of the child.

22 (2) (a) On or before December 1, 1994, the division shall complete a statewide inventory
 23 of early intervention, preventive, and family preservation services that are available through public
 24 and private agencies or individuals. The inventory shall also include:

25 (i) the method of accessing each service;

26 (ii) eligibility requirements for each service; and

27 (iii) the geographic areas and the number of families that can be served by each service,
 28 and information regarding waiting lists for each service.

29 (b) The information shall be stored, updated annually, and made available in a usable form
 30 as a resource directory for all caseworkers.

31 (c) The division shall provide a copy of the inventory to the Office of Legislative Research

1 and General Counsel on or before December 1, 1994, and each subsequent year thereafter.

2 (3) As a part of its preventive services, the division shall provide family preservation
3 services that are short-term, intensive, crisis intervention programs, and that address:

4 (a) the safety of children;

5 (b) the physical and emotional needs of parents and children; the division shall also
6 evaluate specific needs of the family, including depression, addiction, and mental illness;

7 ~~[(b)]~~ (c) the child's physical surroundings, including cleaning and repairing physical
8 housing, and addressing needs for necessities such as food, heat, and electricity;

9 ~~[(c)]~~ (d) personal cleanliness, nutrition, and provision of personal grooming supplies and
10 clothing;

11 ~~[(d)]~~ (e) budgeting [and], money management, and employment; and

12 ~~[(e)]~~ (f) parenting skills, including nonviolent discipline, nurturing, and structure, and
13 teaching responsibility, respect for others, cooperation, and moral values[; and].

14 ~~[(f) the safety of children.]~~

15 (4) (a) The division may use only specially trained caseworkers or private providers to
16 provide the family preservation services described in Subsection (3).

17 (b) Family preservation caseworkers may only be assigned a minimum number of families,
18 but the division shall require that they be available 24 hours for an intensive period of at least six
19 weeks, and that they respond to an assigned family within 24 hours.

20 (c) The division shall allow family preservation caseworkers to be creative and flexible
21 in responding to the needs of each individual family.

22 Section 8. Section **62A-4a-202.1** is amended to read:

23 **62A-4a-202.1. Taking a child into protective custody -- Peace officer -- Division of**
24 **Child and Family Services caseworker.**

25 (1) Any peace officer may, without a warrant, take a minor into protective custody when
26 the officer has substantial cause to believe that any of the factors described in Section 78-3a-301
27 exist.

28 (2) (a) A child welfare worker within the Division of Child and Family Services may take
29 and maintain protective custody of a minor, without a warrant, in accordance with the requirements
30 of this section and Section 78-3a-301 when accompanied by a peace officer, or without a peace
31 officer, when a peace officer is not reasonably available.

1 (b) If possible, consistent with the child's safety and welfare, before taking a child into
 2 protective custody, the worker shall also determine whether there are services reasonably available
 3 to the worker which, if provided to the minor's parent or to the minor, would eliminate the need
 4 to remove the minor from the custody of his parent in accordance with the provisions and
 5 limitations of Section 78-3a-301. If those services are reasonably available, they shall be utilized.
 6 In determining whether services are reasonably available, and in making reasonable efforts to
 7 provide those services, the child's health **h** [and] **h** safety **h** , AND WELFARE **h** shall be the worker's
 7a paramount concern.

8 Section 9. Section **62A-4a-202.3** is amended to read:

9 **62A-4a-202.3. Investigation -- Substantiation of reports -- Child in protective**
 10 **custody.**

11 (1) When a child is taken into protective custody in accordance with Sections
 12 62A-4a-202.1 and 78-3a-301, the Division of Child and Family Services shall immediately
 13 investigate the circumstances of the minor and the facts surrounding his being taken into protective
 14 custody.

15 (2) The division's investigation shall include, among other actions necessary to meet
 16 reasonable professional standards:

17 (a) a search for and review of any records of past reports of abuse or neglect involving the
 18 same child, any sibling or other child residing in that household, and the alleged perpetrator;

19 (b) with regard to a child who is five years of age or older, a personal interview with the
 20 child outside of the presence of the alleged perpetrator, conducted in accordance with the
 21 requirements of Subsection (5);

22 (c) an interview with the child's natural parents or other guardian, unless their whereabouts
 23 are unknown;

24 (d) an interview with the person who reported the abuse, unless anonymous;

25 (e) where possible and appropriate, interviews with other third parties who have had direct
 26 contact with the child, including school personnel and the child's health care provider;

27 (f) an unscheduled visit to the child's home; and

28 (g) if appropriate and indicated in any case alleging physical injury, sexual abuse, or
 29 failure to meet the child's medical needs, a medical examination. That examination shall be
 30 obtained no later than 24 hours after the child was placed in protective custody.

31 (3) (a) The division's determination of whether a report is substantiated [or],

1 unsubstantiated, or without merit may be based on the child's statements alone.

2 (b) Inability to identify or locate the perpetrator may not be used by the division as a basis
3 for determining that a report is unsubstantiated or without merit, or for closing the case.

4 (c) The division may not determine a case to be unsubstantiated or without merit, or
5 identify a case as unsubstantiated, or without merit, solely because the perpetrator was an
6 out-of-home perpetrator.

7 (d) Decisions regarding whether a report is substantiated [or], unsubstantiated, or without
8 merit shall be based on the facts of the case at the time the report was made.

9 (4) The division should maintain protective custody of the child if it finds that one or more
10 of the following conditions exist:

11 (a) the minor has no natural parent, guardian, or responsible relative who is able and
12 willing to provide safe and appropriate care for the minor;

13 (b) shelter of the minor is a matter of necessity for the protection of the minor and there
14 are no reasonable means by which the minor can be protected in his home or the home of a
15 responsible relative;

16 (c) there is substantial evidence that the parent or guardian is likely to flee the jurisdiction
17 of the court; or

18 (d) the minor has left a previously court ordered placement.

19 (5) (a) Within 24 hours after receipt of a child into protective custody, excluding weekends
20 and holidays, the Division of Child and Family Services shall convene a child protection team to
21 review the circumstances regarding removal of the child from his home, and prepare the testimony
22 and evidence that will be required of the division at the shelter hearing, in accordance with Section
23 78-3a-306.

24 (b) Members of that team shall include:

25 (i) the caseworker assigned to the case and the caseworker who made the decision to
26 remove the child;

27 (ii) a representative of the school or school district in which the child attends school;

28 (iii) the peace officer who removed the child from the home;

29 (iv) a representative of the appropriate Children's Justice Center, if one is established
30 within the county where the child resides;

31 (v) if appropriate, and known to the division, a therapist or counselor who is familiar with

1 the child's circumstances; and

2 (vi) any other individuals as determined to be appropriate and necessary by the team
3 coordinator and chair.

4 (c) At that 24-hour meeting, the division shall have available for review and consideration,
5 the complete child protective services and foster care history of the child and the child's parents
6 and siblings.

7 (6) After receipt of a child into protective custody and prior to the adjudication hearing,
8 all investigative interviews with the child that are initiated by the division shall be audio or video
9 taped, and the child shall be allowed to have a support person of the child's choice present. That
10 support person may not be an alleged perpetrator.

11 (7) The division shall cooperate with law enforcement investigations regarding the alleged
12 perpetrator.

13 (8) The division may not close an investigation solely on the grounds that the division
14 investigator is unable to locate the child, until all reasonable efforts have been made to locate the
15 child and family members. Those efforts include:

- 16 (a) visiting the home at times other than normal work hours;
- 17 (b) contacting local schools;
- 18 (c) contacting local, county, and state law enforcement agencies; and
- 19 (d) checking public assistance records.

20 Section 10. Section **62A-4a-202.6** is enacted to read:

21 **62A-4a-202.6. Child Protective Services Investigators Within Attorney General's**
22 **Office -- Authority.**

23 (1) Pursuant to Section 67-5-16 the attorney general may employ, with the consent of the
24 division, child protective services investigators to investigate reports of abuse or neglect of a child
25 that occur while the child is in the custody of the division.

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

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

31 (a) make a thorough investigation upon receiving either an oral or written report of alleged

1 abuse or neglect of a child, with the primary purpose of that investigation being the protection of
2 the child;

3 (b) make an inquiry into the child's home environment, emotional, or mental health, the
4 nature and extent of the child's injuries, and the child's physical safety;

5 (c) make a written report of their investigation, including determination regarding whether
6 the alleged abuse or neglect was substantiated, unsubstantiated, or without merit, and forward a
7 copy of that report to the division within the time mandates for investigations established by the
8 division;

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

12 (e) enter upon public or private premises, using appropriate legal processes, to investigate
13 reports of alleged child abuse or neglect; and

14 (f) take a child into protective custody, and deliver the child to a law enforcement officer,
15 or to the division. Control and jurisdiction over the child shall be determined by the provisions
16 of Title 62A, Chapter 4a, Part 2, Child Welfare Services, Title 78, Chapter 3a, Juvenile courts, and
17 as otherwise provided by law.

18 Section 11. Section **62A-4a-203** is amended to read:

19 **62A-4a-203. Removal of a child from his home -- Reasonable efforts to maintain**
20 **child in home -- Exception -- Reasonable efforts for reunification.**

21 (1) Because removal of a child from his home may affect protected, constitutional rights
22 of the parent, the division shall:

23 (a) when possible and appropriate, without danger to the child's welfare, make reasonable
24 efforts to prevent or eliminate the need for removal of a child from his home prior to placement
25 in substitute care;

26 (b) determine whether there is substantial cause to believe that a child has been or is in
27 danger of abuse or neglect, in accordance with the guidelines described in Title 78, Chapter 3a,
28 Part 3, Abuse, Neglect, and Dependency Proceedings, prior to removing the child from his home;
29 and

30 (c) when it is possible and appropriate, and in accordance with the limitations and
31 requirements of Sections 78-3a-311 and 78-3a-312, make reasonable efforts to make it possible

1 for a child in substitute care to return to his home.

2 (2) In determining the reasonableness of efforts needed to maintain a child in his home or
 3 to return a child to his home, in accordance with Subsection (1)(a) or (c), the child's health ~~h~~ [and] ~~h~~
 4 safety ~~h~~ , AND WELFARE ~~h~~ shall be the paramount concern. Additionally, the division shall consider
 4a whether those
 5 services would be effective within a six-month period, and whether they would be likely to prevent
 6 reabuse or continued neglect of the child.

7 (3) When removal and placement in substitute care is necessary to protect a child, the
 8 "efforts" described in Subsections (1) and (2) would not be reasonable or appropriate and,
 9 therefore, ~~[are not required]~~ should not be utilized.

10 (4) In cases where obvious sexual abuse ~~[or]~~, abandonment, or serious physical abuse or
 11 neglect are involved, the state has no duty to make "reasonable efforts" or to, in any other way,
 12 attempt to maintain a child in his home, provide reunification services, or to attempt to rehabilitate
 13 the offending parent or parents. This subsection does not exempt the division from providing court
 14 ordered services.

15 Section 12. Section **62A-4a-203.5** is enacted to read:

16 **62A-4a-203.5. Mandatory petition for termination of parental rights.**

17 (1) For purposes of this section, "abandoned infant" means a child who is 12 months of
 18 age or younger whose parent or parents:

19 (a) although having legal custody of the child, fail to maintain physical custody of the
 20 child without making arrangements for the care of the child;

21 (b) have failed to maintain physical custody, and have failed to exhibit the normal interest
 22 of a natural parent without just cause;

23 (c) are unwilling to have physical custody of the child; or

24 (d) have left the child without proper parental care, by reason of the fault or habits of the
 25 parent.

26 (2) Notwithstanding any other provision of this chapter or of Title 78, Chapter 3a, the
 27 division shall file a petition for termination of parental rights with regard to:

28 (a) an abandoned infant; or

29 (b) a parent, whenever a court has determined that the parent has:

30 (i) committed murder or child abuse homicide of another child of that parent;

31 (ii) committed voluntary manslaughter of another child of that parent;

1 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
2 homicide, or voluntary manslaughter against another child of that parent; or

3 (iv) committed a felony assault or abuse that has resulted in serious physical injury to
4 another child of that parent, or to the other parent of that child.

5 Section 13. Section **62A-4a-205** is amended to read:

6 **62A-4a-205. Treatment plans.**

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

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

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

- 14 (a) both of the child's natural parents, unless the whereabouts of a parent are unknown;
- 15 (b) the child;
- 16 (c) the child's foster parents; and
- 17 (d) where appropriate, the child's step-parent.

18 (4) A copy of the treatment plan shall be provided to the guardian ad litem, and to the
19 child's natural parents and foster parents.

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

23 [(5)] (6) The plan shall set forth, with specificity, at least the following:

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

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

28 (c) if the plan is for the child to return to his family, specifically what the parents must do
29 in order to enable the child to be returned home, specifically how those requirements may be
30 accomplished, and how those requirements will be measured;

31 (d) the specific services needed to reduce the problems that necessitated placement in the

1 division's custody, [~~and to accomplish the reasonable efforts requirements,~~] and who will provide
2 for and be responsible for case management;

3 (e) a visitation schedule between the natural parent and the child;

4 (f) the health care to be provided to the child, and the mental health care to be provided
5 to address any known or diagnosed mental health needs of the child. If residential treatment, rather
6 than a foster home, is the proposed placement, a specialized assessment of the child's health needs
7 shall be conducted, including an assessment of mental illness and behavior and conduct disorders;
8 and

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

10 [(6)] (7) (a) The treatment plan shall be specific to each child and his family, rather than
11 general. The division shall train its workers to develop treatment plans that comply with federal
12 mandates and the specific needs of the particular child and his family;

13 (b) all treatment plans and expectations shall be individualized and contain specific time
14 frames;

15 (c) treatment plans shall address problems that keep children in placement and keep them
16 from achieving permanence in their lives; and

17 (d) the child's natural parents, foster parents, and where appropriate, step-parents, shall be
18 kept informed of and supported to participate in important meetings and procedures related to the
19 child's placement.

20 [(7)] (8) With regard to a child who is three years of age or younger, if the goal is not to
21 return the child home, the [~~division's goal or~~] permanency plan for that child shall be adoption
22 unless there are extenuating circumstances that justify long-term foster care or guardianship.

23 Section 14. Section **62A-4a-205.6** is amended to read:

24 **62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.**

25 (1) With regard to children who have a permanency goal of adoption or for whom a final
26 plan for pursuing termination of parental rights has been approved in accordance with Section
27 78-3a-312, the division shall make intensive efforts to place the child in an adoptive home within
28 30 days after the final plan has been approved.

29 (2) If within the time period described in Subsection (1) the division is unable to locate
30 a suitable adoptive home, it shall contract with licensed child placing agencies to search for an
31 appropriate adoptive home for the child, and to place the child for adoption. The division shall

1 comply with the requirements of Section 62A-4a-607 and contract with a variety of child placing
2 agencies licensed under Part 6. In accordance with federal law, the division shall develop plans
3 for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent
4 placements for waiting children.

5 (3) The division shall ensure that children who are adopted and were previously in its
6 custody, continue to receive the medical and mental health coverage that they are entitled to under
7 state and federal law.

8 Section 15. Section **62A-4a-206** is amended to read:

9 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
10 **process.**

11 (1) (a) The Legislature finds that, except with regard to a child's natural [parents] parent
12 or legal guardian, a foster family has a very limited but recognized interest in its familial
13 relationship with a foster child who has been in the care and custody of that family. In making
14 determinations regarding removal of a child from a foster home, the division may not dismiss the
15 foster family as a mere collection of unrelated individuals.

16 (b) The Legislature finds that children in the temporary custody and custody of the
17 division are experiencing multiple changes in foster care placements with little or no
18 documentation, and that numerous studies of child growth and development emphasize the
19 importance of stability in foster care living arrangements.

20 (c) For the reasons described in Subsections (a) and (b), the division shall provide
21 procedural due process for a foster family prior to removal of a foster child from their home,
22 regardless of the length of time the child has been in that home, unless removal is for the purpose
23 of returning the child to his natural parent or legal guardian ~~h~~ [, or for the purpose of placing the child
24 in an adoptive home] h .

25 (2) (a) ~~[On or before July 1, 1994, the]~~ The division shall ~~[establish]~~ maintain and utilize
26 due process procedures for removal of a foster child from a foster home, in accordance with the
27 procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act.

28 (b) Those procedures shall include requirements for:

29 (i) personal communication with and explanation to foster parents prior to removal of the
30 child; and

31 (ii) an opportunity for foster parents to present ~~[written and oral testimony]~~ their

1 information and concerns to the division and to request a review by a third party neutral fact finder
2 prior to removal of the child.

3 (c) If the division determines that there is a reasonable basis to believe that the child is in
4 danger or that there is a substantial threat of danger to the health or welfare of the child, it shall
5 place the child in [~~temporary shelter~~] emergency foster care during the pendency of the procedures
6 described in this subsection, instead of making another foster care placement.

7 (3) [~~As of July 1, 1994, whenever~~] Whenever the division places a child in a foster home,
8 it shall provide the foster parents with:

9 (a) notification of the requirements of this section;

10 (b) a written description of the procedures enacted by the division pursuant to Subsection
11 (2) and how to access those processes; and

12 (c) written notification of the foster parents' ability to petition the juvenile court directly
13 for review of a decision to remove a foster child who has been in their custody for 12 months or
14 longer, in accordance with the limitations and requirements of Section 78-3a-315.

15 (4) The requirements of this section do not apply to the removal of a child based on a
16 foster parent's request for that removal.

17 Section 16. Section **62A-4a-208** is enacted to read:

18 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**

19 (1) As used in this section:

20 (a) "Complainant" means a person who initiates a complaint with the ombudsman.

21 (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this
22 section.

23 (2) (a) There is created within the department the position of child protection ombudsman.

24 The ombudsman shall be appointed by and serve at the pleasure of the executive director.

25 (b) The ombudsman shall be:

26 (i) an individual of recognized executive and administrative capacity;

27 (ii) selected solely with regard to qualifications and fitness to discharge the duties of
28 ombudsman; and

29 (iii) have experience in child welfare, and in state laws and policies governing abused,
30 neglected, and dependent children.

31 (c) The ombudsman shall devote full time to the duties of office.

1 (3) (a) Except as provided in Subsection (b), the ombudsman shall, upon receipt of a
2 complaint from any person, investigate whether an act or omission of the division with respect to
3 a particular child is:

- 4 (i) contrary to statute, rule, or policy;
- 5 (ii) places a child's health or safety at risk;
- 6 (iii) made without an adequate statement of reason; or
- 7 (iv) is based on irrelevant, immaterial or erroneous grounds.

8 (b) The ombudsman may decline to investigate any complaint. If the ombudsman declines
9 to investigate a complaint or continue an investigation, the ombudsman shall notify the
10 complainant and the division of the decision and of the reasons for that decision.

11 (c) The ombudsman may conduct an investigation on his own initiative.

12 (4) The ombudsman or an employee of the ombudsman may not have an office located in
13 the same building as an office of the division.

14 (5) The ombudsman shall:

15 (a) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, makes
16 rules that govern the following:

- 17 (i) receiving and processing complaints;
- 18 (ii) notifying complainants and the division regarding decision to investigate or to decline
19 to investigate a complaint;
- 20 (iii) prioritizing workload;
- 21 (iv) maximum time within which investigations shall be completed;
- 22 (v) conducting investigations;
- 23 (vi) notifying complainants and the division regarding the results of investigations; and
- 24 (vii) making recommendations based on the findings and results of recommendations;

25 (b) report findings and recommendations in writing to the complainant and the division,
26 in accordance with the provisions of this section;

27 (c) within appropriations from the Legislature, employ staff as may be necessary to carry
28 out the ombudsman's duties under this part;

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

31 (e) annually report to the:

1 (i) Child Welfare Legislative Oversight Panel;

2 (ii) governor;

3 (iii) Board of Child and Family Services;

4 (iv) executive director of the department; and

5 (v) director of the division; and

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

8 (6) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall notify
9 the complainant and the division of that decision.

10 (b) The ombudsman may advise a complainant to pursue all administrative remedies or
11 channels of complaint before pursuing a complaint with the ombudsman. Subsequent to
12 processing a complaint, the ombudsman may conduct further investigations upon the request of
13 the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes
14 a complainant from making a complaint directly to the ombudsman before pursuing an
15 administrative remedy.

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

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

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

23 (7) (a) Except as provided in Subsection (ii), all records of the ombudsman regarding
24 individual cases shall be classified in accordance with federal law and the provisions of Title 63,
25 Chapter 2, Government Records Access and Management Act. The ombudsman may make public
26 a report prepared pursuant to this section in accordance with the provisions of Title 63, Chapter
27 2, Government Records Access and Management Act.

28 (b) The ombudsman shall have access to all of the department's written and electronic
29 records and databases, including those regarding individual cases. In accordance with Title 63,
30 Chapter 2, Government Records Access and Management Act, all documents and information
31 received by the ombudsman shall maintain the same classification that was designated by the

1 department.

2 (8) (a) The ombudsman shall prepare a written report of the findings and
3 recommendations, if any, of each investigation.

4 (b) The ombudsman shall make recommendations to the division if the ombudsman finds
5 that:

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

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

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

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

10 Section 17. Section **62A-4a-250** is amended to read:

11 **62A-4a-250. Separate programs and procedures for minors committed to the custody**
12 **of the Division of Child and Family Services on grounds other than abuse or neglect --**
13 **Attorney general responsibility.**

14 (1) On or before July 1, 1998, the division shall have established programs designed to
15 meet the needs of minors who have not been adjudicated as abused or neglected, but who are
16 otherwise committed to the custody of the division by the juvenile court pursuant to Section
17 78-3a-118, and who are classified in the division's management information system as having been
18 placed in custody primarily on the basis of delinquent behavior or a status offense.

19 (2) (a) The processes and procedures designed to meet the needs of children who are
20 abused or neglected, described in Part 2 and in Title 78, Chapter 3a, Part 3, Abuse, Neglect, and
21 Dependency Proceedings, are not applicable to the minors described in Subsection (1).

22 (b) The procedures described in Subsection 78-3a-119(2)(a) are applicable to the minors
23 described in Subsection (1).

24 (3) As of July 1, 1998, the attorney general's office has the responsibility to represent the
25 division with regard to actions involving minors described in Subsection (1). Nothing in this
26 section may be construed to affect the responsibility of the county attorney or district attorney to
27 represent the state in those matters, in accordance with Section 78-3a-116.

28 Section 18. Section **62A-4a-402** is amended to read:

29 **62A-4a-402. Definitions.**

30 As used in this part:

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

1 person responsible for the child's care, whether in the same home as the child, a relative's home,
2 a group, family, or center day care facility, a foster care home, or a residential institution.

3 (2) "Child" means a person under 18 years of age.

4 (3) "Child abuse or neglect" means causing harm or threatened harm to a child's health or
5 welfare.

6 (4) "Commission of domestic violence in the presence of a child" means committing an
7 act of domestic violence against a cohabitant, as defined in Section 30-6-1:

8 (a) in the physical presence of a child; or

9 (b) having knowledge that a child is present and may see or hear an act of domestic
10 violence.

11 (5) "Domestic violence" means the same as that term is defined in Section 77-36-1.

12 [(4)] (6) "Harm or threatened harm" means damage or threatened damage to the physical
13 or emotional health and welfare of a child through neglect or abuse, and includes but is not limited
14 to:

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

16 (b) incest[;];

17 (c) sexual abuse[;];

18 (d) sexual exploitation[;];

19 (e) molestation[,-or];

20 (f) repeated negligent treatment or maltreatment[-]; or

21 (g) commission of domestic violence in the presence of a child.

22 [(5)] (7) "Incest" means having sexual intercourse with a person whom the perpetrator
23 knows to be his or her ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first
24 cousin. The relationships referred to in this subsection include blood relationships of the whole
25 or half blood without regard to legitimacy, and include relationships of parent and child by
26 adoption, and relationships of stepparent and stepchild while the marriage creating the relationship
27 of a stepparent and stepchild exists.

28 [(6)] (8) "Molestation" means touching the anus or any part of the genitals of a child or
29 otherwise taking indecent liberties with a child, or causing a child to take indecent liberties with
30 the perpetrator or another with the intent to arouse or gratify the sexual desire of any person.

31 [(7)] (9) "Sexual abuse" means acts or attempted acts of sexual intercourse, sodomy, or

1 molestation directed towards a child.

2 [(8)] (10) "Sexual exploitation of minors" means knowingly employing, using, persuading,
3 inducing, enticing or coercing any minor to pose in the nude for the purpose of sexual arousal of
4 any person or for profit, or to engage in any sexual or simulated sexual conduct for the purpose
5 of photographing, filming, recording, or displaying in any way the sexual or simulated sexual
6 conduct, and includes displaying, distributing, possessing for the purpose of distribution, or selling
7 material depicting minors in the nude or engaging in sexual or simulated sexual conduct.

8 [(9)] (11) "Subject" or "subject of the report" means any person reported under this part,
9 including, but not limited to, a child, parent, guardian, or other person responsible for a child's
10 care.

11 [~~(10) "Unfounded report" means a report made pursuant to this part which, after
12 investigation, is not supported by credible evidence.~~]

13 Section 19. Section **62A-4a-409** is amended to read:

14 **62A-4a-409. Investigation by division -- Temporary protective custody.**

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

19 (2) The investigation may include inquiry into the child's home environment, emotional,
20 or mental health, nature and extent of injuries, and physical safety.

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

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

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

29 (c) A representative of the division shall serve as the team's coordinator and chair.
30 Members of the team shall serve at the coordinator's invitation, and whenever possible, the team
31 shall include representatives of health, mental health, education, law enforcement agencies, and

1 other appropriate agencies or individuals.

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

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

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

11 (8) Division workers or other child protection team members have authority to enter upon
12 public or private premises, using appropriate legal processes, to investigate reports of alleged child
13 abuse or neglect.

14 (9) In accordance with the procedures and requirements of Sections 62A-4a-202.1 through
15 62A-4a-202.3 and 78-3a-301, a division worker or child protection team member may take a child
16 into protective custody, and deliver the child to a law enforcement officer, or place the child in an
17 emergency shelter facility approved by the juvenile court, at the earliest opportunity subsequent
18 to the child's removal from its original environment. Control and jurisdiction over the child is
19 determined by the provisions of Title 78, Chapter 3a, and as otherwise provided by law.

20 Section 20. Section **67-5-16** is enacted to read:

21 **67-5-16. Child protective services investigators within attorney general's office --**
22 **Authority.**

23 The attorney general may employ, with the consent of the Division of Child and Family
24 Services within the Department of Human Services, and in accordance with Section 62A-4a-202.6,
25 child protective services investigators to investigate alleged instances of abuse or neglect of a child
26 that occur while a child is in the custody of the Division of Child and Family Services. Those
27 investigators may also investigate reports of abuse or neglect of a child by an employee of the
28 Department of Human Services, or involving a person or entity licensed to provide substitute care
29 for children in the custody of the Division of Child and Family Services.

30 Section 21. Section **78-3a-103** is amended to read:

31 **78-3a-103. Definitions.**

1 (1) As used in this chapter:

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

3 (i) has suffered or been threatened with nonaccidental physical or mental harm, negligent
4 treatment, or sexual exploitation~~[-or who]~~;

5 (ii) has been the victim of any sexual abuse~~[-]~~; or

6 (iii) has been the victim of "commission of domestic violence in the presence of a child,"
7 as defined in this section.

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

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

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

14 (e) "Child placement agency" means:

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

16 or

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

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

20 (g) "Commission of domestic violence in the presence of a child" means committing an
21 act of domestic violence, as defined in Section 77-36-1, against a cohabitant, as defined in Section
22 30-6-1:

23 (i) in the physical presence of a child; or

24 (ii) having knowledge that a child is present and may see or hear an act of domestic
25 violence.

26 [~~g~~] (h) "Court" means the juvenile court.

27 [~~h~~] (i) "Dependent child" includes a minor who is homeless or without proper care
28 through no fault of his parent, guardian, or custodian.

29 [~~i~~] (j) "Deprivation of custody" means transfer of legal custody by the court from a parent
30 or the parents or a previous legal custodian to another person, agency, or institution.

31 [~~j~~] (k) "Detention" means home detention and secure detention as defined in Section

1 62A-7-101 for the temporary care of minors who require secure custody in physically restricting
2 facilities:

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

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

5 [~~(k)~~] (l) "Formal referral" means a written report from a peace officer or other person
6 informing the court that a minor is or appears to be within the court's jurisdiction and that a
7 petition may be filed.

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

10 [~~(m)~~] (n) "Guardianship of the person" includes the authority to consent to marriage, to
11 enlistment in the armed forces, to major medical, surgical, or psychiatric treatment, and to legal
12 custody, if legal custody is not vested in another person, agency, or institution.

13 [~~(n)~~] (o) "Legal custody" means a relationship embodying the following rights and duties:

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

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

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

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

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

20 [~~(o)~~] (p) "Minor" means a person under the age of 18 years. It includes the term "child"
21 as used in other parts of this chapter.

22 [~~(p)~~] (q) "Natural parent" means a minor's biological or adoptive parent, and includes the
23 minor's noncustodial parent.

24 [~~(q)~~] (r) (i) "Neglected child" means a minor:

25 (A) whose parent, guardian, or custodian has abandoned or subjected the minor to
26 mistreatment or abuse;

27 (B) who lacks proper parental care by reason of the fault or habits of the parent, guardian,
28 or custodian;

29 (C) whose parent, guardian, or custodian fails or refuses to provide proper or necessary
30 subsistence, education, or medical care, including surgery or psychiatric services when required,
31 or any other care necessary for health, safety, morals, or well-being; or

1 (D) who is at risk of being a neglected or abused child as defined in this chapter because
2 another minor in the same home is a neglected or abused child as defined in this chapter.

3 (ii) The aspect of neglect related to education, described in Subsection (1)(q)(i)(C), means
4 that, after receiving notice that a minor has been frequently absent from school without good
5 cause, or that the minor has failed to cooperate with school authorities in a reasonable manner, a
6 parent or guardian fails to make a good faith effort to ensure that the minor receives an appropriate
7 education.

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

10 [(r)] (s) "Nonjudicial adjustment" means closure of the case by the assigned probation
11 officer without judicial determination upon the consent in writing of the minor, the parent, legal
12 guardian or custodian, and the assigned probation officer.

13 [(s)] (t) "Probation" means a legal status created by court order following an adjudication
14 on the ground of a violation of law or under Section 78-3a-104, whereby the minor is permitted
15 to remain in his home under prescribed conditions and under supervision by the probation
16 department or other agency designated by the court, subject to return to the court for violation of
17 any of the conditions prescribed.

18 [(t)] (u) "Protective supervision" means a legal status created by court order following an
19 adjudication on the ground of abuse, neglect, or dependency, whereby the minor is permitted to
20 remain in his home, and supervision and assistance to correct the abuse, neglect, or dependency
21 is provided by the probation department or other agency designated by the court.

22 [(u)] (v) "Residual parental rights and duties" means those rights and duties remaining
23 with the parent after legal custody or guardianship, or both, have been vested in another person or
24 agency, including the responsibility for support, the right to consent to adoption, the right to
25 determine the child's religious affiliation, and the right to reasonable visitation unless restricted
26 by the court. If no guardian has been appointed, "residual parental rights and duties" also include
27 the right to consent to marriage, to enlistment, and to major medical, surgical, or psychiatric
28 treatment.

29 [(v)] (w) "Secure facility" means any facility operated by or under contract with the
30 Division of Youth Corrections, that provides 24-hour supervision and confinement for youth
31 offenders committed to the division for custody and rehabilitation.

1 ~~[(w)]~~ (x) "Shelter" means the temporary care of minors in physically unrestricted facilities
2 pending court disposition or transfer to another jurisdiction.

3 ~~[(x)]~~ (y) "Termination of parental rights" means the permanent elimination of all parental
4 rights and duties, including residual parental rights and duties, by court order.

5 ~~[(y)]~~ (z) "Therapist" means a person employed by a state division or agency for the
6 purpose of conducting psychological treatment and counseling of a minor in its custody, or any
7 other person licensed or approved by the state for the purpose of conducting psychological
8 treatment and counseling.

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

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

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

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

18 ~~[(3) In determining whether a minor is neglected or abused, as defined in this section, it
19 may be presumed that the person having the minor under his direct and exclusive care and control
20 at the time of the abuse is responsible for the neglect or abuse.]~~

21 Section 22. Section **78-3a-104** is amended to read:

22 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

23 (1) Except as otherwise provided by law, the juvenile court has exclusive original
24 jurisdiction in proceedings concerning:

25 (a) a minor who has violated any federal, state, or local law or municipal ordinance or a
26 person younger than 21 years of age who has violated any law or ordinance before becoming 18
27 years of age, regardless of where the violation occurred, excluding traffic laws and ordinances;

28 (b) a person 21 years of age or older who has failed or refused to comply with an order of
29 the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's 21st
30 birthday; however, the continuing jurisdiction is limited to causing compliance with existing
31 orders;

1 (c) a minor who is an abused child, neglected child, or dependent child, as those terms are
2 defined in Section 78-3a-103;

3 (d) a protective order for a minor who is alleged to be an abused child or neglected child,
4 except as provided in Section 78-3a-105, and unless the petition is filed by a natural parent of the
5 minor against a natural parent of the minor;

6 [~~(d)~~] (e) the determination of the custody of a minor or to appoint a guardian of the person
7 or other guardian of a minor who comes within the court's jurisdiction under other provisions of
8 this section;

9 [~~(e)~~] (f) the termination of the legal parent-child relationship in accordance with Part 4,
10 Termination of Parental Rights Act, including termination of residual parental rights and duties;

11 [~~(f)~~] (g) the treatment or commitment of a mentally retarded minor;

12 [~~(g)~~] (h) a minor who, in defiance of earnest and persistent efforts on the part of his parents
13 and school authorities as required under Section 53A-11-103, is a habitual truant from school;

14 [~~(h)~~] (i) the judicial consent to the marriage of a minor under age 16 upon a determination
15 of voluntariness or where otherwise required by law, employment, or enlistment of a minor when
16 consent is required by law;

17 [~~(i)~~] (j) any parent or parents of a minor committed to a secure youth corrections facility,
18 to order, at the discretion of the court and on the recommendation of a secure youth corrections
19 facility, the parent or parents of a minor committed to a secure youth corrections facility for a
20 custodial term, to undergo group rehabilitation therapy under the direction of a secure youth
21 corrections facility therapist, who has supervision of that parent's or parents' minor, or any other
22 therapist the court may direct, for a period directed by the court as recommended by a secure youth
23 corrections facility;

24 [~~(j)~~] (k) a minor under Title 55, Chapter 12, Interstate Compact on Juveniles;

25 [~~(k)~~] (l) the treatment or commitment of a mentally ill child. The court may commit a
26 child to the physical custody of a local mental health authority or to the legal custody of the
27 Division of Mental Health in accordance with the procedures and requirements of Title 62A,
28 Chapter 12, Part 2A, Commitment of Persons Under Age 18 to Division of Mental Health. The
29 court may not commit a child directly to the Utah State Hospital; and

30 [~~(l)~~] (m) the commitment of a minor in accordance with Section 62A-8-501.

31 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive

1 jurisdiction over any traffic offense committed by a minor under 16 years of age and concurrent
2 jurisdiction over all other traffic offenses committed by a minor 16 years of age or older, except
3 that the court shall have exclusive jurisdiction over the following traffic offenses committed by
4 a minor under 18 years of age:

- 5 (a) Section 76-5-207, automobile homicide;
- 6 (b) Section 41-6-44, operating a vehicle while under the influence of alcohol or drugs;
- 7 (c) Section 41-6-45, reckless driving;
- 8 (d) Section 41-1a-1311, unauthorized control over a motor vehicle, trailer, or semitrailer;
- 9 (e) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or semitrailer
10 for an extended period of time; and
- 11 (f) Section 41-6-13.5, fleeing a peace officer.

12 (3) The court also has jurisdiction over traffic offenses that are part of a single criminal
13 episode filed in a petition that contains an offense over which the court has jurisdiction.

14 (4) The juvenile court has jurisdiction over questions of custody, support, and visitation
15 certified to it by the district court pursuant to Section 78-3a-105.

16 (5) The juvenile court has jurisdiction over an ungovernable or runaway minor who is
17 referred to it by the Division of Child and Family Services or by public or private agencies that
18 contract with the division to provide services to that minor where, despite earnest and persistent
19 efforts by the division or agency, the minor has demonstrated that he:

- 20 (a) is beyond the control of his parent, guardian, lawful custodian, or school authorities
21 to the extent that his behavior or condition endangers his own welfare or the welfare of others; or
- 22 (b) has run away from home.

23 (6) This section does not restrict the right of access to the juvenile court by private
24 agencies or other persons.

25 (7) The juvenile court has jurisdiction of all magistrate functions relative to cases arising
26 under Section 78-3a-602.

27 Section 23. Section **78-3a-105** is amended to read:

28 **78-3a-105. Concurrent jurisdiction -- District court and juvenile court.**

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

- 31 (a) when a person who is 18 years of age or older and who is under the continuing

1 jurisdiction of the juvenile court under Section 78-3a-118 violates any federal, state, or local law
2 or municipal ordinance; [and]

3 (b) in adoption proceedings, when the juvenile court has previously entered an order
4 terminating the rights of a parent, and finds that adoption is in the best interest of the minor.
5 Adoption proceedings under this section shall be conducted in accordance with the procedures
6 described in Title 78, Chapter 30, Adoption[-];

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

11 (d) in proceedings brought on behalf of a minor pursuant to Title 30, Chapter 6, Cohabitant
12 Abuse Act, unless the petition is filed by a natural parent of the minor against a natural parent of
13 the minor.

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

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

20 (b) However, if a petition involving the same minor is pending in the juvenile court or the
21 juvenile court has previously acquired continuing jurisdiction over the same minor, the district
22 court shall certify the question of support, custody, and visitation to the juvenile court for
23 determination.

24 (4) When a question is certified to the juvenile court under Subsection (3), the findings and
25 order of the juvenile court judge are the order of the district court.

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

31 (b) The juvenile court may, by order, change the custody, support, and visitation rights

1 previously ordered in the district court as necessary to implement the order of the juvenile court
2 for the safety and welfare of the minor. The juvenile court order remains in effect so long as the
3 jurisdiction of the juvenile court continues.

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

7 Section 24. Section **78-3a-116** is amended to read:

8 **78-3a-116. Hearings -- Record -- County attorney or district attorney responsibilities**
9 **-- Attorney general responsibilities -- Admissibility of evidence.**

10 (1) A verbatim record of the proceedings shall be taken by an official court reporter or by
11 means of a mechanical recording device in all cases that might result in deprivation of custody as
12 defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed
13 with by the court.

14 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
15 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
16 case.

17 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Family
18 Services, and Title 78, Chapter 3a, Juvenile Courts, relating to:

19 (i) protection or custody of an abused, neglected, or dependent child[;]; and

20 (ii) petitions for termination of parental rights.

21 (c) The attorney general shall represent the Division of Child and Family Services in
22 actions involving minors who have not been adjudicated as abused or neglected, but who are
23 otherwise committed to the custody of that division by the juvenile court, and who are classified
24 in the division's management information system as having been placed in custody primarily on
25 the bases of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be
26 construed to affect the responsibility of the county attorney or district attorney to represent the
27 state in those matters, in accordance with the provisions of Subsection (2)(a).

28 (3) The board may adopt special rules of procedure to govern proceedings involving
29 violations of traffic laws or ordinances, fish and game laws, and boating laws. However,
30 proceedings involving offenses under Section 78-3a-506 are governed by that section regarding
31 suspension of driving privileges.

1 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
2 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and
3 in hearings upon petitions for termination of parental rights, written reports and other material
4 relating to the minor's mental, physical, and social history and condition may be received in
5 evidence and may be considered by the court along with other evidence. The court may require
6 that the person who wrote the report or prepared the material appear as a witness if the person is
7 reasonably available.

8 (b) For the purpose of determining proper disposition of ~~[the]~~ a minor alleged to be or
9 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care
10 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be
11 considered by the court along with other evidence. The court may require any person who
12 participated in preparing the dispositional report to appear as a witness, if the person is reasonably
13 available.

14 (5) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
15 may, in its discretion, consider evidence of statements made by a minor under eight years of age
16 to a person in a trust relationship.

17 Section 25. Section **78-3a-118** is amended to read:

18 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
19 **Enumeration of possible court orders -- Considerations of court.**

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

24 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
25 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided to
26 the school superintendent of the district in which the minor resides or attends school. Notice shall
27 be made to the district superintendent within three days and shall include the specific offenses for
28 which the minor was adjudicated.

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

30 (a) (i) The court may place the minor on probation or under protective supervision in the
31 minor's own home and upon conditions determined by the court, including community service as

1 provided in Section 78-11-20.7.

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

6 (iii) Any employee of the local law enforcement agency and the school which the minor
7 attends who discloses the court's order of probation is not:

8 (A) civilly liable except when the disclosure constitutes fraud or malice as provided in
9 Section 63-30-4; and

10 (B) civilly or criminally liable except when the disclosure constitutes a knowing violation
11 of Section 63-2-801.

12 (b) The court may place the minor in the legal custody of a relative or other suitable
13 person, with or without probation or protective supervision, but the juvenile court may not assume
14 the function of developing foster home services.

15 (c) (i) The court may vest legal custody of the minor in the Division of Child and Family
16 Services, Division of Youth Corrections, or the Division of Mental Health, and may order the
17 Department of Human Services to provide dispositional recommendations and services.

18 (ii) Minors who are committed to the custody of the Division of Child and Family Services
19 on grounds other than abuse or neglect are subject to the provisions of Part 3A and Title 62A,
20 Chapter 4a, Part 2A. At least five days prior to making a recommendation that the court place a
21 minor in the custody of the Division of Child and Family Services on grounds other than abuse
22 or neglect, the probation department shall provide the division with notice of that recommendation.

23 (d) (i) The court may commit the minor to the Division of Youth Corrections for secure
24 confinement.

25 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect, or
26 dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of Youth
27 Corrections.

28 (e) The court may commit the minor, subject to the court retaining continuing jurisdiction
29 over him, to the temporary custody of the Division of Youth Corrections for observation and
30 evaluation for a period not to exceed 90 days.

31 (f) (i) The court may commit the minor to a place of detention or an alternative to

1 detention for a period not to exceed 30 days subject to the court retaining continuing jurisdiction
2 over the minor.

3 (ii) Subsection (f) applies only to those minors adjudicated for an act which if committed
4 by an adult would be a criminal offense or for contempt of court under Section 78-3a-901. This
5 commitment may be stayed or suspended upon conditions ordered by the court.

6 (g) The court may vest legal custody of an abused, neglected, or dependent minor in the
7 Division of Child and Family Services or any other appropriate person in accordance with the
8 requirements and procedures of Part 3, Abuse, Neglect, and Dependency Proceedings.

9 (h) The court may place the minor on a ranch or forestry camp, or similar facility for care
10 and also for work, if possible, if the person, agency, or association operating the facility has been
11 approved or has otherwise complied with all applicable state and local laws. A minor placed in
12 a forestry camp or similar facility may be required to work on fire prevention, forestation and
13 reforestation, recreational works, forest roads, and on other works on or off the grounds of the
14 facility and may be paid wages, subject to the approval of and under conditions set by the court.

15 (i) The court may order that the minor be required to repair, replace, or otherwise make
16 restitution for damage or loss caused by the minor's wrongful act, including costs of treatment as
17 stated in Section 78-3a-318, and may impose fines in limited amounts.

18 (j) The court may issue orders necessary for the collection of restitution and fines ordered
19 by the court, including garnishments, wage withholdings, and executions.

20 (k) (i) The court may through its probation department encourage the development of
21 employment or work programs to enable minors to fulfill their obligations under Subsection (2)(i)
22 and for other purposes considered desirable by the court.

23 (ii) Consistent with the order of the court, the probation officer may permit the minor
24 found to be within the jurisdiction of the court to participate in a program of work restitution or
25 community service in lieu of paying part or all of the fine imposed by the court. The work
26 restitution or community service permitted by the probation officer may not affect the amount of
27 the surcharge.

28 (l) In violations of traffic laws within the court's jurisdiction, the court may, in addition
29 to any other disposition, restrain the minor from driving for periods of time the court considers
30 necessary and take possession of the minor's driver license. However, proceedings involving an
31 offense under Section 78-3a-506 are governed by that section regarding suspension of driving

1 privileges.

2 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
3 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug Paraphernalia
4 Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court shall, in addition to
5 any fines or fees otherwise imposed, order that the minor perform a minimum of 20 hours, but no
6 more than 100 hours, of community service. Satisfactory completion of an approved substance
7 abuse prevention or treatment program may be credited by the court as community service hours.

8 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
9 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court may,
10 upon the first adjudication, and shall, upon a second or subsequent adjudication, order that the
11 minor perform a minimum of 20 hours, but no more than 100 hours of community service, in
12 addition to any fines or fees otherwise imposed. Satisfactory completion of an approved substance
13 abuse prevention or treatment program may be credited by the court as community service hours.

14 (n) The court may order that the minor be examined or treated by a physician, surgeon,
15 psychiatrist, or psychologist or that he receive other special care. For these purposes the court may
16 place the minor in a hospital or other suitable facility.

17 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the interest
18 of the minor, and may appoint a public or private institution or agency as guardian in which legal
19 custody of the minor is vested.

20 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
21 private agency or institution, the court shall give primary consideration to the welfare of the minor.
22 When practicable, the court may take into consideration the religious preferences of the minor and
23 of the minor's parents.

24 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
25 conditions to be complied with by the parents or guardian, the minor, the minor's custodian, or any
26 other person who has been made a party to the proceedings. Conditions may include:

27 (A) visitation by the parents or one parent;

28 (B) restrictions on the minor's associates;

29 (C) restrictions on the minor's occupation and other activities; and

30 (D) requirements to be observed by the parents or custodian.

31 (ii) A minor whose parents or guardians successfully complete a family or other

1 counseling program may be credited by the court for detention, confinement, or probation time.

2 (q) The court may order the minor to be placed in the legal custody of the Division of
3 Mental Health or committed to the physical custody of a local mental health authority, in
4 accordance with the procedures and requirements of Title 62A, Chapter 12, Part 2A, Commitment
5 of Persons Under Age 18 to Division of Mental Health.

6 (r) The court may make an order committing a minor within its jurisdiction to the Utah
7 State Developmental Center if the minor has been found mentally retarded in accordance with the
8 provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility. The
9 procedure applicable in the district courts with respect to judicial commitments to the Utah State
10 Developmental Center shall be followed by the juvenile court in these cases.

11 (s) The court may terminate all parental rights upon a finding of compliance with the
12 provisions of Part 4, Termination of Parental Rights Act.

13 (t) The court may make any other reasonable orders for the best interest of the minor or
14 as required for the protection of the public, except that a person younger than 18 years of age may
15 not be committed to jail or prison, and offenses under Section 78-3a-506 are governed by that
16 section regarding suspension of driving privileges.

17 (u) The court may combine several of the above-listed modes of disposition if they are
18 compatible.

19 (v) **h [f] Before depriving any parent of custody, the court shall give due consideration to the**
20 **rights of parents concerning their minors. [j] h** The court may transfer custody of a minor to another
21 person, agency, or institution in accordance with the requirements and procedures of Part 3, Abuse,
22 Neglect, and Dependency Proceedings.

23 (w) Except as provided in Subsection (2)(y)(i), an order under this section for probation
24 or placement of a minor with an individual or an agency shall include a date certain for a review
25 of the case by the court. A new date shall be set upon each review.

26 (x) In reviewing foster home placements, special attention shall be given to making
27 adoptable minors available for adoption without delay.

28 (y) (i) The juvenile court may enter an order of permanent custody and guardianship with
29 a relative or individual of a minor where the court has previously acquired jurisdiction as a result
30 of an adjudication of abuse, neglect, or dependency, excluding cases arising under Subsection
31 78-3a-105(4).

1 (ii) Such orders remain in effect until the minor reaches majority and are not subject to
2 review under Section 78-3a-119, but may be modified by petition or motion as provided in Section
3 78-3a-903.

4 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
5 permanent orders of custody and guardianship do not expire with a termination of jurisdiction of
6 the juvenile court.

7 Section 26. Section **78-3a-301** is amended to read:

8 **78-3a-301. Removing a child from his home -- Grounds for removal.**

9 (1) The Division of Child and Family Services may not remove a child from the custody
10 of his natural parent unless there is substantial cause to believe that any one of the following exist:

11 (a) there is a substantial danger to the physical health or safety of the minor and the
12 minor's physical health or safety may not be protected without removing him from his parent's
13 custody. If a minor has previously been adjudicated as abused, neglected, or dependent, and a
14 subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie
15 evidence that the child cannot safely remain in the custody of his parent;

16 (b) the minor is suffering emotional damage, as may be indicated by, but not limited to,
17 extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,
18 and there are no reasonable means available by which the minor's emotional health may be
19 protected without removing the minor from the custody of his parent;

20 (c) the minor or another minor residing in the same household has been physically or
21 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
22 a parent, a member of the parent's household, or other person known to the parent. If a parent has
23 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
24 and there is evidence that the parent has allowed the child to be in the physical presence of the
25 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
26 being physically or sexually abused;

27 (d) the parent is unwilling to have physical custody of the child;

28 (e) the minor has been left without any provision for his support;

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

31 (g) a relative or other adult custodian with whom the minor has been left by the parent is

1 unwilling or unable to provide care or support for the minor, the whereabouts of the parent are
2 unknown, and reasonable efforts to locate him have been unsuccessful;

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

4 (i) the physical environment or the fact that the child is left unattended poses a threat to
5 the child's health or safety;

6 (j) the minor or another minor residing in the same household has been [severely]
7 neglected; [or]

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

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

13 [~~(k)~~] (m) the child's welfare is otherwise endangered, as documented by the caseworker.

14 (2) The Division of Child and Family Services may not remove a minor from the custody
15 of his natural parent solely on the basis of educational neglect.

16 (3) (a) A minor removed from the custody of his natural parent under this section may not
17 be placed or kept in a secure detention facility pending court proceedings unless the minor is
18 detainable based on guidelines promulgated by the Division of Youth Corrections.

19 (b) A minor removed from the custody of his natural parent but who does not require
20 physical restriction shall be given temporary care in a shelter facility.

21 Section 27. Section **78-3a-305** is amended to read:

22 **78-3a-305. Petition filed -- Protective orders.**

23 (1) Any interested [~~party~~] person may file a petition to commence proceedings in the
24 juvenile court alleging that a minor is abused, neglected, or dependent.

25 (2) Any interested person may file a petition seeking a protective order on behalf of a
26 minor who is alleged to be an abused child or a neglected child, except as provided in Sections
27 78-3a-104 and 78-3a-105.

28 [~~(2)~~] (3) If the child who is the subject of a petition was removed from his home by the
29 Division of Child and Family Services that petition shall be filed on or before the date of the initial
30 shelter hearing described in Section 78-3a-306.

31 [~~(3)~~] (4) The petition shall be verified, and contain all of the following:

1 (a) the name, age, and address, if any, of the minor upon whose behalf the petition is
2 brought;

3 (b) the names and addresses, if known to the petitioner, of both parents and any guardian
4 of the minor;

5 (c) a concise statement of facts, separately stated, to support the conclusion that the minor
6 upon whose behalf the petition is being brought is abused, neglected, or dependent; and

7 (d) a statement regarding whether the minor is in protective custody, and if so, the date and
8 precise time the minor was taken into protective custody.

9 Section 28. Section **78-3a-305.1** is enacted to read:

10 **78-3a-305.1. Presumption of Responsibility.**

11 In determining whether a minor is an abused child or neglected child it may be presumed
12 that the person having the minor under his direct and exclusive care and control at the time of the
13 abuse is responsible for the abuse or neglect.

14 Section 29. Section **78-3a-306** is amended to read:

15 **78-3a-306. Shelter hearing.**

16 (1) [A] With regard to a child who has been removed by the Division of Child and Family
17 Services, or who is in the protective custody of the division, a shelter hearing shall be held within
18 72 hours after removal of [a] the child from his home, excluding weekends and holidays.

19 (2) Upon removal of a child from his home and receipt of that child into protective
20 custody, the division shall issue a notice that contains all of the following:

21 (a) the name and address of the person to whom the notice is directed;

22 (b) the date, time, and place of the shelter hearing;

23 (c) the name of the minor on whose behalf a petition is being brought;

24 (d) a concise statement regarding the allegations and code sections under which the
25 proceeding has been instituted;

26 (e) a statement that the parent or guardian to whom notice is given, and the minor, are
27 entitled to have an attorney present at the shelter hearing, and that if the parent or guardian is
28 indigent and cannot afford an attorney, and desires to be represented by an attorney, one will be
29 provided; and

30 (f) a statement that the parent or guardian is liable for the cost of support of the minor in
31 the protective custody, temporary custody, and custody of the division, and the cost for legal

1 counsel appointed for the parent or guardian under Subsection (2)(e), according to his financial
2 ability.

3 (3) That notice shall be personally served as soon as possible, but at least 24 hours prior
4 to the time set for the shelter hearing, on:

5 (a) the appropriate guardian ad litem; and

6 (b) both parents and any guardian of the minor, unless they cannot be located.

7 (4) The following persons shall be present at the shelter hearing:

8 (a) the child, unless it would be detrimental for the child;

9 (b) the child's parents or guardian, unless they cannot be located, or fail to appear in
10 response to the notice;

11 (c) counsel for the parents, if one has been requested;

12 (d) the child's guardian ad litem;

13 (e) the caseworker from the Division of Child and Family Services who has been assigned
14 to the case; and

15 (f) the attorney from the attorney general's office who is representing the division.

16 (5) (a) At the shelter hearing, the court shall provide an opportunity for the minor's parent
17 or guardian, if present, and any other person having relevant knowledge, to provide relevant
18 testimony. The court may also provide an opportunity for the minor to testify.

19 (b) The court may consider all relevant evidence, in accordance with the Utah Rules of
20 Juvenile Procedure. The court shall hear relevant evidence presented by the minor, his parent or
21 guardian, the requesting party, or their counsel, but may in its discretion limit testimony and
22 evidence to only that which goes to the issues of removal and the child's need for continued
23 protection.

24 (6) If the child is in the protective custody of the division, the division shall report to the
25 court:

26 (a) the reasons why the minor was removed from the parent's or guardian's custody;

27 (b) any services provided to the child and his family in an effort to prevent removal;

28 (c) the need, if any, for continued shelter;

29 (d) the available services that could facilitate the return of the minor to the custody of his
30 parent or guardian; and

31 (e) whether the child has any relatives who may be able and willing to take temporary

1 custody.

2 (7) If necessary to protect the child, preserve the rights of a party, or for other good cause
3 shown, the court may grant no more than one time-limited continuance, not to exceed five judicial
4 days.

5 (8) The court shall order that the minor be released from the protective custody of the
6 division unless it finds, by a preponderance of the evidence, that any one of the following exist:

7 (a) there is a substantial danger to the physical health or safety of the minor and the
8 minor's physical health or safety may not be protected without removing him from his parent's
9 custody. If a minor has previously been adjudicated as abused, neglected, or dependent and a
10 subsequent incident of abuse, neglect, or dependency occurs, that fact constitutes prima facie
11 evidence that the child cannot safely remain in the custody of his parent;

12 (b) the minor is suffering emotional damage, as may be indicated by, but is not limited to,
13 extreme anxiety, depression, withdrawal, or negative aggressive behavior toward self or others,
14 and there are no reasonable means available by which the minor's emotional health may be
15 protected without removing the minor from the custody of his parent;

16 (c) the minor or another minor residing in the same household has been physically or
17 sexually abused, or is deemed to be at substantial risk of being physically or sexually abused, by
18 a parent, a member of the parent's household, or other person known to the parent. If a parent has
19 received actual notice that physical or sexual abuse by a person known to the parent has occurred,
20 and there is evidence that the parent has allowed the child to be in the physical presence of the
21 alleged abuser, that fact constitutes prima facie evidence that the child is at substantial risk of
22 being physically or sexually abused;

23 (d) the parent is unwilling to have physical custody of the child;

24 (e) the minor has been left without any provision for his support;

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

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

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

31 (i) the physical environment or the fact that the child is left unattended poses a threat to

1 the child's health or safety;

2 (j) the minor or another minor residing in the same household has been [severely]
3 neglected; [or]

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

8 [(k)] (l) the child's welfare is otherwise endangered.

9 (9) (a) The court shall also make a determination on the record as to whether reasonable
10 efforts were made to prevent or eliminate the need for removal of the minor from his home and
11 whether there are available services that would prevent the need for continued removal. If the
12 court finds that the minor can be safely returned to the custody of his parent or guardian through
13 the provision of those services, it shall place the minor with his parent or guardian and order that
14 those services be provided by the division.

15 (b) In making that determination, and in ordering and providing services, the child's health
16 h [and] , h safety h , AND WELFARE h shall be the paramount concern, in accordance with federal
16a law.

17 (10) Where the division's first contact with the family occurred during an emergency
18 situation in which the child could not safely remain at home, [~~even with reasonable services being~~
19 ~~provided;~~] the court shall make a finding that any lack of preplacement preventive efforts was
20 [~~reasonable~~] appropriate.

21 (11) In cases where obvious sexual abuse or abandonment, or serious physical abuse or
22 neglect are involved, neither the division nor the court has any duty to make "reasonable efforts"
23 or to, in any other way, attempt to maintain a child in his home, return a child to his home, provide
24 reunification services, or attempt to rehabilitate the offending parent or parents. [The court may,
25 however, determine that those services or efforts would be reasonable in specific circumstances,
26 and order the division to provide those services.]

27 (12) The court may not order continued removal of a minor solely on the basis of
28 educational neglect as described in Subsection 78-3a-103(1)(q)(ii).

29 (13) (a) Whenever a court orders continued removal of a minor under this section, it shall
30 state the facts on which that decision is based.

31 (b) If no continued removal is ordered and the minor is returned home, the court shall state

1 the facts on which that decision is based.

2 (14) If the court finds that continued removal and temporary custody is necessary for the
3 protection of a child because harm may result to the child if he were returned home, it shall order
4 continued removal regardless of any error in the initial removal of the child, or the failure of a
5 party to comply with notice provisions, or any other procedural requirement of this chapter or Title
6 62A, Chapter 4a, Family Services.

7 Section 30. Section **78-3a-307** is amended to read:

8 **78-3a-307. Shelter hearing -- Placement with a noncustodial parent or relative --**
9 **DCFS custody.**

10 (1) (a) At the shelter hearing, when the court orders that a child be removed from the
11 custody of his parent in accordance with the requirements of Section 78-3a-306, the court shall
12 first determine whether [there is] reasonable efforts have been made to identify or locate and
13 provide notice to another natural parent as defined in Subsection (b), with whom the child was not
14 residing at the time the events or conditions that brought him within the court's jurisdiction
15 occurred, who desires to assume custody of the child. If that parent requests custody, the court
16 shall place the minor with that parent unless it finds that the placement would be unsafe or
17 otherwise detrimental to the child. The provisions of this Subsection (1) are limited by the
18 provisions of Subsection (8)[(b)].

19 (b) Notwithstanding the provisions of Section 78-3a-103, for purposes of this section
20 "natural parent" includes only a biological or adoptive parent [~~whose consent for adoption would~~
21 ~~be required pursuant to Section 78-30-4.14]~~ who was married to the child's biological mother at
22 the time the child was conceived or born, or who has strictly complied with the provisions of
23 Section 78-30-4.14 prior to removal of the child or voluntary surrender of the child by the
24 custodial parent. This definition applies regardless of whether the child has been or will be placed
25 with adoptive parents or whether adoption has been or will be considered as a long term goal for
26 the child.

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

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

1 by the division regarding the parent at issue.

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

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

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

7 (2) If the court orders placement with a parent under Subsection (1), the child and the
8 parent are under the continuing jurisdiction of the court. The court may order that the parent
9 assume custody subject to the supervision of the court, and order that services be provided to the
10 parent from whose custody the child was removed, the parent who has assumed custody, or both.
11 The court may also provide for reasonable visitation with the parent from whose custody the child
12 was removed, if that is in the best interest of the child. The court's order shall be periodically
13 reviewed to determine whether:

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

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

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

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

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

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

24 (5) (a) If, at the time of the shelter hearing, a child is removed from the custody of his
25 parent and is not placed in the custody of his other parent, the court shall, at that time, attempt to
26 determine whether there is a relative who is able and willing to care for the child. The court may
27 order the Division of Child and Family Services to conduct a reasonable search to determine
28 whether there are relatives of the child who are willing and appropriate, in accordance with the
29 requirements of this part and Title 62A, Chapter 4a, Part 2, Child Welfare Services, for placement
30 of the child. The child may be placed in the temporary custody of the division pending that
31 determination. This section may not be construed as a guarantee that an identified relative will

1 receive custody of the child. However, preferential consideration may be given to a relative's
2 request for placement of the child, if it is in the best interest of the child, and the provisions of this
3 section are satisfied.

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

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

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

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

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

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

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

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

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

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

30 (d) For purposes of this section, "relative" means an adult who is a grandparent, aunt,
31 uncle, or sibling of the child.

1 (e) Any preferential consideration that a relative may be initially granted pursuant to this
2 subsection expires 30 days from the date of the shelter hearing. After that time period has expired,
3 a relative who has not obtained custody or asserted an interest in the child may not be granted
4 preferential consideration by the division or the court.

5 (6) (a) When the court vests physical custody of a child with a relative pursuant to
6 Subsection (5), it shall order that the relative assume custody subject to the continuing supervision
7 of the court, and shall order that any necessary services be provided to the minor and the relative.
8 That [placement] child is not within the temporary custody or custody of the Division of Child and
9 Family Services. The child and any relative with whom the child is placed are under the
10 continuing jurisdiction of the court. The court may enter any order that it considers necessary for
11 the protection and best interest of the child.

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

14 [(a)] (A) placement with the relative continues to be in the child's best interest;

15 [(b)] (B) the child should be returned home; or

16 [(c)] (C) the child should be placed in the custody of the division.

17 ~~[(7) (a) When the court vests custody of a child with a relative pursuant to Subsection (5),~~
18 ~~the child is not within the temporary custody or custody of the Division of Child and Family~~
19 ~~Services. The child and any relative with whom the child is placed, are under the continuing~~
20 ~~jurisdiction of the court. The court may enter any order that it considers necessary for the~~
21 ~~protection and best interest of the child.]~~

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

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

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

1 ~~[(8) (a) Any preferential consideration that a relative may be initially granted pursuant to~~
 2 ~~Subsection (5) expires 30 days from the date of the shelter hearing. After that time period has~~
 3 ~~expired, a relative who has not obtained custody or asserted an interest in a child, may not be~~
 4 ~~granted preferential consideration by the division or the court.]~~

5 ~~[(b)] (8) When a period of 30 days from the date of the shelter hearing has expired, the~~
 6 ~~preferential consideration which may initially be granted to a natural parent in accordance with~~
 7 ~~Subsection (1), is limited. After that time the court shall base its custody decision on the best~~
 8 ~~interest of the child. [The court shall take into consideration:]~~

9 ~~[(i) the extent of the natural parent's relationship with the child;]~~

10 ~~[(ii) whether the natural parent had actual knowledge of the child's removal from the other~~
 11 ~~parent's custody;]~~

12 ~~[(iii) whether, in the past, the natural parent has participated in raising the child by taking~~
 13 ~~responsibility for the child, maintaining a relationship with the child, and financially supporting~~
 14 ~~the child in accordance with the parent's abilities; and]~~

15 ~~[(iv) the nature and extent of the child's relationships and well-being in his current~~
 16 ~~placement.]~~

17 Section 31. Section **78-3a-311** is amended to read:

18 **78-3a-311. Dispositional hearing -- Reunification services -- Exceptions.**

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

22 (2) (a) Whenever the court orders continued removal at the dispositional hearing, and that
 23 the minor remain in the custody of the Division of Child and Family Services, it shall first
 24 determine whether reunification services are appropriate for the child and the child's family,
 25 pursuant to Subsection (3). In cases where obvious sexual abuse [or], abandonment, or serious
 26 physical abuse or neglect are involved, neither the division nor the court has any duty to make
 27 "reasonable efforts" or to, in any other way, attempt to provide reunification services, or to attempt
 28 to rehabilitate the offending parent or parents. In all cases, the child's health ^h [and] , ^h safety
 28a ^h , AND WELFARE ^h shall be
 29 the court's paramount concern in determining whether reasonable efforts to reunify should be
 30 made.

31 (b) If the court determines that reunification services are appropriate, [however;] it shall

1 order that the division make reasonable efforts to provide services to the minor and his parent for
2 the purpose of facilitating reunification of the family, for a specified period of time. ~~[That]~~ In
3 providing those services, the child's health ~~h~~ **[and]** ~~h~~ safety ~~h~~ , **AND WELFARE ~~h~~** shall be the
3a division's paramount concern,
4 and the court shall so order. The time period for reunification services may not exceed 12 months
5 from the date that the child was initially removed from his home. Nothing in this section may be
6 construed to entitle any parent to an entire 12 months of reunification services. If reunification
7 services have been ordered, the court may terminate those services at any time. ~~If, at any time,~~
8 continuation of reasonable efforts to reunify a child is determined to be inconsistent with the
9 permanency plan for the child, then measures shall be taken, in a timely manner, to place the child
10 in accordance with the permanency plan, and to complete whatever steps are necessary to finalize
11 the permanent placement of the child.

12 ~~[(b)]~~ (c) Any physical custody of the minor by the parent or a relative during the period
13 described in Subsection ~~[(a)]~~ (b) does not interrupt the running of the period.

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

18 (ii) If reunification services have not been ordered, a permanency hearing shall be
19 conducted within ~~[90]~~ 30 days, in accordance with Section 78-3a-312.

20 ~~[(d)]~~ (e) With regard to a child who is two years of age or younger at the time the court
21 orders reunification services, the court shall order the discontinuance of those services after six
22 months if the parent or parents have not made substantial efforts to comply with the treatment plan.
23 The burden is upon the parents, and the division if it supports continued reunification services, to
24 show that the parents have made substantial efforts to comply with the plan during the first six
25 months of reunification services.

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

30 (3) (a) Because of the state's interest in and responsibility to protect and provide
31 permanency for children who are abused, neglected, or dependent, the Legislature finds that a

1 parent's interest in receiving reunification services is limited. The court may, under any
2 circumstances, determine that efforts to reunify a child with his family are not reasonable or
3 appropriate, based on the individual circumstances, and that reunification services should not be
4 provided. In determining "reasonable efforts" to be made with respect to a child and in making
5 "reasonable efforts," the child's health **h** [and] , **h** safety **h** , AND WELFARE **h** shall be the paramount
5a concern.

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

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

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

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

18 (iv) the parent has ~~[been convicted of causing]~~ caused the death of another child through
19 abuse or neglect or has committed, aided, abetted, attempted, conspired, or solicited to commit
20 murder or manslaughter of a child or child abuse homicide;

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

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

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

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

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

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

1 (4) (a) Failure of the parent to respond to previous services or comply with any previous
2 treatment plan, the fact that the child was abused while the parent was under the influence of drugs
3 or alcohol, a past history of violent behavior, whether a parent continues to live with an individual
4 who abused the child, any patterns of the parent's behavior that have exposed the child to repeated
5 abuse, or testimony by a competent professional that the parent's behavior is unlikely to be
6 successful, shall be considered in determining whether reunification services are appropriate.

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

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

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

23 (7) If, pursuant to Subsection (3)(b)(ii), (iii), (iv),(v), (vi), (vii), (viii), (ix), or (x), the court
24 does not order reunification services, a permanency hearing shall be conducted within 90 days, in
25 accordance with Section 78-3a-312.

26 Section 32. Section **78-3a-312** is amended to read:

27 **78-3a-312. Permanency hearing -- Final plan -- Petition for termination of parental**
28 **rights filed -- Hearing on termination of parental rights.**

29 (1) [A] (a) When reunification services have been ordered in accordance with Section
30 78-3a-311, with regard to a child who is in the custody of the Division of Child and Family
31 Services, a permanency hearing shall be held by the court no later than 12 months after the original

1 removal of the child.

2 (b) When no reunification services were ordered at the dispositional hearing, a permanency
3 hearing shall be held within 30 days from the date of the dispositional hearing.

4 (2) (a) If reunification services were ordered by the court in accordance with Section
5 78-3a-311, the court shall, at the permanency hearing, determine whether the child may safely be
6 returned to the custody of his parent. If the court finds, by a preponderance of the evidence, that
7 return of the child would create a substantial risk of detriment to the child's physical or emotional
8 well-being, the child may not be returned to the custody of his parent. The failure of a parent or
9 guardian to participate in, comply with, in whole or in part, or to meet the goals of a court
10 approved treatment plan constitutes prima facie evidence that return of the child to that parent
11 would create a substantial risk of detriment.

12 (b) In making a determination under this [section] Subsection (2), the court shall review
13 the report prepared by the Division of Child and Family Services, a report prepared by the child's
14 guardian ad litem, any report prepared by a foster care citizen review board pursuant to Section
15 78-3g-103, any evidence regarding the efforts or progress demonstrated by the parent, and the
16 extent to which the parent cooperated and availed himself of services provided.

17 ~~[(c) The court shall determine whether reasonable services have been offered or provided~~
18 ~~to the parent or guardian.]~~

19 (3) (a) ~~[If]~~ With regard to a case where reunification services were ordered by the court,
20 if a child is not returned to his parent or guardian at the permanency hearing, the court shall order
21 termination of reunification services to the parent, and make a final determination regarding
22 whether termination of parental rights, adoption, guardianship, or long-term foster care is the most
23 appropriate final plan for the child. If the child clearly desires contact with the parent, the court
24 shall take the child's desire into consideration in determining the final plan. The court may not
25 extend reunification services beyond 12 months from the date the child was initially removed from
26 his home, in accordance with the provisions of Section 78-3a-311. Delay or failure of a parent to
27 establish paternity or seek custody does not provide a basis for the court to extend services for that
28 parent beyond that 12 month period.

29 (b) The court may, in its discretion, enter any ~~[other]~~ additional order that it determines
30 to be in the best interest of the child, so long as that order does not conflict with the requirements
31 and provisions of Subsection (a). The court may order the division to provide protective

1 supervision or other services to a child and the child's family after the division's custody of a child
2 has been terminated.

3 (4) If the final plan for the child is to proceed toward termination of parental rights, the
4 petition for termination of parental rights shall be filed, and a pretrial held, within 45 calendar days
5 after the permanency hearing.

6 (5) Any party to an action may, at any time, petition the court for an expedited permanency
7 hearing on the basis that continuation of reunification efforts are inconsistent with the permanency
8 plan for the child. If the court so determines, it shall order, in accordance with federal law, that
9 the child be placed in accordance with the permanency plan, and that whatever steps are necessary
10 to finalize the permanent placement of the child be completed as quickly as possible.

11 (6) Nothing in this section may be construed to:

12 (a) entitle any parent to reunification services for any specified period of time;

13 (b) limit a court's ability to terminate reunification services at any time prior to a
14 permanency hearing; or

15 (c) limit or prohibit the filing of a petition for termination of parental rights by any party,
16 or a hearing on termination of parental rights, at any time prior to a permanency hearing. If a
17 petition for termination of parental rights is filed prior to the date scheduled for a permanency
18 hearing, the court may schedule the hearing on termination of parental rights in lieu of the
19 permanency hearing; combine the permanency hearing and the hearing on termination of parental
20 rights; or schedule the hearings separately. If the court schedules the hearing on termination of
21 parental rights in lieu of the permanency hearing, any reunification services shall be terminated
22 in accordance with the time lines described in Section 78-3a-311, a determination regarding the
23 permanency of the child shall be made within 18 months from the date of the child's removal.

24 Section 33. Section **78-3a-313.5** is enacted to read:

25 **78-3a-313.5. Mandatory petition for termination of parental rights.**

26 (1) For purposes of this section, "abandoned infant" means a child who is 12 months of
27 age or younger whose parent or parents:

28 (a) although having legal custody of the child, fail to maintain physical custody of the
29 child without making arrangements for the care of the child;

30 (b) have failed to maintain physical custody, and have failed to exhibit the normal interest
31 of a natural parent without just cause;

1 (c) are unwilling to have physical custody of the child; or

2 (d) have left the child without proper parental care, by reason of the fault or habits of the
3 parent.

4 (2) Notwithstanding any other provision of this chapter or of Title 62A, Chapter 4a, the
5 division shall file a petition for termination of parental rights with regard to:

6 (a) an abandoned infant; or

7 (b) a parent, whenever a court has determined that the parent has:

8 (i) committed murder or child abuse homicide of another child of that parent;

9 (ii) committed voluntary manslaughter of another child of that parent;

10 (iii) aided, abetted, attempted, conspired, or solicited to commit murder, child abuse
11 homicide, or voluntary manslaughter against another child of that parent; or

12 (iv) committed a felony assault or abuse that has resulted in serious physical injury to
13 another child of that parent, or to the other parent of that child.

14 Section 34. Section **78-3a-314** is amended to read:

15 **78-3a-314. All proceedings -- Persons entitled to be present.**

16 (1) A [~~minor~~] child who is the subject of a juvenile court hearing [~~and~~], any person entitled
17 to notice pursuant to Section 78-3a-306 or 78-3a-309, [~~is~~] preadoptive parents, and any relative
18 providing care for the child, are entitled to notice [~~and~~], to be present at each hearing held under
19 this part, including administrative and citizen reviews, and are entitled to an opportunity to be
20 heard.

21 (2) Because the [~~minor's~~] child's foster parents have the right to notice, pursuant to Section
22 78-3a-309, they have the right to be present at each and every hearing held under this part
23 including administrative and citizen reviews, and are entitled to an opportunity to be heard.

24 (3) A [~~minor~~] child shall be represented at each hearing by the guardian ad litem appointed
25 to his case by the court. The [~~minor~~] child has a right to be present at each hearing, subject to the
26 discretion of the guardian ad litem or the court regarding any possible detriment to the child.

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

29 (b) When it appears to the court that a parent or guardian of the [~~minor~~] child desires
30 counsel but is financially unable to afford and cannot for that reason employ counsel, and the
31 [~~minor~~] child has been placed in out-of-home care, or the petitioner is recommending that the

1 [minor] child be placed in out-of-home care, the court shall appoint counsel.

2 (5) In every abuse, neglect, or dependency proceeding under this chapter, the court shall
3 order that the [minor] child be represented by a guardian ad litem, in accordance with Section
4 78-3a-912. The guardian ad litem shall represent the best interest of the child, in accordance with
5 the requirements of that section, at the shelter hearing and at all subsequent court and
6 administrative proceedings, including any proceeding for termination of parental rights in
7 accordance with Part 4, Termination of Parental Rights Act.

8 (6) Notwithstanding any other provision of law, counsel for all parties to the action shall
9 be given access to all records, maintained by the division or any other state or local public agency,
10 that are relevant to the abuse, neglect, or dependency proceeding under this chapter. If the natural
11 parent of a child is representing himself, he shall have access to those records.

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

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

17 Section 35. Section **78-3a-350** is amended to read:

18 **78-3a-350. Separate procedures for minors committed to the Division of Child and**
19 **Family Services on grounds other than abuse or neglect -- Attorney general responsibility.**

20 (1) The processes and procedures described in Part 3, Abuse, Neglect, and Dependency
21 Proceedings, designed to meet the needs of minors who are abused or neglected, are not applicable
22 to a minor who is committed to the custody of the Division of Child and Family Services on a
23 basis other than abuse or neglect and who are classified in the division's management information
24 system as having been placed in custody primarily on the basis of delinquent behavior or a status
25 offense.

26 (2) The procedures described in Subsection 78-3a-119(2)(a) are applicable to the minors
27 described in Subsection (1).

28 (3) The court may appoint a guardian ad litem to represent the interests of a minor
29 described in Subsection (1).

30 (4) As of July 1, 1998, the attorney general's office shall represent the Division of Child
31 and Family Services with regard to actions involving minors who have not been adjudicated as

1 abused or neglected, but who are otherwise committed to the custody of the division by the
2 juvenile court, and who are classified in the division's management information system as having
3 been placed in custody primarily on the bases of delinquent behavior or a status offense. Nothing
4 in this Subsection (4) may be construed to affect the responsibility of the county attorney or district
5 attorney to represent the state in those matters, in accordance with the provisions of Section
6 78-3a-116.

7 Section 36. Section **78-3a-408** is amended to read:

8 **78-3a-408. Evidence of grounds for termination.**

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

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

15 (b) have failed to communicate with the child by mail, telephone, or otherwise for six
16 months; [or]

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

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

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

21 (a) emotional illness, mental illness, or mental deficiency of the parent that renders him
22 unable to care for the immediate and continuing physical or emotional needs of the child for
23 extended periods of time;

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

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

28 (d) repeated or continuous failure to provide the child with adequate food, clothing,
29 shelter, education, or other care necessary for his physical, mental, and emotional health and
30 development by a parent or parents who are capable of providing that care. However, a parent
31 who, legitimately practicing his religious beliefs, does not provide specified medical treatment for

1 a child is not for that reason alone a negligent or unfit parent;

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

5 (f) a history of violent behavior.

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

10 (4) The following circumstances constitute prima facie evidence of unfitness:

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

13 (b) conviction of a [~~felony~~] crime, if the facts [~~of~~] surrounding the crime are of such a
14 nature as to indicate the unfitness of the parent to provide adequate care to the extent necessary for
15 the child's physical, mental, or emotional health and development; [~~or~~]

16 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement of
17 the child[-]; or

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

20 Section 37. Section **78-3a-903** is amended to read:

21 **78-3a-903. Modification or termination of custody order or decree -- Grounds --**

22 **Procedure.**

23 (1) A parent, guardian, or next friend of a minor whose legal custody has been transferred
24 by the court to an individual, agency, or institution, except a secure youth corrections facility, may
25 petition the court for restoration of custody or other modification or revocation of the [~~decree~~]
26 court's order, on the ground that a change of circumstances has occurred which requires such
27 modification or revocation in the best interest of the minor or the public.

28 (2) The court shall make a preliminary investigation. If the court finds that the alleged
29 change of circumstances, if proved, would not affect the decree, it may dismiss the petition. If the
30 court finds that a further examination of the facts is needed, or if the court on its own motion
31 determines that the decree should be reviewed, it shall conduct a hearing. Notice shall be given

1 to all persons concerned. At the hearing, the court may enter an order continuing, modifying, or
2 terminating the decree.

3 (3) A petition by a parent may not be filed under this section after his or her parental rights
4 have been terminated in accordance with Part 4, Termination of Parental Rights Act.

5 (4) An individual, agency, or institution vested with legal custody of a minor may petition
6 the court for a modification of the custody order on the ground that the change is necessary for the
7 welfare of the minor or in the public interest. The court shall proceed upon the petition in
8 accordance with Subsections (1) and (2).

9 Section 38. Section **78-3g-103** is amended to read:

10 **78-3g-103. Foster care citizen review boards -- Membership -- Responsibilities --**
11 **Periodic reviews.**

12 (1) Foster care citizen review boards shall be established in the First, Second, Third, and
13 Fourth Juvenile Court Districts, to act as the panels described in 42 U.S.C. Sections 675(5) and
14 (6), which are required to conduct periodic reviews unless court reviews are conducted. At least
15 one review board shall be established in the Fifth Juvenile Court District and at least one review
16 board shall be established in the Seventh Juvenile Court District.

17 (2) (a) The committee shall appoint seven members to each board. Five of those members
18 shall be parents.

19 (b) Five members of a board constitute a quorum, and an action of a majority of the
20 quorum constitutes the action of the board.

21 (c) A board member may not be an employee of the division or the juvenile court.

22 (d) Board members shall be representative of the ethnic, cultural, religious,
23 socio-economic, and professional diversity found in the community.

24 (e) A board may elect its own chair, vice chair, and other officers as it considers
25 appropriate.

26 (f) The division may designate a representative to provide technical advice to the board
27 regarding division policy and procedure.

28 (3) With regard to each child in its custody, the division shall provide the appropriate
29 boards with access to all records maintained by the division.

30 (4) (a) In districts or areas where foster care citizen review boards have been established,
31 periodic reviews either by the court or by a foster care citizen review board, shall be conducted

1 with regard to each child in the division's custody no less frequently than once every six months,
2 in accordance with Section 78-3a-313 and 42 U.S.C. Sections 675(5) and (6). In cases where the
3 court has conducted a six month review hearing, a foster care citizen review board shall also
4 conduct a review within 12 months from the date of the child's removal from his home.

5 (b) [Periodic] In accordance with federal law and with Subsection 78-3a-314(1), periodic
6 reviews conducted by foster care citizen review boards shall be open to the participation of the
7 child's natural parents, [in accordance with 42 U.S.C. Section 675(6)] foster parents, preadoptive
8 parents, and any relative providing care for the child. Notice shall be provided to those persons
9 pursuant to Subsection 78-3a-314(1).

10 (c) Boards may review additional abuse, neglect, or dependency cases or plans at the
11 request of the court.

12 (5) Each board shall prepare a dispositional report regarding the child's case and plan. The
13 periodic review and the dispositional report shall be consistent with the provisions of Title 62A,
14 Chapter 4a, Family Services, and Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
15 Proceedings, and shall include at least the following considerations:

16 (a) the extent to which the plan's objectives have been implemented or accomplished by
17 the parent, the child, and the division;

18 (b) whether revisions to the plan are needed, and if so, how the plan should be revised;

19 (c) the extent to which the division has provided the services and interventions described
20 in the plan, and whether those services and interventions are assisting, or will assist, the parent and
21 child to achieve the plan's objectives within the statutory time limitations;

22 (d) the extent to which the parent and child have willingly and actively participated in the
23 interventions described in the plan;

24 (e) the continuing necessity for and appropriateness of the child's placement;

25 (f) the extent of progress that has been made toward alleviating or mitigating the causes
26 necessitating the child's removal or continued placement;

27 (g) a recommended permanency plan for the child and, if one has been established, an
28 opinion regarding the appropriateness of that permanency plan; and

29 (h) a determination regarding whether the statutory time limitations described in Title 78,
30 Chapter 3a, Part 3, have been met, specifically, whether the 12 month limitation on reunification
31 services required by Section 78-3a-311 has been complied with. The board shall also render an

1 opinion regarding when it estimates that the child will achieve permanency.

2 (6) (a) Each board shall submit its dispositional report to the court, the division, and to all
3 parties to an action within 30 days after a case is reviewed by the board.

4 (b) The board's dispositional report shall be filed with the court, and shall be made a part
5 of the court's legal file. The dispositional report shall be received and reviewed by the court in the
6 same manner as the court receives and reviews the reports described in Section 78-3a-505. Foster
7 care citizen review board dispositional reports may be received as evidence, and may be
8 considered by the court along with other evidence. The court may require any person who
9 participated in the dispositional report to appear as a witness if the person is reasonably available.

10 (7) Members of boards may not receive financial compensation or benefits for their
11 services. Members may not receive per diem or expenses for their service, except that:

12 (a) members may be reimbursed for mileage on days that they are involved in training, at
13 rates established by the Division of Finance; and

14 (b) members may be provided with a meal on days that they serve on a board.

15 (8) Boards are authorized to receive funds from public and private grants and donations
16 in accordance with the requirements described in Subsection 78-3g-102(8).

17 (9) In districts or areas where foster care citizen review boards have not been established,
18 either the court or the Division of Child and Family Services shall conduct the reviews in
19 accordance with the provisions of Subsections (4)(a) and (b), and Section 78-3a-313.

20 Section 39. Section **78-45a-5** is amended to read:

21 **78-45a-5. Remedies.**

22 (1) (a) The district court [has] and the juvenile court have jurisdiction of an action to
23 establish paternity, in accordance with the provisions of Section 78-3a-105. [AH]

24 (b) Except as provided in Section 78-3a-105, the district court has jurisdiction over all
25 remedies for enforcement of judgments for expenses of pregnancy and confinement for a wife or
26 for education, necessary support, or funeral expenses for legitimate children [~~shall apply~~]. The
27 appropriate court has continuing jurisdiction to modify or revoke a judgment for future education
28 and necessary support. All remedies under Title 78, Chapter 45f, Uniform Interstate Family
29 Support Act, are available for enforcement of duties of support under this chapter.

30 (2) (a) The obligee may enforce his right of support against the obligor and the state may
31 proceed on behalf of the obligee or in its own behalf, pursuant to the provisions of Title 62A,

1 Chapter 11, Recovery Services, to enforce that right of support against the obligor.

2 (b) The provisions of Title 62A, Chapter 11, Recovery Services, apply in all actions by
3 the state.

4 (c) Whenever the state commences an action under this chapter, it shall be the duty of the
5 attorney general or the county attorney of the county where the obligee resides to represent the
6 state. Neither the attorney general nor the county attorney represents or has an attorney-client
7 relationship with the obligee or the obligor, in carrying out his responsibilities under this chapter.

8 (3) Upon motion by a party, the district court shall issue a temporary order in a paternity
9 action to require the payment of child support pending a determination of paternity if there is clear
10 and convincing evidence of paternity in the form of genetic test results under Section 78-45a-7 or
11 78-45a-10, or other evidence.

12 (4) The court may enter an order awarding costs, attorney fees, and witness fees in the
13 manner prescribed by Section 30-3-3 upon a judgment or acknowledgment of paternity.

14 (5) Rule 55, Default Judgment, Utah Rules of Civil Procedure, applies to paternity actions
15 commenced under this chapter.

16 Section 40. **Uncodified Section 42, Chapter 329, Laws Of Utah 1997** is amended to
17 read:

18 Section 42. **Early Intervention for Juveniles Pilot Program -- Appropriation.**

19 (1) The Division of Child and Family Services and the probation department shall
20 establish, within the counties served by the Third, Fourth, Fifth, and Sixth District Juvenile Courts,
21 an Early Intervention for Juveniles Pilot Program that offers time limited, intensive treatment,
22 including youth services, as defined in Section 62A-4a-101, as an alternative to out-of-home
23 placement for ungovernable minors and juvenile offenders who:

24 (a) (i) are in the custody of the Division of Child and Family Services or under the
25 protective supervision of the division and who, absent the pilot program, would be in out-of-home
26 care; or

27 (ii) are under the supervision of the probation department;

28 (b) have been determined to be ungovernable, or who have not complied with the terms of
29 judicial orders issued before placement in the pilot project, including requirements of probation
30 ordered under Section 78-3a-118;

31 (c) require continual supervision and intensive therapeutic intervention, but not secure

1 confinement; and

2 (d) are likely to succeed in the pilot program based on an expressed commitment of the
3 child and his family to fully participate in and comply with the program's requirements.

4 (2) The pilot program shall provide intensive services and interventions that include, but
5 are not limited to:

6 (a) electronically monitored home detention;

7 (b) psychological assessment provided by or supervised by licensed mental health
8 professionals;

9 (c) individual, family, and group psychotherapy conducted by or supervised by licensed
10 mental health professionals;

11 (d) skills training, including problem solving and conflict resolution skills, parenting and
12 discipline skills, and communication skills;

13 (e) academic assessment and intervention;

14 (f) academic placement, and individual tutoring or alterative education programs when
15 appropriate; and

16 (g) aftercare.

17 (3) The juvenile court shall maintain continuing jurisdiction over minors who are receiving
18 services in accordance with the pilot program described in this section.

19 (4) The court shall order the parent or guardian of the minor to:

20 (a) complete an assessment to determine appropriate treatment interventions;

21 (b) participate in training on problem solving skills, implementation of consequences for
22 inappropriate behavior, and rewarding appropriate behavior; and

23 (c) pay the appropriate division for all or part of the costs associated with the child's
24 involvement in the pilot program in accordance with their ability to pay.

25 (5) The juvenile court may issue any order that it deems appropriate to support a family's
26 successful completion of the pilot program.

27 (6) Payments received by the division under Subsection (3) shall be deposited in the
28 General Fund.

29 (7) In accordance with the provisions of Title 63, Chapter 56, Utah Procurement Code, the
30 division shall:

31 (a) contract for the provision of services necessary to implement the pilot program; and

1 (b) contract for an independent evaluation of the effectiveness of the pilot program.
2 (8) The pilot program is authorized from July 1, [~~1997~~] 1998 to June 30, [~~1998~~] 1999.
3 [~~(9) There is appropriated from the General Fund, for fiscal year 1997-1998, \$320,000 to~~
4 ~~the Division of Child and Family Services within the Department of Human Services solely for~~
5 ~~the purpose of implementing the Early Intervention for Juveniles Pilot Program described in this~~
6 ~~section.]~~

7 Section 41. **Effective date.**

8 This act takes effect on July 1, 1998.